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Gary W. Ott  
Recorder, Salt Lake County, UT  
COTTONWOOD TITLE  
BY: eCASH, DEPUTY - EF 7 P.

When recorded, mail to:

James H. Jones, Esq.  
SNELL & WILMER L.L.P.  
15 West South Temple, Suite 1200  
Salt Lake City, Utah 84101

Tax Parcel Nos. 27-36-351-009

CTIA No. 5705 PF

## ASSIGNMENT OF DECLARANT'S RIGHTS

This ASSIGNMENT OF DECLARANT'S RIGHTS (the "*Assignment*"), dated as of April 15, 2013, is made by **DRAPER HOLDINGS, LLC**, a Utah limited liability company ("*Assignor*"), in favor of **RED BRIDGE CAPITAL II LLC**, a Utah limited liability company ("*Assignee*").

### RECITALS

A. Assignor and Assignee entered into that certain Term Loan Agreement dated of approximately even date herewith (the "*Loan Agreement*") whereby the lenders party thereto agreed to make a secured loan (the "*Loan*") available to Assignor in the original principal amount of up to **SEVEN MILLION SIX HUNDRED AND SEVENTY-SEVEN THOUSAND FOUR HUNDRED AND NO/100 DOLLARS** to be secured by real property located in Salt Lake County, Utah owned by Assignor and more particularly described on **Exhibit A** (the "*Property*") and together with the improvements, the "*Project*"). Capitalized terms used and not otherwise defined herein shall have the meanings given to them in the Loan Agreement.

B. In connection with the Loan, Assignor has executed and delivered two promissory notes of approximately even date herewith in the amount of the Loan, payment of which is secured by (i) a Deed of Trust with Absolute Assignment of Rents, Security Agreement and Fixture Filing in favor of Assignee on the Project (the "*Deed of Trust*"), and (ii) the other Loan Documents.

C. The Project is subject to that certain Declaration and Establishment of Protective Covenants, Conditions and Restrictions recorded in the official records of Salt Lake County, Utah as Document No. 11282239 in Book 9967, beginning on Page 8558, as amended and modified from time to time (the "*Declaration*").

D. The execution and delivery of this Assignment is a condition precedent to the making of the Loan.

### AGREEMENT

NOW, THEREFORE, in consideration of the recitals set forth above and incorporated herein, and for other good and valuable consideration, Assignor agrees as follows:

1. Assignor hereby grants, transfers and assigns to Assignee all the right, title and interest of Assignor now or hereafter acquired in and to all rights of "Declarant" under the Declaration that pertain to the Project, including all rights, privileges, options and exemptions of the "Declarant" under the Declaration that pertain to the Project (the "*Declarant's Rights*"). Such assignment shall include all rights of "Declarant" under the Declaration whether or not affecting real property subject to the Deed of Trust and whether or not any other lender shall have a lien against property affected by the Declaration.

2. Assignor represents and warrants to Assignee that there have been no prior assignments of the Declarant's Rights or Assignor's rights under the Declaration, except for assignments in favor of Assignee.

3. Neither this Assignment nor any action or actions on the part of Assignee shall constitute an assumption by Assignee of any of the obligations of Assignor under the Declarant's Rights or the Declaration, as the case may be, and Assignor shall continue to be liable for all such obligations. Without limiting the generality of the foregoing, Assignee's exercise of any of the Declarant's Rights, benefits and privileges under the Declaration shall not confer "Declarant" status on the Assignee or subject the Assignee to any of the obligations and liabilities of the "Declarant". Assignor does hereby agree to protect, defend, indemnify and hold Assignee harmless from and against any and all loss, cost, liability or expense (including, but not limited to, reasonable attorneys' fees and expenses) resulting from any failure of Assignor to perform and observe such obligations. All rights, benefits and privileges in favor of the Assignor shall inure to the benefit of Assignee or a receiver or third-party purchaser in the event of foreclosure of Assignee's Deed of Trust or a deed given in lieu of foreclosure of such Deed of Trust (the "*Acquiror*"). The Acquiror's exercise of such rights, benefits and privileges shall not confer Assignor status on the Acquiror or subject the Acquiror to any of the obligations and liabilities of the Assignor. Notwithstanding anything to the contrary elsewhere contained in the Declaration, the provisions of this paragraph as well as any others that grant specific rights in favor of first mortgagees shall not be amended without the prior written consent of Assignee at any time that Assignee and/or its successors and assigns hold a Deed of Trust encumbering the Project, or any portion thereof, or acquire title to any portion directly or indirectly through foreclosure of Assignee's Deed of Trust or a deed given in lieu of foreclosure thereof. Notwithstanding anything to the contrary elsewhere contained in the Declaration, no amendment to the Declaration shall be effective without the prior written consent of Assignee at any time that Assignee and/or its successors and assigns hold a Deed of Trust lien encumbering any portion of the Project or any portion of the Project is owned by an Acquiror.

4. Assignor hereby irrevocably appoints Assignee as its attorney-in-fact, and as such, Assignee shall have the right at any time (but shall have no obligation) upon the occurrence and during the continuance of an Event of Default to take in its name or in the name of Assignor or otherwise, such action as Assignee may at any time or from time to time reasonably determine to be necessary to protect the rights of the Assignee and the Assignees as the collateral assignees of Assignor hereunder. Assignee shall incur no liability on account of any action taken by it or on its behalf in good faith pursuant to the foregoing sentence or otherwise hereunder, whether or not the same shall prove to be improper, inadequate or invalid, in whole or in part, and Assignor agrees to indemnify and hold Assignee harmless from and against any and all loss, cost, liability or expense (including but not limited to reasonable attorneys' fees and expenses) except for Assignee's gross negligence or willful misconduct in connection with any such action or actions.

5. Notwithstanding anything to the contrary in the Declaration, no amendment to the Declaration or to any articles or the bylaws of any association filed with the Declaration shall be effective without the prior written consent of Assignee if such amendment may adversely affect the Project, as determined by Assignee in its sole discretion. Assignor hereby covenants and agrees that it will not, without the prior written consent of Assignee, modify, amend or change the Declaration or the articles or the bylaws of any association filed with the Declaration if such modification, amendment or change may adversely affect the Project, as determined by Assignee in its sole discretion, or further assign or create any further encumbrance or hypothecation of Assignor's interest in the Declarant's Rights.

6. Upon the payment in full of the obligations of Assignor to the Assignee arising under the Loan Agreement and the other Loan Documents and the satisfaction of all conditions on the part of Assignor to be performed under the Loan Agreement and the other Loan Documents, this Assignment shall become null and void. So long as no Event of Default has occurred and is continuing, Assignor may, except as herein restricted or provided otherwise, continue to receive and exercise all of its rights, benefits and privileges in and to the Declarant's Rights.

7. No course of dealing on the part of Assignee, and no delay or failure by Assignee to exercise any right which Assignee may have hereunder shall be deemed a waiver thereof or otherwise prejudice any of its rights, remedies or powers hereunder unless so agreed in writing by Assignee, and the waiver by Assignee

of a default by Assignor hereunder shall not constitute a continuing waiver or a waiver of any other default or of the same default on any other occasion.

8. This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

9. Assignor acknowledges that the making of said Loan by Assignee to Assignor shall be made by Assignee in full reliance upon this Assignment. This instrument is for the sole benefit of Assignee and shall not be construed for the benefit of any third party or parties.

10. This Assignment shall only be terminated upon satisfaction in full of the obligations secured hereby and by virtue of the recordation of a termination hereof, in form and substance satisfactory to Assignee, in the Salt Lake County Recorder's Office.

11. All notices, demands, requests and other communications required under this Assignment shall be given in writing, by telex, telegram, or telecopy, or in writing delivered by hand or mail and shall be delivered in accordance with the Loan Agreement.

12. It is specifically agreed that time is of the essence as to all matters provided for in this Assignment and that no waiver of any obligation hereunder or secured hereby shall at any time thereafter be held to be a waiver of the obligations.

13. No agreement unless in writing and signed by an authorized officer of Assignee and no course of dealing between the parties hereto shall be effective to change, waive, terminate, modify, discharge, or release in whole or in part any provision of this Assignment. No waiver of any rights or powers of Assignee or consent by it shall be valid unless in writing signed by an authorized officer of Assignee and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

14. Any capitalized terms not otherwise defined herein shall have the meanings given them in the Loan Agreement or the Condominium Documents, as the context may require.

**15. ASSIGNOR AND ASSIGNEE (BY ACCEPTANCE OF THIS ASSIGNMENT), MUTUALLY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH ASSIGNOR AND ASSIGNEE OR LENDERS MAY BE PARTIES, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY PERTAINING TO, THIS ASSIGNMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTION OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS ASSIGNMENT. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY ASSIGNOR, ASSIGNEE AND LENDERS, AND ASSIGNOR HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. ASSIGNOR FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS ASSIGNMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL. THIS PROVISION IS A MATERIAL INDUCEMENT FOR ASSIGNOR AND LENDERS ENTERING INTO THE SUBJECT LOAN TRANSACTION.**

16. The rights and remedies of Assignee under this Assignment are cumulative and are not in lieu of, but are in addition to, any other rights or remedies which Assignee may have under the Loan Agreement, any other Loan Document, at law or otherwise.

17. If any provision of this Assignment shall be invalid, illegal or unenforceable, it shall not affect or impair the validity, legality and enforceability of any other provision of this Assignment or of any documents related thereto.

18. This Assignment may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by an instrument in writing and signed by the party against whom enforcement of the waiver, amendment, change, modification or discharge is sought.

19. This Assignment shall be binding upon Assignor and its successors and assigns, and shall inure to the benefit of Assignee and each of the Assignees and their respective successors and assigns. Assignee may assign all or any portion of its interest in the Declarant's Rights and, in such event, Assignor, at its sole expense, shall promptly execute, acknowledge and deliver such additional documents, instruments and agreements as may be required by Assignee in connection with any such assignment.

20. To the extent of any conflict or inconsistency between this Assignment and the Loan Agreement, the provisions of the Loan Agreement shall govern.

21. This Assignment shall be construed, interpreted, enforced and governed by and in accordance with the laws of the State of Utah, excluding the principles thereof governing conflicts of law.

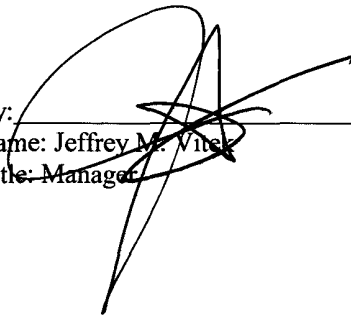
22. This Assignment may be executed in counterparts, each of which shall be deemed an original and all of such counterparts shall together constitute one and the same instrument.

[Remainder of Page Intentionally Left Blank]

EXECUTED as of the date first set forth above.

**DRAPER HOLDINGS, LLC**  
a Utah limited liability company

By: **DRAPER HOLDINGS ASSOCIATES, LLC,**  
a Utah limited liability company, its manager

By: \_\_\_\_\_  
Name: Jeffrey M. Vitek  
Title: Manager  
  
"Assignor"

STATE OF UTAH                    )  
  : ss.  
COUNTY OF \_\_\_\_\_        )

*See attached fm*

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2013, by JEFFREY M. VITEK, a Manager of, DRAPER HOLDINGS ASSOCIATES, LLC, a Utah limited liability company, the Manger of DRAPER HOLDINGS, LLC, a Utah limited liability company, for and on behalf of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

\_\_\_\_\_  
NOTARY PUBLIC

[Seal]

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

CIVIL CODE § 1189

State of California

County of San Diego

On 4/10/13 before me, Rachel Miller, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Jeffrey M. Vitek  
Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is~~ are subscribed to the within instrument and acknowledged to me that ~~he~~ she ~~she~~ they executed the same in ~~his~~ her ~~her~~ their authorized capacity(ies), and that by ~~his~~ her ~~her~~ their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Rachel Miller  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_ Signer's Name: \_\_\_\_\_

Corporate Officer — Title(s): \_\_\_\_\_  Corporate Officer — Title(s): \_\_\_\_\_

Individual  Individual

Partner —  Limited  General  Partner —  Limited  General

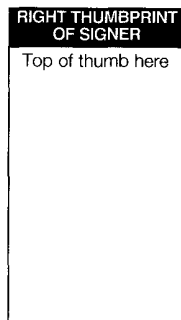
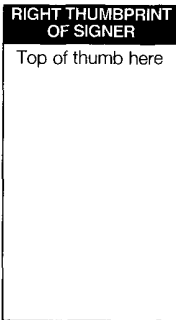
Attorney in Fact  Attorney in Fact

Trustee  Trustee

Guardian or Conservator  Guardian or Conservator

Other: \_\_\_\_\_  Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_ Signer Is Representing: \_\_\_\_\_



**EXHIBIT A**

**PROPERTY DESCRIPTION**

That certain real property owned by Assignor and situated in the County of Salt Lake, State of Utah and described as follows:

All of Lot 6, DRAPER TOD, a subdivision, according to the official plat thereof, filed in the office of the Salt Lake County Recorder in Book 2011P of Plats at Page 146 of official records.

Tax Id No. 27-36-351-009