

MNT #08057388
After Recording Return to:

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Gary W. Ott
Recorder, Salt Lake County, UT
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**AMENDED AND RESTATED COMPREHENSIVE RECIPROCAL
EASEMENT AGREEMENT WITH
COVENANTS, CONDITIONS AND RESTRICTIONS**

[This document amends and supersedes in its entirety a document of record dated December 9, 2008 and recorded December 15, 2008 as Entry Number 10579319 in Book 9665 Pgs 2177-2185]

THIS AMENDED AND RESTATED COMPREHENSIVE RECIPROCAL EASEMENT AGREEMENT WITH COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration") is executed as of January 9, 2009, and amends, restates and supersedes in its entirety that certain COMPREHENSIVE RECIPROCAL EASEMENT AGREEMENT WITH COVENANTS, CONDITIONS AND RESTRICTIONS, executed by DRAPER LTD., L.L.C., an Arizona limited liability company, Strategic Assets L.T.D., L.L.C., and SANCHEZ UTAH II, L.L.C., a Utah limited liability company ("Declarants") dated December 9, 2008, and recorded December 15, 2008, as Entry Number 10579319, in Book 9665, Pages 2177-2185 in the Offices of the County Recorder of Salt Lake County, Utah.

A. Declarants are the owners of certain real property located in Draper City, Salt Lake County, Utah, being more particularly described as Lot 1 on that certain Factory Stores of America Subdivision ("Subdivision Plat") recorded as Entry Number 6168179 in Book 95-09 of Plats at Page 235 of the Official Records of Salt Lake County, Utah:

C. On December 15, 2008, Declarants caused a new subdivision plat ("Eastgate Subdivision") to be recorded as Entry Number 10579318 in Book 2008P, Page 303 in the Offices of the County Recorder of Salt Lake County, Utah. Pursuant to the Eastgate Subdivision, Parcel 1 of the Subdivision Plat was divided into four separate legal parcels (individually, "Parcel" and collectively "Parcels"). The Declarants desire that the Parcels, together with additional land depicted on the Eastgate Subdivision, be utilized as a commercial center (including retail uses).

D. The Declarants desire to establish non-exclusive easements over, across and upon all driveways, drive aisles and access ways located from time to time on the Parcels (collectively, the "Common Areas") for the mutual and reciprocal benefit of the Parcels and the present and future owners, occupants and invitees thereof.

E. Parcel 104 of the Eastgate Subdivision does not include any driveways, drive aisles, parking, or access ways, or any other Common Areas. Further, unless the owner of Parcel 104 agrees in writing, no easements provided herein shall run across or through Parcel 104. Declarants and the Owner of Parcel 104 intend to record against Parcel 104 a Declaration of Covenants and Reciprocal Easements ("Parcel 104 CC&Rs") which will, among other things grant specific easements and impose other rights, duties and obligations between the Declarants and the Owner of Parcel 104. In the event of any conflict between the provisions of this Declaration and the Parcel 104 CC&Rs, the provisions of this Declaration shall prevail.

F. The Parcels are subject to: (i) that certain Declaration of Covenants and Reciprocal Easements dated October 11, 1995 and recorded as Entry Number 6187092 in Book 7246, Page 1646-1679 of the Official Records of Salt Lake County, Utah; (ii) that certain Declaration of Covenants and Reciprocal Easements dated October 27, 1995 and recorded as Entry Number 6205722 in Book 7263, Pages 2549-2570 of the Official Records of Salt Lake County, Utah; and (iii) that certain Declaration of Restrictions and Covenants dated November 30, 2005, and recorded as Entry Number 9568643 in Book 9224, Pages 4554-4559 of the Official Records of Salt Lake County, Utah (collectively, "Prior CC&Rs").

F. The Declarants also desire to establish certain covenants, conditions and restrictions with respect to the use of the Parcels now and in the future pursuant to this Declaration and in addition to the Prior CC&Rs.

NOW, THEREFORE, in consideration of the above premises and of the covenants herein contained, the Declarants hereby impose against, and for the benefit of, the Parcels, and all present and future owners, occupants and invitees of the Parcels the terms, easements, covenants, conditions and restrictions as follows:

1. **DEFINITIONS.** For purposes hereof:

1.1 The term "Owner" or "Owners" shall mean the Owner or any and all successors or assigns of such persons as the owner or owners of fee simple title to all or any portion of the Parcels, whether by sale, assignment, inheritance, operation of law, trustee's sale, foreclosure, or otherwise, but not including the holder of any lien or encumbrance on such Parcels or any portion thereof.

1.2 The term "Permittees" shall mean the tenant(s) or occupant(s) of the Parcels, and the respective employees, agents, contractors, customers, invitees and licensees of (a) the Owners of such Parcels, and/or (b) such tenant(s) or occupant(s).

2. **EASEMENTS.**

2.1 **Grant of Reciprocal Easements.** Subject to the Prior CC&Rs, the Parcel 104 CC&Rs, and to any express conditions, limitations or reservations contained herein, Declarants hereby grant, establish, covenant and agree that the Parcels, and all Owners and Permittees of the Parcels, shall be benefited and burdened by the following

nonexclusive, perpetual and reciprocal easements which are hereby imposed upon the Parcels and all present and future Owners and Permittees of the Parcels:

(a) An easement for reasonable access, ingress and egress to from, upon, over and across all of the Common Areas now and from time to time existing on the Parcels for the purpose of vehicular and pedestrian ingress and egress between all portions of the Common Areas, and to and from all abutting streets or rights of way furnishing access to the Parcels. This access easement shall not prohibit the right of the Owners to reconfigure or construct roadways and vehicular passageways, driveways, and driving lanes, or to construct and maintain, within the area affected by this easement, traffic and parking control islands and other such facilities, on their respective portion of the Parcels, so long as any such action does not unreasonably prevent the passage by motor vehicles and service and delivery vehicles between each of the Parcels, and to the public roads, as appropriate and does not reduce the number of parking spaces within the Parcels to levels which would render any uses of the Parcels out of compliance with any zoning ordinances in the City of Draper. No person shall be permitted to construct or maintain any building, barrier or sign of any sort, which would limit or otherwise interfere with the traversing of vehicular and/or pedestrian traffic within Common Areas of the Eastgate Subdivision.

Notwithstanding anything in this Declaration to the contrary, the Owners acknowledge and agree that: (i) the Common Areas shall always include at least one (1) full-motion access drive for access to the Parcels from Factory Outlet Drive.

(b) An easement under and across those parts of the Eastgate Subdivision, which are not under or within any buildings located on the Eastgate Subdivision, for the installation, operation, maintenance, repair, replacement and renewal of any and all underground utility lines, telecommunication facilities, storm drains, subdrains, and related facilities within the Eastgate Subdivision (collectively, "Utility Lines"), wherever said Utility Lines may from time to time be located. Easements are also established for the benefit of each Parcel to permit natural drainage to sheet flow across neighboring Parcels within the Eastgate Subdivision, without the right to increase the amount, velocity or direction of such flow. Storm drains and subdrains may be directed to any drainage basin maintained on Parcel 103 of the Eastgate Subdivision. The Owners covenant and agree that the rights granted pursuant to these easements shall at all times be exercised in such a manner as not to unreasonably interfere with the normal operation of the Parcels and the businesses conducted therein. All such utility lines and related facilities shall be installed and maintained below the ground level or surface of the Parcels (except for such parts thereof that cannot and are not intended to be placed below the surface, such as transformers and control panels).

(c) A parking easement appurtenant to the Parcels for the use of designated areas of the Common Area for the parking of motor vehicles by

persons employed at, or guests and licensees of, businesses in the Eastgate Subdivision and for ingress and egress for motor vehicles and pedestrians to and from the businesses in the Eastgate Subdivision.

2.2 Indemnification. Each Owner having rights with respect to any easement granted in this Declaration shall indemnify and hold the Owner whose Parcel is subject to such easement(s) and each of such Owner's Permittees harmless from and against all claims, liabilities, damages, penalties, costs, demands and expenses (including reasonable attorneys' fees and legal costs) relating to accidents, injuries, loss, or damage of or to any person or property arising from the negligent, intentional or willful acts or omissions of such Owner, its contractors, employees, agents, or others acting on behalf of such Owner.

2.3 Reasonable Use of Easements.

(a) The easements granted herein shall be used and enjoyed by each Owner and its Permittees in such a manner so as not to unreasonably interfere with, obstruct or delay the conduct and operations of the business of any other Owner or its Permittees at any time conducted on its Parcel including, without limitation, public access to and from said business, and the receipt or delivery of merchandise in connection therewith.

(b) No permanent building, structures, trees or other improvements inconsistent with the use and enjoyment of such easements (excluding improvements typically found in common areas of shopping centers) shall be placed over or permitted to encroach upon any utility installations governed by Section 2.1(b) above.

(c) Once commenced, any construction, maintenance, repair or replacement undertaken in reliance upon an easement granted herein shall be diligently prosecuted to completion, so as to minimize any interference with the business of any other Owner and its Permittees. Except in cases of emergency, the right of any Owner to enter upon a Parcel of another Owner for the exercise of any right pursuant to the easements set forth, or to prosecute work on such Owner's own Parcel if the same interferes with utility easements or easements of ingress, egress or access to or in favor of another Owner's Parcel, shall be undertaken only in such a manner so as to minimize any interference with the business of the other Owner and its Permittees, and only following reasonable notice under the circumstances to the other Owner and its Permittees. The Owner performing any such construction, maintenance, repair or replacement shall have the obligation at its own expense (except as set forth in Section 3.3) to promptly restore the other Owner's Parcel to the same condition as was present prior to such construction, maintenance, repair or replacement.

(d) Each Owner shall have the right to alter, modify, reconfigure, and/or relocate the Common Areas on its Parcel, subject to the following conditions: (i) the reciprocal easements between the Parcels pursuant to

Section 2.1(a), and any improvements installed within such easements shall not be extinguished, or materially impaired, and (ii) the access ways, driveways, parking, passageways, and ingress and egress thereto, and to and from the Parcels and adjacent streets and roads, shall not be so altered, modified, relocated, blocked and/or removed without the express written consent of all Owners.

3. MAINTENANCE AND REPAIR.

3.1 Buildings and Appurtenances Thereto. Each Owner covenants to keep and maintain, at its sole cost and expense, the building(s) and other improvements located on its respective Parcel in good order, condition and repair. In the event of any damage to or destruction of a building on any Parcel, the Owner of such Parcel shall, at its sole cost and expense, with due diligence either (a) repair, restore and rebuild such building to its condition prior to such damage or destruction (or with such changes as shall not conflict with this Declaration), or (b) demolish and remove all portions of such damaged or destroyed building then remaining, including the debris resulting therefrom, and otherwise clean and restore the area affected by such casualty to a level, graded condition. Each Owner shall also be responsible to pay all ad valorem and other taxes owing with respect to such Owner's Parcel including all Common Areas located on such Owner's Parcel.

3.2 Common Areas and Easements.

(a) Each Owner shall at all times be responsible for the regular maintenance, repair and replacement of the Common Areas and all of the easements located on its own Parcel including, without limitation, all of the physical improvements associated with such easements. Such obligations shall include, without limitation: maintaining and repairing all sidewalks and the surface of the roadway areas; removing all papers, debris and other refuse from and periodically sweeping all sidewalk areas to the extent necessary to maintain the same in a clean, safe and orderly condition; maintaining appropriate lighting fixtures for the roadways; maintaining marking, directional signs, lines and striping as needed; maintaining signage in good condition and repair; and performing any and all such other duties as are necessary to maintain such Common Areas and easements in a clean, safe and orderly condition. Notwithstanding the foregoing, any damage to any easement, which is caused by intentional or negligent acts of one of the Owners or its Permittees, shall be promptly repaired at the sole cost of such Owner.

3.3. Failure to Maintain the Common Areas and Easements. If any Owner defaults under its regular maintenance, repair and replacement obligations as described in Section 3.2 above, the other Owner(s) shall give such defaulting Owner written notice of the claimed default, and such defaulting Owner shall have ten (10) days following the receipt of such written notice to cure such default. If the default remains uncured following the ten (10) day period, or if such default is not curable within the ten (10) day period and the defaulting Owner has failed to begin to cure such default within the ten (10) day period, the other Owner(s) may, but shall not be required to, cure the default itself, and then bill the

defaulting Owner for the reasonable costs incurred in curing such default. Each such bill shall contain an itemized description of the work performed and the total costs and expenses incurred for such work. The defaulting Owner shall pay all such bills within thirty (30) days after receipt of the bill. In the event the defaulting Owner fails to timely pay any bill, the unpaid amount shall bear interest at the rate of twelve percent (12%) per annum from the due date until the date such amount is paid in full.

Additionally, in the event that the defaulting Owner's failure to pay a bill continues beyond sixty (60) days after it is due, then the Owner(s) who performed the work to cure the default shall be entitled to record a Notice of Lien against the defaulting Owner's Parcel in the total amount due and owing. Said Notice of Lien may be foreclosed by suit, power of sale or in any other manner permitted by applicable law including, without limitation, power of sale foreclosure. Notwithstanding the foregoing, if the defaulting Owner gives written notice, prior to the expiration of such sixty (60) day period, that it is contesting the amount or payment of the bill in question, and provided that the defaulting Owner also either posts a bond in favor of the other Owner(s) or pays into escrow the amount being contested pending resolution, then the Owner(s) who performed the work to cure the default shall not be entitled to record a Notice of Lien against the defaulting Owner's Parcel. The defaulting Owner and/or its agents shall be permitted, upon seventy-two (72) hours advance written notice to review the records and supporting documentation for any bill submitted to the defaulting Owner pursuant to this Section 3.3. Such review shall take place at the principal place of business of the Owner(s) who performed the work to cure the default or, if the defaulting Owner desires, by a review of documents sent by facsimile or mail to the defaulting Owner, unless otherwise mutually agreed.

4. COVENANTS, CONDITIONS AND RESTRICTIONS.

4.1 Term. The easements, covenants, conditions and restrictions contained in this Declaration shall be effective commencing on the date of recordation of this Declaration in the office of the Salt Lake County Recorder and shall remain in full force and effect thereafter in perpetuity, unless this Declaration is modified, amended, canceled or terminated by the written consent of all then record Owners of all of the Parcels in accordance with Section 6.2 hereof.

4.2 Use Restrictions. Each Parcel shall be used for lawful purposes in conformance with all restrictions imposed by all applicable governmental laws, ordinances, codes, and regulations, and no use or operation shall be made, conducted or permitted on or with respect to all or any portion of a Parcel that is illegal.

4.3 No Rights in Public; No Implied Easements. Nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion of the Parcels. No easements, except those expressly set forth in Section 2, shall be implied by this Declaration.

5. **REMEDIES AND ENFORCEMENT.**

5.1 **All Legal and Equitable Remedies Available.** In the event of a default or threatened default by any Owner or its Permittees of any of the terms, easements, covenants, conditions or restrictions hereof, the other Owner(s) shall be entitled forthwith to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach, including payment of any amounts due and/or specific performance.

5.2 **Remedies Cumulative.** The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity.

5.3 **No Termination for Default.** Notwithstanding the foregoing to the contrary, no default hereunder shall entitle any Owner to cancel, rescind, or otherwise terminate this Declaration. No breach hereunder shall defeat or render invalid the lien of any mortgage or deed of trust upon any Parcel made in good faith for value, but the easements, covenants, conditions and restrictions hereof shall be binding upon and effective against any Owner of such Parcel covered hereby whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.

6. **MISCELLANEOUS.**

6.1 **Attorneys' Fees.** In the event a Party institutes any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing Party after a final adjudication shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

6.2 **Amendment.** The Parties agree that the provisions of this Declaration may be modified or amended, in whole or in part, or terminated, only by the written consent of all record Owners of the Parcels, evidenced by a document that has been fully executed and acknowledged by all such record Owners and recorded in the official records of the Salt Lake County Recorder.

6.3 **No Waiver.** No waiver of any default of any obligation by any Party shall be implied from any omission by the other Party to take any action with respect to such default.

6.4 **No Agency.** Nothing in this Declaration shall be deemed or construed by any person to create the relationship of principal and agent or of limited or general partners or of joint venturers or of any other association between any persons.

6.5 **Covenants to Run with Land.** It is intended that each of the easements, covenants, conditions, restrictions, rights and obligations set forth herein shall run with the Parcels and create equitable servitudes in favor of the Parcel(s) benefited thereby, shall bind every person having any fee, leasehold or other interest therein and shall inure

to the benefit of the Parties and their respective successors, assigns, heirs, and personal representatives.

6.6 Grantee's Acceptance. The grantee of any of the Parcels, or any portion thereof, by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from Owner or from any subsequent Owner of such Parcels, or any portion thereof, shall accept such deed or contract upon and subject to each and all of the easements, covenants, conditions, restrictions, duties and obligations contained herein. By such acceptance, any such grantee shall for itself and its successors, assigns, heirs, and personal representatives, covenant, consent, and agree to and with the other affected persons, to keep, observe, comply with, and perform the obligations and agreements set forth herein with respect to the portion of the Parcels so acquired by such grantee.

6.7 Severability. Each provision of this Declaration and the application thereof to the Parcels are hereby declared to be independent of and severable from the remainder of this Declaration. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Declaration. In the event the validity or enforceability of any provision of this Declaration is held to be dependent upon the existence of a specific legal description, the parties agree to promptly cause such legal description to be prepared. Ownership of all of the Parcels by the same person or entity shall not terminate this Declaration nor in any manner affect or impair the validity or enforceability of this Declaration.

6.8 Time of Essence. Time is of the essence of this Declaration.

6.9 Entire Agreement. This Declaration contains the complete understanding and agreement of the Parties with respect to all matters referred to herein, and all prior representations, negotiations, and understandings are superseded hereby.

6.10 Notices. Notices or other communication hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested, or by other national overnight courier company, or personal delivery at the Party's last known address. Notice shall be deemed given upon receipt or refusal to accept delivery. Each Party may change from time to time their respective address for notice hereunder by like notice to the other Parties.


6.11 Governing Law. The laws of the State of Utah shall govern the interpretation, validity, performance, and enforcement of this Declaration.

6.12 Bankruptcy. In the event of any bankruptcy affecting any Owner or occupant of any Parcel, this Declaration shall, to the maximum extent permitted by law, be considered an agreement that runs with the affected Parcel(s) and that is not rejectable, in whole or in part, by the bankrupt person or entity.


6.13 Benefits to Permittees. Notwithstanding anything contained herein to the contrary, any provision creating a right or benefit for an Owner shall be deemed to also create a similar right or benefit for such Owner's tenants and subtenants.

IN WITNESS WHEREOF, the Parties have executed this Declaration as of the date first written above.


DRAPER LTD, LLC, an Arizona limited liability company

By: 
Its: MANAGING member
Date: 1-8-09

SANCHEZ UTAH II, LLC, a Utah limited liability company

By: 
Its: Manager MANAGER
Date: 1/9/09 1/9/2009

STRATEGIC ASSETS LTD, LLC, an Arizona limited liability company

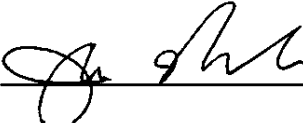
By: 
Its: MANAGING member
Date: 1-8-09

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On 01-08, 2009, before me, JASON MABEE, Notary Public, personally appeared DOUGLAS R. FIELDING, 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/they executed the same in his/her/their authorized capacity(ies), and that by his/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 ARIZONA that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)

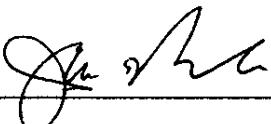


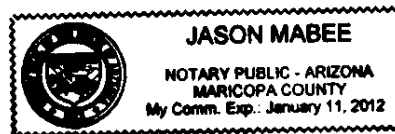
STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On 01-08, 2009, before me, JASON MABEE, Notary Public, personally appeared DOUGLAS R. FIELDING, 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/they executed the same in his/her/their authorized capacity(ies), and that by his/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 ARIZONA that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)

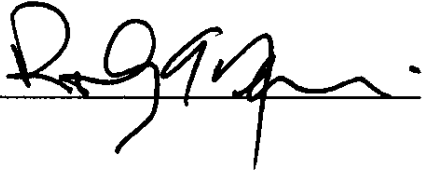


STATE OF Utah)
) ss.
COUNTY OF Salt Lake)

On Jan 9th, 2009, before me, Rodney A. Newman Notary Public, personally appeared Joshua S AND Augustus D. Sanchez, 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/they executed the same in his/her/their authorized capacity(ies), and that by his/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 Utah that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)

