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Book - 11275 Pg - 4310-4323
RASHELLE HOBBS
RECORDER, SALT LAKE COUNTY, UTAH
HERRIMAN
5355 W HERRIMAN MAIN ST
HERRIMAN UT 84096
BY: DNA, DEPUTY - MA 14 P.

WHEN RECORDED RETURN TO:

Herriman City Recorder
5355 West Herriman Main Street
Herriman, UT 84096

Affecting Parcels: 26-25-402-0010000
26-25-402-0020000

SECOND REPURCHASE OPTION

This Second Repurchase Option (the "Agreement") is made effective as of the 23 day of November, 2021 (the "Effective Date"), by and between Herriman City, a Utah municipal corporation (the "City"), and Game Pointe Properties, LLC, a Utah limited liability company ("Game Pointe"). City and Game Pointe may be referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

A. On or about October 9, 2019, Game Pointe purchased approximately six acres of unimproved real property (the "Six Acres") from the City.

B. On or about October 9, 2019, the Parties executed a Repurchase Option (the "Original Agreement") wherein Game Pointe granted an exclusive option to the City to repurchase the Six Acres "if Game Pointe faile[ed] to obtain a building permit to develop/construct a family entertainment center (or a similar entertainment/restaurant facility) as approved by the City in its governmental capacity on Lot 2 within two (2) years form the date Game Pointe purchased the Six Acres." A copy of the Original Agreement is attached hereto as Exhibit "A" and incorporated herein by this reference.

C. The Original Agreement expired on October 16, 2021. However, the City exercised its repurchase option under the Original Agreement by sending a certified letter to Game Pointe on October 15, 2021. Game Pointe acknowledged receipt of the City's letter and the Parties admit that the option under the Original Agreement was effectively executed as set forth therein. A copy of the letter is attached hereto as Exhibit "B" and is incorporated herein by this reference.

D. The City, having exercised its repurchase option under the Original Agreement, desires to allow Game Pointe to continue pursuing development of the Six Acres in a manner acceptable to City. The City desires, however, to maintain an option to repurchase the Six Acres. Accordingly, the Parties wish to enter into this Second Repurchase Agreement setting forth the terms and conditions of Game Pointe's rights and obligations with respect to Six Acres while preserving for the City a right to repurchase the Six Acres.

E. The Parties also entered in a Development Agreement (the "MDA") on or about October 9, 2019 governing the development and improvement of the Six Acres. The MDA has been recorded against the Six Acres and a copy thereof is available in the offices of the Salt Lake County Recorder. The term of the MDA was for "a period of two (2) years *or* until fulfillment of the obligations of the parties unless earlier terminated or modified by a written amendment agreed to and approved by the parties."

F. The Parties acknowledge that the MDA is still in full force and effect and that the MDA governs the development of the Six Acres according to the terms and conditions set forth therein.

G. The City acknowledges that entering into this Agreement is in the best interest of the City and its residents with regard to the development of the Six Acres.

NOW THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

1. **Incorporation of Recitals and Exhibits.** The foregoing Recitals to this Agreement, as well as the Exhibits attached hereto, are incorporated into and shall constitute a part of this Agreement.

2. **Option to Purchase.** Game Pointe hereby grants to City, and City hereby accepts, the exclusive right and privilege (referred to as the "Option") of purchasing the Six Acres on or before July 11, 2022 (such period starting on the Effective Date and ending on July 11, 2022 shall be referred to as the "Option Period"). At any time during the Option Period, City may exercise the Option to purchase the Six Acres for One Million Six Hundred Ninety-Eight Thousand Eight Hundred Forty Dollars (\$1,698,840.00) (the "Option Price").

3. **Exercise of Option.** The Option shall be exercised by the City, if at all, on or before the expiration of the Option Period by City providing Game Pointe with written notice of its intent to exercise the Option hereunder.

4. **Expiration of Option.** If the Option is not exercised on or before the expiration of the Option Period, the Option shall expire of its own force and effect. The Option shall also expire if Game Pointe obtains a building permit from the City to construct a family entertainment center or a similar entertainment facility as permitted by the MDA.

5. **Closing.** If the City exercises the Option as permitted herein, then the Closing shall occur on a date scheduled by City on or before 45 days after the City provides notice of its intent to exercise the Option. Closing shall occur when the City delivers to Cottonwood Title Company the Option Price. The Closing will be held in the office of Cottonwood Title Company unless otherwise agreed in writing by the Parties. The title to the Six Acres shall be in the same marketable title and condition it was on at the time of City's sale of the Six Acres to Game Pointe. The Purchase Price will be paid by the City at the Closing in immediately available funds.

6. **Marketing of Six Acres.** Subject to Section 10 regarding assignment as well as any other applicable provisions of this Agreement, Game Pointe may market the Six Acres to a third-party. However, Game Pointe acknowledges and hereby agrees that any assignment or sale of the Six Acres is subject to the written approval of the City during the Option Period.

7. **Complete Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the issues addressed herein and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except in writing mutually agreed to and accepted by all Parties hereto.

8. **Notice.** All notices required or permitted under this MDA shall, in addition to any other means of transmission, be given in writing by email, certified mail, or regular mail to the following address:

City: Herriman City
Attn: City Manager
5355 West Herriman Main Street
Herriman, Utah 84096
ncherpeski@herriman.org

With a Copy to: Herriman City
Attn: City Attorney
5355 West Herriman Main Street
Herriman, Utah 84096
candrizzi@herriman.org

Owner: Game Pointe Properties, LLC
Attn: Jed Stevenson
290 North Flint Street, Suite A
Kaysville, Utah 84037
jed@academicavest.com

9. **No Third-Party Beneficiaries.** This Agreement is solely among and solely for the benefit of the Parties. There are no third-party beneficiaries of this Agreement.

10. **Assignment.** Game Pointe shall not, without the City's written consent, assign its rights or delegate its obligations or duties under this Agreement. City may, however, without restriction, assign its rights under this Agreement. Any such assignment by any party shall not act as a release of the assigning Party who shall remain obligated under this Agreement.

11. **Binding Effect.** The provision of this Agreement shall be binding upon the successors, assigns, heirs, and personal representatives of the Parties.

12. **Recordation.** This Agreement shall be recorded and shall run with the land during the Option Period. If the Option is not exercised or if the Closing otherwise fails to occur as provided herein, the City shall, upon request of Game Pointe, execute and record a suitable, unconditional release of the Option in a form acceptable to the Parties.

13. **Superiority of Option.** Any mortgage, trust deed, lien, judgment, or other financial interest executed or entered against the Six Acres shall be subordinate to this Option and in no way enable the holder of such interest of their successor(s) in interest to breach the terms of this Agreement.

14. **Obligation to Maintain Property; Compliance with Laws.** Game Pointe shall at all times keep the Six Acres free from weeds in excess of six inches in height, in good order, condition and repair. Game Pointe shall not permit or suffer any waste of the Six Acres and shall not alter the Six Acres except for normal clearing, grading, or construction activities. Game Pointe shall cause the Six Acres, and all activities thereon, to comply at all times with all applicable laws.

15. **Rights and Remedies.** The rights and remedies of the parties hereto shall not be mutually exclusive, and the exercise of one or more of the provisions of this Agreement shall not preclude the exercise of any other provisions hereof.

16. **Waiver.** No failure by any Party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such or any other covenant, agreement, term, or condition. Any party may, by notice delivered in the manner provided in this Agreement, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation, or covenant of any other party. No waiver shall affect or alter the remainder of this Agreement, but each and every other covenant, agreement, term, and condition hereof shall continue in full force and effect with respect to any other then existing or subsequently occurring breach.

17. **Applicable Law.** The provisions hereof shall be governed by and construed in accordance with the laws of the state of Utah. In the event of conflicts and/or inconsistencies within or among this Agreement and applicable statute, rules, regulations, or standards, Game Pointe shall (1) provide the better quantity or greater quality or (2) comply with more stringent requirements or standards, either or both, in accordance with City's reasonable interpretation.

18. **Attorney's Fees.** In any action arising out of this Agreement, the prevailing Party shall be entitled to its costs, reasonable attorney's fees, and other related collection or enforcements costs and expenses.

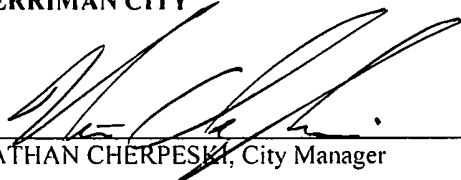
19. **Severability.** In the event that any condition, covenant, or other provision hereof is held to be invalid or void, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or condition herein contained. If such condition, covenant, or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

20. **Government Records Access and Management Act.** City is subject to the requirements of the Government Records Access and Management Act, Chapter 2, Title 63G, Utah Code Annotated or its successor ("GRAMA"). All materials submitted by Game Pointe pursuant to this Agreement are subject to disclosure unless such materials are exempt from disclosure pursuant to GRAMA. The burden of claiming an exemption from disclosure shall rest solely with Game Pointe. Any materials for which Game Pointe claims a privilege from disclosure shall be submitted marked as "Business Confidential" and accompanied by a concise statement of reasons supporting claim of business confidentiality. City will make reasonable efforts to notify Game Pointe of any requests made for disclosure of documents submitted under a claim of business confidentiality.

IN WITNESS WHEREOF, the Parties have executed this Agreement by and through their respective, duly authorized representatives as of the Effective Day first written above.

[signatures on following page]

HERRIMAN CITY


NATHAN CHERPESKI, City Manager

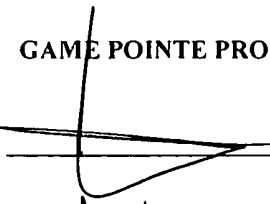
ATTEST


JACKIE NOSTROM, City Recorder


CHASE A. ANDRIZZI, City Attorney
Approved as to form and legality



GAME POINTE PROPERTIES, LLC

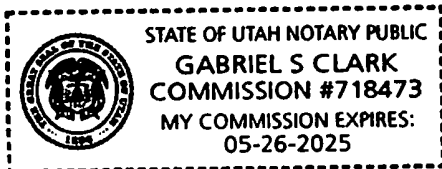
Signature: 

Print Name: Jed Stevenson

Title: Manager

STATE OF UTAH)
) :SS
COUNTY OF Davis)

On the 23rd day of November, 2021 personally appeared before me Jed Stevenson, who being by me duly sworn, did say that they are the Manager of Game Pointe Properties, LLC, a Utah limited liability company, and that said instrument was signed on behalf of Game Pointe Properties, LLC by authority of its governing body and the above-listed signor acknowledged to me that they executed the same.



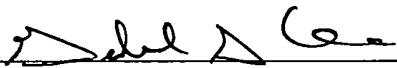

NOTARY PUBLIC

EXHIBIT A

Original Repurchase Agreement

WHEN RECORDED RETURN TO:

Herriman City
5355 West Herriman Main Street
Herriman, UT 84096

113DIS - CAF

TAX ID 26-25-400-067

13418451
11/7/2019 11:55:00 AM \$40.00
Book - 10857 Pg - 097-702
RASHELLE HOBBS
Recorder, Salt Lake County, UT
COTTONWOOD TITLE
BY: eCASH, DEPUTY - EF 6 P.

REPURCHASE OPTION

This Repurchase Option Agreement (the "Agreement") is made effective as of the 9th day of October, 2019, by and between Herriman City, a Utah corporation (referred to as "City"), and Game Pointe Properties LLC, a Utah Limited Liability Company (referred to as "Game Pointe"). Game Pointe and City shall sometimes be referred to herein as the "Parties" or, individually as a "Party."

RECITALS

A. On or about October 9, 2019, Game Pointe purchased approximately six acres of unimproved real property ("Six Acres") from the City and Game Pointe subdivided the Six Acres into two lots- Lots 1 and 2. Lot 1 is more particularly described on the attached exhibit "A" ("Lot 1") and Lot 2 is also more particularly described on the attached exhibit "A" ("Lot 2") and Lot 1 and Lot 2 are collectively the "Lots").

B. Game Pointe represented to the City that it would develop/construct a family entertainment center (or a similar entertainment/restaurant facility) as approved by the City in its governmental capacity on Lot 2 within two (2) years from the date Game Pointe purchased the Six Acres.

C. Game Pointe agreed that the City has the option to repurchase the Lots if Game Pointe fails to obtain a building permit to develop/construct a family entertainment center (or a similar entertainment/restaurant facility) as approved by the City in its governmental capacity on Lot 2 within two (2) years from the date Game Pointe purchased the Six Acres pursuant to the terms and conditions of a repurchase option.

C. Game Pointe desires to grant the City an option to repurchase the Lots as set forth herein.

AGREEMENT

NOW THEREFORE in consideration of the above premises, the mutual covenants, promises, and agreements contained in this Agreement, and for other good and valuable

consideration, the receipt and sufficiency of which is fully acknowledged by the Parties the Parties agree as follows:

1. Option to Purchase the Lots. Game Pointe grants to City, for a maximum period of twenty four (24) months from October 16, 2019, (such period is referred to as the "Option Period"), the exclusive right and privilege of acquiring the Lots. At any time during the Option Period, City may exercise its option to purchase the Lots for One Million Six Hundred Ninety-Eight Thousand Eight Hundred Forty Dollars (\$1,698,840.00) ("Option Price").
2. Option Payment. The \$1,698,840 will be paid at Closing in immediately available funds.
3. Exercise of Option. This option shall be exercised, if at all, on or before the expiration of the Option Period if Game Pointe fails to obtain a building permit from the City to construct a family entertainment center (or a similar entertainment/restaurant facility), by City providing Game Pointe with written notice of its intent to exercise the option. The City will not unreasonably withhold the issuance of a building permit.
4. Normal Expiration. If this option is not exercised on or before the Option Period expires, the option shall expire of its own force and effect. The option shall also expire if Game Pointe obtains a building permit from the City to construct a family entertainment center (or a similar entertainment/restaurant facility) on Lot 2.
5. No Other Sale. Game Pointe shall not market Lot 2 to others until the Option expires.
6. Closing. This transaction shall be closed on a date scheduled by City on or before thirty (30) days after the exercise (if any) of the option, or on such other date as may be agreed in writing between the parties, but in no event shall the closing occur beyond forty-five (45) days after the option is exercised. Closing shall occur when the City delivers to Cottonwood Title Company ("Title Company") the Option Price. The Closing will be held in the offices of Title Company unless otherwise agreed in writing by the parties. The title to the Lots and its condition shall at closing be in the same marketable title and condition it was on City's sale to Game Pointe.
7. Complete Agreement. This Agreement together with its addenda, any attached exhibits, and any further instruments or documents referred to in this Agreement or referred to in those other instruments or documents affecting the Lots, constitute the entire Agreement between City and Game Pointe with respect to the Agreement's subject matter. There are no oral agreements between City and Game Pointe. This Agreement and any such related documents shall be construed in a manner consistent with each other. Nevertheless, to the extent of any inconsistency in this Agreement and any such related documents, the terms of this Agreement shall control. This Agreement shall not be changed except by written agreement signed by authorized representatives of both Parties.

8. Attorney's Fees. In any action arising out of this Agreement, the prevailing party shall be entitled to its costs, reasonable attorney's fees, and other related collection or enforcement costs and expenses.

9. Time is of the Essence. Time is of the essence regarding the dates set forth in this Agreement except to the extent a grace period is specifically authorized. Extensions must be agreed to in writing by both Parties. Performance under each section of this Agreement which references a date shall be required absolutely by 5:00 p.m. Mountain Time or Mountain Daylight Time as applicable.

10. Notice. Any notice, designation, consent, approval, or other communication required or permitted to be given pursuant to the provisions of this Agreement (referred to, collectively, as "Notice") shall, except as otherwise expressly provided in this Agreement, be given in writing and shall be provided by hand delivery or sent by certified or registered mail, Federal Express, or overnight courier. Notice may be sent to City at 5355 West Herriman Main Street Herriman, UT 84096 and to John Brems at 5355 West Herriman Main Street Herriman, UT 84096. Notice may be sent to Game Pointe at 290 N FLINT ST STE A Kaysville, UT 84037.

11. No Third-party Beneficiaries. This Agreement is solely among and solely for the benefit of the Parties. There are no third-party beneficiaries of this Agreement.

12. Assignments. Game Pointe shall not, without City's written consent, assign its rights, or delegate its obligations or duties under this Agreement. City may however, without restriction, assign its rights under this Agreement. Any such assignment by any party shall not act as a release of the assigning party who shall remain obligated under this Agreement.

13. Binding. The provisions of this Agreement shall be binding upon the successors, assigns, heirs, and personal representatives of the respective parties.

14. Recordation. This Agreement shall be recorded. If the option is not exercised, or if exercised, but the transaction fails to close, City shall promptly, on request from Game Pointe, execute and record a suitable, unconditional release of such option or a quitclaim deed.

15. Superiority of Option. Any mortgage, trust deed, lien, judgment, or other financial interest executed or entered against Lot 1 hereafter shall be subordinate to this Option and in no way enable the holder of such interest or their successor(s) in interest to breach the terms of this Option.

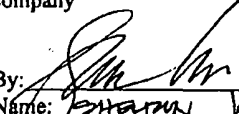
16. Obligation to Maintain Property; Compliance with Laws. Game Pointe shall at all times keep the Lots free from weed in excess of six inches in height, in good order, condition, and repair. Game Pointe shall not permit or suffer any waste of the Lots, and shall not alter the Lots except for normal clearing, grading, and construction activities. Game Pointe shall cause the Lots, and all activities on the Lots (including those requiring any alterations or improvements to be made thereon), to comply at all times with all applicable laws.

City and Game Pointe execute this Agreement intending to be fully bound by its terms and conditions.

DATED effective as of the 6th day of November, 2019.

gh

~~PROPERTY, LLC~~
GAME POINTE, a Utah limited liability
company

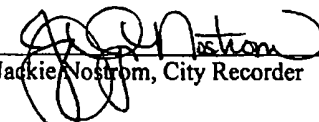
By: 
Name: J. Michael Krupar
Its: CEO

HERRIMAN CITY

By: 
Brett George Wood, City Manager



Attest:


Jackie Nostrom, City Recorder

CITY ACKNOWLEDGMENT

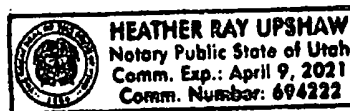
STATE OF UTAH)
:ss.
COUNTY OF SALT LAKE)

On the 15 day of Oct., 2019 personally appeared before me Brett George Wood who being by me duly sworn, did say that he is the City Manager of Herriman City, a political subdivision of the State of Utah, and that said instrument was signed in behalf of the City by authority of its City Council and said City Manager acknowledged to me that the City executed the same.

Heather Upshaw
NOTARY PUBLIC

My Commission Expires: April 9, 2021

Residing at: Salt Lake County



GAME POINTE ACKNOWLEDGMENT

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

On the 6th day of November, 2019, personally appeared before me Spencer Kilpatrick, who being by me duly sworn, did say that he is the Manager of Game Pointe, a Utah LLC and that the foregoing instrument was duly authorized by the company at a lawful meeting held by authority of its operating agreement and signed in behalf of said company.

Michael Paul Chabries
NOTARY PUBLIC

My Commission Expires: 8-27-2023

Residing at: Davis County



EXHIBIT B

Letter Executing Original Repurchase Option



10/14/2021

Sent via email and Certified Mail

Game Pointe Properties, LLC
Attn: Jed Stevenson
290 N. Flint St. STE A
Kaysville, UT 84037
jed@academicwest.com

Re: Exercise of Repurchase Option for Six Acres of Real Property Owned by Game Pointe Property.

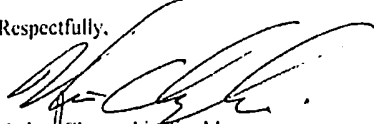
The purpose of this letter is to inform you that Herriman City intends to exercise its option to repurchase six acres of real property owned by Game Point Properties, LLC and subject to a Repurchase Agreement executed on October 16, 2019. The City's repurchase option expires on October 16, 2021. By "providing Game Pointe with [this] written notice of its intent to exercise the option" the City has satisfied the requirements of the Repurchase Agreement.

Pursuant to Section 6 of the Repurchase Agreement, the City is required to close on the property within 45 days hereof. However, as discussed in a recent Council meeting, the City is open to negotiating an extension to the Repurchase Agreement. So long as an extension is agreed upon and formalized in a written amendment to the Repurchase Agreement within 10 days hereof, the City will revoke this notice and will not otherwise close on the Property.

By signing below, you acknowledge receipt of this Notice and that such receipt satisfies the Notice Requirements of the Repurchase Agreement. A copy of this letter is also being sent via certified mail to the address above.

If you have any questions, please do not hesitate to reach out.

Respectfully,


Nathan Cherpeski, City Manager

Signature: _____
Jed Stevenson

Title: _____
Manager

5355 W. Herriman Main St. • Herriman, Utah 84096
(801) 446-5323 office • herriman.org



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