

MNT File 17943-2

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Gary W. Ott
Recorder, Salt Lake County, UT
METRO NATIONAL TITLE
BY: eCASH, DEPUTY - EF 13 P.

WHEN RECORDED RETURN TO:

Draper Holdings, LLC
5850 Avenida Encinas, Suite A
Carlsbad, CA 92008

27-36-351-005, 27-36-151-017
27-36-151-018

ASSIGNMENT OF DEVELOPMENT AGREEMENT

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This Assignment of Development Agreement (the "**Assignment**") is made effective as of the 17 day of December, 2009 (the "Effective Date"), by and between **WHITEWATER VII HOLDINGS, LLC**, a Delaware limited liability company ("**Assignor**"), and **DRAPER HOLDINGS, LLC**, a Utah limited liability company ("**Assignee**").

RECITALS

A. Assignor entered into that certain Development Agreement (the "**Development Agreement**") dated as of November 20, 2008, by and among Assignor, Draper City, a Utah municipal corporation (the "**City**"), the Redevelopment Agency of Draper City (the "**Agency**"), and the Utah Transit Authority, a public transit district organized and existing pursuant to Utah law (the "**UTA**").

B. The Development Agreement pertains to certain real property located within the City and more particularly described on Exhibit "A" attached hereto (the "**Master Developer Parcel**"), which Master Developer Parcel is located within the boundaries of, and comprises a large component of, the City's Transit Station District.

C. Assignor desires to assign all right, title, and interest in and to the Development Agreement to Assignee, and Assignee desires to assume the obligations of Assignor, as "**Master Developer**" thereunder, all as more particularly as set forth below.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. **Assignment and Assumption of the Development Agreement.**

(a) Assignment. From and after the Effective Date, Assignor hereby assigns, transfers, and conveys unto Assignee all of Assignor's right, title, and interest in, and delegates to Assignee all of Assignor's obligations as the Master Developer under, the Development Agreement.

(b) Assumption. Assignee hereby accepts the foregoing assignment and delegation and hereby assumes all such rights and obligations of the Master Developer under the Development Agreement accruing from and after the Effective Date, and agrees to be bound by and perform all of said obligations of the Master Developer under the Development Agreement and to be subject to the conditions and restrictions set forth therein.

2. **Representations and Warranties.** Assignor represents and warrants to Assignee that (i) the Development Agreement is valid and in full force and effect; (ii) Assignor

has delivered to Assignee a complete, true and correct copy of the Development Agreement and all amendments and modifications thereof; and (iii) no Additional Agreements, as defined in Section 6.9 of the Development Agreement, have been executed by Assignor in connection with the Development Agreement or the Master Developer Parcel.

Assignor further represents and warrants to Assignee that Assignor has not assigned or granted a security interest in the Development Agreement to anyone, nor is the Development Agreement subject to any lien, encumbrance, or claim. Assignor further represents and warrants to Assignee that no event of default, breach or failure of condition has occurred, or would exist with notice or the lapse of time or both, under the Development Agreement and that all representations and warranties of Assignor set forth herein are true and correct as of the Effective Date.

3. **No Modification.** Except as set forth in this Assignment, the terms of the Development Agreement shall remain unchanged and in full force and effect.

4. **Miscellaneous.**

(a) **Further Action.** The Parties agree to execute and deliver any further documents and to perform any further actions reasonably requested by any other party hereto in order to fulfill the intention hereof.

(b) **Counterparts.** This Assignment may be executed in one or more counterparts. All executed counterparts shall constitute the same agreement.

(c) **Attorneys' Fees.** In the event of litigation between Assignor and Assignee to enforce any provisions of this Assignment or right hereunder, the non-prevailing party to such litigation shall pay to the prevailing party all costs and expenses including, but not limited to, reasonable attorneys' fees incurred by such party in connection with such litigation.

(d) **Headings.** The paragraph headings contained herein are for convenience only and shall not be considered or referred to in construing the Assignment.

SIGNATURES ON FOLLOWING PAGE

ASSIGNEE:

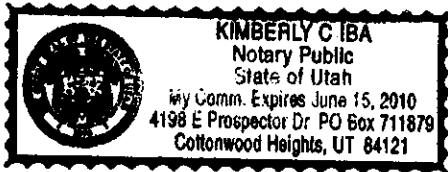
DRAPER HOLDINGS LLC, a Utah limited liability company

By: [Signature]
Name: JEFFREY M. VITEK
Title: Managing Member

STATE OF UTAH)
) SS
COUNTY OF SALT LAKE)

On this 8th day of December, 2009, before the undersigned notary public in and for the said state, personally appeared Jeffrey M. Vitek, known or identified to me to be the Manager of Draper Holdings, LLC, and the person who executed the foregoing instrument and acknowledged to me that said company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.



Kimberly C. Iba
Notary Public for Utah
Residing at: Salt Lake County
My Commission Expires: June 15, 2010

**City and Agency Consent
To
Assignment of Development Agreement**

Pursuant to Section 5.1 of the Development Agreement, the City and the Agency hereby consent to the acquisition of the Master Developer Parcel by Assignee and the assignment and assumption set forth in Section 1 of this Assignment. The foregoing consent is granted in consideration of the fact that the City and the Agency have determined that no Additional Agreements, as defined in Section 6.9 of the Development Agreement, have been executed in connection with the Development Agreement or the Master Developer Parcel; the conditions set forth in Section 5.1.1 (a) and (b) of the Development Agreement are satisfied in full; and upon such assignment and assumption the Assignee shall have all of the rights and obligations of the Master Developer under the Development Agreement. The City and Agency further confirm that, upon such assignment and assumption, the Assignor hereby is and shall be released in full from the obligations of the Master Developer under the Development Agreement.

DRAPER CITY, a municipal corporation organized and existing under the laws of the State of Utah

By: *Darrell H. Smith*
Darrell H. Smith, Mayor

ATTEST:

Tracy B. Dorr
Tracy B. Dorr, City Recorder



REDEVELOPMENT AGENCY OF DRAPER CITY, a Utah community development and renewal agency existing under the laws of the State of Utah

By: *Jeff Stenquist*
Jeff Stenquist, Chairperson

ATTEST:

Layne Long
Layne Long, Executive Director

CITY ACKNOWLEDGEMENT

STATE OF UTAH)
) SS
COUNTY OF SALT LAKE)

On this 8th day of December, 2009, before the undersigned notary public in and for the said state, personally appeared Darrell H. Smith, known or identified to me to be the Mayor of Draper City and the person who executed the foregoing instrument on behalf of said City and acknowledged to me that said City executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.



Angelia J. Olsen
Notary Public for Utah
Residing at: Draper, UT
My Commission Expires: 12-20-2011

REDEVELOPMENT AGENCY ACKNOWLEDGEMENT

STATE OF UTAH)
) SS
COUNTY OF SALT LAKE)

On this 8th day of December, 2009, before the undersigned notary public in and for the said state, personally appeared Jeff Stengvist, known or identified to me to be the Chairperson of the Redevelopment Agency of Draper City and the person who executed the foregoing instrument on behalf of said Redevelopment Agency and acknowledged to me that said Redevelopment Agency executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.



Angelia J. Olsen
Notary Public for Utah
Residing at: Draper, UT
My Commission Expires: 12-20-2011

**EXHIBIT A
TO
ASSIGNMENT OF DEVELOPMENT AGREEMENT**

Legal Description of Master Developer Parcel

[See Attached.]

EXHIBIT A

**MASTER DEVELOPER PARCEL
(Legal Description)**

Exhibit "A"

Parcel 1: (27-36-351-005)

Beginning at the Southwest corner of Section 36, Township 3 South, Range 1 West, Salt Lake Base and Meridian; thence North 00 deg. 12'13" West 3976.67 feet along the section line; thence North 89 deg. 37'33" East 332.24 feet; thence North 51 deg. 24'08" East 1278.69 feet; thence North 00 deg. 27'36" West 528.86 feet to the North line of said Section 36; thence North 89 deg. 51'01" East 185.66 feet along said North line to the Westerly right of way line of the Denver and Rio Grande Western Railroad; thence along said Westerly right of way line as follows: South 01 deg. 49' East 3222.94 feet to the point of tangency with a 01 deg. 45' curve to the right; Southwesterly 1733.33 feet along the arc of said curve; South 28 deg. 31' West 467.93 feet to the South line of said Section 36; thence South 89 deg. 37'14" West 981.52 feet to the point of beginning.

LESS AND EXCEPTING THEREFROM the following six (6) parcels:

1) Beginning at a point 3716.67 feet North and 430 feet East from the Southwest corner of Section 36, Township 3 South, Range 1 West, Salt Lake Base and Meridian; and running thence East 726 feet; thence South 300 feet; thence West 726 feet; thence North 300 feet to the point of beginning.

2) Beginning at a point 1452.585 feet North 89 deg. 49'08" East, along the Section line, from the Southwest corner of Section 25, Township 3 South, Range 1 West, Salt Lake Base and Meridian; and running thence South 01 deg. 51'23" East, a distance of 425.90 feet, to a point; thence South 51 deg. 21'45" West, a distance of 166.00 feet to a point; thence North 00 deg. 29'59" West, a distance of 528.70 feet, to a point; thence North 89 deg. 41'33" East, a distance of 120.53 feet, to the point of beginning.

3) Beginning at a point 1690.20 feet South 00 deg. 14'36" East along the section line, from the Southwest corner of Section 25, Township 3 South, Range 1 West, Salt Lake Base and Meridian; and running thence North 00 deg. 14'36" West a distance of 364.704 feet, to a point; thence North 89 deg. 35'10" East, a distance of 332.240 feet, to a point; thence North 51 deg. 21'45" East a distance of 65.030 feet, to a point; thence South 20 deg. 02'25" East a distance of 86.600 feet, to a point; thence South 51 deg. 33'35" West a distance of 524.930 feet, to the point of beginning.

4) Beginning at a point 1452.585 feet North 89 deg. 49'08" East, along the section line, from the Southwest corner of Section 25, Township 3 South, Range 1 West, Salt Lake Base and Meridian; and running thence North 89 deg. 49'08" East a distance of 65.139 feet, to a point; thence South 01 deg. 51'23" East a distance of 390.211 feet, to a point; thence South 51 deg. 21'45" West a distance of 1443.416 feet, to a point; thence South 20 deg. 02'25" East a distance of 86.631 feet, to a point; thence South 51 deg. 33'35" West a distance of 543.026 feet, to a point; thence North 00 deg. 14'44" West a distance of 15.269 feet, to a point; thence North 51 deg. 33'35" East a distance of 524.930 feet, to a point; thence North 20 deg. 02'25" West a distance of 86.600 feet, to a point; thence North 51 deg. 21'45" East a distance of 1379.656 feet, to a point; thence North 01 deg. 51'00" West a distance of 425.844 feet, to the point of beginning.

5) Beginning at the Northeast corner of said entire tract, which point is 3595.34 feet North 00 deg. 12'13" West and 543.03 feet North 51 deg. 33'35" East and 86.63 feet North 20 deg. 02'25" West and 1443.42 feet North 51 deg. 21'45" East from the Southwest corner of said Section 36; and running

thence South 01 deg. 49'00" East 69.50 feet along the Easterly boundary line of said entire tract; thence South 88 deg. 11'00" West 15.00 feet; thence South 01 deg. 49'00" East 255.00 feet; thence North 88 deg. 11'00" East 15.00 feet to said Easterly boundary line; thence South 01 deg. 49'00" East 961.06 feet; thence North 25 deg. 51'49" West 82.36 feet; thence North 06 deg. 56'00" West 1115.20 feet to the Northerly boundary line of said entire tract; thence North 51 deg. 21'45" East 166.16 feet along said Northerly boundary line to the point of beginning as shown on the official map of said project on file in the office of the Utah Department of Transportation.

6) Beginning at a point in the Easterly boundary line of said entire tract, which point is 3595.34 feet North 00 deg. 12'13" West and 543.03 feet North 51 deg. 33'35" East and 86.63 feet North 20 deg. 02'25" West and 1443.42 feet North 51 deg. 21'45" East and 69.50 feet South 01 deg. 49'00" East from the Southwest corner of said Section 36; and running thence South 01 deg. 49'00" East 255.00 feet along said Easterly boundary line; thence South 88 deg. 11'00" West 15.00 feet; thence North 01 deg. 49'00" West 255.00 feet; thence North 88 deg. 11'00" East 15.00 feet to the point of beginning as shown on the official map of said project on file in the office of the Utah Department of Transportation.

Parcel 2: (27-36-151-017)

Beginning at a point 3716.67 feet North and 430 feet East from the Southwest corner of Section 36, Township 3 South, Range 1 West, Salt Lake Base and Meridian; and running thence East 726 feet; thence South 300 feet; thence West 726 feet; thence North 300 feet to the point of beginning.

LESS AND EXCEPTING from Parcel 1 and Parcel 2, any portion lying within the bounds of the following described tract:

Beginning at a point on the South line of Galena Hills Phase I Subdivision at a point which is 3595.34 feet North 00 deg. 12'13" West and 543.03 feet North 51 deg. 33'35" East and 86.63 feet North 20 deg. 02'25" West and 1277.26 feet North 51 deg. 21'45" East from the Southwest corner of Section 36, Township 3 South, Range 1 West, Salt Lake Base and Meridian; and running thence South 6 deg. 56'00" East 1115.20 feet; thence South 25 deg. 51'49" East 82.36 feet; thence South 01 deg. 49'00" East 190.00 feet; thence West 755.00 feet; thence North 908.50 feet, more or less, to a point on the South line of said Galena Hills Phase I Subdivision; thence North 51 deg. 21'45" East 740.50 feet, more or less, to the point of beginning.

Parcel 3: (27-36-151-018)

Beginning at a point on the South line of Galena Hills Phase I Subdivision at a point which is 3595.34 feet North 00 deg. 12'13" West and 543.03 feet North 51 deg. 33'35" East and 86.63 feet North 20 deg. 02'25" West and 1277.26 feet North 51 deg. 21'45" East from the Southwest corner of Section 36, Township 3 South, Range 1 West, Salt Lake Base and Meridian; and running thence South 06 deg. 56'00" East 1115.20 feet; thence South 25 deg. 51'49" East 82.36 feet; thence South 01 deg. 49'00" East 190.00 feet; thence West 755.00 feet; thence North 908.50 feet, more or less, to a point on the South line of said Galena Hills Phase I Subdivision; thence North 51 deg. 21'45" East 740.50 feet, more or less, to the point of beginning.

AS SURVEYED DESCRIPTION:

Beginning at the Southwest corner of Section 36, Township 3 South, Range 1 West, Salt Lake Base and Meridian; and running thence North 00 deg. 23'09" West along the section line 3599.84 feet; to a point on the Southerly boundary line of Galena Hills Phase II Subdivision as recorded with the office of the Salt Lake County Recorder; thence along said Southerly boundary line the following two courses: North 51 deg. 33'35" East 547.63 feet, and North 20 deg. 02'25" West 86.65 feet to a point on the Southerly boundary line of Galena Hills Phase I Subdivision as recorded with the office of the Salt Lake County Recorder; thence North 51 deg. 21'45" East 1272.02 feet; thence South 06 deg. 56'00" East 1119.34 feet; thence South 25 deg. 51'49" East 85.97 feet to a point on the West right of way line of the Denver Rio Grande Rail Road; thence Southerly along said right-of-way line the following three courses: South 01 deg. 59'46" East 1537.87 feet to a point of curvature, Southerly along the arc of a 3274.00 foot radius curve to the right, through a central angle of 30 deg. 20'00", a distance of 1733.31 feet, and South 28 deg. 20'14" West 472.44 feet to a point on the Southwest section line of said Section 36; thence South 89 deg. 37'14" West along the section line 980.21 feet to the point of beginning.

APPENDIX 1

Definitions

"City Laws" means, collectively, the following as in effect on the Effective Date, as modified by this Agreement: (i) the Municipal Land Use, Development, and Management Act (Utah Code Annotated, § 10-9a-101, et seq.) ("MLUDMA"), (ii) the City's ordinances, resolutions, policies, plans, procedures, regulations, goals and objectives, (iii) other Governmental Requirements impacting the Real Property or the ownership, operation, use, development or redevelopment thereof.

"Governmental Requirement" means every law (including, without limitation, common law), statute, regulation, guideline, rule, code, ordinance, resolution, or treaty of any Governmental Authority or Order and similar provisions having the force or effect of any of the foregoing.

"Master Developer/DNR Trade" means the trade of a portion of the Master Developer Parcel for a like sized portion of the real property owned by the Utah Division of Natural Resources located within the TSD Zone.