

9353279

**DECLARATION, GRANT OF EASEMENTS,  
And LICENSE OF PARKING RIGHTS**

12-10

THIS DECLARATION, GRANT OF CROSS EASEMENTS AND PARKING RIGHTS (this "Declaration") is made and entered into as of March 16, 2005 (the "Effective Date"), by and among WEST SIDE PROPERTY ASSOCIATES, L.P., a Utah limited partnership doing business as WESTGATE BUSINESS CENTER, with an address at 180 South 300 West, #120, Salt Lake City, Utah 84101 ("Westgate"), and UTAH PAPER BOX COMPANY, a Utah corporation, both with an address at 340 W. 2ND SO. ST., Salt Lake City, Utah 84101 ("Paper Box").

RECITALS

A. Westgate owns certain real property located in Salt Lake County, State of Utah, as more particularly described in Exhibit "A" attached hereto and incorporated herein (the "Westgate Property"), and Paper Box owns certain real property north of and adjacent to the Westgate Property, located in Salt Lake County, State of Utah, as more particularly described in Exhibit "B" attached hereto and incorporated herein (the "Paper Box Property").

B. Paper Box also possesses a non-exclusive easement and right-of-way across the Westgate Property, running north along the old Gale Street, from 200 South Street, more particularly described in Exhibit "C" attached hereto and incorporated herein (the "200 South Access Easement Property") that Paper Box uses to access the Paper Box Property (the "200 South Access Easement").

C. In addition, Paper Box possesses a non-exclusive easement and right-of-way across the Westgate Property, running west from 300 West Street toward 400 West Street, as more particularly described in Exhibit "D" attached hereto and incorporated herein (the 25 wide "300 West Egress Easement Property") that Paper Box also uses for egress from the Paper Box Property (the "300 West Egress Easement").

D. For the past number of years, Westgate and Paper Box have voluntarily permitted each other to park ten (10) each of their respective vehicles on the property belonging to the other, which permits are terminable at will. The parties now desire to formalize in writing their agreement regarding use of the "Ten Westgate Parking Spaces" and the "Ten Paper Box Parking Spaces".

E. Westgate is in the process or redeveloping certain of its buildings and improvements located on the Westgate Property (the "Westgate Development").

Cross Access & Drainage Easement for Strong Volkswagen 2 (12-11-03)

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BK 9120 PG 690

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04/20/2005 11:24 AM \$42.00  
Book - 9120 Pg - 690-701  
GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
WESTGATE BUSINESS CENTER  
ATTN RICHARD F GORDON  
180 S 300 W STE 120  
SLC UT 84101  
BY: SBM, DEPUTY - WI 12 P.

F. In connection with the Westgate Development, Westgate is creating a parking structure underneath its building at 328 West 200 South, with an entry from and exit onto the 300 West Egress Easement Property. Such accesses may interfere with the usage of three (3) parking stalls belonging to Paper Box which run along the north side of such property, across from such accesses, so the parties desire to relocate those three parking spaces onto the property of Westgate along the north side of the Westgate fence line west of building 342 West and south from the offices of Paper Box, and to confirm the location of the *Three Paper Box Relocated Parking Spaces*.

G. Further, in connection with the Westgate Development, Westgate is required by Salt Lake City to provide a fire exit from the 328 West 200 South building basement parking lot, which exit will extend by five (5) feet westward into the twenty five foot (25') width of the 200 South Access Easement Property, and Westgate also needs to extend by three (3) feet eastward the basement fire exits from its 342 West 200 South building into said 200 South Access Easement Property, leaving an unencumbered driveway of seventeen feet (17') for the vehicles of Paper Box to use as their easement driveway, and the parties desire to confirm their agreement regarding these "*Fire Exits Expansion*".

The parties now desire to enter into this Declaration to confirm, consent, grant and agree to each of the above provisions.

#### AGREEMENT

NOW, THEREFORE, to these ends and in consideration of Ten dollars (\$10.00), the terms and conditions of this Declaration, the mutual benefits to be derived herefrom and other good and valuable consideration acknowledged and received by each of the parties hereto, Westgate and Paper Box hereby agree as follows:

#### TERMS

1. Acknowledgment of Easements.

Westgate hereby acknowledges, reaffirms and, to the extent necessary, grants and conveys again to Paper Box for the benefit of the Paper Box Property the nonexclusive easements and right of ways consisting of the 200 South Access Easement, subject to the Fire Exit Expansion, and the 300 West Egress Easement as defined above, upon, over and across the Westgate Property for access and egress to and from the Paper Box Property as provided herein. Such access and egress is intended to be for the use of both vehicles and pedestrians. Paper Box acknowledges, agrees and reaffirms the existence and location of the 200 South Access Easement, subject to the Fire Exits Expansion, and the 300 West Egress Easement, both as described herein. Paper box reserves the rights of ingress and egress over the Westgate property to the Paper Box Property, as set forth in this agreement.

2. Shared, Nonexclusive Use. The parties agree that Paper Box's usage of the 200 South Access Easement and the 300 West Egress Easement is shared and non-exclusive and no rights are hereby created for any other parties whatsoever.

3. Permitted Use. The use by Paper Box of the 200 South Access Easement and the 300 West Egress Easement acknowledged and granted herein shall be limited to such uses as are described herein, which uses shall be made in such a manner as will not unreasonably (removed "least interfere) interfere with the use of the Westgate Property (i.e., the servient tenements) by the owners and lessees thereof. The 200 South Access Easement and the 300 West Egress Easement shall be used by Paper Box for the purpose of providing access and egress to, from and for the Paper Box Property for Paper Box's business purposes (or to any assignee, successor or tenant of Paper Box and its business purposes).

4. Westgate 10 Parking Spaces and Paper Box 10 Parking Spaces. Paper Box hereby grants to Westgate an exclusive license to use the designated 10 Paper Box Parking Spaces on the southeast corner of the Paper Box Property, and in consideration therefore, Westgate hereby grants to Paper Box a license to use 10 Westgate Parking Spaces in the parking lot located on the west end of the Westgate Property. Such parking lot includes many parking spaces so the 10 spaces provided to Paper Box shall be on a non-exclusive, non-designated basis, but shall be guaranteed to be available in said lot.

Either party may terminate this license given to the other to use the 10 Parking Spaces by providing the other party a thirty (30) days prior written notice. Notwithstanding anything else contained herein, neither party hereby grants to the other a perpetual, irrevocable right to use the 10 Parking Spaces. Neither Party shall be charged any license fee for its respective use of the parking spaces granted under this Section.

5. Three Paper Box Relocated Parking Spaces. Westgate shall provide three parking stalls for the relocation of the Three Paper Box Parking Spaces to the north side of the existing fence line between the Westgate and Paper Box properties, south from the business offices of Paper Box but on Westgate's property. This license shall continue until terminated by the parties by mutual consent or until both properties become owned by a common owner.

6. 300 West Egress Property. The parties acknowledge that Paper Box possesses a non-exclusive easement and right-of-way across the Westgate Property, running west from 300 West Street toward 400 West Street, as more particularly described in Exhibit "D" attached hereto and incorporated herein, but that the original railroad line easement reserved to Westgate has been converted to parking for Westgate along the north side of its building which adjoins such right-of way, and that Paper Box asserts no claim of a right of use to that particular part of the egress property.

7. Fire Exits Expansion. The expansion of fire exits from buildings 328 W 200 S. and from 342 W. 200 S. into the 200 South Access Easement Property by Westgate as provided above is acknowledged and consented to by Paper Box provided that such expansion is limited to the extent that said 200 South Access Easement Property is not restricted to less than a minimum of fifteen feet (15') of width for the passage and usage of the vehicles of Paper Box pursuant to its easement referred to herein.

RFG 16' ← → RFG PBK  
4/20/05  
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PBK 4/20/2005  
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9. Covenant to Provide Notices to Westgate Tenants. To minimize the problems that might occur with residents and tenants of Westgate regarding use of the 200 South Access Easement Property, Westgate hereby covenants to post signage and to provide express notices to its tenants and residents of the following matters:

That the 200 South Access Easement Property is a No Parking Area and that violators can be towed.

That the west entry from 400 West into the property of Paper Box is a private entry and not for the use of Westgate tenants and residents.

That vehicular traffic on such Access Easement can occur at any time of day or night and may create noise and interfere with their use of their leased or purchased office or residential space.

10. Default. Neither party shall be deemed to be in default of any provision of this Declaration except upon the expiration of thirty (30) days from receipt of written notice to such Party specifying the particulars in which such Party has failed to perform the obligations of this Declaration, unless such Party, prior to the expiration of said thirty (30) days, has rectified the particulars specified in said notice. Failure to cure any such default shall entitle the nonbreaching Party to any remedies at law or equity including, without limitation, specific performance, reasonable expenses, attorney fees and costs.

11. Maintenance of the Properties. Westgate, its tenants and assigns shall be solely responsible for the care and maintenance of the Westgate Property and any improvements located thereon, at its sole cost and expense. Likewise, Paper Box, its tenants and assigns shall be solely responsible for the care and maintenance of the Paper Box Property and any improvements located thereon, at its sole cost and expense.

12. Payment of Property Taxes. Each party shall bear all costs and liabilities associated with all real estate taxes or other assessments levied by competent authorities upon the property belonging to it.

13. Waiver. The failure of either party to insist upon strict performance of any of the terms, covenants, conditions or agreements contained herein shall not be deemed a waiver of any rights or remedies that said party may have, and shall not be deemed a waiver of any subsequent breach or default in any of the terms, covenants, conditions or agreements contained herein by the same or any other person.

14. No Joint Venture; Merger. The provisions of this Declaration are not intended to create a joint venture, partnership or any similar relationship between the parties. This Declaration contains the entire agreement between the Parties and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Declaration shall be construed as a whole and not strictly for or against any Party.

15. Choice of Law; Recordation. This Declaration shall be governed by and construed in accordance with the laws of the State of Utah. This Declaration shall be recorded in the records of the County Recorder of Salt Lake County, Utah.

16. Successors and Assigns; Run with the Land. All of the provisions in this Declaration, including the benefits and burdens, shall be and are binding upon and inure to the benefit of the successors and assigns of the Parties. All obligations of Paper Box under this Declaration shall be binding on Utah Paper Box Co. The covenants agreed to and the restrictions imposed herein shall continue as a servitude running with the Westgate Property and the Paper Box Property for the duration of this Declaration and shall survive any dissolution or termination of Westgate' or Paper Box' existence. The easements, agreements, duties, responsibilities and covenants herein contained shall be easements and covenants running with the land for the duration of this Declaration.

17. No Third Party Beneficiaries. Nothing in this Declaration is intended to create an enforceable right, claim or cause of action by any third party against any Party to this Declaration.

18. Authority of Signatory. Each person executing this Declaration certifies that he or she is duly authorized to execute this Declaration on behalf of the Party for which he or she is signing, and that the person has the authority to bind said Party to the terms of this Declaration.

19. Independent Provisions. If any provision herein is held invalid or unenforceable, such a finding shall not affect the validity of the remainder of the Declaration, the Parties hereby stipulate that all provisions are deemed severable and independent.

20. Amendment and Termination. This Declaration shall continue until terminated as provided herein. Paper Box may elect to terminate its use of the 200 South Access Easement Property and/or the 300 West Egress Easement Property at any time. In connection with any such termination, Paper Box shall execute and deliver to Westgate, suitable for recording, a termination of this Declaration, to evidence such termination and to remove any encumbrance therefore on the Westgate Property. Either party may also terminate the Paper Box Ten Parking Spaces or the Westgate Ten Parking Spaces upon 30 days notice, provided that since they are only given pursuant to a license no instrument need be recorded to evidence such termination.

21. Miscellaneous. The section and other headings contained in this Declaration are for purposes of reference only and shall not limit, expand, or otherwise affect the construction of any of the provisions of this Declaration. Whenever the context reasonably permits, the singular shall include the plural, the plural shall include the singular, and the whole shall include any part thereof. Further, the masculine gender shall include the female gender and neuter, and vice versa. The recital paragraphs set forth above are expressly incorporated in this

Declaration by this reference. This Declaration represents the wording selected by the Parties to define their agreement and no rule of strict construction shall apply against any of the Parties. Each Party represents that it has had or has been advised to have the representation of its legal counsel in connection with the preparation of this Declaration. The words "hereof," "hereto," "herein" and "hereunder" and words of similar import, when used in this Declaration, shall refer to this Declaration as a whole and not to any particular provision of this Declaration. References herein to Sections and Exhibits shall be construed as references to Sections and Exhibits of this Declaration unless the context otherwise requires. Any terms defined in this Declaration in the singular shall have a comparable meaning when used in the plural, and vice versa.

IN WITNESS WHEREOF Westgate and Paper Box hereby enter into this Declaration effective as of the date first indicated above.

WEST SIDE PROPERTY ASSOCIATES, L.P.,  
a Utah limited partnership

By: Richard Gordon  
Name: Richard Westgate  
Title: Manager of General Partner

DATED: this 16th day of March, 2005.

UTAH PAPER BOX COMPANY,  
a Utah corporation

By: Paul B. Keyser  
Name: Paul Keyser  
Title: President

DATED: this 16th day of March, 2005.

STATE OF Utah )  
COUNTY OF Salt Lake ) : ss.

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of March, 2005, by Richard Gordon, acting in his capacity as Manager of the General Partner of Westside Property Associates, L.P.

Teri R. Jensen  
Notary Public



STATE OF Utah )  
COUNTY OF Salt Lake ) : ss.

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of March, 2005, by Paul Keyser, acting in his capacity as \_\_\_\_\_.

Teri R. Jensen  
Notary Public



EXHIBIT "A"  
LEGAL DESCRIPTION OF WESTGATE PROPERTY

Property located in Salt Lake County, Utah, more particularly described as follows:

Commencing 100 feet East from the Southwest corner of Lot 4, Block 66, Plat "A", Salt Lake City Survey, and running thence North  $0^{\circ}03'48''$  West 178.4 feet; thence Northerly on curve to the right (radius 173.5 feet) 120.76 feet; thence South  $89^{\circ}58'19''$  West 14.28 feet; thence North 70 feet; thence East 660 feet to the West line of Second West Street; thence South 330 feet; thence West 560 feet to place of beginning.

Subject to a right-of-way beginning at a point 130 feet South from the Northeast corner of said Lot 1; and running thence West 395 feet; thence South 45 feet; thence East 81 feet; thence South 165 feet; thence East 24 feet; thence North 165 feet; thence East 290 feet; thence North 45 feet to the point of beginning. Subject to the present railroad right-of-way along the South portion of said property. Subject to adjacent property owners right to use and enjoyment of all rights and easements of the railroad spur track and trackage facilities and subject to the rules and regulations of the railroad company relating thereto.

Excepting from said right of way the following two parcels:

1. Beginning at a point 165 feet South from the Northeast corner of Lot 1, Block 66, Plat "A", Salt Lake City Survey; and running thence West 290 feet; thence South 10 feet; thence East 290 feet; thence North 10 feet to the point of beginning. Subject to the present railroad right-of-way along the South portion of said property. Subject to adjacent property owners right to use and enjoyment of all rights and easements of the railroad spur track and trackage facilities and subject to the rules and regulations of the railroad company relating thereto.
2. Beginning at a point 165 feet South and 314 feet West from the Northeast corner of said Lot 1, Block 66, Plat "A", Salt Lake City Survey; and running thence West 81 feet; thence South 10 feet; thence East 81 feet; thence North 10 feet to the point of beginning. Subject to the present railroad right-of-way along the South portion of said property. Subject to adjacent property owners right to use and enjoyment of all rights and easements of the railroad spur track and trackage facilities and subject to the rules and regulations of the railroad company relating thereto.

Also, subject to a right-of-way or easement 65.66 feet in width for buried cable in favor of the Mountain States Telephone and Telegraph Company by instrument recorded November 22, 1957, as Entry No. 1566576, in Book 1462, at Page 498 of the Official Records, and particularly described as follows:

Commencing at the Southwest corner of Lot 2, Block 66, Plat "A", Salt Lake City Survey, and running thence East  $32\text{-}1/2$  feet; thence North 10 rods; thence West 65.66 feet; thence South 10 rods; thence East 33.16 feet to beginning.

Excepting therefrom the following described parcel:

Beginning at a point 100 feet East and North  $0^{\circ}03'48''$  West 178.4 feet from the Southwest corner of Block 66, Plat "A", Salt Lake City Survey, thence Northwesterly on a curve to the right (radius being 173.8 feet) 120.76 feet; thence South  $89^{\circ}58'19''$  West 14.28 feet; thence North 70 feet; thence East 660 feet; thence South 130 feet; thence West 395 feet; thence South 21.6 feet; thence West 165 feet to the point of beginning.

SUBJECT TO all restrictions, reservations and other conditions of record as may be disclosed by a record examination of the title.



EXHIBIT "B"

LEGAL DESCRIPTION OF PAPER BOX PROPERTY

Property located in Salt Lake County, Utah, more particularly described as follows:

BEGINNING AT A POINT 100 FEET EAST AND NORTH 00°03'48" WEST 178.4 FEET FROM THE SOUTHWEST CORNER OF BLOCK 66, PLAT "A", SALT LAKE CITY SURVEY. THENCE NORTHWESTERLY ON A CURVE TO THE RIGHT (RADIUS BEING 173.8) 120.76 FEET; THENCE SOUTH 89°58'19" WEST 14.28 FEET; THENCE NORTH 70 FEET; THENCE EAST 660 FEET; THENCE SOUTH 130 FEET; THENCE WEST 395 FEET; THENCE SOUTH 21.6 FEET; THENCE WEST 165 FEET TO THE POINT OF BEGINNING.

SUBJECT TO AND TOGETHER WITH A RIGHT-OF-WAY BEGINNING AT A POINT 1.30 SOUTH FROM THE NORTHEAST CORNER OF S&D LOT 1; AND RUNNING THENCE WEST 395 FEET; THENCE SOUTH 45 FEET; EAST 81 FEET; THENCE SOUTH 165 FEET; THENCE EAST 24 FEET; THENCE NORTH 165 FEET; THENCE EAST 290 FEET; THENCE NORTH 45 FEET TO THE POINT OF BEGINNING. SUBJECT TO ADJACENT PROPERTY OWNERS RIGHT TO THE USE AND ENJOYMENT OF ALL RIGHTS AND EASEMENTS OF THE RAILROAD SPUR TRACK AND TRACKAGE FACILITIES AND SUBJECT TO THE RULES AND REGULATIONS OF THE RAILROAD COMPANY RELATING THERETO.

A RIGHT-OF-WAY EASEMENT 65.66 FEET IN WIDTH FOR BURIED CABLE IN FAVOR OF THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY BY INSTRUMENT RECORDED NOVEMBER 22, 1957 AS ENTRY NO. 1568576 IN BOOK 1462 AT PAGE 498 OF THE OFFICIAL RECORDS AND PARTICULARLY DESCRIBED AS FOLLOWS:  
COMMENCING AT THE SOUTHWEST CORNER OF LOT 2, BLOCK 66, PLAT "A", SALT LAKE CITY SURVEY, AND RUNNING THENCE EAST 32.5 FEET; THENCE NORTH 10 RODS; THENCE WEST 65.66 FEET; THENCE SOUTH 10 RODS; THENCE EAST 33.26 FEET TO THE BEGINNING.

SUBJECT TO all restrictions, reservations and other conditions of record as may be disclosed by a record examination of the title.

*Cross Access & Drainage Easement for Strong Volkswagen 2 (12-11-03)*

EXHIBIT "C"

LEGAL DESCRIPTION OF 200 SOUTH ACCESS EASEMENT PROPERTY

Property located in Salt Lake County, Utah, more particularly described as follows:

**INGRESS EGRESS RIGHT-OF-WAY EASEMENT (FROM 200 SOUTH STREET)**

BEGINNING AT A POINT ON THE NORTH RIGHT-OF-WAY LINE OF 200 SOUTH STREET, SAID POINT BEING SOUTH 89°58'33" WEST ALONG SAID NORTH RIGHT-OF-WAY LINE FROM THE SOUTH EAST CORNER OF LOT 1, BLOCK 66, PLAT "A", SALT LAKE CITY SURVEY AND RUNNING THENCE SOUTH 89°58'33" WEST ALONG SAID NORTH RIGHT-OF-WAY LINE 24.00 FEET; THENCE NORTH 00°04'09" WEST 165.25 FEET; THENCE NORTH 89°58'27" EAST 24.00 FEET; THENCE SOUTH 00°04'09" EAST 165.25 FEET TO THE POINT OF BEGINNING

(Designated by herring-bone hatch pattern on exhibit drawing)

SUBJECT TO all restrictions, reservations and other conditions of record as may be disclosed by a record examination of the title.

*Cross Access & Drainage Easement for Strong Volkswagen 2 (12-11-03)*

**EXHIBIT "D"**

**LEGAL DESCRIPTION OF 300 WEST EGRESS EASEMENT PROPERTY**

Property located in Salt Lake County, Utah, more particularly described as follows:

**INGRESS EGRESS RIGHT-OF-WAY EASEMENT (FROM 300 WEST STREET)**

BEGINNING AT A POINT ON THE WEST RIGHT-OF-WAY LINE OF 300 WEST STREET, SAID POINT BEING SOUTH 00°03'19" EAST 155.00 FEET FROM THE NORTH EAST CORNER OF LOT 1, BLOCK 66, PLAT "A", SALT LAKE CITY SURVEY AND RUNNING THENCE SOUTH 89°58'27" WEST 289.04 FEET; THENCE SOUTH 00°04'09" EAST 9.85 FEET; THENCE SOUTH 89°58'27" WEST 106.16 FEET; THENCE NORTH 00°03'25" WEST 34.79 FEET; THENCE NORTH 89°58'27" EAST 395.20 FEET TO SAID WEST RIGHT-OF-WAY LINE; THENCE SOUTH 00°03'19" WEST 24.93 FEET TO THE POINT OF BEGINNING.

(Designated by cross hatch pattern on exhibit drawing)

**SUBJECT TO all restrictions, reservations and other conditions of record as may be disclosed by a record examination of the title.**

*Cross Access & Drainage Easement for Strong Volkswagen 2 (12-11-03)*

**BK 9120 PG 700**

