

WHEN RECORDED RETURN TO:

Herriman City
5355 West Herriman Main Street
Herriman, UT 84096

113018 - CAF

TAX ID 26-25-400-067

13118451

11/7/2019 11:55:00 AM \$40.00

Book - 10857 Pg - 697-702

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.

Exhibit A

Lots 1 and 2, GAME POINTE SUBDIVISION, according to the official plat thereof on file and of record in the office of the Salt Lake County Recorder, recorded on October 14, 2019 as Entry No. 13098578 in Book 2019P at Page 277.