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Draper, Utah 84020

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GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
CITY OF DRAPER
1020 E PIONEER RD
DRAPER UT 84020
BY: ZJM, DEPUTY - WI 12 P.

For Recording Purposes Do
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**FIRST AMENDMENT TO DEVELOPMENT AGREEMENT
AND
CONFIRMATION OF SATISFACTION OF CONDITIONS PRECEDENT**

This First Amendment to Development Agreement and Confirmation of Satisfaction of Conditions Precedent (this "**Amendment**") is made effective as of the 15th day of February, 2011, by and among Draper City, a Utah municipal corporation (the "**City**"), by and through its Mayor, the Redevelopment Agency of Draper City (the "**Agency**"), Utah Transit Authority, a public transit district organized and existing pursuant to Utah law ("**UTA**"), and Draper Holdings, LLC, a Utah limited liability company ("**Draper Holdings**").

RECITALS

A. The City, Agency, UTA and Whitewater VII Holdings, LLC, a Delaware limited liability company ("**Whitewater**"), entered into that certain Development Agreement (the "**Development Agreement**") dated as of November 20, 2008. Capitalized terms not otherwise defined in this Amendment shall have the meaning ascribed to such terms in the Development Agreement.

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. Pursuant to that certain Assignment of Development Agreement, dated December 8, 2009, Whitewater, as "Master Developer," assigned with the consent of the City and Agency, all of Whitewater's right, title, and interest in and to the Development Agreement to Draper Holdings, and Draper Holdings assumed the obligations of Whitewater, as "Master Developer," all as more particularly as set forth in the said Assignment of Development Agreement (collectively, the "**Assignment and Assumption**").

D. Draper Holdings has acquired the Master Developer Parcel, commenced construction of an underpass pursuant to that Galena Park Underpass Funding Agreement, dated

October 31, 2010 (the “**Underpass Funding Agreement**”), which underpass is in lieu of the Galena Park Bridge, as described in the Development Agreement.

E. In connection with the Underpass Funding Agreement and construction of the underpass, the Master Developer or its affiliate has conveyed the Draper FrontRunner Station Site directly to UTA with the understanding that the Development Agreement would be amended to reflect such direct conveyance.

F. Draper Holdings now desires to proceed with the preparation of the Master Area Plan and to develop certain portions of the Master Developer Parcel pursuant thereto.

G. In connection with Master Developer’s desire to proceed as set forth in Recital E, Master Developer has sought confirmation from the City, Agency and UTA that the Conditions Precedent set forth in Section 1.5 of the Development Agreement, as well as the conditions identified in Section 3 of each of Ordinance Numbers 858 and 860, both of which were adopted by the City Council on November 3, 2008, have been satisfied or waived by the City, Agency and UTA, as applicable.

H. The City, Agency, UTA and Master Developer have determined that the Conditions Precedent set forth in Section 1.5 of the Development Agreement have been satisfied or substantially satisfied to the reasonable satisfaction of the City, Agency, Master Developer and UTA, as applicable.

I. The City has determined that the conditions set forth in Section 3 of each of Ordinance Numbers 858 and 860 have been satisfied or substantially satisfied to the reasonable satisfaction of the City.

J. The City and Agency have also determined that Master Developer’s preparation of the Master Area Plan and initial development of the Master Developer Parcel at this juncture is consistent with the City’s expectations and vision for development of the Master Developer Parcel, as well as its desire to accommodate the selection of the Draper FrontRunner Station Site, the finalization of any further studies or approvals needed in connection with such selection, and the advancement of master planning and development around the proposed site in satisfaction of one or more of the UTA Conditions set forth in Section 2.1.1 of the Development Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City, Agency, UTA and Master Developer hereby agree as follows:

1. References to “Master Developer”. In recognition of the Assignment and Assumption, any and all references in the Development Agreement to “Master Developer” shall be deemed to refer to Draper Holdings.

2. References to “Galena Park Bridge”. Any and all references in the Development Agreement to the “Galena Park Bridge,” “a bridge over the rail corridor,” or

words of similar import are hereby replaced with "Galena Park Underpass," "an underpass under the rail corridor," or words of similar import. The foregoing amendment is made in consideration of the determination by the City and Master Developer that the underpass configuration was more acceptable than a bridge, both from a design and aesthetic perspective as well as a cost perspective.

3. UTA Conditions Precedent. Section 2.1.1(i) of the Development Agreement is amended and restated in its entirety as follows:

(i) resolution to the reasonable satisfaction of UTA of all environmental issues and required governmental approvals.

4. Conveyance of Draper FrontRunner Station Site to UTA. Section 2.3 of the Development Agreement is amended and restated in its entirety as follows:

2.3 Conveyance of Draper FrontRunner Station Site to UTA. If the Draper FrontRunner Station Site Selection occurs, City agrees that it shall:

(a) subject to sub-paragraph (c) below, purchase from Master Developer such portions of the Master Developer Parcel as are needed for the extension of Galena Park Boulevard at the Master Developer's acquisition cost (calculated on a square footage pro rata basis, but not to exceed \$4.15 per square foot);

(b) subject to sub-paragraph (c) below, in connection with the direct conveyance to UTA of the Draper FrontRunner Station Site by the Master Developer or any affiliate of Master Developer, reimburse Master Developer or such affiliate for such direct conveyance of the Draper FrontRunner Station Site at the Master Developer's acquisition cost (calculated on a square footage pro rata basis, but not to exceed \$4.15 per square foot);

(c) the City's obligations arising under sub-paragraphs (a) and (b) above shall arise, only if the City and/or Agency enter into a reimbursement agreement with Master Developer pursuant to which the Master Developer could be reimbursed or paid, as the case may be, from impact fees collected, tax increment generated or some other financing mechanism reasonably acceptable to the City and/or Agency and Master Developer; and

(d) contribute fifty percent (50%), but not more than \$5.5 million, of the City's actual Fiscal Year 2009 revenue from state sources (exclusive of B&C Road Funds) (the "**2009 State Funds**"), towards the completion of the Galena Park Bridge.

5. Confirmation of Satisfaction of Conditions Precedent. Each of the City, Agency, UTA and Master Developer confirm that the Conditions Precedent set forth in Section 1.5 of the Development Agreement have been satisfied or substantially satisfied to the reasonable satisfaction of the City, Agency, Master Developer and UTA, each as applicable. The City further confirms that the conditions set forth in Section 3 of each of Ordinance Numbers 858 and 860 have been satisfied or substantially satisfied to the reasonable satisfaction of the City and that the amendments to the Land Use Map of the Draper City General Plan accomplished pursuant to Ordinance Number 858, and the application of the Transit Station District Zoning Classification to the Master Developer Parcel accomplished pursuant to Ordinance No. 860, are

not subject to revocation or reversion by reason of the failure to occur of the conditions set forth in Section 3 of the said ordinances. Except for the condition set forth in Section 2.1.1(a), the foregoing shall not be deemed to be a satisfaction or waiver of the UTA Conditions set forth in Section 2.1.1 of the Development Agreement, some of which have not yet been satisfied or waived by UTA.

6. Miscellaneous. This Amendment contains the entire understanding of the Parties hereto and supersedes all prior oral or written understandings relating to the subject matter set forth herein. This Amendment may be executed in counterparts each of which shall be deemed an original. This Amendment shall be binding upon and shall inure to the benefit of each Party and their respective grantees, transferees, lessees, heirs, devisees, personal representatives, successors, and assigns. In all respects, other than as specifically set forth in this Amendment, the Development Agreement shall remain unaffected by this Amendment and shall continue in full force and effect, subject to the terms and conditions thereof, and in the event of any conflict, inconsistency, or incongruity between the provisions of this Amendment and any provisions of the Development Agreement, the provisions of this Amendment shall in all respects govern and control.

[Signatures appear on the next four pages.]

IN WITNESS WHEREOF, the Parties have entered into this Amendment on the date first set forth above.

CITY:



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:

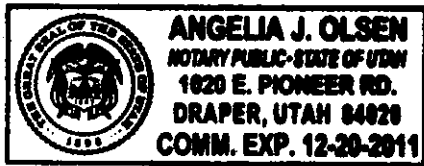
Isaac Brown
_____, City Recorder

CITY ACKNOWLEDGEMENT

STATE OF UTAH)
 : ss.
County of Salt Lake)

On this 5th day of February, 2011, 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.

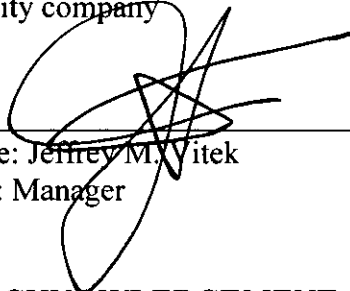


Angela J. Olsen
Notary Public for Utah
Residing at: Draper, UT
My Commission Expires: 12-20-2011

MASTER DEVELOPER:

DRAPER HOLDINGS, LLC, a Utah limited liability company

By: _____
Name: Jeffrey M. Vitek
Title: Manager



MASTER DEVELOPER ACKNOWLEDGEMENT

STATE OF UTAH)
) SS
COUNTY OF SALT LAKE)

*See Attached
Inv*

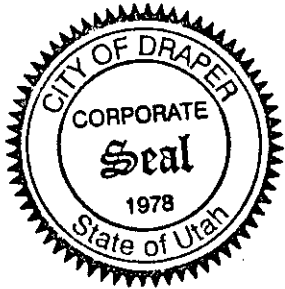
On this _____ day of _____, 2011, before the undersigned notary public in and for the said state, personally appeared Jeffrey M. Vitek, known or identified to me to be the Manager of Draper Holdings, LLC, and the person who executed the foregoing instrument and acknowledged to me that said company executed the same.

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

Notary Public for Utah
Residing at: _____
My Commission Expires: _____

AGENCY:

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



By: [Signature], Chairperson

ATTEST:

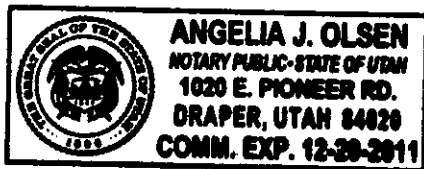
[Signature]
Layne Long, Executive Director

REDEVELOPMENT AGENCY ACKNOWLEDGEMENT

STATE OF UTAH)
: ss.
County of Salt Lake)

On this 15th day of February, 2011, before the undersigned notary public in and for the said state, personally appeared Bill Rappaport, 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.



[Signature]
Notary Public for Utah
Residing at: Draper, UT
My Commission Expires: 12-20-2011

UTA:

UTAH TRANSIT AUTHORITY, a
Utah public transit district organized under the laws
of the State of Utah

By: [Signature]
Its: GENERAL MANAGER

By: Bruce Jones
Its: President of Trans. Resources

Approved As To Form
[Signature]
UTA Legal Counsel

UTAH TRANSIT AUTHORITY ACKNOWLEDGEMENT

STATE OF UTAH)
 : ss.
County of Salt Lake)

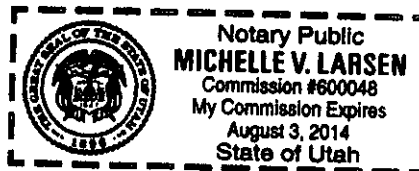
On this 17th day of March, 2011, before the undersigned notary public in and for the said state, personally appeared Michael Allegre, known or identified to me to be the General Manager of the Utah Transit Authority, and the person who executed the foregoing instrument and acknowledged to me that said public transit district executed the same.

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

Michelle V. Larsen
Notary Public for Utah
Residing at: _____
My Commission Expires: _____
By: _____

Approved as to form:

UTA Legal



**EXHIBIT A
TO
AMENDMENT OF DEVELOPMENT AGREEMENT
AND
CONFIRMATION OF SATISFACTION OF CONDITIONS PRECEDENT**

Legal Description of Master Developer Parcel

[See Attached.]

That certain real property located in Salt Lake County, Utah and more particularly described as follows:

PARCEL 1

BEGINNING AT A POINT WHICH IS NORTH 00°23'09" WEST 3666.44 FEET AND EAST 1334.40 FEET FROM THE SOUTHWEST CORNER OF SECTION 36, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH 88°00'14" EAST 209.18 FEET; THENCE SOUTH 25°51'49" EAST 47.85 FEET; THENCE SOUTH 02°03'02" EAST 81.88 FEET; THENCE CONTINUE SOUTHERLY ALONG SAID LINE, A DISTANCE OF 1,459.30 FEET TO THE POINT OF CURVE OF A NON TANGENT CURVE TO THE RIGHT, OF WHICH THE RADIUS POINT LIES SOUTH 88°00'14" WEST, A RADIAL DISTANCE OF 3,274.00 FEET; THENCE SOUTHERLY ALONG THE ARC, THROUGH A CENTRAL ANGLE OF 05°53'20", A DISTANCE OF 336.51 FEET (CHORD BEARING SOUTH 00°56'54" WEST 336.36 FEET); THENCE NORTH 84°48'32" WEST 221.30 FEET TO THE POINT OF CURVE OF A NON TANGENT CURVE TO THE LEFT, OF WHICH THE RADIUS POINT LIES NORTH 84°48'32" WEST, A RADIAL DISTANCE OF 870.00 FEET; THENCE NORTHERLY ALONG THE ARC, THROUGH A CENTRAL ANGLE OF 07°11'15", A DISTANCE OF 109.14 FEET (CHORD BEARING NORTH 01°35'51" EAST 109.06 FEET); THENCE NORTH 01°59'46" WEST 1,784.31 FEET TO THE POINT OF BEGINNING.

CONTAINS 435,651 SQUARE FEET OR 10 ACRES, MORE OR LESS.

PARCEL 2

BEGINNING AT A POINT WHICH IS NORTH 00°23'09" WEST 709.22 FEET FROM THE SOUTHWEST CORNER OF SECTION 36, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH 00°23'09" WEST 1,941.59 FEET; THENCE CONTINUE NORTHERLY ALONG SAID LINE, A DISTANCE OF 949.03 FEET; THENCE NORTH 51°33'35" EAST 547.63 FEET; THENCE NORTH 20°02'25" WEST 86.65 FEET; THENCE NORTH 51°21'45" EAST 1,272.02 FEET; THENCE SOUTH 06°56'00" EAST 1,119.34 FEET; THENCE SOUTH 25°51'49" EAST 34.51 FEET; THENCE SOUTH 88°00'14" WEST 209.18 FEET; THENCE SOUTH 01°59'46" EAST 1,784.31 FEET TO A POINT OF CURVE TO THE RIGHT HAVING A RADIUS OF 870.00 FEET AND A CENTRAL ANGLE OF 07°11'15"; THENCE SOUTHERLY ALONG THE ARC A DISTANCE OF 109.14 FEET (CHORD BEARING SOUTH 01°35'51" WEST 109.06 FEET); THENCE SOUTH 84°48'32" EAST 221.30 FEET TO THE POINT OF CURVE OF A NON TANGENT CURVE TO THE RIGHT, OF WHICH THE RADIUS POINT LIES NORTH 86°06'26" WEST, A RADIAL DISTANCE OF 3,274.00 FEET; THENCE SOUTHERLY ALONG THE ARC, THROUGH A CENTRAL ANGLE OF 24°26'40", A DISTANCE OF 1,396.80 FEET (CHORD BEARING SOUTH 16°06'53" WEST 1,386.23 FEET); THENCE SOUTH 28°20'14" WEST 125.29 FEET; THENCE SOUTH 88°26'48" WEST 90.57 FEET; THENCE NORTH 43°56'54" WEST 76.91 FEET; THENCE NORTH 76°44'02" WEST 89.28 FEET; THENCE NORTH 34°47'12" WEST 47.36 FEET; THENCE NORTH 60°57'19" WEST 99.12 FEET; THENCE NORTH 81°02'12"

WEST 78.58 FEET; THENCE NORTH 48°51'40" WEST 93.19 FEET; THENCE NORTH 40°06'58" WEST 60.34 FEET; THENCE NORTH 70°04'20" WEST 52.22 FEET; THENCE NORTH 23°13'29" WEST 119.94 FEET; THENCE NORTH 65°43'05" WEST 92.17 FEET; THENCE SOUTH 89°18'27" WEST 136.36 FEET; THENCE SOUTH 69°18'51" WEST 71.85 FEET; THENCE NORTH 88°17'33" WEST 99.55 FEET; THENCE SOUTH 79°35'27" WEST 137.37 FEET TO THE POINT OF BEGINNING.

CONTAINS 5,224,624 SQUARE FEET OR 120 ACRES, MORE OR LESS.

PARCEL 3

BEGINNING FROM THE SOUTHWEST CORNER OF SECTION 36, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH 00°23'09" WEST 709.22 FEET; THENCE NORTH 79°35'27" EAST 137.37 FEET; THENCE SOUTH 88°17'33" EAST 99.55 FEET; THENCE NORTH 69°18'51" EAST 71.85 FEET; THENCE NORTH 89°18'27" EAST 136.36 FEET; THENCE SOUTH 65°43'05" EAST 92.17 FEET; THENCE SOUTH 23°13'29" EAST 119.94 FEET; THENCE SOUTH 70°04'20" EAST 52.22 FEET; THENCE SOUTH 40°06'58" EAST 60.34 FEET; THENCE SOUTH 48°51'40" EAST 93.19 FEET; THENCE SOUTH 81°02'12" EAST 78.58 FEET; THENCE SOUTH 60°57'19" EAST 99.12 FEET; THENCE SOUTH 34°47'12" EAST 47.36 FEET; THENCE SOUTH 76°44'02" EAST 89.28 FEET; THENCE SOUTH 43°56'54" EAST 76.91 FEET; THENCE NORTH 88°26'48" EAST 90.57 FEET; THENCE SOUTH 28°20'14" WEST 347.16 FEET; THENCE SOUTH 89°37'14" WEST 980.21 FEET TO THE POINT OF BEGINNING.

CONTAINS 639,573 SQUARE FEET OR 14.68 ACRES