

WHEN RECORDED RETURN TO:

David E. Gee, Esq.
Parr Brown Gee & Loveless
100 South 200 East, Suite 700
Salt Lake City, UT 84111

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1/30/2015 4:37:00 PM \$43.00
Book - 10292 Pg - 8279-8285
Gary W. Ott
Recorder, Salt Lake County, UT
METRO NATIONAL TITLE
BY: eCASH, DEPUTY - EF 7 P.

Affects Tax Parcel Nos. 27-36-151-020; 27-36-351-009; 27-36-353-002; 27-36-127-009; 27-36-353-003

MNT 44122

REIMBURSEMENT MEMORANDUM

THIS REIMBURSEMENT MEMORANDUM (this “**Memorandum**”) is dated this 30th day of January, 2015 by and between Draper Holdings, LLC (“**Seller**”) and BG Vista Station, L.C., a Utah limited liability company (“**Purchaser**”). Purchaser and Seller are sometimes referred to herein, individually, each a “**Party**” and, collectively, the “**Parties.**”

RECITALS

A. Purchaser and Buyer entered into that certain Purchase Agreement and Escrow Instructions dated January 27, 2015 (the “**Purchase Agreement**”) whereby Purchaser agreed to sell, and Seller agreed to purchase, that certain real property located in Draper, Salt Lake County, Utah, which property is more particularly described on Exhibit A attached hereto (the “**Property**”).

B. In connection with the sale of the Property, Seller assigned to Purchaser the rights and obligations of Master Developer and Developer as those terms are defined in that certain Development Agreement dated November 20, 2008 by and between Seller, as successor in interest to Whitewater VII Holdings, LLC, Draper City, a Utah municipal corporation (“**City**”), Redevelopment Agency of Draper City (the “**Agency**”) and Utah Transit Authority, a public transit district (the “**Development Agreement**”), that certain Agreement for Development of Land dated March 25, 2013 entered into between Seller and the Agency (the “**Agency**”) (the “**ADL**”) and that certain Master Reimbursement Agreement dated November 17, 2011 entered into between Seller, City and Agency (“**Agency**”) (the “**Reimbursement Agreement**” and together with the Development Agreement and the ADL, the “**Agreements**”).

C. The Parties agreed to record a written notice of the provisions of Section 20.3 of the Agreement, effective as of the date hereof (the “**Closing Date**”).

AGREEMENT

1. Retention and Distribution of Reimbursement. Notice is hereby given that Seller and Purchaser have agreed as follows:

(a) Seller is retaining (i) one hundred percent (100%) of the first payment of reimbursement made under the ADL following the Closing Date, which amount is due and payable under the ADL as of the Closing Date; (ii) fifty percent (50%) of all other amounts paid to the Developer (as defined in the ADL) under the ADL at any time on and after the Closing Date. Seller is retaining (i) one hundred percent (100%) of the approximately \$900,000.00 in reimbursement due and payable to the Master

Developer (as defined in the Reimbursement Agreement) under the Reimbursement Agreement as of the Closing Date, but which has not yet been paid to Seller; and (ii) fifty percent (50%) of all other amounts paid to the Master Developer under the Reimbursement Agreement at any time on and after the Closing Date.

(b) Purchaser will not directly modify or amend the Reimbursement Agreement or ADL without the written consent of Seller in a manner that: (a) decreases the amount of reimbursement or tax increment payable to Master Developer or Developer, as applicable, under the Reimbursement Agreement or the ADL with respect to improvements installed on or before the Closing Date; (b) increases the period of time over which the amount of reimbursement or tax increment are paid to Master Developer or Developer, as applicable, under the Master Reimbursement Agreement or the ADL; or (c) any release of City or Agency under the Master Reimbursement Agreement or ADL. Notwithstanding the foregoing provisions to the contrary, Seller and Purchaser contemplate that prior to the Closing Date, the ADL will be amended to provide that (x) with respect to that certain real property identified as Tax Parcel No. 27363520010000 (the “**30% Parcel**”), thirty percent (30%) of the Tax Increment Subsidy (as defined in the ADL) payable to the Developer (as defined in the ADL) from tax increment generated from any new improvements constructed or installed (as opposed to the existing improvements as of the Closing Date) on the 30% Parcel may be paid to the owner(s) of the 30% Parcel (in which event Purchaser and Seller would share equally in the remaining seventy percent (70%) of Tax Increment Subsidy generated from any new improvements constructed or installed on the 30% Parcel); and (y) with respect to improvements made on that certain real property identified as Tax Parcel Nos. 3311000220000, 33011000240000, 3311000290000 and 33011000310000 (collectively, the “**40% Parcels**”), forty percent (40%) of the aggregate Tax Increment Subsidy generated by the 40% Parcels shall be paid to the owner(s) of the 40% Parcels, which forty percent (40%) is comprised of twenty-five percent (25%) of the aggregate Tax Increment Subsidy payable to the Agency under the ADL and fifteen percent (15%) of the aggregate Tax Increment Subsidy payable to the Developer with respect to the 40% Parcels (in which event Purchaser and Seller would share equally in the remaining sixty percent (60%) of Tax Increment Subsidy payable with respect to the 40% Parcels).

(c) Notwithstanding the foregoing, Purchaser shall have the sole right without the consent of Seller to settle any dispute as to the amount of any reimbursement under the Master Reimbursement Agreement or the ADL due where the dispute relates solely to computation. In addition, the written consent of Seller to any proposed modification requiring its written consent shall not be unreasonably withheld, conditioned or delayed.

(d) Nothing herein shall prevent Purchaser from negotiating amendments or modifications to the ADL, the Reimbursement Agreement or the Development Agreement that modify the MAP, other approved site plans or the types, or the nature or extent of improvements to be made to the Property after the Closing Date, even if such modifications or amendments decrease the total amount of reimbursement available under the ADL and the Reimbursement Agreement with respect to improvements installed after the Closing Date. Specifically, Seller and Purchaser expressly acknowledge and agree that Purchaser and its successors and assigns: (a) shall have the right to amend the Development Agreement, the ADL and(or) the MAP (or corresponding changes to the Reimbursement Agreement) that alter zoning and land use approvals, including without limitation, height and density requirements, as to portions of the Property that have not been developed as of the Closing Date; (b) shall have no obligation or duty to Seller or its affiliates, or to any other person or entity, to develop or install any additional buildings or improvements on the Property; and (c) shall have no obligation or duty to Seller or its affiliates, or to any

other person or entity, to increase or maximize the amounts of reimbursement or tax increment payable to Developer under the ADL or to Master Developer under the Reimbursement Agreement.

(e) Except as permitted by the prior provisions, and except with the written consent of Seller, Purchaser shall not amend the Reimbursement Agreement or the ADL: (A) to grant to any third party the right to receive all or any portion of the amounts payable to Developer under the ADL or to Master Developer under the Reimbursement Agreement in any manner which would decrease the total amount of reimbursement or tax increment payable to Seller; (B) to decrease the amount of reimbursement or tax increment payable to Developer under the ADL or to Master Developer under the Reimbursement Agreement with respect to the buildings and improvements constructed prior to the date hereof in any manner which would decrease the total amount of reimbursement or tax increment payable to Seller; (C) to decrease the amount of reimbursement or tax increment payable to Developer under the ADL or to Master Developer under the Reimbursement Agreement with respect to the buildings and improvements once constructed in any manner which would decrease the total amount of reimbursement or tax increment payable to Seller, except the foregoing shall not require Buyer to obtain Seller's consent in connection with any construction, demolition, reconstruction, addition, alteration or any other change to such buildings or improvements or zoning or land use laws relating thereto; (D) except as provided in the Resolution (defined below), permit the City or the Agency to waive, forgive or refund impact fees or tax increment on property subject to the Community Development Project Area Plan (as defined in the ADL, including the Property, in any manner which would decrease the total amount of reimbursement or tax increment payable to Seller; (E) to remove or exclude any property which is subject to the Community Development Project Area Plan as of the Closing Date; or (F) modify (I) the interest rate payable to Developer under the ADL or to Master Developer under the Reimbursement Agreement, (II) the percentage of reimbursement or tax increment payable by the City or Agency, or the priority of the allocation of such payments, to Developer under the ADL or to Master Developer under the Reimbursement Agreement (including, without limitation, a modification to the provisions of Section 4.3 of the ADL), or (III) the percentage share of the reimbursement or tax increment payable (directly or indirectly) to Seller, in each case in any manner which would decrease the total amount of reimbursement or tax increment payable to Seller.

(f) Without limiting the foregoing, Seller acknowledges the amendments to the ADL and Master Reimbursement Agreement contemplated by the resolution adopted by the City on January 20, 2015, and Seller agrees that such amendments do not require Seller's consent (the "**Resolution**").

2. Remedies. Except as set forth in the next sentence, Seller's sole and exclusive remedy with respect to Section 20.3 of the Purchase Agreement and this Memorandum shall be to sue for actual damages, which shall equal the amounts Seller would have received but for Purchaser's breach. Seller may also file a lawsuit against Purchaser seeking a declaration that (i) determines if Purchaser has breached or will be in breach of this Memorandum; (ii) determines the damages that will be caused by Purchaser's breach; (iii) sets forth damages caused to date, if any, and (iv) determines the adjustments that must be made or amounts that must be allocated in the future to compensate for such breach. Seller may not assign any such claims to any affiliate, person or third-party. This Memorandum does not constitute a lien or encumbrance against any interest in real or personal property including, but not limited to, the Property, or a restriction on the authority of the City and the Agency to pay reimbursements to Purchaser. Seller hereby expressly waives, irrevocably and unconditionally, any claims for consequential damages, punitive damages, lost profits or other indirect damages. Purchaser, for itself, its affiliates, officers, members, managers, employees, successors and assigns also hereby waive any claim or interest in the

Property for purposes of collecting, attaching or enforcing any claim it may have for a breach of Purchaser under 20.3 of the Purchase Agreement.

3. Mortgagee Protection. Unless and until it enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu of foreclosure, any Mortgagee interested under any mortgage affecting any part of the Parcels shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, this Memorandum. A breach of any of the covenants, provisions, or requirements of this Memorandum shall not defeat, impair or render invalid the lien of or other rights under any Mortgagee. A Mortgagee shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, any of the covenants, provisions, or requirements of this Memorandum. As used herein, the term "**Mortgagee**" means a mortgagee under a mortgage, or the beneficiary under a deed of trust, recorded in the official records of Salt Lake County, Utah.

4. Term. This Memorandum shall automatically expire on January 1, 2035.

5. Effect of Purchase Agreement. No provision of the Purchase Agreement shall be of public record or is necessary for interpretation of this Memorandum.

6. No Further Recordation. Neither Seller nor Purchaser, nor any of their respective affiliates, officers, members, managers, employees, successors or assigns shall record any further notice, memorandum or other instrument relating to this Memorandum. Any such notice, memorandum or other instrument shall be null, void and of no effect. The foregoing shall not prohibit a Mortgagee from recording a mortgage, deed of trust or other lien with respect to Purchaser's interest in the Agreements.

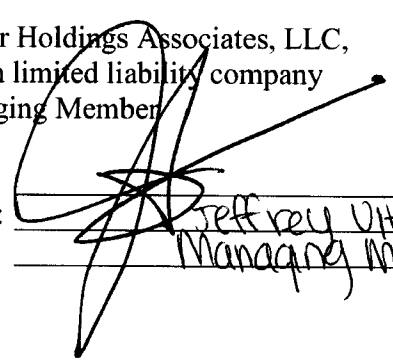
[Signatures and Acknowledgments Follow]

IN WITNESS WHEREOF, the Parties have executed this Memorandum as of the date first written above.

DRAPER HOLDINGS, LLC,
a Utah limited liability company

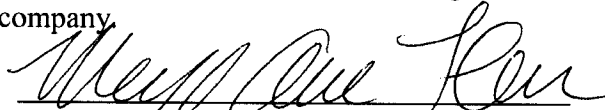
By: Draper Holdings Associates, LLC,
a Utah limited liability company

Its: Managing Member

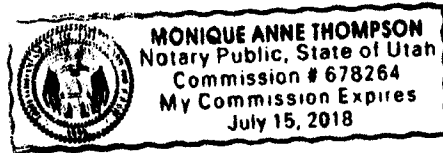
By: 
Name: Jeffrey Vittek
Its: Managing Member

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 29 day of January, 2015, by Jeffrey Vittek, the Manager of DRAPER HOLDINGS ASSOCIATES, L.L.C., a Utah limited liability company, which is a Manager of DRAPER HOLDINGS, LLC, a Utah limited liability company.


NOTARY PUBLIC
Residing at: Salt Lake City, UT


My Commission Expires: 7/15/18



BG VISTA STATION, L.C.,
a Utah limited liability company


By: The Boyer Company, L.C.,
a Utah limited liability company

Its: Manager

By: 
Name: Dan Glenn
Its: Manager

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 29th day of January, 2015, by Devon Glenn, the Manager of THE BOYER COMPANY, L.C., a Utah limited liability company, which is a Manager of BG VISTA STATION, L.C., a Utah limited liability company.


NOTARY PUBLIC
Residing at: Salt Lake

My Commission Expires: 04-04-16

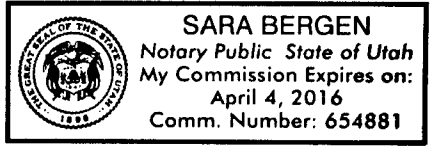


Exhibit "A"

All of Lots 108 through 129, DRAPER TOD SECOND AMENDMENT, (amending Lots 2 and 6, Draper TOD Subdivision, also amending Lots 104 and 105 Draper TOD Amending Lots 3, 4, and 5) according to the official plat thereof, filed in the office of the Salt Lake County Recorder in Plat Book 2015P at page 14.

Also:

All of Lot 107, DRAPER TOD AMENDING LOTS 3, 4 & 5, according to the official plat thereof, filed in the office of the Salt Lake County Recorder in Plat Book 2013P at page 37.