

**MILLCREEK COMMUNITY REINVESTMENT AGENCY
RESOLUTION NO. 24-03**

**A RESOLUTION OF THE MILLCREEK COMMUNITY REINVESTMENT
AGENCY APPROVING A PARTICIPATION AGREEMENT WITH EP GT3, LLC, A
UTAH LIMITED LIABILITY COMPANY (SALES TAX)**

WHEREAS, the Millcreek Community Reinvestment Agency met in a special open and public meeting on January 9, 2024, to consider, among other things, approving a participation agreement with EP GT3, LLC, a Utah limited liability company; and

WHEREAS, the Agency was created to transact the business and exercise all of the powers provided for in the former Utah Redevelopment Agencies Act and the current Utah Community Reinvestment Agency Act and any subsequent, replacement or amended law or act (the "Act"); and

WHEREAS, pursuant to the Act the Agency is authorized enter into participation agreements with developers or property owners; and

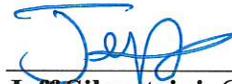
WHEREAS, EP GT3, LLC, a Utah limited liability company and the Agency have negotiated a contract for payment of certain property tax increment the terms of which are set forth in the participation agreement ("Agreement") attached hereto as exhibit "A."

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE MILLCREEK COMMUNITY REINVESTMENT AGENCY as follows:

1. That the Agreement be approved, with such minor changes and recommendations as deemed necessary by the Agency.
2. That the Chairperson and Secretary are hereby authorized and directed to execute and deliver the Agreement on behalf of the Agency.
3. That this resolution takes effect upon adoption.

**MILLCREEK
REINVESTMENT AGENCY**

COMMUNITY



Jeff Silvestrini, Chairperson

ATTEST:



Alex Wendt, Deputy Agency Recorder



Roll Call Vote:

Silvestrini	<input checked="" type="radio"/> Yes	<input type="radio"/> No
Cattene excuse	<input checked="" type="radio"/> Yes	<input type="radio"/> No
DeSirant excuse	<input checked="" type="radio"/> Yes	<input type="radio"/> No
Jackson	<input checked="" type="radio"/> Yes	<input type="radio"/> No
Uipi	<input checked="" type="radio"/> Yes	<input type="radio"/> No

SALES TAX PARTICIPATION AGREEMENT

This Participation Agreement (the "**Agreement**") is made and entered into this 9 day of January, 2024 (the "**Effective Date**"), by and between the Millcreek Community Reinvestment Agency (the "**Agency**"), a political subdivision of the State of Utah, operating under the Utah Community Reinvestment Agency Act (the "**Act**"; § 17C-1-101 *et seq.*, or its predecessor statutes), and EP GT3, LLC a Utah limited liability company qualified to do business in Utah ("**Participant**"). Participant and the Agency may from time to time hereinafter be referred to individually as a "**Party**" and collectively as the "**Parties**."

1. SUBJECT OF AGREEMENT

2.7 Purpose of the Agreement

The purpose of this Agreement is to implement the Olympus Hills Community Reinvestment Project Area (a map of which is attached hereto as Exhibit A, the "**Project Area**"). The governing body of the Agency adopted a resolution on November 26, 2018, authorizing the Agency to commence the process under the Act to create the Olympus Hills Community Reinvestment Project Area. The Agency and the City Council of Millcreek have adopted the Olympus Hills Community Reinvestment Project Area Plan and intends to adopt an Amended Project Area Plan, (a copy of the original plan is attached hereto as Exhibit B, the "**Project Area Plan**" and, once amended, the "**Amended Project Area Plan**"), pursuant to which the Agency plans to encourage and promote economic development in the Project Area and by providing for the development of the Porsche dealership on approximately four acres of land, as more particularly described below, located in Millcreek, Utah (the "**City**").

2.8 Agreement in the Best Interests of the City and Residents

This Agreement is in the vital and best interests of the City and the health, safety, and welfare of its residents, and in accord with public purposes. This Agreement is carried out pursuant to the Act.

2.9 The Project Area

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

2.10 The Amended Project Area Plan and Budget

This Agreement is conditioned on and subject to the provisions of the Amended Project Area Plan, as approved and adopted on 1/22/24 by the City Council of the City, in Ordinance

No. 24-04 and Amended Project Area Budget (the “ Amended Budget”) adopted by the Agency for the Project Area.

2.11 “Interlocal Agreement”; “Point of Sale; Certain other Defined Terms

The Agency has entered into an Interlocal Agreement with the City to pay to the Agency certain sales tax amounts for purposes of funding part of the costs of development the Project Area (the “Sales Tax Interlocal Agreement”). The Sales Tax Interlocal Agreement is attached to this Agreement as Exhibit “C.” As described in the Sales Tax Interlocal Agreement, sales occurring within the boundaries of the City are currently subject to a one (1) percent sales tax (the “Local Sales Tax”) per Title 59, Chapter 12, Part 2 of the Utah Code, the Local Sales and Use Tax Act, and more particularly per Utah Code Ann. § 59-12-204. Approximately fifty (50) percent of that one percent tax as set forth in Utah Code Ann. § 59-12-205(2)(b) is based on the transaction occurring within the boundaries of the City (the “Point-of-sale Tax” or “POST”). Pursuant to Utah Code Ann. § 17C-5-204 and § 11-13-215, the City has agreed and consented that the Agency shall be paid the POST generated by sales attributable to the Site (defined below) (the fifty percent paid to the Agency is referred to as “Point-of-sale Tax” or “POST”). Pursuant to the Sales Tax Interlocal Agreement, the Agency is entitled to receive (i) twenty five percent (25%) of the POST for a period beginning on the date the City issues the Facility a Certificate of Occupancy and ending twenty one years after the City issues the Facility a Certificate of Occupancy (collectively the “Sales Tax Rebate”).

2.12 The Site and the Facility

Pursuant to the terms of this Agreement, the Development Agreement between the Parties dated 10/23/23 (“Development Agreement”), and the rezone enacted as Ordinance No. 23-39 Participant intends to develop a Porsche automobile dealership within the Project Area n located on approximately the portion of the Project Area shown on exhibit “B” (the “Site”). The Porsche automobile dealership includes an approximately 64,000 square feet structured parking facility and a retail facility/show room that is no more than 20,000 square feet all as contemplated in Utah Code Ann. §§ 11-41-102 (15)(b)(i)(B) and 11-41-103(2)(c) (the “Facility”) on the Site.

2.13 The Incentive

As used in this Agreement, the term “Incentive” means one hundred (100%) of the Sales Tax Rebate.

2.14 Parties to the Agreement

1.1.1. The Agency

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

Agreement is: Millcreek Community Reinvestment Agency 1330 Chambers Avenue, Millcreek, Utah 84106 Attention: City Manager.

1.1.2. The Participant

Participant is EP GT3, LLC . The address of Participant for the purposes of this Agreement is: 2425 E. Camelback Road, Suite 1155, Phoenix, AZ 85016.

2.15 Prohibition against Certain Changes

1.1.3. Acknowledgement by Participant

Participant acknowledges the importance of the development of the Project Area to the general welfare of the community, the public assistance set forth in this Agreement that has been made available by law and by the Agency for the purpose of making the investment within the Project Area possible, that a significant change in the identity of Participant, as prohibited by this Section may be considered, for practical purposes, a transfer or disposition of the Facility, the qualifications and identity of Participant are of particular concern to the Agency, and that it is because of such qualifications and identity that the Agency is entering into this Agreement with Participant.

1.1.4. Representation as to Investment Intent

Participant represents and agrees that its investment in and use of the Facility and the Site, and Participant's other undertakings reflected in this Agreement are and shall only be for the purpose of Participant's development of the Facility and the Site and not for speculation in land holding or otherwise.

1.1.5. Assignment or Transfer of Agreement

Participant represents and agrees for itself and its successors and assigns that, during the term of this Agreement and except as set forth in the following sentence, 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, during the term of this Agreement except as explicitly allowed herein or as agreed to in a writing signed by the Parties. The foregoing notwithstanding, Participant may transfer its rights and obligations under this Agreement to any of its subsidiaries or affiliates or operating tenants without the Agency's prior written approval during the term of this Agreement so long as the Facility continues to operate as described in this Agreement. The attempted or actual assignment or delegation of this Agreement in violation of the above provisions is a material Default of this Agreement.

For purposes of this Section the term "subsidiaries" shall mean those companies or entities in which Participant both holds an ownership stake of more than 50 percent and over which Participant is able to exert control and (ii) the term "affiliates" shall mean those companies in which the owner of Participant both holds an ownership stake of more than 50 percent and over which the owner of Participant is able to exert control. The term "operating tenant" means an

entity that leases the Property from Participant that is licensed by the Utah Division of Motor Vehicles to operate the Porsche dealership.

1.1.6. Transfer to Tax-Exempt Organization

Notwithstanding anything in this Agreement to the contrary, if Participant transfers fee title to any of the real property or any material portion of the personal property that, in either case (a) is within the Site, (b) is owned by Participant Affiliates and (c) is subject to *ad valorem* property tax (all such property, "Taxable Property") to a tax-exempt organization or otherwise to exempt Taxable Property from property taxation without the prior written consent of the Agency will entitle the Agency, at its sole discretion, to immediately and without prior notice terminate this Agreement and cease further payments under this Agreement to Participant. Transfers of title to personal property that Participant has determined is inadequate, obsolete, worn out, unsuitable, undesirable, inappropriate, or unnecessary property for its operations within the Site are not subject to the provisions of this Section.

1.1.7. Continuing Obligations

Any permitted assignment or transfer of this Agreement, in whole or in part, shall relieve Participant from any and all obligations under this Agreement; provided, however, that the assignee has accepted the assignment and assumed all duties, obligations and liabilities of Participant under this Agreement in writing. Except as otherwise provided herein, all of the terms, covenants, and conditions of this Agreement are and will remain binding upon Participant and its successors and assigns until the expiration or termination of this Agreement.

2. OBLIGATIONS OF THE PARTIES

2.16 Payment of Incentive

2.1.1. Payment Obligation

Provided the Participant fulfills all of its obligations under this Agreement, the Development Agreement, and all of the conditions precedent have been satisfied the Agency will pay to Participant the Incentive as provided below. The Agency expects to receive the monthly Sales Tax Rebate approximately two months and twenty days after the end of the calendar month for which the sales taxes were paid (e.g., the Agency will receive August payment of the Sales Tax Rebate by November 20). Within fifteen (15) days after the end of the one month and twenty-day time period, the contemplated payment of the Incentive shall be made to the Participant by the Agency.

2.1.2. Sales Tax Rebate Payments

The Agency is entitled to receive the Sales Tax Rebate as set forth in Section 1.5 above.

2.17 Sole Source of Funding for the Incentive

The entirety of Participant's Incentive contemplated in this Agreement will be funded solely by the Sales Tax Rebate payments received by the Agency pursuant to the Sales Tax Interlocal Agreement.

2.18 Conditions Precedent to the Payment of the Incentive to Participant

In addition to other provisions in this Agreement, the Agency has no obligation to remit to Participant the Incentive unless and until all the following conditions precedent, as detailed in the following subsections, are satisfied:

2.1.3. Agency is Entitled to Receive the Sales Tax Rebate

The Agency is not obligated to pay to Participant the Incentive unless the Agency is legally entitled to receive the Sales Tax Rebate pursuant to the Sales Tax Interlocal Agreement.

2.1.4. Agency has Actually Received the Sales Tax Rebate Payment

The Agency is obligated to pay to Participant the Incentive only to the extent the Agency has actually received the Sales Tax Rebate payment(s) for the particular calendar month. Participant agrees and acknowledges that the calculation of payments of the Sales Tax Rebate pursuant to the Sales Tax Interlocal Agreement may require the Participant to provide the City and the Agency the Participant's sales tax return for the Facility, provide the City and the Agency with information reasonably necessary to allow the City and the Agency to calculate the amount of the Sales Tax Rebate, or obtain such information from the Utah State Tax Commission reasonably necessary to allow the City and the Agency to calculate the amount of the Sales Tax Rebate. Agency agrees to protect such information pursuant to Utah Code Ann. § 63G-2-309.

2.1.3 Infrastructure Development Costs

Reimbursement is available to the Participant only upon verification of actual costs incurred by Participant for construction of the improvements which can be verified by invoices include invoices showing actual costs and other supporting documentation as reasonably required and acceptable to the Agency.

2.1.4 Continued Operation of the Facility

The Agency is not obligated to pay to Participant the Incentive unless Participant has continuously operated (defined in Section 2.10) the Facility for the entire month for which payment of the Incentive is being sought.

2.19 Effect of Failure to Meet Conditions Precedent to Payment of Incentive

In the event that the conditions precedent as described in Section 2.2 are not met for any given calendar month during the term of this Agreement, and Participant is thus not entitled to receive the Incentive attributable to that calendar month, but is otherwise not in default under this

Agreement, such failure shall not constitute a Default under this Agreement. Such failure shall result in the forfeiture by Participant of the Incentive for that particular calendar month.

2.20 Limitations on Incentive

The Incentive term shall begin the day the City issues the Facility a Certificate of Occupancy and terminates twenty years after the City issues the Facility a Certificate of Occupancy (the "Incentive Term"). The total amount of Incentive paid to Participant under this Agreement shall not exceed a cumulative total of \$2,350,260.

Participant further acknowledges that the Incentive paid by the Agency to Participant under this Agreement is limited by the Incentive Term and the amount of Sales Tax Rebate actually received by the Agency attributable to the Facility. Participant further acknowledges that the Agency does not guarantee that Participant will receive a minimum dollar amount during the Incentive Term. The amount of Sales Tax Rebate generated by the Facility is determined by taxable sales occurring at the Facility.

Notwithstanding all other provisions in this Agreement, unless payments include past due payments, the Agency shall not pay or is not obligated to pay to Participant in any one calendar month more than Incentive attributable to such calendar month.

The Agency shall not support any modification or amendment to the Sales Tax Interlocal Agreement that would reduce, on a percentage basis, the amount of Incentive that Participant is entitled to receive under this Agreement or the term during which Participant is entitled to receive the Incentive.

2.6 Agency Representations

Agency represents and warrants to Participant that, to the Agency's actual knowledge and as of the Effective Date, that the Agency is a Community Reinvestment Agency pursuant to the Limited Purpose Local Government Entities-Community Reinvestment Agency Act, the execution, performance, and delivery of this Agreement will be fully authorized by the Agency, the Agency's execution, delivery and performance of this Agreement will not constitute a default or a breach under any contract, agreement or order to which the Agency is a party or by which is bound, and there are no pending lawsuits or other actions or proceeding which would prevent or impair the timely performance by the Agency under this Agreement.

2.21 Payment of Taxes

Participant shall not receive any payments from the Agency for any period until the Agency has received documentation from Participant that all real and personal property taxes attributable to the Site and Facility have been paid for the particular year of the Incentive. Documentation contemplated by this Subsection shall include copies of all forms or other documents sent to the

Salt Lake County Assessor or the Utah State Tax Commission for the purpose of reporting property owned by Participant within the Site. and other *ad valorem* taxes and assessments.

2.22 Reduction or Elimination of Incentive

The Parties agree that Participant assumes and accepts the risk of possible alteration of Federal or State statute, regulation, or adjudication rendering unlawful or impractical the collection, receipt, disbursement, or application of the Incentive to the Agency as contemplated in and by this Agreement. If the provisions of Utah law which govern the payment of the Incentive to the Agency are changed or amended so as to reduce or eliminate the amount paid to the Agency under the Sales Tax Interlocal Agreement, the Agency's obligation to pay Participant annually the Incentive, as applicable, will be proportionately reduced or eliminated, but only to the extent necessary to comply with the changes in such law. Notwithstanding any change in law, Participant specifically reserves and does not waive any right it may have to challenge, at Participant's cost and expense, the constitutionality of any law change(s) that would reduce or eliminate the payment of Incentive to the Agency and/or Participant and nothing herein shall be construed as an estoppel, waiver or consent to reduce or eliminate payment of the Incentive to the Agency and/or Participant. Participant acknowledges, understands, and agrees that, except as set forth in Section 2.7 below, the Agency is under no obligation to challenge the validity, enforceability, or constitutionality of a change in law that reduces or eliminates the payment of Incentive to the Agency and/or Participant, or to otherwise indemnify or reimburse Participant for its actions to independently do so. In no event will the Agency take any action that enables, encourages or facilitates the alteration of Federal or State statute, regulation, or adjudication rendering unlawful or impractical the collection, receipt, disbursement, or application of the Reimbursement to the Agency as contemplated in and by this Agreement.

2.23 Declaration of Invalidity

In the event any legal action is filed in a court of competent jurisdiction that seeks to invalidate the Project Area or this Agreement or that otherwise seeks to or would have the possible result of reducing or eliminating the payment of the Incentive to the Agency, the Agency shall provide written notice of such legal action to Participant. In the event such an action is filed, the Agency shall have no obligation to challenge that action or defend itself against such action. Participant specifically reserves and does not waive any right it may have to intervene, at Participant's cost and expense, in any such legal action and challenge the basis for any causes of action or any remedy sought that would reduce or eliminate the payment of the Incentive to the Agency and/or Participant, and nothing herein shall be construed as an estoppel, waiver or consent to reduce or eliminate payment of the Incentive to the Agency and/or Participant. In the event that the court declares that the Agency cannot receive the Incentive, invalidates the Project Area or this Agreement, or takes any other action which eliminates or reduces the amount of Incentive paid to the Agency, and the grounds for the legal determination cannot reasonably be addressed by the Agency, the Agency's obligation to annually pay to Participant the Incentive in accordance with this Agreement will be reduced or eliminated to the extent that the Incentive is not received by the Agency.

2.24 Dispute over Receipt of Payment of the Incentive

In the event a dispute arises as to the person or entity entitled to receive the Incentive under this Agreement due to a claimed assignment or claimed successor-in-interest to the Incentive or otherwise, the Agency will use good faith efforts to challenge that action or defend itself against such action. The Agency may withhold payment of the Incentive and may refrain from taking any other action required of it by this Agreement until the dispute is resolved either by agreement or by a court of competent jurisdiction and sufficient evidence of such resolution is provided to the Agency.

2.25 Nature of Participant's Obligations and Limitation

To qualify to receive the Incentive as set forth herein, Participant shall fulfill all of its obligations as set forth in this Agreement. The failure of Participant to fulfill its obligations may result in a failure to qualify to receive the Incentive or termination of this Agreement but shall not give rise to any other right or remedy in favor of the Agency.

2.10 Funding Responsibility

The Parties understand and agree that funding for the investment comes entirely from Participant's internal capital or from financing obtained by Participant. The Agency shall not be liable or responsible for providing, obtaining, or guaranteeing such financing.

2.26 Operation of the Facility

Participant shall operate the Facility in a commercially reasonable manner substantially similar to other Porsche dealerships operated by Participant. For purposes of this Agreement, "operating," "operational," or "operations" of the Facility shall mean when the following conditions are satisfied: (1) all required permits, licenses, certificate of occupancy, or other approvals have been obtained for Participant to occupy the Facility, (2) Participant shall have received a business license issued by the City, and (3) the Facility is open to the public during regular business hours. For purposes of this Section, Participant shall be deemed to have continuously operated the Facility if the foregoing standards are substantially met or exceeded, notwithstanding temporary cessation of operations for inspection, maintenance, repair, replacement, line down-time, and/or events of force majeure or destruction.

2.27 Commencement of Operations

Operations of the Facility as described above shall begin no later than June 30, , 2026. For purposes of this Section, the Facility shall be deemed operational if the conditions and standards in above are met. If Participant fails to commence operations of the Facility as required by this Section for any reason other than events of force majeure, the Agency shall have the right to terminate this Agreement upon written notice to Participant, subject, however, to any notice and cure periods set forth in Article 5.

2.28 Continuing Operations

Operations of the Facility as described above shall be commenced as described above 2.11 and shall continue throughout the term of this Agreement as set forth herein. For purposes of this Section, the Facility shall be considered to be in operation if the Facility is operating as described above. If Participant ceases to operate the Facility for a continuous period of more than six (6) months for any reason other than events of force majeure or destruction, the Agency shall have the right to terminate this Agreement upon written notice to Participant at any time during such cessation of operations.

2.29 Funding Responsibility

2.30 Potential Shortfall

Participant agrees and acknowledges that the only funds available to the Agency for compensation or incentives to Participant are those funds received by the Agency under the Sales Tax Interlocal Agreement and that the amount of Incentive paid to Participant under this Agreement is dependent on the taxable sales occurring within the Site.

2.31 Audits, Appeals, and Reassessments

In the event that the Utah State Tax Commission or other court or governmental entity with jurisdiction (a "Tax Authority") finds that Participant owes additional sales taxes for taxable sales occurring at the Facility, the Agency shall pay the Incentive for such additional amounts unless Participant fraudulently withheld taxes in which case the Agency shall have no obligation to pay the Incentive for such additional amounts. In the event that a Tax Authority finds that Participant overreported or overpaid sales taxes for sales occurring at the Facility, Participant shall immediately pay to the Agency the portion of the Incentive attributable to such overage.

3 ADDITIONAL TERMS

3.7 Investment

Participant will at all times be responsible for its investment at the Facility. Recognizing the level of investment by Participant, the Agency has determined that it is in the best interests of the residents of the City to provide the Incentive to Participant to develop and operate the Facility as contemplated in this Agreement.

3.8 Responsibility for Development Plans and Permits

The Agency shall not have any responsibility to obtain permits, licenses, or other approvals for Participant's development or operation of the Facility.

3.9 Other Terms

2.1.5. 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.

2.1.6. Restriction Against Parcel Splitting

If applicable, during the term of this Agreement, Participant shall not, without the prior written approval of the Agency, (a) convey its interest in the Site or any portion thereof, if any, in such a way that a parcel of real property would extend outside the Project Area, or (b) construct or install any building or structure within the Project Area in such a way that any portion of the Facility or structure would extend outside of the Project Area. Participant understands and acknowledges that these requirements are intended to avoid the splitting of any parcels of real property within the Project Area and to avoid the joining of any parcels of real property inside of the Project Area with parcel(s) outside of the Project Area in such a way that Salt Lake County could no longer identify the periphery of the Project Area by distinct parcels.

2.1.7. Deannexation

Participant agrees that it will not cooperate with any person, group, or municipality in any effort to remove, deannex, disconnect, or disincorporate the Site or any portion thereof from the City during the Incentive Term. 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 to pay the Incentive for that portion of the Site outside of the City shall immediately cease.

2.1.8. Indemnification

Participant agrees to and shall indemnify, defend, and hold the Agency and its directors, officers, agents, employees, elected officials, and representatives 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 third party person or to the property of any third party person, directly or indirectly caused by any acts done or any errors or omissions of Participant or its directors, officers, agents, employees, consultants, and contractors on the Facility or the Site except for willful misconduct or negligent acts or omissions of the Agency, the City, or their respective directors, officers, agents, employees, contractors, and consultants. Likewise, the Agency agrees to and shall indemnify, defend, and hold Participant and its directors, officers, agents, employees, and representatives harmless from and against all liability, loss, damage, costs, or expenses (including reasonable attorneys' 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 third party person or to the property of any third party person, directly or indirectly caused by any acts done or any errors or omissions of the Agency, the City, or their respective directors, officers, agents, employees, contractors and consultants except for willful misconduct or negligent acts or omissions of Participant or its directors, officers, agents, employees, consultants, and contractors.

2.1.9. 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.

2.1.10. Local, State, and Federal Laws

Participant shall develop and operate the Facility in conformity with all applicable laws; provided, however, that unless otherwise addressed elsewhere in this Agreement, nothing herein shall limit the right of Participant to properly challenge any such law or the applicability of such law.

2.1.11. Rights of Access

Representatives of the Agency shall have the right of reasonable access to the Facility for purposes of inspection, with reasonable and prior written notice (but in no event less than 48 hours prior), and without charges or fees, during normal business hours or as otherwise agreed to in writing by Participant, subject, however, to the rules, regulations, security protocols and other access limitations for safety and security purposes as required by Participant or by the owner or operator of the Facility.

2.1.12. Responsibility of the Agency

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

2.1.13. 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.*

3.2.10 Agency and City Publicity

Throughout the term of this Agreement and notwithstanding any agreements to the contrary, the Agency shall have the right to freely use the following facts and information in Agency and City marketing, promotional, and publicity materials (together, "**Promotional Materials**"): (i) the presence of Participant's operations in the City, (ii) the approximate square

footage of the Facility, (iii) Participant's approximate total investment relating to the Facility within the City, (iv) timing of Participant's initial and subsequent investments within the City, (v) the details of the Reimbursement and the expected benefits to the City, (vi) the location of the Facility, and (vii) publicly-available information about Participant and its operations and history. Agency to provide draft content of all Promotional Materials to Participant within a reasonable time frame for Participant's written approval prior to Agency and/or City using said Promotional Materials for city publicity purposes.

4 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 later of: (a) the final payment of the Incentive during or upon the expiration of the Incentive Term; or (b) upon the written agreement signed by the Parties hereto.

5 DEFAULTS, REMEDIES, AND TERMINATION

5.7 Default

If either the Agency or Participant fails to perform or delays performance of any material obligation of this Agreement or fails to perform or delays performance of any material obligation of that certain Property Tax Participation Agreement between the Parties dated 1/4/24 and fails to cure as provided for in this Article 5, 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 below.

5.8 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.

5.9 Cure Period

The non-defaulting Party shall have no right to exercise a right or remedy hereunder unless the subject Default continues uncured for a period of thirty (30) days after delivery of the Default Notice with respect thereto, or, where the default is of a nature which cannot be cured within such

Party each represents; (c) this Agreement constitutes a legal, valid, and binding obligation of each Party, enforceable in accordance with its terms.

6.8 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.

6.9 Nonliability of Officials and Employees

No director, officer, agent, employee, representative, contractor, attorney, elected official, or consultant of the Parties hereto shall be personally liable to any other Party hereto, or any successor-in-interest thereof, in the event of any Default or breach by a Party hereto or for any amount which may become due to a Party hereto or to its successor, or on any obligations under the terms of this Agreement.

6.10 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, unusually severe weather, or any other causes beyond the reasonable 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 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 Participant by mutual agreement.

6.11 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.

6.12 Time of the Essence

Time shall be of the essence in the performance of this Agreement.

6.13 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 an enterprise between the Parties hereto.

6.14 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.

6.15 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 Millcreek, Utah.

6.16 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.

6.17 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.

6.18 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.

6.19 Incorporation of Recitals and Exhibits

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

6.16 Governmental Records And Management Act

The Agency acknowledges that Participant considers all of the information provided to the Agency in connection with this Agreement is protected under the Utah Governmental Records Access and Management Act, § 63G-2-101 *et seq.* (“GRAMA”) under a claim of “business confidentiality” so long as Participant complies with the applicable requirements in making a claim of business confidentiality under § 63G-2-309(1)(a)(i)(A) & (B).

7 DUPLICATION, INTEGRATION, WAIVERS, AND AMENDMENTS

7.7 Duplicate Originals

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

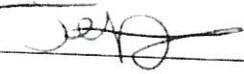
7.8 Integration

This Agreement (including its exhibits) constitutes the entire understanding and agreement of the Parties regarding the subject matter thereof. 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 the subject matter thereof.

7.9 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 Participant and the Agency.

**MILLCREEK COMMUNITY
REINVESTMENT AGENCY**

By: , Chair

Attest:

By: 
Alex Went, Secretary
Deputy Agency Recorder



EP GT3, LLC, a _____

By: Michael R. Mikhlin

Name:

Title: Manager