

WHEN RECORDED, MAIL TO:
Attn: South Jordan City Recorder
1600 West Towne Center Drive
South Jordan, Utah 84095

12164512
11/04/2015 10:49 AM \$0.00
Book - 10376 Pg - 7270-7293
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
SOUTH JORDAN
1600 W TOWNE CENTER DR
SOUTH JORDAN UT 84095-8265
BY: TRA, DEPUTY - WI 24 P.

AFFECTING PARCELS: 26-13-300-008-0000
26-24-100-006-0000
26-14-400-011-0000

PURCHASE AND REIMBURSEMENT AGREEMENT

Extension of South Jordan Parkway

This Purchase and Reimbursement Agreement is dated November 2, 2015, and is between the CITY OF SOUTH JORDAN, a Utah municipal corporation ("City"), DAYBREAK DEVELOPMENT LLC, a Delaware limited liability company (formerly known as Daybreak Development Company, a Delaware corporation) ("Daybreak"), and THE LAST HOLDOUT, L.L.C., a Utah limited liability company ("Last Holdout").

To meet current and future development and transportation demands in the western portion of City, City and Daybreak desire to extend South Jordan Parkway (the "Parkway") from its current terminus at 5630 West, across Daybreak's property and approximately 3.1335 acres of Last Holdout's property, to Utah State Road 85 ("S.R. 85"), also known as Mountain View Corridor. The Parkway is designed as an arterial road with a 134 foot wide right-of-way.

Last Holdout is the record owner of approximately 31 acres of property currently used as a farm that is located between Daybreak's property on the east and S.R. 85 on the west. Last Holdout has no immediate plans to develop its property but it does intend to develop it sometime in the future. Last Holdout acknowledges that when it chooses to develop its property it will be required to dedicate and build at least 55 feet of the Parkway's right-of-way that crosses its property, and/or pay City for Last Holdout's proportionate impact caused on City's transportation infrastructure by its development.

Daybreak desires to dedicate the portion of the Parkway expansion on its property to City, and City desires to acquire the 3.1335 acres of Last Holdout's property that is necessary to extend the Parkway from 5630 West to S.R. 85. The parties acknowledge that it is in their best interests (1) for Last Holdout to voluntarily sell its 3.1335 acres of property to City, thereby avoiding a formal condemnation proceeding; (2) to agree in advance that construction of the Parkway may be phased; and (3) to determine what portion of the entire cost of the Parkway's expansion for which each party is responsible, including Last Holdout's and Daybreak's dedication of property, Daybreak's contribution to City for the purchase of Last Holdout's 3.1335 acres, and reimbursement for construction costs and future traffic impact payments.

The parties therefore agree as follows:

Purchase and Reimbursement Agreement
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ARTICLE I – DEFINITIONS

A. **Definitions.** For purposes of this agreement, the following definitions apply:

(1) “Business Day” means a day other than a Saturday, Sunday, or a day which banking institutions in Salt Lake City, Utah are authorized or required by law or executive order to be closed.

(2) “Closing” means the consummation of the transactions contemplated by Article II of this agreement.

(3) “Closing Date” means the date on which the Closing occurs, as established pursuant to Article II, Section C of this agreement.

(4) “Final Plat” means the professional land surveyor’s plat that is substantially similar to the plat attached hereto as Exhibit A that depicts the extension of the Parkway from 5630 West to S.R. 85 and the associated public dedications to City.

(5) “Project” shall mean the construction of the extension of a 134 foot wide arterial public right-of-way named “South Jordan Parkway” from its current terminus at 5630 West to Utah S.R. 85 according to City’s “Standard Plans and Specifications,” which is administered by the Engineering Division of City’s Development Services Department. The Project’s final design includes, but is not limited to a curbed median, paved travel and turning lanes, paved shoulders, curb and gutter, park strip, street lights, traffic signals and signs, sidewalk, and all associated utilities, irrigation systems and vegetation. The portion of the Project’s total 134 foot wide right-of-way on the Property includes:

(a) an approximately 23 foot wide right-of-way that is in addition to City’s standard arterial road width of 111 feet (the “23’ ROW”);

(b) a 55 foot wide right-or-way that Last Holdout would be required to dedicate to City if it developed its property east of S.R. 85 (the “55’ ROW”); and

(c) an additional 56 foot wide dedication that will accommodate future traffic demand as described by the attached Exhibit B (the “56’ ROW”).

(6) “Property” means approximately 3.1335 acres of undeveloped real property owned by Last Holdout and generally located at approximately 5600 West 10800 South in the City of South Jordan, Salt Lake County, Utah and described in the attached Exhibit A.

(7) “Title Commitment” means a commitment of the First American Title Company, LLC, whose address is 7730 South Union Park Avenue, Suite 110, Midvale, Utah 84047, to issue a commitment for title insurance on the Property.

ARTICLE II – PURCHASE

A. **Offer and Acceptance.** Last Holdout shall convey the Property to City and City shall purchase the Property, all upon the terms and conditions set forth in this agreement.

B. **Purchase Price.** The purchase price for the Property shall be \$482,826.00 (the “Purchase Price”). The Purchase Price shall be payable upon Last Holdout’s delivery of the Property by means of signing the Final Plat whereupon the Property shall be deemed conveyed to City. City shall deliver the Purchase Price to Last Holdout at the Closing by wire transfer on or before the Closing Date, which Last Holdout shall hold in escrow until City has recorded the Final Plat.

(1) *Dedication by Last Holdout.* Last Holdout agrees that, if and when it chooses to develop its property east of S.R. 85, it would be required to dedicate to City the 55’ ROW without compensation from City or Daybreak. In August 2015, Integra Realty Resources appraised the Property to have a then-current value of \$818,970.00 (the “Appraised Value”). Based on the Appraised Value, the value of the 55’ ROW is equal to \$336,144.00. Accordingly, Last Holdout agrees that the Purchase Price is equal to the Appraised Value minus the value of the 55’ ROW.

(2) *Daybreak Portion of Purchase Price.* Based on the Appraised Value, Daybreak agrees to contribute \$140,569.00 of the Purchase Price, which Daybreak shall deliver to City before 5:00 PM November 16, 2015. Daybreak agrees that its portion of the Purchase Price is based on the extra 23 foot right-of-way width that is necessary for Daybreak to construct a median that it has included in its design for the Project.

(3) *Special Assessment Area Reimbursement.* City and Daybreak will be reimbursed \$342,257.00 and \$140,569.00, respectively, when funds from a special assessment area (“SAA”) bond become available. Such reimbursement, including the timing of the reimbursement, shall occur according to the terms of said SAA bond.

C. **Closing.** The Closing shall occur on or before 5:00 PM November 6, 2015.

(1) *City Obligations.* At the Closing, City shall:

- (a) pay the Purchase Price as described above; and
- (b) pay all recording fees related to the Closing except for encumbrance or lien releases, which shall be paid by Last Holdout.

(2) *Last Holdout Obligations.* At the Closing, Last Holdout shall:

- (a) sign the Final Plat; and
- (b) pay all encumbrance or lien releases.

(3) *Daybreak Obligations.* At the Closing, Daybreak shall sign the Final Plat.

(4) *Income and Expense.* All items of income and expense in respect of the Property, including, without limitation, rents, insurance premiums, and real estate taxes and assessments (except for greenbelt rollback taxes) shall be prorated between Last Holdout and City as of the Closing Date, based on the latest available information. From and after the Closing Date, City shall be solely responsible for real estate taxes and assessments (except for greenbelt rollback taxes) for the Property conveyed at the Closing.

(5) *Greenbelt Rollback Taxes.* Last Holdout shall file all necessary paperwork with the office of the South Lake County Recorder to withdraw the Property from taxation under the Farmland Assessment Act and shall pay all greenbelt rollback taxes then due on or before the Closing Date.

(6) *Other Closing Costs.* Any other Closing costs shall, to the extent not previously paid, be paid by Last Holdout and City. Last Holdout agrees that all Closing prorations and costs payable by Last Holdout shall be deducted from Last Holdout's proceeds at the Closing.

D. Certification as to "Non-Foreign" Status.

(1) *Certification.* At the Closing, Last Holdout shall deliver or cause to be delivered to City, at Last Holdout's sole cost and expense, a certification, signed and acknowledged by Last Holdout under penalties of perjury, certifying the following:

(a) Last Holdout's U.S. Taxpayers Identification Number;

(b) Last Holdout's business address; and

(c) that Last Holdout is not a non-resident alien, foreign corporation, foreign partnership, foreign trust, foreign estate or other foreign person within the meaning of Sections 1445 and 7701 of the Internal Revenue Code and the Treasury Regulations thereunder (collectively the "IRC").

(2) *Delivery of Certification.* City is hereby authorized to submit any certification delivered by Last Holdout pursuant to this section to the Internal Revenue Service and, in connection therewith, to disclose the details of this transaction to the Internal Revenue Service.

E. Possession of the Property. Possession of the Property shall be delivered to City at the Closing.

F. Final Plat.

(1) *Preparation.* Daybreak has prepared and provided the Final Plat and shall provide a current title report to City as defined by the South Jordan Municipal Code § 16.10.110. Daybreak is solely responsible for the expense of preparing the Final Plat including all engineering and Title Commitment expenses.

(2) *Recording.* City and Daybreak shall obtain all necessary signatures and record the Final Plat with the office of the Salt Lake County Recorder within a reasonable time period after the Closing. The parties acknowledge that there are many factors outside of City's and Daybreak's control that may affect their ability to obtain all necessary signatures and to record the Final Plat. City and Daybreak will seek to obtain all necessary signatures and to record the Final Plat with reasonable diligence and expediency. Last Holdout and Daybreak agree to promptly resign the Final Plat after the Closing if the Salt Lake County Recorder requires changes to the Final Plat before recording that necessitate Last Holdout and Daybreak to resign the Final Plat.

G. Last Holdout's Representations and Warranties. The following representations, warranties and covenants shall be true, correct and accurate on and as of the date of this agreement and on and as of the Closing Date. All representations, warranties and covenants by Last Holdout set forth in this agreement will survive the consummation of this agreement and the recordation of the Final Plat for a period of 18 months following the Closing, as to the Property conveyed at such Closing. Last Holdout represents and warrants to City as follows:

(1) *Litigation.* There is no pending or, to Last Holdout's actual knowledge, threatened litigation or administrative proceeding affecting Last Holdout or the Property.

(2) *Authorization.* The execution and delivery of, and Last Holdout's performance under, this agreement is within Last Holdout's powers and has been duly authorized by all requisite actions. This agreement constitutes a binding obligation of Last Holdout. In addition, the execution and delivery of the Final Plat, pursuant to this agreement, is within Last Holdout's powers and has been duly authorized by all requisite actions.

(3) *Liens.* At the Closing there will be no unpaid charges, debts, liabilities, claims or obligations arising from the ownership for operation of the Property that could give rise to any mechanic's or materialman's liens against the Property.

(4) *Organization and Standing.* Last Holdout has full power and authority to enter into this agreement and complete the purchase and sale transaction. Further, the person signing on behalf of Last Holdout is authorized by Last Holdout to sign this agreement. The person signing the Final Plat on behalf of Last Holdout is authorized by Last Holdout to sign the Final Plat.

(5) *Title.* There are no unrecorded agreements, leases, liens or encumbrances that may affect title to the Property.

(6) *Binding Agreement.* Upon Last Holdout's execution of this agreement, this agreement will be binding and enforceable against Last Holdout in accordance with its terms, and upon Last Holdout's execution of the additional documents contemplated by this agreement, they will be binding and enforceable against Last Holdout in accordance with their terms.

(7) *Other Agreements.* Neither the execution and delivery of this agreement nor the consummation of the purchase and sale transaction will constitute a breach under any contract or agreement to which Last Holdout is a party or by which Last Holdout is bound or affected or that affects the Property or any part thereof. Last Holdout has not entered into any agreement or contract with respect to the Property or granted an interest in the Property that is inconsistent with Last Holdout's obligation to convey to City by signing the Final Plat good and marketable fee simple title to the Property subject only to the permitted exceptions of the Title Commitment. Last Holdout shall not, prior to any termination of this agreement, enter into or execute any easement, encumbrance, lease, or other agreement with respect to the Property without City's prior written consent. Last Holdout shall not, prior to termination of this agreement, execute and record or consent to any declaration of covenants, conditions and restrictions or other similar document with respect to the Property without City's prior written consent.

(8) *No Condemnation, Moratoria or Violations.* Last Holdout has not received notice of any pending or threatened condemnation affecting the Property or any violation with regard to any applicable law, regulation, requirement, covenant, condition or restriction relating to the present use, occupancy or condition of the Property from any person, authority or agency having jurisdiction over the Property.

(9) *No Default.* Last Holdout is not in default under the terms of any written agreement by Last Holdout pertaining to the Property, nor has any event occurred that, with notice or passage of time, or both, would constitute a default by Last Holdout under any agreement, nor has Last Holdout received notice of any default under any agreement or encumbrance to which the Property, or any portion of the Property, is subject.

(10) *Environmental.* Based on Last Holdout's current actual knowledge, Last Holdout has no actual knowledge of the presence or existence of any Hazardous Materials (as defined below) or petroleum underground storage tanks on or near the Property that would necessitate or require remediation, cleanup or any other action in accordance with any Environmental Laws (as defined below). To Last Holdout's current actual knowledge, the Property is in compliance with the provisions of all Environmental Laws and all permits, licenses or other approvals issued thereunder, and to Last Holdout's actual knowledge, prior to the date of this agreement, the Property has been used in compliance with Environmental Laws. To Last Holdout's actual knowledge, all permits, licenses and other approvals required under Environmental Laws have been obtained for the Property. Last Holdout has not at any time used, stored or kept at the Property any Hazardous Materials, except in compliance with all Environmental Laws, and to Last Holdout's current actual knowledge, no Hazardous Materials have been used, stored or kept at the Property except in compliance with all Environmental Laws. As used in this agreement, the term "Hazardous Materials" is defined to include, without limitation, (i) oil hydrocarbons, petroleum, petroleum products or products containing or derived from petroleum; and (ii) any hazardous or toxic waste, substance, material, chemical, gas or particulate matter, as presently defined by or for purposes of any Environmental Laws. As used in this agreement, the term "Environmental Laws" is defined to include, without limitation, the Comprehensive Environmental Response,

Compensation and Liability Act, 42 U.S.C.A. Section 9601, *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C.A. Section 1801, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C.A. Section 6901, *et seq.*; the Toxic Substances Control Act, 15 U.S.C.A. Section 2601, *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C.A. Section 1251, *et seq.*; the Safe Drinking Water Act, 42 U.S.C.A. Section 300f, *et seq.*; the Clean Air Act, 42 U.S.C.A. Section 7401, *et seq.*; Utah Code Annotated; any successor to those laws (in existence on the date this representation is made or updated); any rules, regulations, ordinances, orders or decrees issued pursuant to those laws; any other Federal, State or local environmental, health or safety statute, ordinance, code, rule, regulation, order or decree as may now or at any later time be in effect regulating, relating to or imposing liability or standards concerning or in connection with hazardous or toxic wastes, substances, materials, chemicals, gases or particulate matter or the emission, discharge, dumping or other release of any substance to the environment; and any common law theory based on nuisance or strict liability.

(11) *Disclosure.* Last Holdout has not intentionally withheld from City any information known to Last Holdout affecting or in any way relating to the Property and/or Last Holdout's ability to develop and use the Property for Last Holdout's intended purpose.

(12) *Notices.* Last Holdout shall, immediately upon receiving notice of any actual or threatened claims or proceedings (i) for the condemnation of the Property or any portion thereof, (ii) arising out of injury or damage to or upon the Property or any portion thereof, (iii) arising out of any violation or threatened violation of applicable laws or regulations relating to or affecting the Property, including but not limited to any violation of Environmental Laws, or that may result in the liability of the owner or a successor owner of any interest in the Property, (iv) arising out of the imposition of any special assessment, levy or tax, (v) relating to the potential formation of any taxing authority affecting the Property, or (vi) that could affect or cloud title to or ownership of the Property, notify City thereof in writing with reference to this paragraph. Prior to the respective Closing, City shall have a period of ten days from receipt of such notice to waive the matter described in the notice or cancel this agreement by written notice to Last Holdout. Failure of City to so notify Last Holdout shall be an automatic cancellation of this agreement under the preceding sentence.

H. **City's Representations and Warranties.** City represents and warrants to Last Holdout as follows:

(1) *Organization and Standing.* City has full power and authority to enter into this agreement and complete the purchase and sale transaction. Further, the person signing on behalf of City is authorized by City to sign this agreement.

(2) *Binding Agreement.* Upon City's execution of this agreement, this agreement will be binding and enforceable against City in accordance with its terms, and upon City's execution of the additional documents contemplated by this agreement, they will be binding and enforceable against City in accordance with their terms.

(3) *Litigation.* There are no attachments, executions, assignments for the benefit of creditors, or voluntary or involuntary proceedings in bankruptcy or under other debtor relief laws contemplated by, pending, or threatened against City.

(4) *No Default.* Neither the execution and delivery of this agreement nor the consummation of the purchase and sale transaction will constitute a breach under any agreement to which City is a party or by which City is bound or affected or that affects the Property or any part thereof.

I. **Releases from Representations and Warranties.** Prior to the Closing, City has or shall make such on-site inspections of the Property and review such documents relating to the Property as City deems necessary. Upon the Closing, except for the express warranties stated in this agreement and any Closing documents, City shall accept the Property “as is” in its present condition without any representation or warranty, either express or implied. City expressly acknowledges that City has not relied on any warranties, promises, understandings or representations, express or implied, of Last Holdout relating to the Property that are not expressly set forth on the face of this agreement. City acknowledges that any and all engineering data, cost estimates, feasibility or marketing reports, soil reports, or other information of any type which City has received or may receive from Last Holdout or its agents is furnished on the express condition that City shall make an independent verification of the accuracy of such information, all such information being furnished without any warranty.

J. **Risk of Loss.** In the event any casualty loss or destruction of all or some of the Property occurs prior to the Closing, City may either: (a) elect to rescind this agreement, in which event City shall not be required to purchase all or any of the Property and the parties shall be released from any further liability hereunder with respect to the Property; or (b) accept, by written notice to Last Holdout, the Property in its destroyed condition, along with the insurance proceeds covering such loss, and proceed to the Closing as explained above. Such election shall be made within ten days after Last Holdout provides written notice to City that such loss or destruction has occurred. If City fails to timely make an election to cancel this agreement, City shall be deemed to have cancelled this agreement.

ARTICLE III – PROJECT CONSTRUCTION AND REIMBURSEMENT

A. **Project Design and Construction.** Daybreak may design and construct Project in phases. City shall approve Project’s design before Daybreak begins constructing any phase of the Project, and Daybreak shall coordinate construction of the Project with City. If Last Holdout chooses to develop its property east of S.R. 85 before City or Daybreak has completed constructing the Project, City may require Last Holdout to construct, or contribute to the construction expenses of, the portion of the Project on the Property.

B. **Reimbursement.** The parties agree that regardless of which party actually constructs any portion of the Project, each is responsible to pay only its share of the Project expenses as explained in this section. A party that constructs any portion of the Project on the Property shall provide City a summary of design and construction expenses, which summary shall be reviewed and approved by City. Daybreak and Last Holdout agree that each will pay to City any fees required to reimburse the other party for expenses paid by that party that were

greater than that party's share. City shall remit any reimbursement fees it collects to the party owed reimbursement to ensure each party only pays its share of Project expenses. Each party is responsible for the following Project expenses:

(1) *Daybreak Portion of Project Expenses.* Daybreak agrees to pay all design and construction expenses for portions of the Project not located on the Property. Daybreak shall also pay all design and construction expenses for the 23' ROW, whether located on the Property or on Daybreak's property, and 75.4% of all design and construction expenses related to the 56' ROW according to Exhibit B.

(2) *Last Holdout Portion of Project Expenses.* Last Holdout agrees to pay all design and construction expenses for the portion of the Project located on the Property, which includes all infrastructure, except for the 23' ROW, and any travel lane pavement and utility oversizing related to the 56' ROW that is not designed to serve development on property currently owned by Last Holdout. Last Holdout shall also pay 18.1% of all design and construction expenses related to the 56' ROW according to Exhibit B. Last Holdout shall not be required to pay any reimbursement fees described in this section unless and until Last Holdout or its successor in interest develops its property for a use other than agriculture. Last Holdout agrees to pay any reimbursement fees described in this section to City before City issues a building permit for any proposed structure on any property owned by Last Holdout, except for a proposed structure that is related to Last Holdout's current farming operations on its property east of S.R. 85.

(3) *City Portion of Project Expenses.* City agrees to pay 6.5% of all design and construction expenses related to the 56' ROW according to Exhibit B. City shall pay its share of Project expenses by crediting Daybreak's or Last Holdout's City imposed development fees, as necessary.

(4) *56' ROW Expenses.* For the avoidance of doubt, the parties agree that they will pay their proportionate percentage of the 56' ROW based on the following Table 1, which is derived from Exhibit B, if there is any dispute concerning the forgoing Article III Section B (1)(2)(3):

TABLE 1: Proportionate Share Contribution for the 56' ROW	
Future Traffic Generator	Proportionate Share
Last Holdout (Total)	18.1%
<i>Last Holdout's property west of S.R. 85</i>	<i>6.0%</i>
<i>Last Holdout's property east of S.R. 85 (the Property)</i>	<i>12.1%</i>
Daybreak	75.4%
City (regional traffic coming from areas outside of Daybreak's and Last Holdout's properties)	6.5%

C. **Ownership of Project.** City shall own all improvements associated with Project after City has inspected and accepted said improvements, and City and Daybreak have recorded the Final Plat.

D. **Fence.** City and Daybreak are aware that the Property is currently operated as farm ground and specifically as weed free seed ground. To minimize the impact of the Project construction on the remainder of the Last Holdout property, prior to any construction of the Project, Daybreak will install a temporary fence on the north and south boundaries of the Property, being a silt fence (made up of cloth or plastic material on wooden or other stakes) not less than two feet in height. Daybreak and City will use commercially reasonable efforts to ensure that no dumping or unauthorized entry occurs on the remainder of the Last Holdout property during construction by any agents or employees of Daybreak or City. Daybreak agrees to notify Last Holdout at least one day in advance before it commences construction of any portion of the Project on the Property, telephonic or email notice shall be sufficient.

E. **No Trespass.** City and Daybreak agree not to intentionally or willfully go upon any property owned by Last Holdout, or to allow any of its contractors, subcontractors, employees, independent contractors or representatives to go on to any property owned by Last Holdout, except for the Property conveyed by Last Holdout to City pursuant to this agreement.

ARTICLE IV – MISCELLANEOUS PROVISIONS

A. **Entire Agreement.** This agreement including any attached exhibits is the entire agreement between the parties and supersedes all prior or contemporaneous understandings or representations, whether oral or written, respecting the subject matter herein.

B. **Other Instruments, Actions.** The parties hereto agree that they will take such further actions and execute and deliver such other and further consents, authorizations, instruments, or documents as are necessary or incidental to effectuate the purposes of this agreement.

C. **Amendment.** No amendment of this agreement will be effective unless it is in writing and signed by the duly authorized representatives of the parties hereto, which amendment will incorporate this agreement in every particular not otherwise changed by the amendment.

D. **Counterparts.** This agreement may be executed in several counterparts, each of which will be deemed an original but all of which together will constitute one instrument.

E. **Interpretation.** If there is a conflict between this agreement and prior written or verbal representations, this agreement shall control. This agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strictly for or against any party. Except where the context otherwise clearly requires, in this agreement words imparting the singular will include the plural and vice versa.

F. **Section Headings.** The section and subsection headings contained in this agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation and construction or limit the scope or meaning of the various and several sections and subsections hereof.

G. Applicable Law; Venue. This agreement shall be construed under and according to the laws of the State of Utah. Personal jurisdiction and venue for any suit arising hereunder shall be in Salt Lake County, Utah.

H. Severability. If any provision of this agreement is unenforceable to any extent, the remainder of this agreement, or application of that provision to any persons or circumstances other than those as to which it is held unenforceable, will not be affected by that unenforceability and will be enforceable to the fullest extent permitted by law.

I. Notices. For the purposes of notice, the addresses of the parties will, until changed as provided below, be as follows:

CITY:
City of South Jordan
1600 W. Town Center Drive
South Jordan, Utah 84095
Attn: City Recorder

DAYBREAK:
Daybreak Development LLC
4700 Daybreak Parkway
South Jordan, Utah 84009
Attn: Gary Langston

LAST HOLDOUT:
The Last Holdout, L.L.C.
7677 South Lincoln Street
Midvale, Utah 84047
Attn: David S. Bastian, Manager

With a copy to:
Anderson Law, PLLC
500 N Marketplace Drive, Ste. 240
Centerville, Utah 84014
Attn: Jacob D. Anderson

The parties have the right from time to time to change their respective addresses upon written notice to the other parties.

J. Time Periods. Except as expressly provided for in this agreement, the time for performance of any obligation or taking any action under this agreement shall be deemed to expire at 6:00 p.m., Salt Lake City time, on the last day of the applicable time period provided for herein. If the time for the performance of any obligation or taking any action under this agreement does not expire on a Business Day, the time for performance or taking any action shall be extended to the next Business Day. Time is of the essence with respect to the obligations of the parties pursuant to this agreement.

K. **No Third Party Beneficiaries.** Except as expressly provided herein, nothing herein shall be construed to confer upon any person other than the parties hereto any rights, benefits or remedies under or because of this agreement.

L. **No Joint Venture.** It is not the intent of Last Holdout, City or Daybreak to, and said parties do not, by execution of this agreement, become partners, equity participants or joint venturers of each other.

M. **Assignment.** This agreement shall be binding upon and inure to the benefit of the parties and their representatives, successors, and assigns. The parties may assign or otherwise transfer their rights and obligations under this agreement without the consent of the other parties; provided, however, that the assigning party in all cases shall remain obligated for such party's performance hereunder notwithstanding any such assignment, unless otherwise agreed in writing by the other parties.

N. **No Waiver.** No waiver of any provision of this agreement will be deemed to constitute a waiver of any other provision or any other agreement between the parties. No waiver of any provision of this agreement will be deemed to constitute a continuing waiver unless expressly provided for by written amendment to this agreement; nor will the waiver of any default under this agreement be deemed a waiver of any subsequent defaults of the same type.

O. **Attorneys' Fees and Indemnification.** If there is any judicial or administrative action between the parties with respect to this agreement, the prevailing party or parties shall be entitled to recover all court costs, other litigation costs, including reasonable attorneys' fees, and any other expenses. If a party, without fault, is made a party to any judicial or administrative action or proceeding by reason of the conduct of any other party, the other party shall indemnify and hold the first party harmless from and against all loss, cost, liability and expense, including reasonable attorneys' fees, incurred in such action.

[SIGNATURE PAGES FOLLOW]

The parties are signing this agreement on the date stated in the introductory clause.

CITY OF SOUTH JORDAN

By: *Gary L. Whatcott*

Name: *Gary L. Whatcott*

Title: *City Manager*

State of Utah)

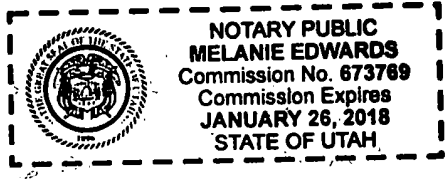
ss:

County of Salt Lake)

Approved as to form:

[Signature]
Attorney for the City

The foregoing instrument was acknowledged before me this 2 day of November, 2015, by *Gary L. Whatcott* the *City Manager* of the City of South Jordan, a Utah municipal corporation, on behalf of said municipal corporation.



Melanie Edwards
Notary Public
My commission expires:
Residing at:

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

THE LAST HOLDOUT, L.L.C.,

By: David S. Bastian

Name: David S. Bastian

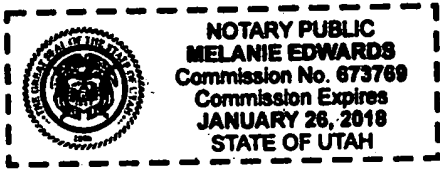
Title: Manager

State of Utah)

ss:

County of Salt Lake)

The foregoing instrument was acknowledged before me this 2 day of November, 2015, by David S. Bastian the Manager of The Last Hold Out, L.L.C., a Utah limited liability company, on behalf of said company.



Melanie Edwards
 Notary Public
 My commission expires:
 Residing at:

EXHIBIT A

The Final Plat

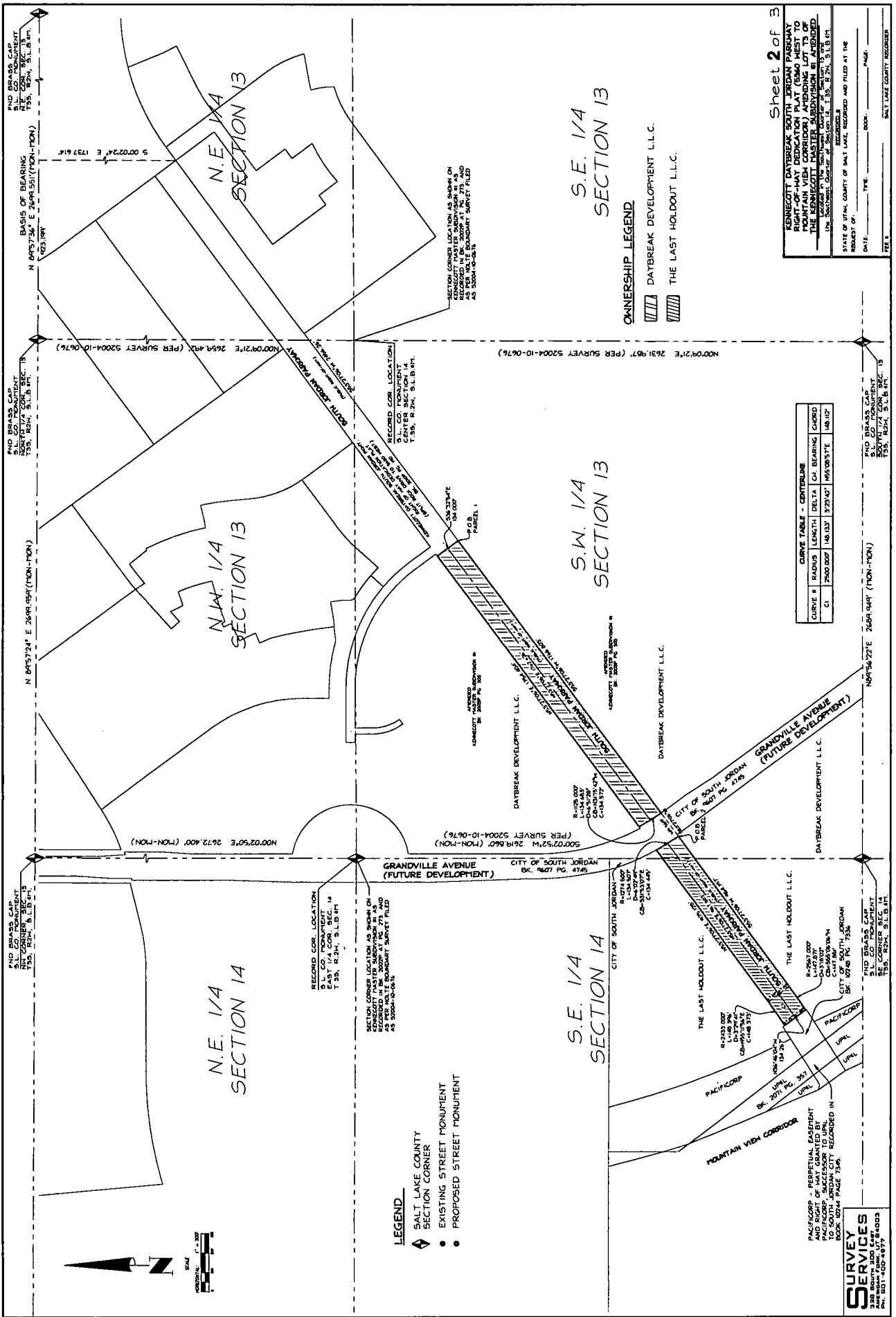


EXHIBIT B

South Jordan Parkway Proportional Share Traffic Assessment

TECHNICAL MEMORANDUM

DATE: 10/13/2015
TO: Brad Klavano, P.E., South Jordan City
FROM: Tim Taylor, PE, PTOE
Mike Brown - Metro Analytics, P.E., PTP, AICP
RE: South Jordan Parkway Proportional Share Traffic Assessment

The section of South Jordan Parkway that lies within the limits of the Bastian property will accommodate traffic generated by the Bastian property, the Daybreak development, and other Citywide/regional traffic generators.

The purpose of this assessment is to estimate the proportion of the future year 2040 daily traffic that is associated with each of these three users/traffic generators for this study section of South Jordan Parkway.

Analytical Approach

This assessment utilized the Daybreak/Wasatch Front Regional Council (WFRC) Travel Demand Model to forecast future year (2040) daily traffic volumes on the study section of South Jordan Parkway. Using the models' select link/select zone analysis functions, we estimated the various proportions of daily traffic associated with the Bastian property, the Daybreak development, and other Citywide/regional traffic generators.

Land Use/Socioeconomic Assumptions for the Bastian Property

For purposes of modeling and summarizing land uses, we divided the Bastian property into three areas as depicted in *Figure 1*.

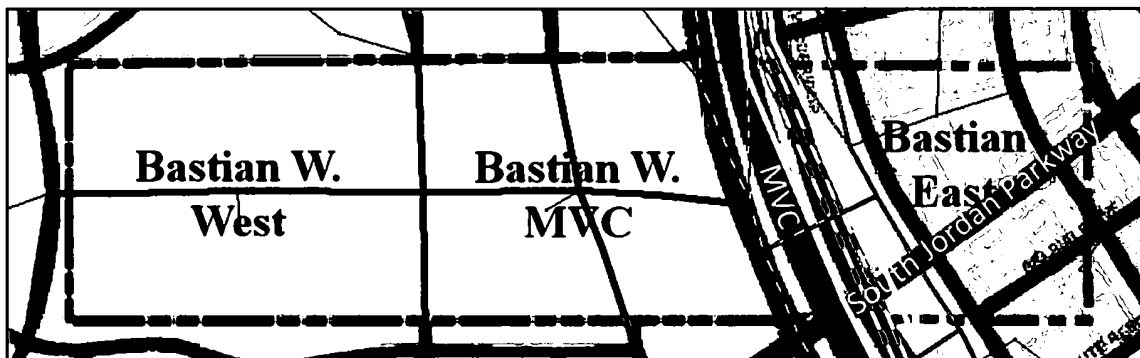


Figure 1: Bastian Property Modeling Areas

Since there is currently no specific development plan for the Bastian property, land uses were assumed to be consistent with the adjacent Daybreak densities for dwelling units, retail, and commercial non-retail uses (Other). **Table 1** summarizes the land use assumptions for each Bastian property area.

Table 1: Bastian Property Land Use/Socioeconomic Data Assumptions							
Area	Approx. Acres	Dwelling Units/Acre	Retail/Acre	Other/Acre	Total Dwelling Units	Retail SF	Other SF
Bastian East	31	---	13,903	7,839	---	431,000	243,000
Bastian W. MVC	52	16	3,000	5,385	832	156,000	280,000
Bastian W. West	52	5	---	1,000	260	---	52,000
Total	135	8	4,348	4,259	1,092	587,000	575,000

All land use/socio-economic data for the areas outside of Daybreak and the Bastian property are represented by the 2040 assumptions currently utilized by the Wasatch Front Regional Council.

Bastian Property Transportation Network Assumptions

Figure 1 depicts the roadway network modeling assumptions for the Bastian Property areas. The transportation network for the areas outside of Daybreak and the Bastian property are represented by the 2040 assumptions currently utilized by the Wasatch Front Regional Council.

Select Link Analysis

The Daybreak/WFRC model has the ability to designate a specific roadway link of interest and trace the origins and destinations of any vehicle that traverses that link. Figure 2 depicts the primary vehicle paths of all origins and destinations along the Wasatch Front area that are expected to utilize the study section of South Jordan Parkway.

Findings

The 2040 two-way average daily traffic volume for the section of South Jordan Parkway immediately east of the Mountain View Corridor and within the limits of the Bastian Property is expected to be 23,500 vehicles.

Table 2 summarizes the proportionate share of 2040 daily traffic (by traffic generator, volume, and percentage) that is expected to utilize the study section of South Jordan Parkway.

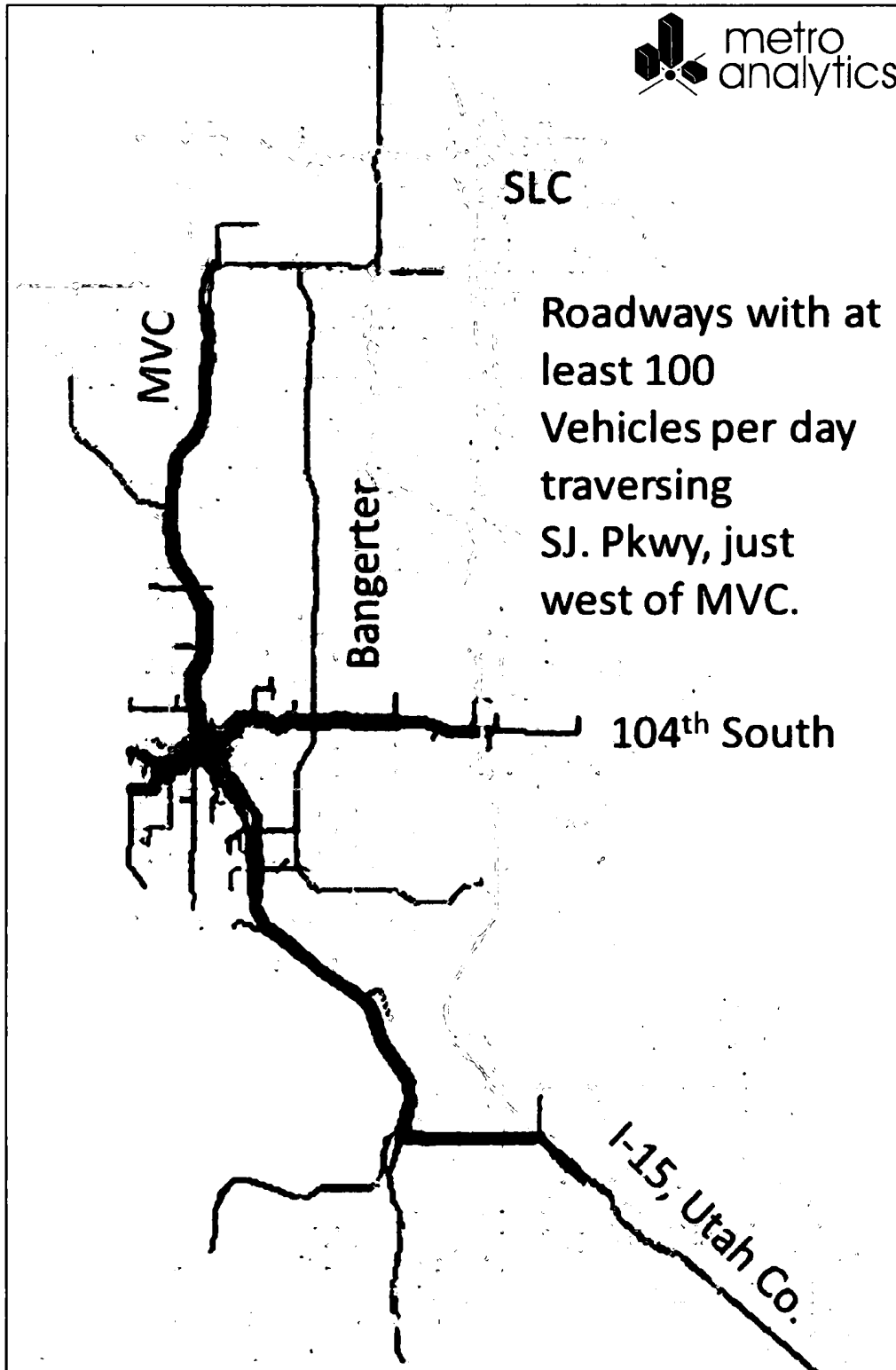


Figure 2: Origin and Destination Paths for Vehicles on the Study Section of South Jordan Parkway

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Table 2: South Jordan Parkway Proportionate Share Assessment Results		
Traffic Generator	Average Daily Traffic Volume	Proportionate Percentage
Bastian W. (West & MVC)	1,400	6.0%
Bastian East	2,800	12.1%
Daybreak	17,500	75.4%
Regional (Outside Daybreak and Bastian Areas)	1,500	6.5%
Total	23,200	100.0%