

110/9

**PUBLIC IMPROVEMENTS
REIMBURSEMENT AGREEMENT**

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RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER

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REC'D FOR FARMINGTON CITY

THIS AGREEMENT is made and entered into as of the 2nd day of September, 2008, by and between **FARMINGTON CITY**, a Utah municipal corporation, hereinafter referred to as the "City," and **GARDNER BTS OLD FARM, LLC**, a Utah limited liability company, and **GARDNER OLD FARM, LLC**, a Utah limited liability company, hereinafter jointly and severally referred to as the "Developer."

RECITALS:

WHEREAS, the Developer is developing a residential planned unit development (PUD) and a non-residential commercial area within the City at approximately 1650 North Main Street, referred to as the "Village at Old Farm," hereinafter referred to as the "Project"; and

WHEREAS, the Project is located on that certain real property, hereinafter referred to as the "Property," more particularly described in **Exhibit "A"** attached hereto and by this reference made a part hereof; and

WHEREAS, the Developer is required by City ordinance to install certain public improvements both within and outside the boundaries of the Project; and

WHEREAS, the Developer and the City, in conjunction with the City's approvals for the Project, have entered into that certain Development Agreement dated September 2, 2008, which Development Agreement contemplates the entry and execution of this Reimbursement Agreement.

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

1. **Incorporation of Recitals.** The above Recitals are incorporated herein by this reference as if fully set forth in this paragraph.

2. **Storm Drainage Improvements.** Consistent with Paragraph 7.3 of the Development Agreement, and in conjunction with the approved plans for the Project, the Developer is required to install storm drainage improvements within the Project, hereinafter the "Storm Drainage Improvements." The City has required the Developer to up-size certain segments of the Storm Drainage Improvements. In conjunction with the City's requirement, Developer has provided the City with the marginal cost difference, including design costs, to up-size the applicable segments of the Storm Drainage Improvements. In accordance with the estimate provided by the Developer, the City hereby agrees to reimburse Developer \$20,209.00 in connection with the commercial phase of the Project and \$43,657.00 in connection with the residential phase of the Project. The foregoing reimbursement will be paid by the City in accordance with the provisions of Paragraph 6, below.

08-461-0001, 0002, 0003, 0004, 0005, 0006, 0007, 0008, 0009, 0010, 0011, 0012, 0013, 0014, 0015, 0016, 0017
08-462-0001 thru 0014
08-435-0001, 0002, 0003 08-041-0077
08-043-0193, 0194, 0017

3. **Timing of Bonding for Storm Drainage Improvements.** As of the execution of this Agreement, the Storm Drainage Improvements for the residential phase of the Project are almost complete. Developer agrees to provide a bond to warrant the workmanship of, and materials used, in the construction of the Storm Drainage Improvements ("Warranty") prior to recordation of the final plat for the commercial phase of the Project. In the event such improvements are not completed prior to recordation of the final plat for the commercial phase of the Project, Developer hereby agrees to provide prior to the recording of such plat, a suitable bond or other assurance of completion and Warranty with respect to those improvements in a form and amount reasonably acceptable to the City. With respect to the Storm Drainage Improvements for the commercial phase of the Project, the Developer hereby agrees to provide a bond or other assurance of completion and Warranty prior to the issuance of any building permit for a non-residential building served by the Storm Drainage Improvements for the commercial phase of the Project.

4. **Traffic Signals Installation.** Consistent with Paragraph 6.2(vi) of the Development Agreement, Developer has agreed to construct two traffic signals on the streets providing access to the Project. The traffic signal at the intersection of Somerset Street and Main Street is herein referred to as the "Phase I Signal." The traffic signal at the Main Street and Mountain Road intersection is herein referred to as the "Phase II Signal." The Phase I and II Signals are herein referred to collectively as the "Traffic Signal Improvements." The City hereby agrees to reimburse Developer the cost of the Traffic Signal Improvements in accordance with the provisions of Paragraph 6 below.

5. **Timing of Installation and Bonding for Traffic Signal Improvements.** Developer hereby agrees to commence construction of the Phase I Signal within 60 days after execution of this Agreement. In addition, Developer hereby agrees that the City shall not be required to issue a building permit for construction of any commercial building within the Project until Developer has provided a suitable bond or other assurance of completion and Warranty with respect to the Phase I Signal. As of the date hereof, the Parties agree that the Phase II Signal is not warranted, but that the Phase II Signal may be warranted at some point in the development of the commercial phase of the Project. Accordingly, the parties agree that when the Phase II Signal is warranted pursuant to the standards applied by the Utah Department of Transportation, the City shall notify Developer of such fact, and Developer shall thereafter expeditiously begin, and pursue to completion, the construction of the Phase II Signal. Prior to beginning actual construction, Developer hereby agrees to provide the City with a suitable bond or other assurance of completion and Warranty to insure construction and completion of the Phase II Signal. The parties agree that the City shall have independent authority to assess traffic and transportation conditions within and around the Project and to determine when the Phase II Signal is warranted pursuant to the above-referenced standard, provided the City's determination shall be supported by sound engineering principals generally applied within the greater Salt Lake City metropolitan area.

6. **Reimbursement.** The City hereby agrees to reimburse Developer for the installation for the Storm Drainage Improvements and the Traffic Signal Improvements as follows:

(a) Pursuant to City ordinance and as permitted by law, the City shall assess and collect a transportation impact fee and a storm drainage impact fee on all development activities within the impact fee service area of which the Project is a Part, including the Property. The amount of the impact fees shall be determined by the City in accordance with the requirements of the Utah Impact Fees Act. In the event any law or court decision hereafter prohibits, limits, or eliminates impact fees, the City shall not be obligated to assess or collect impact fees other than those authorized by the then existing law and/or any applicable court decisions. Subject to the foregoing, the City hereby agrees:

(b) Storm Drainage Improvements. The City will credit Developer an amount equal to the storm drainage impact fees otherwise due in connection with the Project up to a total of \$43,657.00 with respect to the residential phase of the Project, and \$20,209.00 with respect to the commercial phase of the Project. Such credit shall be applied on an application-by-application basis, commencing on the first day following completion of the Storm Drainage Improvements for the applicable residential or commercial phase of the Project. Notwithstanding the foregoing, to the extent the storm drainage impact fees due in connection with the residential or commercial phase of the Project do not exceed, in any given calendar quarter, the reimbursements due from the City hereunder, the City shall remit to the Developer fifty percent (50%) of the storm drainage impact fees collected hereafter by the City within the applicable service area, up to the total amounts stated above. All amounts actually paid to the Developer by the City pursuant to the foregoing sentence shall reduce the remaining available credit against storm drainage impact fees on a dollar for dollar basis.

(c) Traffic Signal Improvements. The City credit Developer an amount equal to the actual reasonable cost, without mark-up, incurred by Developer in designing and constructing the Traffic Signal Improvements as set forth in this Agreement, hereinafter referred to as the "Traffic Signal Reimbursement Amount." Such credit shall be applied on an application-by-application basis (regardless of the phase of the Project for which an application requiring the payment of an impact fee is submitted), commencing on the first day following completion of the Phase I Signal or Phase II Signal, as applicable. Notwithstanding the foregoing, to the extent the traffic impact fees due in connection with the residential or commercial phase of the Project do not exceed, in any given calendar quarter, the reimbursements due from the City hereunder, the City shall remit to the Developer fifty percent (50%) of the traffic impact fees collected hereafter by the City within the applicable service area, up to the total Traffic Signal Reimbursement Amount. All amounts actually paid to the Developer by the City pursuant to the foregoing sentence shall reduce the remaining available credit against traffic impact fees on a dollar for dollar basis.

(d) Other Reimbursement Obligations. In the event the City is obligated to make other expenditures for system improvements or reimbursements of impact fees collected, fifty percent (50%) of the impact fees collected, net of direct costs of collection, shall be divided by the City among the outstanding system improvement agreements in proportion to the original amounts due. Notwithstanding anything in this Agreement to the contrary, the City shall have no obligation to make any reimbursement to the Developer until the above-referenced impact fees from the Property or lands located within the applicable service area are actually received by the City.

The City shall not be obligated to pay interest to the Developer on amounts reimbursed from or credited against impact fees. Developer hereby agrees to accept the above-referenced impact fees actually collected by the City and/or credited to the Developer as provided herein as full and final reimbursement and satisfaction of all sums due to Developer from the City pursuant to this Agreement and hereby agrees to hold the City and its officer, employees, agents and representatives harmless for any amounts claimed by Developer for reimbursement in the event the City is unable to collect the aforesaid impact fees.

No reimbursement or credit shall be due hereunder to Developer until:

- a. The applicable Storm Drainage Improvements or Traffic Signal Improvements for which reimbursement is requested or credits given have been fully completed, inspected and approved by the City; and
- b. The provisions of this Agreement require such reimbursement and/or credits; and
- c. With respect to the Traffic Signal Improvements only, the Developer has provided the City with copies of receipts, checks, vouchers, bills, statements and other information necessary for the City to determine the actual costs incurred by the Developer in installing and constructing the Traffic Signal Improvements as set forth in this Agreement.

7. **Entire Agreement.** This Agreement contains the final and complete expression of the parties relating in any manner to the subject matter hereof, and other matters as set forth in this Agreement. Except as to those terms expressly cited herein, no prior agreements or understanding pertaining to the same shall be valid or of any force or effect and the covenants and agreements of this Agreement shall not be altered, modified or added to except in writing signed by the City and Developer.

8. **Binding Effect.** This Agreement shall be binding upon the parties hereto and their respective heirs, representatives, officers, employees, agents, successors in interest, and assigns.

9. **Validity and Severability.** If any section, clause or portion of this Agreement is declared invalid by a court of competent jurisdiction for any reason, the remainder shall not be affected thereby and shall remain in full force and effect.

10. **Amendment.** This Agreement may be amended only in writing, signed by the parties hereto.

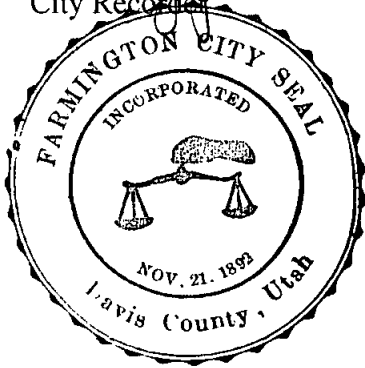
IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their respective, duly authorized representatives as of the day and year first above written.

FARMINGTON CITY

ATTEST:

Margy L. Lomax
City Recorder

By: Scott C. Harbertson
SCOTT C. HARBERTSON, Mayor

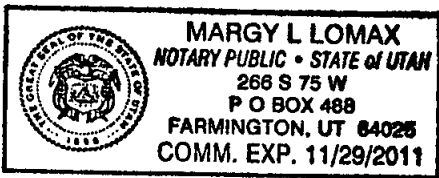


CITY ACKNOWLEDGMENT

STATE OF UTAH)
) :SS.
COUNTY OF DAVIS)

On the ____ day of August, 2008, personally appeared before me Scott C. Harbertson, who being duly sworn, did say that he is the Mayor of FARMINGTON CITY, a municipal corporation of the State of Utah, and that the foregoing instrument was signed in behalf of the City by authority of its governing body and said Scott C. Harbertson, acknowledged to me that the City executed the same.

Margy L. Lomax
Notary Public



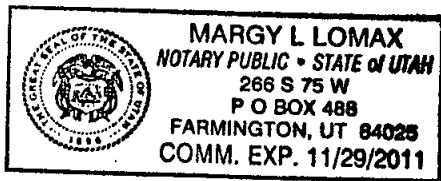
GARDNER BTS OLD FARM, LLC

By: Jonathan S. Gardner
Its: Member

GARDNER BTS OLD FARM, LLC ACKNOWLEDGMENT

STATE OF UTAH)
)
) :SS.
)
COUNTY OF DAVIS)

On the 18 day of ~~August~~ ^{September}, 2008, personally appeared before me Jonathan S. Gardner who being by me duly sworn did say that he is the a member of GARDNER BTS OLD FARM, LLC, and that the foregoing instrument was signed in behalf of said limited liability company by authority of its Board of Directors; and he acknowledged to me that he executed the same.



Margy L. Lomax
Notary Public

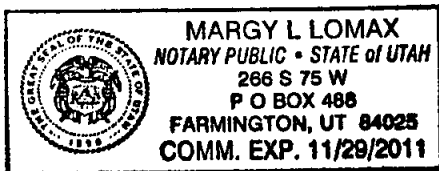
GARDNER OLD FARM, LLC

By: Jonathan S. Gardner
Its: Member

GARDNER OLD FARM, LLC ACKNOWLEDGMENT

STATE OF UTAH)
)
) :SS.
)
COUNTY OF DAVIS)

On the 18 day of ~~August~~ ^{Sept.}, 2008, personally appeared before me Jonathan S. Gardner who being by me duly sworn did say that he is the a member of GARDNER OLD FARM, LLC, and that the foregoing instrument was signed in behalf of said limited liability company by authority of its Board of Directors; and he acknowledged to me that he executed the same.



Margy L. Lomax
Notary Public

08-435-0001, 0002, 0003
 08-462-0001 thru 0074

EXHIBIT A
Description of the Property

RESIDENTIAL:

A parcel of land located in the Southwest Quarter of Section 12, Township 3 North, Range 1 West, Salt Lake Base and Meridian, being more particularly described as follows:

Beginning at a point on the East Right of Way Line of Highway 89 and a barbed-wire fence running Southerly, said point being West 437.58 feet and North 00°06'34" West 1392.50 feet from the South Quarter Corner of Section 12, Township 3 North, Range 1 West, Salt Lake Base and Meridian, and running thence;

North 74°18'22" East 185.92 feet; to a point of curvature on a 345.00 foot radius curve to the left (chord bearing is North 55°36'21" East); thence along the arc of said curve 227.67 feet; thence North 36°42'02" East 78.09 feet to a point of curvature on a 195.00 foot radius curve to the left (chord bearing is North 10°27'42" East); thence along the arc of said curve 178.60 feet to a point of reverse curvature on a 180.00 foot radius curve to the right (chord bearing is North 15°11'26" East); thence along the arc of said curve 194.58 feet; thence North 46°09'31" East 123.78 feet to the western right-of-way line of State Route 106; thence South 39°09'51" East 187.83 feet; thence South 63°08'56" West 1.18 feet; thence South 38°57'59" East 95.81 feet; thence North 51°02'01" East 1.48 feet; thence South 39°09'51" East 552.73 feet to a point on 26.50 foot non-tangent curve to the left (chord bearing is North 82°26'47" West); thence along the arc of said curve 40.04 feet to a point of curvature on a 180.00 foot reverse curve (chord bearing is South 59°38'08" West); thence along the arc of said curve 33.71 feet; thence South 65°00'00" West 62.51 feet to a point of curvature on a 15.00 foot curve to the left (chord bearing is South 20°09'07" West); thence along the arc of said curve 23.48 feet to a point of curvature on a 174.00 foot radius curve to the right (chord bearing is South 16°03'06" East); thence along the arc of said curve 52.51 feet; thence South 07°24'25" East 6.26 feet to a point of curvature on a 30.00 foot radius curve to the left (chord bearing is South 31°10'48" East); thence along the arc of said curve 24.89 feet to a point of curvature on a 50.00 foot radius curve to the right (chord bearing is South 11°43'04" East); thence along the arc of said curve 75.46 feet; thence South 83°00'56" East 129.48 feet; thence South 88°21'56" East 140.07 feet to the westerly right-of-way line of State Route 106; thence along said right-of-way line South 39°09'51" East 158.08 feet; thence North 89°33'50" West 58.05 feet; thence North 13°00'11" East 10.59 feet; thence South 88°43'03" West 110.97 feet; thence North 89°36'05" West 87.75 feet; thence South 88°49'40" West 97.31 feet; thence South 88°26'50" West 121.47 feet; thence North 89°33'50" West 155.12; thence North 08°40'36" East 9.88 feet; thence North 89°59'49" West 396.69 feet; thence South 03°13'46" West 6.78 feet; thence North 89°33'50" West 242.75 feet to a rebar and cap stamped "4265 RS Inc." marking the easterly right-of-way line of State Route 89; thence northwesterly along said right-of-way line North 21°25'49" West 333.49 feet to the Point of Beginning.

Contains 14.655 Acres more or less.

08-451-0001, 0002, 0003
 08-043-0193, 0194, 0017

COMMERCIAL:

A tract of land, situate in the West Half of Section 12, T.3N., R.1W., S.L.B.&M. The Basis of Bearing for the following described tract of land is N 00°06'34" W between the found monuments marking the Southwest Corner and the West Quarter Corner of said Section 12. The boundaries of said tract of land are described as follows:

Beginning at a point on the existing easterly right of way line of SR-89, which point is 1329.50 feet N 00°06'34" W along the Section Line and 437.58 feet East from the Southwest Corner of said Section 12; thence N 74°18'22" E 163.33 feet to a point of tangency with a 375.00-foot radius curve to the left; thence northeasterly 246.13 feet along the arc of said curve through a central angle of 37°36'20" (chord bears N 55°30'12" E 241.73 feet); thence N 36°42'02" E 82.85 feet to a point of tangency with a 200.00-foot radius curve to the left; thence northerly 176.28 feet along the arc of said curve through a central angle of 50°30'04" (chord bears N 11°27'00" E 170.63 feet) to a point of reverse curvature with a 180.00-foot radius curve to the right; thence northerly 188.37 feet along the arc of said curve through a central angle of 59°57'33" (chord bears N 16°10'44" E 179.89 feet); thence N 46°09'31" E 123.83 feet to the westerly existing right of way line of Main Street (SR-106); thence along said westerly right of way line for the following six (6) courses: 1) N 39°09'51" W 65.17 feet to a point of tangency with a 606.69-foot radius curve to the right; 2) thence northwesterly 129.89 feet along the arc of said curve through a central angle of 12°16'00" (chord bears N 33°01'51" W 129.64 feet); 3) thence N 26°53'51" W 556.83 feet; 4) thence N 88°35'56" W 11.59 feet; 5) thence N 26°59'41" W 51.21 feet to a point of tangency with a 598.17-foot radius curve to the left; 6) thence northwesterly 82.57 feet along the arc of said curve through a central angle of 07°54'32" (chord bears N 30°56'57" W 82.50 feet) to the southerly line of that certain parcel of land conveyed to the Utah Department of Transportation by the Trustees of the John D. Potter Revocable Trust, which said conveyance is incident to the project know as Project No. *HDP-9124(003), and recorded by Warranty Deed and filed as Entry No. 1483226, in Book 2439, at Page 316 in the Davis County Records Office, Davis County, Utah; thence along the southerly and westerly boundary of said parcel of land for the following two (2) courses: 1) thence S 89°39'20" W 148.47 feet; 2) thence N 00°20'40" W 129.52 feet to a point on the said westerly existing right of way line of Main Street (SR-106) and the southerly boundary line of the parcel of land acquired by the Utah Department of Transportation from the Utah State University of Agriculture and Applied Science as a part of said Project No. *HDP-9124(003), and recorded by Quit Claim Deed and filed as Entry No. 1404715, in Book 2292, at Page 69 in the said Davis County Records Office; thence along said southerly boundary line for the following three (3) courses 1) thence S 06°39'20" W 80.00 feet; 2) thence S 35°35'28" W 99.97 feet; 3) thence S 63°39'20" W 316.22 feet to the existing easterly right of way line of SR-89; thence along the said easterly right of way line for the following five (5) courses: 1) thence S 28°50'08" E 231.97 feet; 2) thence S 10°31'59" E 651.99 feet; 3) thence S 89°59'49" E 2.39 feet; 4) thence S 16°18'17" E 417.94 feet; 5) thence S 21°25'49" E 30.05 feet to the point of beginning.

Containing 782,681 square feet or 17.968 acres, more or less.

Parcel 'B' – White House & Underlying Land 08-041-0077
 (March 19, 2008)

08-041-0077

Beginning at a point North 196.25 feet and East 495.37 feet from the West Quarter Corner of Section 12, Township 3 North, Range 1 West, Salt Lake Base and Meridian; and running thence N59°33'07"W 31.26 feet; thence N00°20'40"W 96.67 feet to the Southerly Line of State Road 106; thence Southeasterly 157.63 feet along the arc of a 743.67 foot radius curve to the right, chord bears S44°36'33"E 157.34 feet along said Southerly Line; thence S89°39'20"W 82.97 feet to the point of beginning.

Contains 6,410 Square Feet or 0.147 Acres

Parcel 'C' - Red House *08-032-0091 - pt*

(March 19, 2008)

Beginning at a point North 331.92 feet and East 278.11 feet from the West Quarter Corner of Section 12, Township 3 North, Range 1 West, Salt Lake Base and Meridian; and running thence N31°34'06"E 51.04 feet; thence N16°33'18"W 20.38 feet; thence S56°21'38"E 75.22 feet; thence S31°34'06"W 61.93 feet; thence N58°25'54"W 60.00 feet to the point of beginning.

Contains 3,880 Square Feet or 0.089 Acres

Parcel 'D' - Parcel for Gardner Old Farm LLC *pt 08-032-0091*

(July 23, 2008)

Beginning at a point on the Easterly Line of US Highway 89, said point being North 24.30 feet and East 78.20 feet from the West Quarter Corner of Section 12, Township 3 North, Range 1 West, Salt Lake Base and Meridian; and running thence N28°50'08"W 134.67 feet along said Easterly Line; thence N49°09'32"E 258.02 feet; thence S54°28'37"E 48.52 feet; thence N31°34'06"E 57.63 feet; thence S58°25'54"E 60.00 feet; thence N31°34'06"E 61.93 feet; thence N56°21'38"W 75.22 feet; thence N33°36'05"E 14.00 feet; thence S56°23'55"E 146.78 feet; thence S00°20'40"E 17.01 feet; thence N56°21'38"W 2.33 feet; thence S35°35'28"W 99.97 feet; thence S63°39'20"W 316.22 feet to the point of beginning.

Contains 69,673 Square Feet or 1.600 Acres

Parcel 'F' - Remaining White House Land

(March 19, 2008)

Beginning at a point North 196.25 feet and East 495.37 feet from the West Quarter Corner of Section 12, Township 3 North, Range 1 West, Salt Lake Base and Meridian; and running thence S89°39'20"W 65.57 feet; thence N00°20'40"W 142.68 feet to the Southerly Line of State Road 106; thence Southeasterly 48.99 feet along the arc of a 743.67 foot radius curve to the right, chord bears S52°34'08"E 48.99 feet along said Southerly Line; thence S00°20'40"E 96.67 feet; thence S59°33'07"E 31.26 feet to the point of beginning.

Contains 5,172 Square Feet or 0.119 Acres