RESOLUTION NO. 15-60

A RESOLUTION ADOPTING A COST/BENEFIT ANALYSIS OF APPROPRIATING FUNDS FOR ECONOMIC DEVELOPMENT PURPOSES USING CERTAIN INCREMENTAL SALES TAX REVENUES TO MILLER FAMILY REAL ESTATE FOR THE PURPOSE OF GENERATING ECONOMIC BENEFIT TO THE RESIDENTS OF THE CITY AND RELATED MATTERS AND APPROVING RELATED REIMBURSEMENT AGREEMENTS

WHEREAS, the City is considering a reimbursement agreement ("Reimbursement Agreement") between the City and Miller Family Real Estate ("Developer") in which the City would agree to remit certain local sales and use taxes to the Developer;

WHEREAS, the City is ratifying and amending actions the Council took heretofore;

WHEREAS, Utah Code Section 10-8-2 provides that the City perform a cost-benefit analysis prior to finalizing the appropriation of funds for a corporate purpose as defined in that section and the City has made this analysis available for public review at least 14 days prior to a hearing to discuss the said appropriation of funds;

NOW THEREFORE, the City Council resolves to adopt the analysis outlined in Utah Code Section 10-8-2 as detailed in Exhibit A – Cost / Benefit Analysis and is now ready to appropriate funds as outlined in the Reimbursement Agreement (Exhibit B) and the First Amendment to Reimbursement Agreement (Exhibit C) as described above. In adopting the analysis, the council acknowledges that remittance of a percent of sales and use tax to Miller Family Real Estate would bring a net benefit to the Municipality as is required in Utah Code (10-8-2-1-a-iii), and the property will be improved (10-8-2-1-a-iv).

NOW, THEREFORE BE IT RESOLVED that the City Council as the legislative body of the City have adopted this Resolution this the **10th** day of **November** 2015.

DRAPER CITY, SALT LAKE COUNTY AND
UTAH COUNTY, UTAH

Mayor Troy K. Walker

CITY OF DRAPER CORPORATE Seal 1978 State of Utah

ATTEST:

Rachelle Conner, City Recorder

Exhibit A:

COST / BENEFIT ANALYSIS
(10-8-2)

Cost / Benefit Analysis – (10-8-2 Analysis)

Appropriation of a Portion of Draper City's Local Option Sales Tax Revenues

Date of Report: 10/27/2015

Summary of Report

Section 1: An analysis of the costs and benefits the City will experience if no financial assistance is offered to Miller Family Real Estate.

Section 2: An analysis of the costs and benefits the City will experience if financial assistance is offered to Miller Family Real Estate.

Section 3: A comparison of the costs and benefits of the two scenarios.

Prepared by Lewis Young Robertson & Burningham

41 N. Rio Grande, Suite 101, Salt Lake City, Utah 84101

P: 801.596.0700

In Draper City (the "City"), on the southwest corner of 11400 South and Lone Peak Parkway (west of Karl Malone Toyota) is approximately 15 acres of vacant property. Miller Family Real Estate, owner of Larry H Miller ("LHM") is an interested party to purchase and develop this property into an office building and two car dealerships. To make this potential project financially viable, LHM approached the City seeking assistance to locate within the City's boundaries. This report outlines and compares the estimated costs and benefits of two scenarios for the next 11 years. The time frame of 11 years was chosen because it illustrates the entire duration of the financial assistance period plus one year after the incentive period.

The first scenario, Scenario 1, assumes the City decides against offering assistance and the property is left to develop without the City's support. In the second scenario, Scenario 2, the City offers assistance in the form of incremental sales tax monies to LHM.

Should Scenario 2 be realized, the City will experience a fiscal benefit, development of an under-utilized parcel, and economic development in the form of job creation and a substantial tax base increase. These three benefits come in addition to the fiscal benefit illustrated in detail on pg. 3 of this report.

Figure 1: Map of the Property

Property Overview

The land in question is made up of two parcels[1] and is currently under greenbelt status. While retail developers have shown interest in developing on this land in the past, no efforts have come to fruition. Developers have only been interested in the front sections of the land, but the land owner does not wish to subdivide the parcels for both marketing and valuation purposes. It is therefore likely that the 15.04 acres will remain undeveloped for the foreseeable future. A map of the land is depicted in Figure 1.

Section 1: Scenario 1 - No Change

This scenario assumes the City does not provide financial assistance to LHM, the company locates in a different city, and the 15.04 acres of land remains as it is today. The revenue the City receives from the greenbelt-status remains constant and no expenses are added.

Scenario 1 Costs

The land does not currently impose any notable costs to the City. Services used by the property, i.e. pressurized irrigation, are paid for through usage fees. This scenario would not alter the costs to the City.

Scenario 1 Benefits

The City only receives revenues from greenbelt property taxes imposed on the land. This tax is like a property tax, but instead of basing the tax on the market value of the land, the tax is based off of the agricultural value. If, for example, 4 acres of greenbelt land can produce 20 tons of alfalfa hay, the greenbelt tax will be based off of the value of the hay. Our model assumes that for the next 11 years the City will receive $8,086 annually for a total of $88,945. Table 1 shows the greenbelt tax revenue the City will receive each year for the next 11 years. The time frame of 11 years was chosen because it illustrates the duration of the support the City would provide to LHM plus the year after the scenario ends.

Table 1: Revenues from Land (Scenario 1)

Scenario #1: No change									
Property Tax	**2016**	2017	2018	2019	2020	2021	2022	2023	2024
Revenue to the City	$ 8,086	$ 8,086	$ 8,086	$ 8,086	$ 8,086	$ 8,086	$ 8,086	$ 8,086	$ 8,086
Total Revenue	$ 8,086	$ 8,086	$ 8,086	$ 8,086	$ 8,086	$ 8,086	$ 8,086	$ 8,086	$ 8,086

Property Tax	**2025**	**2026**	**Total**	**NPV @ 5% Discount**
Revenue to the City	$ 8,086	$ 8,086	$ 88,945	67,165
Total Revenue	$ 8,086	$ 8,086	**$ 88,945**	**$ 67,165**

Scenario 1 Net Benefit

The net benefit of not assisting LHM is the revenue the City will receive from the greenbelt taxes, $88,945, less the costs to the City, $0. The net benefit is, therefore, $88,945. This information is summarized in Table 2.

[1] The parcel numbers are 27244010060000 and 2724401003000.

Table 2: Net benefit of Scenario #1 over the Next 11 Years

Scenario #1: No Change				
Net Benefit				
Revenue to the City	less	Costs	equals	Net Benefit
$ 88,945	-	$ 0	=	$88,945

This scenario does not produce any notable economic or development benefits for the City.

Section 2: Scenario 2 – Financial Assistance for LHM

This scenario assumes the City enters into a reimbursement agreement with LHM, offers the company assistance in the form of incremental sales tax from the car dealerships, and the company purchases the 15.04 acres. LHM then develops the land which will cost them an estimated $3,000,000. Once the land is developed, LHM builds a corporate office and 2 car dealerships which employs approximately 805 people between the 3 facilities. LHM anticipates the combined annual sales from the dealerships will be approximately $160,000,000. The financial assistance the City offers is a reimbursement of 38% of the incremental sales tax revenue the City receives from LHM. The financial assistance has a cap of $3,100,000 or 10 years, whichever comes first.

Scenario 2 Costs

This scenario will cost the City money in sales tax revenues, general administration, and in the services it must provide for the dealership and office building, like public safety. Table 3 illustrates the costs to the City if Scenario 2 is selected.

Analysis of the costs looks only at costs that LHM will not assume. Some additional services' costs are paid for through business license fees or impact fees and therefore, not included in this calculation of the cost. These services include; storm water, culinary water, and roads.

Table 3: Scenario 2's Cost to the City

Scenario #2: LHM Financial Assistance + Cost to City Analysis									
Sales Tax Assistance	**2016**	2017	2018	2019	2020	2021	**2022**	**2023**	**2024**
Sales Tax Revenue Rebate	$ 304,000	$ 304,000	$ 304,000	$ 304,000	$ 304,000	$ 304,000	$ 304,000	$ 304,000	$ 304,000
Enhanced Cost of Service	$ 12,500	$ 12,500	$ 12,500	$ 12,500	$ 12,500	$ 12,500	$ 12,500	$ 12,500	$ 12,500
Total Cost	$ 316,500	$ 316,500	$ 316,500	$ 316,500	$ 316,500	$ 316,500	$ 316,500	$ 316,500	$ 316,500

Scenario #2: LHM Financial Assistance + Cost to City Analysis				
Sales Tax	**2025**	**2026**	**Total**	**NPV @ 5% Discount**
Sales Tax Revenue	$ 304,000	$ 0	$ 3,040,000	$ 2,347,407
Enhanced Cost of Service	$ 12,500	$ 12,500	$ 137,500	$ 103,830
Total Cost	$ 316,500	$ 316,500	$ 3,177,500	$ 2,451,238

If Selected, Scenario 2 will cost the City an average of $316,500 annually for 10 years and then $12,500 in current dollars each year thereafter.

Scenario 2 Benefits

The City would benefit from this scenario financially, economically, and from a development standpoint.

Financially, the City receives an increased amount of property tax revenue from the land, $77,574 more a year or an increase of 959%. Where the City was not receiving any sales tax revenue from this land owner, it will retain $496,000 a year for 10 years, thereafter, the City will receive the full amount of sales tax revenue from LHM, $800,000. The City will also receive franchise tax revenues from utilities used by LHM that were not previously used. Fees from gas and power will provide the City with an average of $23,425 annually from 2017 through 2026. The data from this paragraph is summarized in Table 4.

Table 4: Scenario 2's Fiscal Benefit to the City

Scenario #2: LHM Financial Assistance	2016	2017	2018	2019	2020	2021	2022	2023
Property Tax Revenue	$ 0	$ 85,660	$ 85,660	$ 85,660	$ 85,660	$ 85,660	$ 85,660	$ 85,660
Sales Tax Revenue to City	$ 800,000	$ 800,000	$ 800,000	$ 800,000	$ 800,000	$ 800,000	$ 800,000	$ 800,000
Franchise Tax Revenue	$ 0	$ 20,909	$ 21,432	$ 21,967	$ 22,517	$ 23,080	$ 23,657	$ 24,248
Total Benefit	$800,000	$906,569	$907,091	$907,627	$908,176	$908,739	$909,316	$909,908

Scenario #2: LHM Financial Assistance	2024	2025	2026	Total	NPV @ 5% Discount
Property Tax Revenue	$ 85,660	$ 85,660	$ 85,660	**$ 856,596**	**$ 629,944**
Sales Tax Revenue	$ 800,000	$ 800,000	$ 800,000	**$ 8,800,000**	**$ 6,645,131**
Franchise Tax Revenue	$ 24,854	$ 25,476	$ 26,112	**$ 234,251**	**$ 170,568**
Total Revenue	$910,514	$911,135	$911,772	**$ 9,890,847**	**$ 7,445,644**

An additional financial benefit will be seen in the payment of rollback taxes. The current owners of the 15 acres owe 5 years of greenbelt rollback taxes. The total amount owed it $550,000. If Scenario 2 is selected, the $550,000 of rollback taxes will be paid in the same year the sales of the land takes place. The City's portion of this tax is roughly $1,000.

As an **economic benefit**, Scenario 2 will create jobs. LHM believes that their office building will hold approximately 600 employees. The two car dealerships will together employ approximately 205 employees. Together the project will bring approximately 805 jobs to Draper. The annual payroll for these jobs is estimated to be nearly $50,000,000.

From a **development** standpoint, Scenario 2 will bring development to an under developed and underutilized property. As mentioned in the property overview, if LHM does not purchase this property, it is unlikely to be developed in the foreseeable future. The land is already zoned for the use that LHM intends. Furthermore, Karl Malone Toyota is on the other side of Loan Peak Parkway. An additional car dealership in that location would not negatively affect the look or feel of the area or City.

In terms of what LHM will do to develop the land, the company's plans for improvement will cost them $3,000,000, in addition to the cost of acquiring the land. The plan includes widening Loan Peak Parkway, on site detention, canal improvements, soil mitigation, signage, and land assemblage. Once complete, LHM will build an office building to be valued at $16,300,000 and two dealership buildings valued at $8,850,000 and $16,300,000. The combined value of the buildings will be $37,475,000. The building value plus the land improvements equate to a total development benefit of $40,475,000.

Scenario 2 Net Benefit

The net benefit of providing financial assistance to LHM for the next 11 years is an average annual increase in Draper's revenues from taxes and fees of $610,304. Over an 11 year timeframe, the City will receive $6,713,347 in revenues in excess of the option's costs. The City will also experience economic benefits. LHM will bring approximately 805 jobs to the City. An additional benefit is the development LHM has committed to. The cost of development will be $3,000,000. The combined value of the buildings (1 office building and 2 dealerships) will be $37,475,000. A summary of the net benefits of Scenario 2 is provided in Table 5.

Table 5: Net benefit of Scenario #2 over the Next 11 Years

Scenario #2: LHM Financial Assistance	**Net Benefit**			
Fiscal Benefit				
Total Revenue to the City	less	Costs	equals	**Net Benefit**
$ 9,890,847	-	$ 3,177,500	=	$ 6,713,347
Economic Benefit				
Jobs Created	Less	Jobs lost	equals	**Economic Benefit**
805	-	$ 0	=	805 Jobs
Payroll	Less	Replaced Pay	equals	**Increased Payroll**
$ 50,000,000	-	$ 0	=	$ 50,000,000
Development Benefit				
Development Dollars	Less	Demolition of existing development	equals	**Development Benefit**
$ 40,475,000	-	$ 0	=	$ 40,475,000

Section 3: Comparison of Scenarios

Both scenarios will provide a net benefit to the City. Scenario 2's net fiscal benefit over 11 years is estimated to be 7,548% larger than Scenario 1's net fiscal benefit. Scenario 1 does not offer any economic or development benefits. Scenario 2 will bring to the City 805 jobs with an annual payroll of nearly $50,000,000 and $40,475,000 in additional tax value to the property and buildings.

Table 6: Scenario Comparison over the Next 11 Years

Scenario Caparison Fiscal Benefit	Total 11 year Cost	Total 11 Year Fiscal Benefit	Net 11 year Fiscal Benefit	Net Benefit NPV @ 5% Discount
Scenario 1	$ 0	$ 88,945	$ 88,945	**$ 67,165**
Scenario 2	$ 3,177,500	$ 9,890,847	$ 6,713,347	$ 4,994,406

Scenario Caparison Economic & Development Benefits	Economic Benefit Added Jobs	Increased Payroll	Increased Development Land Development	Building Value
Scenario 1	0	$ 0	$ 0	$ 0
Scenario 2	805	$ 50,000,000	$ 3,000,000	$ 37,457,000

With both scenarios, the City carries little to no risk. Scenario 1 would not incur any incremental costs at all. While Scenario 2 requires the City to refund 38% of sales tax revenue paid by LHM, it also gives the City 62% of its entitled sales tax from the proposed development. If sales do not occur as projected, the City has a time-based cap of 10 years. If sales occur as projected, the monetary cap ends refunding sales tax at $3,100,000 (projected to occur after 10 years). Because whichever cap comes first ends the financial assistance to LHM, Scenario 2 is an extremely low risk option.

When taking opportunity cost into account, the net benefit of the next best option is subtracted from the chosen option's net benefit. Accounting for the opportunity cost reduces the net fiscal benefit of each scenario as indicated in Table 7.

Table 7: Net benefit of Scenarios over the Next 11 Years Accounting for Opportunity Cost

Scenario Net Fiscal Benefit Less Opportunity Cost				
Scenario 1				
Net Fiscal Benefit	less	Opportunity Cost (Net Benefit of S2)	equals	**Net Benefit – Opportunity Cost**
$ 88,945	-	$ 6,713,347	=	$ (6,624,402)
Scenario 2				
Net Fiscal Benefit	Less	Opportunity Cost	equals	**Net Benefit – Opportunity Cost**
$ 6,713,347	-	$ 88,945	=	$ 6,624,402

EXHIBIT B

Reimbursement Agreement

REIMBURSEMENT AGREEMENT

This Reimbursement Agreement ("Agreement") is made and entered into as of the _____ day of September, 2015, by and ~~among~~ between ~~the **REDEVELOPMENT AGENCY OF THE CITY OF DRAPER**, a public agency organized and existing under the Utah Neighborhood Development Act, hereinafter referred to as the "Agency,"~~ **DRAPER CITY**, a Utah municipal corporation, hereinafter referred to as the "City," and **MILLER FAMILY REAL ESTATE, L.L.C.**, a Utah limited liability company, hereinafter referred to as "Owner" or "Developer." City~~, Agency~~ and Owner or Developer may be referred to herein collectively as "Parties" or individual as a "Party."

RECITALS:

WHEREAS, Developer intends to construct and operate at least two retail vehicle sales and/or repair facility (each a "Dealership") together with other buildings, including an office building, all within Draper City (the "Project"). The improvements associated with the Project, and the Project's boundaries, are noted on the conceptual preliminary "Site Plan" attached as Exhibit A to this Agreement.

WHEREAS, Developer will incur on-site and off-site improvement costs associated with the development of the Project;

WHEREAS, ~~Draper~~ City will receive direct pecuniary benefits in the form of sales tax and property tax from the construction and operation of the Project's buildings and businesses, including the Dealerships; and

WHEREAS, ~~Draper~~ City desires to reimburse to Developer a portion of the sales tax generated by the Project to offset ~~of~~ Developer's on-site and off-site improvement and related costs in accordance with this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Site Improvements:** To the extent Owner proceeds with the Project, Owner shall pay all of the costs of constructing the Project.

2. ~~**Agency**~~ **City Reimbursement Obligations.** Owner estimates that the Project will generate approximately $50 - $180 million in annual sales. City will receive from the State Tax Commission sales tax revenues generated by the Project. Subject to generating a minimum sales tax revenue, as verified by the State Tax Commission, to the City of $500,000 for the first dealership and a minimum of $200,000 for the second dealership~~A~~after the opening of the first Dealership within the Project, ~~Agency~~ City shall pay Owner, or its affiliate as designated by Owner, ~~: (i) a one-time reimbursement for moving costs as described in Section 2(a) below, and (ii)~~ quarterly sales tax reimbursement payments (the "Quarterly Sales Tax Reimbursement") based on the ~~attached~~following schedule~~.~~: (1) For the first two years of the Term, as defined below, City shall pay fifty percent (50%) of the direct sales tax received by the City from the State Tax Commission, as collected and remitted to the Commission, from sales occurring within

the Project (the "Owner's Sales Tax Reimbursement"); (2) For years three, four, and five of the Term, the Owner's Sales Tax Reimbursement shall be adjusted to forty percent (40%); (3) For years six, seven, and eight of the Term, the Owner's Sales Tax Reimbursement shall be adjusted to thirty percent (30%); and (3) For years nine and ten of the Term, the Owner's Sales Tax Reimbursement shall be adjusted to twenty-five percent (25%). ~~The reimbursement will begin at 50% for years on and two and then deescalate to 40% for years three, four and five, then deescalate to 30% for years six, seven and eight, and finally deescalating to 25% for the final years nine and ten. The reimbursement amount will be in the amount of fifty percent (50%) of the total 0.5% of the direct sales tax received by the City from the State Tax Commission, as collected and remitted to the Commission, during the Term [defined below] of this Agreement, from sales occurring within the Project ("Owner's Sales Tax Reimbursement"), as further detailed in Section 2(b) below.~~ The ten-year reimbursement agreement will apply separately and independently to each ~~d~~Dealership. Reimbursements will begin and be calculated independently for each ~~d~~Dealership and will only begin when each independent ~~d~~Dealership is complete and operational.

~~a. **Moving Cost Reimbursements**. City shall reimburse Owner up to the amount of One Hundred Thousand Dollars ($100,000) per dealership and the office tenant for moving costs incurred by the Project's two Dealerships and office tenant in moving from their current locations to Draper City. Under no circumstances shall the moving cost reimbursement obligation exceed Three Hundred Thousand Dollars ($300,000). Each application for moving costs reimbursement shall be accompanied by copies of paid invoices incurred by Owner or Owner's affiliate in moving the Dealership or the office tenant to the Project. City agrees to pay the reimbursement costs for each of the two Dealerships and the one office tenant within thirty (30) days of receipt of the invoices evidencing the amount of reimbursement requested for each such business unit part of the Project. The Parties agree and acknowledge that a Dealership or the office tenant may complete its move before the other(s) and as a result the applications for reimbursement of moving costs may be made at different times based on the completion of each move to the Project. Once City has reimbursed the Owner or its affiliate for moving costs for each of the three business units described above, the two Dealerships and the office tenant, then City's obligations under this Section 2(a) will have been satisfied.~~

a. **Quarterly Sales Tax Reimbursements**. Beginning the first month after commencement of the Term, City agrees to remit to Owner on a quarterly basis Owner's Sales Tax Reimbursement. City shall track and provide to Owner evidence of all remittances from the State Tax Commission for sales tax generated from the Project. City shall account for and segregate Owner's Sales Tax Reimbursement amount from the monthly payments the City receives from State Tax Commission for direct sales taxes generated from the Project and remit to Owner its ~~fifty (50%)~~ share, as described above, every three months~~,~~ during the entire Term.

b. **City's obligations herein are contingent upon Owner beginning construction of the Project by December 31, 2016, and having one Dealership open for business by July 1, 2017.**

3. **Term**. ~~The agreement is only valid if the owner begins construction of the project by 2016 and is operational by 2017. The agreement will expire if not construction has begun by 2018.~~ The term of this Agreement for each Dealership shall commence on the date that

~~the first~~ ~~a~~each Dealership within the Project opens for business and shall continue for one hundred twenty (120) months from the date that ~~the second~~ each independent Dealership opens within the Project (the "Term."). Upon commencement of the reimbursement Term for each Dealership, the Parties shall execute a term confirmation letter in the form attached hereto as Exhibit B to confirm the beginning date for the Term. ~~and upon opening the second Dealership, the Parties shall again execute a term confirmation letter, in the form attached as Exhibit B, to confirm the ending date of the Term.~~

4. **Impact Fees**. City agrees to waive or to pay on Owner's behalf the impact fees that would be charged in connection with obtaining development approvals or building permits for the two Dealerships and office building depicted on Exhibit A.

5. **Attorney Fees.** Should any party hereto employ attorneys (whether such attorney be in house or outside counsel) for the purpose of enforcing this Agreement, or any judgment based on this Agreement, including but not limited to arbitration, declaratory relief or other litigation, including appeals or re-hearings, and whether or not an action has actually commenced, the prevailing party shall be entitled to receive from the other party thereto reasonable attorneys' fees and reimbursements for all costs and expenses (including expert witnesses). Should any judgment or final order be issued in that proceeding, said reimbursement shall be specified therein. For purposes of calculating reasonable attorneys' fees, any in-house counsel shall be entitled to fees at the same rate as comparable outside counsel would charge for similar work.

6. **Entire Agreement.** This Agreement contains the entire agreement and understanding of the parties with respect to reimbursement to the Developer and supersedes all prior written or oral agreements, representations, promises, inducements or understandings between the parties with regard to any reimbursements to Developer from Draper City.

7. **Binding Effect.** This Agreement shall be binding upon the parties hereto and their respective officers, employees, representative's agents, members, successors, and assigns. This Agreement is for the benefit of the parties hereto for the purposes stated herein, including, without limitation, reimbursement of sales tax generated by the operation of the dealerships and tenant within the Project, as specified herein, and this Agreement is not transferable to any other Party.

8. **Validity and Severability.** If any section, clause or portion of this Agreement is declared invalid by a court of competent jurisdiction for any reason, the remainder shall not be affected thereby and shall remain in full force and effect.

9. **Amendment.** This Agreement may be amended only in writing signed by the parties hereto.

10. **No Waiver.** Failure of a party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise such right at some future time said right or any other right it may have hereunder.

11. **Applicable Law.** This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Utah.

12. **Execution of Agreement.** This Agreement may be executed by facsimile and 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. The exhibits attached to this Agreement shall be and hereby are incorporated herein by this reference.

13. **Relationship of the Parties.** The provisions of this Agreement are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership or any similar relationship between the parties. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.

~~13.~~14. **Notices.** Notices required by this Agreement shall be sent to the following:

City: Draper City ~~RDA~~
1020 East Pioneer Road
Draper, Utah 84020
Attention: Mayor and City Manager

~~**Agency**: Draper City RDA~~
~~1020 East Pioneer Road~~
~~Draper, Utah 84020~~
~~Attention: Mayor and City Manager~~

Owner: Miller Family Real Estate, L.L.C.
Attention: President
9350 South 150 East, Suite 1000
Sandy, UT 84070

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their respective, duly authorized representatives as of the day and year first above written.

~~**"AGENCY"**~~

~~**Redevelopment Agency of Draper City**~~

~~By:~~ ______________________
~~Its:~~ ______________________

"CITY"

Draper City

By: ______________________
Its: ______________________

Attest:

22451016

____
City Recorder

"OWNER"

Miller Family Real Estate, L.L.C.

By: ______________________________

Its: ______________________________

EXHIBIT A

Site Plan for Project

EXHIBIT B
Term Confirmation Letter

Date ______________________

Draper City
Attention: City Manager
1020 East Pioneer Road
Draper, Utah 84020

Re: Term Confirmation Letter with respect to that Reimbursement Agreement as of the _____ day of September, 2015, by and among **Redevelopment Agency of the City of Draper**, as RDA, **Draper City**, as City, and **Miller Family Real Estate, L.L.C.,** a Utah limited liability company, as Owner.

Dear City Manager:

In accordance with the terms and conditions of the above referenced Reimbursement Agreement, Owner's affiliate has opened a Dealership, as the terms are defined in the Reimbursement Agreement, and therefore the Term under the Reimbursement Agreement has commenced. The Term's commencement and termination dates are as follows:

1. The first day of the Term is ______________;

2. The last day of the Term is ______________.

This Term Confirmation Letter shall be deemed accepted by City and RDA if not executed and returned to Owner by City within 30 days after the date that Owner delivers this Term Confirmation Letter to City for execution.

Sincerely,

Miller Family Real Estate, L.L.C.

By: EXHIBIT – DO NOT SIGN
Its: ______________________

Agreed and Accepted:

City: Draper City
By: EXHIBIT – DO NOT SIGN
Name: ______________________
Title: City Manager
Date: ______________________

RDA: Redevelopment Agency of the City of Draper

By EXHIBIT – DO NOT SIGN
Name: ______________________
Title: Chair

22451016

Date: ______________________

EXHIBIT C

Fist Amendment to the Reimbursement Agreement

FIRST AMENDMENT
TO REIMBURSEMENT AGREEMENT

THIS FIRST AMENDMENT TO REIMBURSEMENT AGREEMENT (the "**Amendment**") is made and entered into as of this _____ day of November, 2015 by and between **DRAPER CITY**, a political subdivision of the State of Utah ("**City**") and **MILLER FAMILY REAL ESTATE, L.L.C.**, a limited liability company, ("**Owner**"). City and Developer may be referred to herein collectively as "**Parties.**"

RECITALS

A. **WHEREAS**, Owner and City entered into a Reimbursement Agreement dated as of September 30, 2015 (the "**Agreement**") for the purpose of setting forth various agreements and commitments related to Owner's plan to develop the Project as defined in the Agreement. A copy of the Agreement is attached as Exhibit 1.

B. **WHEREAS**, as part of developing the Project, Owner will install and construct certain infrastructure, including the dedication of land for use as part of Lone Peak Parkway and enclosing and realigning the Salt Lake Canal and reconfiguring the surrounding site so that Dealership display places may be located over the public canal improvements.

C. **WHEREAS**, Owner and City desire to amend the Agreement to establish a cap on the total amount of Sales Tax Reimbursement [defined below] to be paid to Owner under the Agreement, and to agree to other changes set forth below.

BASED UPON the foregoing recitals, which are affirmed correct by the Parties, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Owner agree as follows:

1. Incorporation/Interpretation. All of the terms of the Agreement are incorporated into this Amendment, except as revised below. In the event of a conflict between the Agreement and this Amendment, this Amendment shall control. Capitalized terms in this Amendment shall have the same meaning given in the Agreement, except if there is a conflict this Amendment's definition will control.

2. City's Reimbursement Obligations. Section 2 of the Agreement is stricken and replaced with the following:

> Owner estimates that the Project will generate approximately $50 - $180 million in annual sales. City will receive from the State Tax Commission sales tax revenues generated by the Project. Subject to generating a minimum sales tax revenue, as verified by the State Tax Commission, to the City of $500,000 from a Dealership within the Project, City shall pay Owner, or its affiliate as designated by Owner, quarterly sales tax reimbursement payments (the "**Quarterly Sales Tax Reimbursement**") based on the following: (i) City shall pay fifty percent (50%) of the net point-of-sale sales tax received by the City from the State Tax Commission, as collected and remitted to the Commission, from sales occurring from any Dealership constructed, built and operating within the Project (the "**Owner's Sales Tax Reimbursement**") and (ii) City's obligation to pay the Owner's Sales Tax Reimbursement shall terminate and be of no further force

or effect at such time as City has paid to Owner, or its designated affiliate, the total amount of Three Million One Hundred Thousand Dollars ($3,100,000) (the "**Reimbursement Cap**").

a. **Quarterly Sales Tax Reimbursements**. Beginning the date that a Dealership opens for business within the Project and continuing until the date that City pay the Reimbursement Cap, City agrees to remit to Owner, on a quarterly basis, Owner's Sales Tax Reimbursement. City shall track and provide to Owner evidence of all remittances from the State Tax Commission for sales tax generated from the Project. City shall account for and segregate Owner's Sales Tax Reimbursement amount from the monthly payments City receives from State Tax Commission for direct point-of-sale sales taxes generated from the Project and remit to Owner its share, as described above, every three months through the date that the Reimbursement Cap is met.

b. **Condition Precedent.** City's obligations to pay Owner's Sales Tax Reimbursement is contingent upon Owner beginning construction of the Project by December 31, 2016, and having one Dealership open for business by July 1, 2017.

c. **Disbursement of Reimbursement Amounts**. The Parties agree that the payment of Owner's Sales Tax Reimbursement will be deemed reimbursements of costs and expenses incurred by Owner which will advance (or which have advanced) the public health, safety and general welfare and will significantly increase future tax revenues to City, stimulate economic growth and otherwise generally advance City's policy objectives. City has independently reviewed the terms and conditions of this Agreement, as amended, and has conducted a study pursuant to Utah Code Ann. § 10-8-2, which study establishes the Project will result in significant benefits for City. For purposes of this Agreement, as amended, "public purpose" will include, without limitation, the acquisition, design, construction, installation, erection, repair or maintenance of improvements that promote the benefits described herein; provided, however, notwithstanding anything to the contrary contained herein, City and Owner acknowledge and agree that the Project and all land within the Project boundaries shall at all time remain private property of Owner, or its successors.

3. Term. Section 3 and Exhibit A of the Agreement are stricken and replaced with the following:

> This Agreement commences on the date of execution and the term of the City's obligation to pay the Owner's Sales Tax Reimbursement shall commence as to each Dealership on the date that City issues a certificate of occupancy for each Dealership within the Project and shall continue until the earlier of the date (i) on which the Reimbursement Cap is met, or (ii) which is one-hundred forty-four (144) months from the issuance of the aforementioned certificate of occupancy for each Dealership. Upon commencement of the reimbursement term for each Dealership, the Parties shall execute a term confirmation letter in the form attached to the Agreement.

4. New Provisions. The Agreement is supplemented with the following two provisions:

a. **Road Improvements**. The Project will necessitate certain improvements to Lone Peak Parkways adjacent to Owner's property to accommodate traffic, including the installation of de-acceleration lanes, pavement and a traffic light semaphore ("**Lone Peak Improvements**"). City agrees to contribute the amount of Two Hundred Thousand Dollars ($200,000) towards those Lone Peak Improvements which City might otherwise have been required to construct.

b. **Road Vacation**. To facilitate the Project, City intends to approve an ordinance vacating 300 West in the area located within the Project at no charge to Owner. The Parties agree that the road vacation may be conditioned upon Owner being unconditionally obligated to close on the acquisition of the property underlying the Project.

ENTERED into as of the date first above written.

"CITY"

Draper City

By: ______________________________
Its: ______________________________

Attest:

____
City Recorder

"OWNER"

Miller Family Real Estate, L.L.C.

By: ______________________________
Its: ______________________________

22780820

EXHIBIT 1
[Agreement]