

**THIRD AMENDMENT TO DECLARATION OF COVENANTS  
AND RECIPROCAL EASEMENTS**

THIS THIRD AMENDMENT TO DECLARATION OF COVENANTS AND RECIPROCAL EASEMENTS (this "Amendment") is made this 21<sup>st</sup> day of MARCH, 2011, by DRAPER LTD., L.L.C., an Arizona limited liability company, STRATEGIC ASSETS L.T.D., LLC, an Arizona limited liability company, and SANCHEZ UTAH II, L.L.C., a Utah limited liability company ("Declarants"), collectively Successors-in-Interest to FACTORY STORES OF AMERICA, INC., a Delaware corporation (formerly the "Declarant"), to amend the Declaration of Covenants and Reciprocal Easements dated October 27, 1995 ("DCRE") and recorded as Entry Number 6205722 in Book 7263, Pages 2549-2570 of the Official Records of Salt Lake County, Utah.

WITNESSETH:

WHEREAS, Declarants are the owners of that tract or parcel of land located in Draper city, Salt Lake County, Utah, being more particularly described as Lot 2 on that certain Factory Stores of America Subdivision recorded as Entry Number 6168179 in Book 95-9P, Page 235 of the Official Records of Salt Lake County, Utah (said tract of parcel of land, together with all improvements and personal property located thereon, including any future development of said tract or parcel of land, being hereinafter referred to as "Parcel 2"); and

WHEREAS, Declarants are also the owner of that tract or parcel of land located in Draper City, Salt Lake County, Utah, being more particularly described as Lot 1 on the subdivision Plat (said tract of parcel of land, together with all improvements and personal property located thereon, including any future development of said tract or parcel of land, being hereinafter referred to as "Parcel 1"); and

WHEREAS, D & T Investments, L.L.C. ("D & T"), a Utah limited liability company purchased Parcel 2, which is contiguous with Parcel 1 (being more particularly described as Lot 2 on the Subdivision Plat), and is burdened by Operating Covenants set forth in the DCRE; and

WHEREAS, D & T desires to construct a hotel on Parcel 2 without the burden of certain covenants and restrictions limiting parking, permitted use, building height, and sign height, and in consideration thereof is willing to limit the area on Parcel 2 on which a building may be built; and

WHEREAS, Declarants desire to restrict construction of improvements on Parcel 2 within a building limit area;

NOW, THEREFORE, considering the mutual covenants and promises, and other benefits to be derived by Declarants and each and every subsequent owner and its successors and assigns of each of the Parcels, the DCRE is amended, effective only upon the commencement of construction of a hotel on Parcel 2, as set forth herein for the use, benefit and enjoyment of the applicable Parcel.

AS

1. Section 3(b), "Permitted Use", shall be amended to read: "Subject to the limitations of subparagraph 1(e), the Owner of Parcel 2 may use Parcel 2 for the purpose of operating a retail store or stores, professional office space, a bank, or a hotel together with related services, and for no other purpose whatsoever".
2. Section 3(c), "Architectural and Design Approval", shall be amended to
  - (1) strike the following provision: "(i) as to which no building height is in excess of twenty-eight (28) feet, including false facades, if any, measured from finished floor elevation to the top of the highest building protrusion or appurtenance, including roof-mounted equipments, decorative roof screening, and the like", and
  - (2) substitute in its place: "(i) as to which remains entirely within the Building Limit Area, as shown in Exhibit "B-1" without any height limitation. This Building Limit Area is more particularly described as the south One Hundred Fifty (150) feet within Parcel 2 of Lot 2, Parcel A, which is further described in Exhibit 'B-2'."
3. Section 3(f) shall be amended to read: "There shall be maintained on Parcel 2 the greater of:
  - a) at least four (4) standard-sized automobile parking spaces for each one thousand (1,000) square feet of enclosed building area constructed on Parcel 2 if the use is for retail, office, or bank;
  - b) at least one (1) standard-sized automobile parking space for each overnight room of any enclosed hotel building; or
  - c) such number of automobile parking spaces as may be required by applicable law."
4. Section 7(c)(2) shall be amended to read: "The maximum heights from the bottom of the base to the top of any such freestanding, type sign structure, including the sign panel, shall be that allowed by code, and the sign panel shall be the size as allowed by code."
5. The provisions of this amendment shall not be interpreted to alter the perpetual, non-exclusive easement for the drainage and discharge of storm water from Parcel 1 in, to, over, under, across and through Parcel 2, as declared in Section 1(b)(1) of the DCRE.
6. From the date the Owner of Parcel 2 (hereinafter "Owner") commences construction of a hotel on Parcel 2, the Owner shall contribute to the Declarant five hundred dollars (\$500.00) per month for maintenance costs associated with the main driveway (running perpendicular to Outlet Mall Drive, or the I-15 Frontage Road,) from the western boundary of Parcel 2 up to and including 20 feet beyond any improved entrance access to Parcel 2 ("Subject Area"). The

Owner's maintenance contribution shall be paid in monthly installments beginning January 1, 2011.

7. If D & T or the successor owner of Parcel 2 does not commence construction of a hotel on Parcel 2 on or before July 1, 2011, the provisions of this Amendment shall be null and void.

IN WITNESS WHEREOF, the Declarants have signed and sealed this Amendment effective as of the day and year first above written.

DRAPER LTD., L.L.C.,  
a Arizona limited liability company

By: 

Its: managing member

STRATEGIC ASSETS L.T.D., LLC, an  
Arizona limited liability company

By: 

Its: managing member

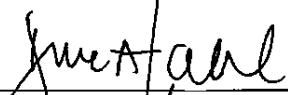
SANCHEZ UTAH II, L.L.C.,  
a Utah limited liability company

By: 

Its: Manager/member Manager/member

IN WITNESS WHEREOF, D & T hereby agrees to this Amendment to the extent it affects D & T's rights to Parcel 2.

D & T INVESTMENTS L.L.C.  
a Utah limited liability company

By: 

Its: President

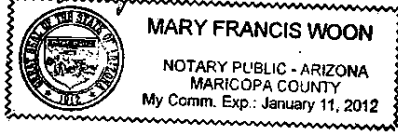
Its: \_\_\_\_\_

ACKNOWLEDGMENTS

STATE OF Arizona )  
COUNTY Maricopa ) :ss.

On this 3<sup>rd</sup> day of March, 2011, before me personally appeared Douglas R. Fielding, to me personally known to be Manager of DRAPER LTD., L.L.C, a Arizona limited liability company, that executed the within instrument, known to me to be the person who executed the within instrument on behalf of said limited liability company therein named, and acknowledged to me that such limited liability company executed the within instrument pursuant to its Operating Agreement.

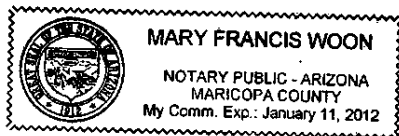
Mary Francis Woon  
Notary Public



STATE OF Arizona )  
COUNTY OF Maricopa ) :ss.


On this 3<sup>rd</sup> day of March, 2011, before me personally appeared Douglas R. Fielding to me personally known to be Manager of STRATEGIC ASSETS L.T.D., LLC, a Arizona limited liability company, that executed the within instrument, known to me to be the person who executed the within instrument on behalf of said limited liability company therein named, and acknowledged to me that such limited liability company executed the within instrument pursuant to its Operating Agreement.

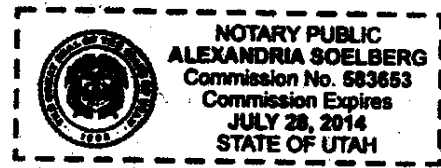
Mary Francis Woon  
Notary Public



STATE OF UTAH )  
 :ss.  
 COUNTY DAVIS )

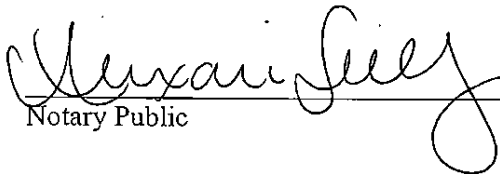
On this 8 day of MARCH, 2011, before me personally appeared JOSHUA SANCHEZ, to me personally known to be Manager of SANCHEZ UTAH II., L.L.C, a Utah limited liability company, that executed the within instrument, known to me to be the person who executed the within instrument on behalf of said limited liability company therein named, and acknowledged to me that such limited liability company executed the within instrument pursuant to its Operating Agreement.

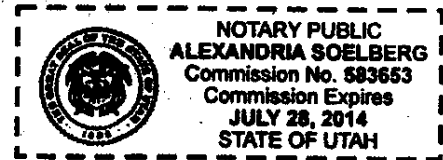
  
\_\_\_\_\_  
Notary Public



STATE OF UTAH )  
 :ss.  
 COUNTY DAVIS )

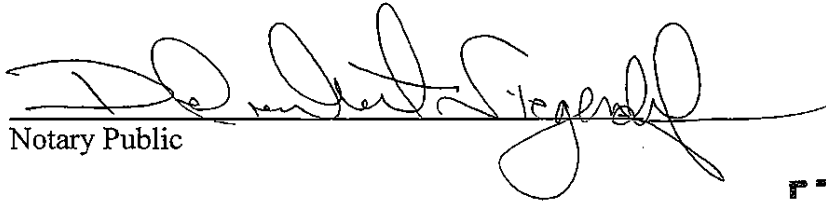
On this 8 day of MARCH, 2011, before me personally appeared AUGUSTUS SANCHEZ, to me personally known to be Manager of ~~Sanchez Utah II, LLC~~ <sup>AS</sup> Sanchez Utah II, LLC, a Utah limited liability company, that executed the within instrument, known to me to be the person who executed the within instrument on behalf of said limited liability company therein named, and acknowledged to me that such limited liability company executed the within instrument pursuant to its Operating Agreement.

  
\_\_\_\_\_  
Notary Public



STATE OF Utah )  
                                      :SS.  
COUNTY Salt Lake )

On this 21<sup>st</sup> day of March, 2011, before me personally appeared Doug eh, to me personally known to be Manager of D & T INVESTMENTS, L.L.C, a Utah limited liability company, that executed the within instrument, known to me to be the person who executed the within instrument on behalf of said limited liability company therein named, and acknowledged to me that such limited liability company executed the within instrument pursuant to its Operating Agreement.

  
Notary Public

