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 Gary W. Ott  
 Recorder, Salt Lake County, UT  
 METRO NATIONAL TITLE  
 BY: eCASH, DEPUTY - EF 8 P.

WHEN RECORDED, MAIL TO:  
**Douglas J. Ahlstrom, Esq.**  
**City Attorney**  
**The City of Draper**  
**1020 East Pioneer Street**  
**Draper, Utah 84020**  
27-36-351-006, 008

## EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT ("**Agreement**") is made as of the 17<sup>th</sup> day of November, 2011, by DRAPER HOLDINGS, LLC, a Utah limited liability company ("**Grantor**") in favor of THE CITY OF DRAPER, a municipal corporation organized and existing under the laws of the State of Utah ("**Grantee**"). Grantor and Grantee are sometimes collectively referred to in this Agreement as the "**Parties**" or individually as a "**Party**."

### RECITALS:

- A. Grantor owns certain tracts of land within Salt Lake County, Utah consisting of the real property described on Exhibit A attached hereto (the "**Grantor Parcels**").
- B. Grantee owns and operates, or upon Dedication of the same by Grantor, will own and operate a storm drainage system within Salt Lake County, Utah, a portion of which is located on the Grantor's Parcels.
- C. Grantor is in the process of developing its property which, pursuant to Draper City Municipal Code 17-5-040, requires Grantor to construct and install or cause to be constructed and installed storm water drainage systems conforming to the City's standards and specifications, to provide easements for storm drainage, natural water courses or channels, streams, creeks, irrigation ditches, or flood plains that enter or traverse the subdivision, and to dedicate easements for any pipe, conduit, channel, and retention or detention areas as required by the City Engineer.
- D. Grantee desires to obtain storm water easements and rights of way across and with respect to a portion of the Grantor Parcels (the "**Storm Drain Easement Area**") for use by Grantee in operating, maintaining, repairing and replacing the Storm Water Facilities (defined below) located on the Storm Drain Easement Area. The legal description of the Storm Drain Easement Area is set forth on Exhibit B.
- E. Grantor has agreed to grant the requested easements to Grantee, and the Parties desire to execute and record this Agreement for the purpose of evidencing of record the foregoing described matters.

## AGREEMENT:

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Recitals. The recitals set forth above in this Agreement are hereby incorporated and made a part of this Agreement.

2. Definitions. Certain capitalized terms which are used in this Agreement are previously defined in this Agreement. In addition to those previously defined terms, the following capitalized terms shall have the meanings indicated.

**"Benefited Parties"** means, with respect to a Parcel, the Owners and Occupants of that Parcel, and their respective employees, customers, guests and invitees.

**"Dedication"** or **"Dedicated"** is defined in Section 4.

**"Mortgage"** means a recorded mortgage, deed of trust or other security agreement creating a lien on a Parcel or a portion of a Parcel as security for the payment of indebtedness.

**"Mortgagee"** means the mortgagee, beneficiary or other secured party under a Mortgage.

**"Occupant"** means any Person that, by virtue of a contract to purchase, a lease, a rental arrangement, a license or any other instrument, agreement, contract, document, understanding or arrangement is entitled to or does occupy, possess or use any Parcel or portion of any Parcel.

**"Owner"** means any Person that, at the time concerned, is the owner of record in the office of the County Recorder of Salt Lake County, Utah of the ground leasehold interest in any Parcel or portion of any Parcel. In the event that, at any time, more than one Person owns the fee interest in a Parcel, they shall constitute one (1) Owner, and liability of each such Person for performance or compliance with the applicable provisions of this Agreement shall be joint and several. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term **"Owner"** shall not mean or include a Mortgagee unless and until such Person has acquired fee title to the Parcel encumbered by a Mortgage pursuant to foreclosure, trustee's sale or any arrangement or proceeding in lieu thereof.

**"Parcel"** means any of the Grantor Parcels.

**"Parcels"** means the Grantor Parcels.

**"Person"** means a natural person or a legal entity.

3. Storm Drain and Related Easements.

(a) Grants of Easements. Grantor hereby grants to Grantee a non-exclusive, perpetual easement to intermittently and completely discharge, direct and allow storm water runoff to seep and flow into that certain storm water detention basin and related improvements (the **"Storm Water Facilities"**) installed by Grantor on the Storm Drain Easement Area, along with the limited right

of ingress and egress upon the Storm Drain Easement Area to inspect, and if necessary, repair or replace the Storm Water Facilities as and to the extent operated and/or maintained by Grantee.

(b) Restrictions and Requirements. Grantor shall not construct or maintain, and shall not permit to be constructed or maintained, any fence, gate, wall, barricade or other obstruction, whether temporary or permanent in nature, which limits or impairs the free and unimpeded use or access by Grantee to or across the Storm Drain Easement Area.

(c) Reservation of Rights. Grantor reserves the right to utilize the Storm Drain Easement Area for any purpose not inconsistent with the easements granted pursuant to Section 3.1 above, including, without limitation, the installation of utilities.

4. Dedication. Grantor is presently processing a plat of subdivision pursuant to which the Grantor will Dedicate to Grantee the Storm Water Facilities for use as a public facility. As used in this Agreement, "Dedication" or "Dedicate" means: (i) the grant, conveyance and/or dedication of the Storm Water Facilities or any portion thereof to the City of Draper for use as a public facility, and the installation, maintenance, repair, use and replacement of the Storm Water Facilities; and (ii) the acceptance of Dedication by the City of Draper in accordance with applicable law. Grantor agrees to continue processing such application to completion so as to effect and facilitate such Dedication, and to comply with Draper City Municipal Code 17-5-040.

5. Title and Mortgage Protection.

(a) Mortgagee Protection. No amendment to this Agreement shall in any way affect the rights of any Mortgagee pursuant to a Mortgage that is recorded at the time of the recordation of the amendment, or the rights of any successor in interest or title to such Mortgagee, either before or after such Mortgagee or its successor enters into possession or acquires title pursuant to foreclosure, trustee's sale or any arrangement or proceeding in lieu thereof, unless such Mortgagee consents in writing to such amendment.

(b) No Forfeiture. A breach of any of the covenants, provisions, or requirements of this Agreement shall not result in any forfeiture or reversion of title or of any other interest in a Parcel. A breach of any of the covenants, provisions, or requirements of this Agreement shall not defeat, impair or render invalid the lien of or other rights under any Mortgage. Unless and until it enters into possession or acquires title pursuant to foreclosure, trustee's sale or any arrangement or proceeding in lieu thereof, 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 Agreement except the obligation to subordinate its lien or security interest to this Agreement.

6. Duration of Agreement. Except as provided in this Section, the term of this Agreement is perpetual and this Agreement shall be and remain in force and effect until modified or terminated pursuant to Section 8 of this Agreement. Notwithstanding the foregoing, in the event that Grantor provides alternative facilities to the Grantee that provide Grantee with storm water storage or detention capacity that is equal to or greater than that provided by the Storm Water Facilities and are otherwise reasonably acceptable to City, Grantee agrees that the terms of this Agreement may be altered to either modify the location of the Storm Drain Easement Area, or in the event underground storm water

detention facilities are provided, that permits the use of the surface of the Storm Drain Easement Area for other development purposes.

7. Covenants to Run with Land. This Agreement and the easements and covenants created by this Agreement are intended by the Parties to be and shall constitute covenants running with the land as to the Storm Drain Easement Area, and shall be binding upon and shall inure to the benefit of each Owner any Person who acquires or comes to have any interest in the Storm Drain Easement Area, and their respective Benefitted Parties. This Agreement and all of the easements, covenants, provisions, and requirements hereof shall also inure to the benefit of Grantee. Each Owner shall comply with, and all interests in the Storm Drain Easement Area shall be subject to, the terms of this Agreement. By acquiring, in any way coming to have an interest in, or occupying the Storm Drain Easement Area, the Person so acquiring, coming to have such interest in, or occupying the Storm Drain Easement Area, shall be deemed to have consented to, and shall be bound by, each and every provision of this Agreement.

8. Amendment; Termination. This Agreement may be amended or terminated, but only by an instrument filed for record in the office of the County Recorder of Salt Lake County, Utah that is executed by all of the Owners of the Parcels.

9. Effective on Recording. This Agreement shall be effective and binding only upon recording in the Salt Lake County Recorder's Office.

10. Indemnification. Grantee shall defend, indemnify and hold harmless Grantor, its officers, directors, employees, affiliated corporations, representatives, agents, and contractors, from and against any liens (including, without limitation, mechanics' liens, materialmen's liens, suppliers' liens and design professional liens) and/or disputes regarding payment to any third party who supplied labor or materials in connection with or on account of Grantee's use of the Storm Drain Easement Area (excluding any punitive, incidental, special, indirect, or consequential damages), costs and expenses (including reasonable attorneys' fees) resulting from any claims or demands made or brought by any third party as a result of injury, death or damage to property caused by or connected with Grantee's, or Grantee's representatives or agents, neglect, fault or omission in the use, maintenance, repair or replacement of the Storm Water Facilities.

11. Miscellaneous.

(a) Captions. The captions to the sections of this Agreement are for convenience only and shall in no way affect the manner in which any provision thereof is construed.

(b) Partial Invalidity. Should any of the provisions of this Agreement prove to be invalid or otherwise ineffective, the other provisions of this Agreement shall remain in full force and effect. There shall be substituted for any such invalid or ineffective provision a provision which, as far as legally possible, most nearly reflects the intention of the Parties hereto.

(c) Applicable Law. The laws of the State of Utah shall govern the validity, construction, performance and effect of this Agreement.

(d) Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall constitute one and the same agreement.

(e) No Third Party Beneficiaries. Nothing in this Agreement is intended to create an enforceable right, claim or cause of action by any third Persons against any Party hereto.

(f) Authority and Further Assurances. Grantee and Grantor each hereto represents and warrants that it has the right, power, legal capacity, authority, and means to enter into and perform this Agreement (as well as the documents referenced herein) and that, to the best of its knowledge, the same will not contravene or result in the violation of any agreement, law, rule, or regulation to which any such Party may be subject. Grantee and Grantor, and each subsequent Owner shall use reasonable efforts and exercise reasonable diligence to accomplish and effect the transactions contemplated and, to that end, shall execute and deliver all such further instruments and documents as may be reasonably requested by any other Owner in order to fully carry out the transactions contemplated by this Agreement.

**Grantor:**

Draper Holdings, LLC,  
a Utah limited liability company,  
by its Manager, Draper Holdings Associates, LLC

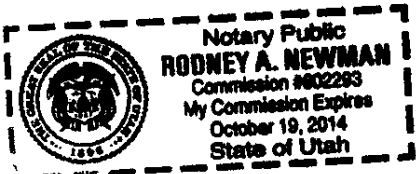
By: [Signature]  
Jeffrey M. Vitek, Manager

Dated this 16 day of November, 2011.

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

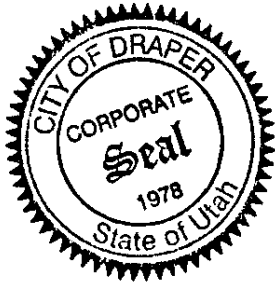
This instrument was acknowledged before me this 16<sup>th</sup> day of November, 2011, by Jeffrey M. Vitek, the Manager of DRAPER HOLDINGS ASSOCIATES, LLC, a Utah limited liability company.

[Signature]  
NOTARY SIGNATURE AND SEAL



**Grantee:**

The City of Draper, a municipal corporation organized and existing under the laws of the State of Utah



By: Layne Long  
Print Name: LAYNE LONG  
Its: CITY MANAGER

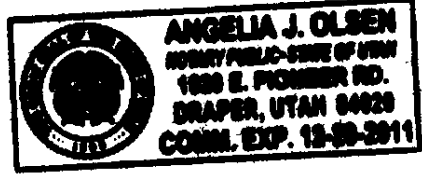
Dated this 17<sup>th</sup> day of November, 2011.

ATTEST: Jacobson  
City Recorder

STATE OF UTAH                    )  
  : ss.  
County of Salt Lake            )

On this 17<sup>th</sup> day of November, 2011, before the undersigned notary public in and for the said state, personally appeared Barrett H. Smith, known or identified to me to be the Mayor of The City of Draper and the person who executed the foregoing instrument on behalf of said City and acknowledged to me that said City executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.



Angelia J. Olsen  
NOTARY SIGNATURE AND SEAL

**EXHIBIT A  
TO  
EASEMENT AGREEMENT**

Legal Description of Grantor Parcels

LOT 6, DRAPER TOD SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON  
FILE AND OF RECORD IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER.

**EXHIBIT B  
TO  
EASEMENT AGREEMENT**

A PORTION OF LOT 6, DRAPER TOD SUBDIVISION, IN THE CITY OF DRAPER, COUNTY OF SALT LAKE, STATE OF UTAH, BEING PART OF THE WEST HALF OF SECTION 36, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST LINE OF SAID LOT 6, SAID POINT BEING N00°01'13" E GRID (NAD 83 (1994) UTAH CENTRAL ZONE) ALONG THE SECTION LINE 721.38 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 36, MARKED WITH A 3" COUNTY SURVEYOR BRASS CAP; THENCE N00°01'13" E ALONG SAID LINE 366.34 FEET; THENCE N61°23'28" E 194.57 FEET; THENCE S33°25'54" E 452.13 FEET; THENCE S78°55'45" W 428.01 FEET TO THE POINT OF BEGINNING.

CONTAINS 120,767 SQUARE FEET, MORE OR LESS.