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ADAM GARDINER
Recorder, Salt Lake County, UT
FIRST AMERICAN NCS
BY: eCASH, DEPUTY - EF 24 P.

WHEN RECORDED, MAIL TO:
Draper Spectrum, L.C.
1165 E. Wilmington Ave., Ste. 275
Salt Lake City, UT 84106

For Information Only:
Affects Tax Parcel Nos:

RESTRICTIONS, EASEMENTS and MAINTENANCE AGREEMENT

THIS RESTRICTIONS, EASEMENTS and MAINTENANCE AGREEMENT ("Agreement") is made to be effective as of the 19th day of December, 2017, between **DRAPER SPECTRUM, L.C.**, a Utah limited liability company, herein called "**Draper Spectrum**," and **BLACK CLOVER ENTERPRISES, LLC**, a Utah limited liability company, herein called "**Black Clover**."

FIRST AMERICAN TITLE
#NCS812410

RECITALS

A. **Draper Spectrum Parcel.** Draper Spectrum is the owner of the Draper Spectrum Parcel as generally shown on the "**Site Plan**" attached hereto as Exhibit "A" and which is more particularly described on Exhibit "B" hereto. The Draper Spectrum Parcel includes, among other property, the "**Diner Parcel**" as shown on the Site Plan.

B. **Black Clover Parcel.** Black Clover is the owner of the Black Clover Parcel as generally shown on the Site Plan, which is more particularly described on Exhibit "C" hereto.

C. **Purpose.** Draper Spectrum and Black Clover desire that the Draper Spectrum Parcel and the Black Clover Parcel be developed and operated in conjunction with each other in an orderly fashion so as to provide a functional commercial shopping center as set forth herein and further desire that the Draper Spectrum Parcel and the Black Clover Parcel be subject to certain easements, covenants, conditions and restrictions all as hereinafter set forth.

AGREEMENT

In consideration that the following encumbrances shall be binding upon the parties hereto and shall attach to and run with the Draper Spectrum Parcel and the Black Clover Parcel, and shall be for the benefit of and shall be limitations upon all future owners of the Draper Spectrum Parcel and the Black Clover Parcel and that all easements, restrictions and other covenants herein set forth shall be appurtenant to the dominant estates and obligations on the servient estates, and in consideration of the promises, covenants, conditions, restrictions, easements and encumbrances contained herein, Draper Spectrum and Black Clover do hereby agree as follows:

1. **Definitions.**

a. "Shopping Center." The **"Shopping Center"** shall consist of the Black Clover Parcel and the Draper Spectrum Parcel.

b. "Building Area; Floor Area." The **"Building Area"** is the portion of the Shopping Center as shown on Exhibit "D" attached hereto. The Black Clover Parcel and Diner Parcel shall not be developed or redeveloped (i) with any building, structure, or portion thereof, located outside of the Building Area, or (ii) for or into any use with Floor Area greater than as shown on Exhibit "D", without Draper Spectrum's consent. For purposes hereof, **"Floor Area"** shall be defined as the square foot floor area within exterior walls of any building or structure, excluding any raised mezzanine, exterior trash enclosures; open loading docks which are not heated or air conditioned; canopies and roof overhangs; and vestibules for ingress and egress. Such exclusions from Floor Area may project from any building or structure up to a distance of twenty-five feet (25') outside of the Floor Area on any Parcel; provided, any such projection or extension complies with all applicable laws, rules, ordinances and regulations of every governmental body having jurisdiction over the Shopping Center; and provided further, no such extension or projection shall be allowed if it materially alters the parking configuration or vehicular or pedestrian circulation, and/or access in and throughout the Shopping Center as shown on the Site Plan.

c. "Common Areas." The **"Common Area"** is all real property, including improvements thereon, within the Shopping Center, except those portions occupied at any time, and from time to time, by a building or other structure. Common Areas shall include, without limitation, all areas, space, equipment, improvements and services provided for the common or joint use and benefit of the tenants or occupants of the Shopping Center, their employees, agents, servants, customers and other invitees, including without limitation, parking areas, access roads, driveways, retaining walls, fences, landscaped areas, planters, utility lines, light poles and fixtures, stairs, ramps and sidewalks. Docks, loading areas, service areas and canopies which are attached to buildings but which extend over Common Area shall be deemed to be part of the building which they serve or to which they are attached and not part of the Common Area.

2. **Buildings.**

a. Retail Limitation. The buildings within the Shopping Center shall be commercial buildings of the type usually found in first-class retail shopping centers in the greater metropolitan area in which the Shopping Center is located. The tenants occupying the buildings within the Shopping Center shall be primarily retail sales and retail service tenants of the type normally associated with first-class retail shopping centers in such metropolitan area. The term "retail service" as used herein shall mean restaurants, financial institutions, real estate and stock brokerage offices, travel or

insurance agencies, medical and dental offices, and similar uses providing services directly to the public, but "retail services" specifically excludes nonprofit organization offices, government offices, office uses that do not involve direct service to consumers, office uses in excess of 3,000 square feet of floor area, and other uses not customarily associated with or contained in first-class retail developments. Without limiting the generality of the foregoing, without Draper Spectrum's consent (which consent may be withheld in Draper Spectrum's sole discretion), no portion of the Diner Parcel or Black Clover Parcel shall be used for (i) flea markets, fire, bankruptcy or liquidation sales, or sales of "second-hand" or "surplus" merchandise; (ii) training or educational facilities (other than on-site employee training by an occupant incidental to the conduct of its business); (iii) automotive or other vehicle service or tire or battery sales or service facilities (except that a "Pep Boys" or "Auto Zone" or other auto parts store shall be permissible); (iv) the renting, leasing, sale or display of any motor vehicle, truck, trailer, recreational vehicle or boats; (v) movie theater; (vi) children's playland, (vii) night club or dance hall, (viii) bowling alley, (ix) skating or roller rink; (x) pool or billiard hall; (xi) health spa or fitness gym; or (xii) game room or video arcades (more than four [4] electronic games) or other similar entertainment facilities.

b. Specific Restrictions on Use. The following specific restrictions shall apply:

- (i) During any period in which a Floor & Décor is being operated at the Shopping Center, no portion of the Diner Parcel or Black Clover Parcel shall be used for any "F & D Use" without Draper Spectrum's consent (which consent may be withheld in Draper Spectrum's sole discretion). As used herein, "F & D Use" shall mean the retail sale and distribution of tile, stone, wood, laminate and other hard surface flooring, rugs and other floor coverings, architectural stone products, tile, stone and other hard surface wall coverings (used for backsplash or otherwise), other wall coverings, tile, stone and other hard surface countertops, sinks, and cabinets, together with the retail sale and/or the leasing of materials, equipment, tools and/or other implements necessary or helpful in connection with installation, maintenance, removal, repair or replacement of, and all other activities relating to, the foregoing.
- (ii) During any period in which a Black Bear Diner is being operated at the Diner Parcel, no portion of the Black Clover Parcel shall be used for any business that derives more than 20% of its revenue from the sale of breakfast foods, without Draper Spectrum's consent (which consent may be withheld in Draper Spectrum's sole discretion).

- (iii) During any period in which an Empire Wok is being operated at the Shopping Center, no portion of the Diner Parcel or Black Clover Parcel shall be used for any business whose primary use is Asian cuisine, meaning that more than 30% of menu items offered are Asian food, including sushi, Asian noodles and Asian rice dishes, without Draper Spectrum's consent (which consent may be withheld in Draper Spectrum's sole discretion).

c. General Restrictions on Use. Neither the Black Clover Parcel nor the Draper Spectrum Parcel nor any portion thereof shall in any event be leased, subleased, operated or otherwise used for (i) the display, distribution or sale of any "adult" books, "adult" films, "adult" periodicals or "adult" entertainment; (ii) the establishment or maintenance of a massage parlor, "adult" theater, "adult" bookstore, "sex" shop, "peep show" or bawdy house or brothel; (iii) the operation, establishment or maintenance of a veterinary clinic, a second hand or pawn shop type of business, or any use in violation of applicable zoning and other governmental laws and regulations; provided, however, that nothing herein shall be deemed, construed or interpreted as restricting or prohibiting gaming operations from being conducted on the Black Clover Parcel or the Draper Spectrum Parcel, so long as such gaming operation is secondary to the parcel's main use. In addition, and not in limitation of the foregoing, neither the Black Clover Parcel nor the Draper Spectrum Parcel, nor any portion thereof, shall be used or permitted to be used for (i) any use which emits an obnoxious odor, noise or sound which can be heard or smelled outside of any building in the Shopping Center; or (ii) any use which is a public or private nuisance, or which is likely to generate public protests or controversy interfering with the operation of the Shopping Center as a retail center; nor shall there be thereon any (iii) distilling, refining, smelting, agricultural, animal raising or boarding (other than consumer pet shops), or mining operation; (iv) any short or long-term residential use; (v) any primary use as a warehousing, assembling, manufacturing, waste processing or other industrial operation; or (vi) any place for public assembly (such as a church mortuary or meeting hall).

d. Change of Use – Parking Requirements. Without Draper Spectrum's consent (which consent shall not be unreasonably withheld, conditioned or delayed), neither the Diner Parcel or Black Clover Parcel shall be used for any use which requires, under Section 9-25-100 (Table 9-25-1) of the Draper City Code or other applicable governmental regulations, more parking spaces than is required in connection with the current use of the Diner Parcel or Black Clover Parcel, as applicable, as of the date of this Agreement.

e. Design and Construction. The buildings within the Shopping Center shall be designed so that the exterior elevation of each will be architecturally and aesthetically compatible. The design and construction shall be in conformity with sound architectural and engineering standards and the construction shall be first quality. All buildings shall be one story and shall not exceed twenty-one feet (21') in

height (but may include an architectural element, raised mezzanines for equipment, storage, offices (to which the public is not invited), restrooms or lounges).

f. Alterations to Shopping Center. Following completion of construction of any portion of the Shopping Center, the sizes and arrangements of buildings and common areas related thereto (including parking areas and traffic circulation and flow patterns) will not be changed without Draper Spectrum's written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

g. No Covenant to Construct or Operate. Notwithstanding anything contained anywhere in this Agreement to the contrary, nothing herein shall be deemed to create an obligation on Draper Spectrum to commence or complete construction of any building on the Draper Spectrum Parcel, or to operate any business for any period of time on the Draper Spectrum Parcel. The construction of a building or operation of a business on the Draper Spectrum Parcel shall, at all times, be in the sole and absolute discretion of Draper Spectrum.

3. **Common Areas Use.**

a. Grant of Easements. Each party, as grantor, hereby grants to the other party for the benefit of said other party, its customers, invitees and employees, a nonexclusive easement for pedestrian and vehicular access, ingress and egress, the parking of motor vehicles in designated areas and use of facilities installed for the comfort and convenience of customers, invitees and employees on the Common Areas of the grantor's parcel.

b. No Barriers. No walls, fences, or barriers of any kind shall be constructed or maintained on the Common Areas, or any portion thereof, by any party which shall prevent or impair the use or exercise of any of the easements granted herein, or the free access and movement, including without limitation, of pedestrians and vehicular traffic between the various parcels; provided, however, reasonable traffic controls approved in advance by Draper Spectrum (which approval shall not be unreasonably withheld or delayed) as may be necessary to guide and control the orderly flow of traffic may be installed so long as access driveways to the parking areas in the Common Areas are not closed or blocked. The only exceptions to this provision shall be (1) for changes to the Common Areas permitted by this Agreement, (2) for incidental encroachments upon the Common Areas which may occur as a result of the use of the ladders, scaffolding, storefront barricades and similar facilities resulting in temporary obstruction of the Common Areas, all of which are permitted hereunder so long as their use is kept within reasonable requirements of construction work being expeditiously pursued, (3) for incidental, immaterial and temporary encroachments upon the Common Areas which may occur in conjunction with the construction, maintenance or repair of buildings and improvements on the Draper Spectrum Parcel or Black Clover Parcel, so long as such construction, maintenance or repair is being diligently pursued, and (4) for temporary

blockage of certain areas deemed necessary by the parties to prevent a public dedication of an easement or access right.

c. Limitations on Use.

(1) Customers. Customers and invitees shall not be permitted to park on the Common Areas except while shopping or transacting business on the Draper Spectrum Parcel or the Black Clover Parcel with the occupants thereof.

(2) Employees. Employees shall not be permitted to park on the Common Areas, except in areas designated as "employee parking areas." The parties hereto may from time to time mutually designate and approve "employee parking areas"; however, if they do not, each party may designate "employee parking areas" on its own Parcel.

d. Utility and Service Easements for Existing Improvements. Each party, as grantor, hereby grants to the other party, for the benefit of said other party, a nonexclusive easement over, under, and across such grantor's property, excluding any portion of such grantor's property on which a building or any utility facilities serving such building are located as of the date of this Agreement, for the purpose of operating, maintaining, repairing and replacing existing utilities lines and related facilities (including without limitation, water, sewer, gas, electricity, surface and underground storm drainage, internet, telephone and cable) and the Pylon Sign (defined below). Any party exercising its easement rights hereunder as grantee shall, at its sole cost, promptly restore any improvements which are damaged in connection with such exercise of easement rights hereunder from time to time, to substantially the same condition as existed prior to such exercise. Each party, as grantee, assumes all risks and responsibilities for accidents, injuries or deaths to persons or damage to property which may occur on the other party's property in connection with such grantee's exercise of its rights set forth herein. Each party, as grantee, shall indemnify, defend and hold the other party harmless from and against any and all claims, liabilities, losses, damages and costs (including reasonable attorney fees) resulting from or in any way related to such grantee's exercise of its rights hereunder, unless due to the other party's gross negligence or willful misconduct.

e. Utility and Service Easements for Future Development. The parties shall, upon request, grant appropriate easements on, under and across their respective property for the installation, operation, maintenance, repair and replacement of utilities and related facilities (including without limitation, water, sewer, gas, electricity, surface and underground storm drainage, internet, telephone, cable) in connection with the orderly development, redevelopment and operation of the Common Areas and additional buildings to be erected within the Shopping Center. Such easements shall be reasonably located so as to minimize adverse impacts on existing improvements. The restoration and indemnification obligations set forth in

Section 3(d) above shall also apply with respect to the exercise of easement rights pursuant to this Section 3(e).

4. **Common Area Maintenance.**

a. Maintenance - Draper Spectrum Parcel. Draper Spectrum shall be responsible for maintaining the Common Areas within the Draper Spectrum Parcel (specifically excluding, however, the Diner Parcel for purposes of this Section 4(a)) in a clean, safe and orderly condition consistent with a first class shopping center. Such maintenance shall include but not be limited to maintaining and repairing all paved roadway areas, parking areas and sidewalks, removing all papers, debris and other refuse, snow removal, maintaining appropriate lighting fixtures, maintaining marking, directional signs, lines and striping as needed, maintaining landscaping, maintaining signage in good condition and repair and performing any and all other duties as are reasonably necessary in connection therewith. Draper Spectrum may, but shall not be required to, enter into one or more third-party contracts for the provision of all or any portion of its maintenance obligations as described herein.

b. Maintenance – Diner Parcel and Black Clover Parcel. Draper Spectrum shall be responsible for only the following maintenance obligations (the “Defined Maintenance Work”) with respect to the Diner Parcel and the Black Clover Parcel: (i) sweeping, removing papers, debris and other refuse, and otherwise reasonably maintaining the cleanliness of vehicular drive lanes and parking areas, (ii) providing reasonable snow removal services with respect to vehicular drive lanes and parking areas, and (iii) providing reasonable landscape maintenance services. Draper Spectrum shall have no other obligation whatsoever related to the maintenance, repair and/or replacement of any Common Areas or any other improvements located at the Diner Parcel or Black Clover Parcel.

c. Expenses. Black Clover and the owner of the Diner Parcel shall each be responsible for its “Proportionate Share” of the costs incurred by Draper Spectrum in connection with the Defined Maintenance Work plus an administrative fee equal to 15% of such costs. Each party’s “Proportionate Share” shall be obtained by multiplying the amount in question by a fraction, the numerator of which shall be the acreage of the Black Clover Parcel or Diner Parcel, as applicable, and the denominator of which shall be the aggregate acreage of the Diner Parcel and Black Clover Parcel combined, as follows: Black Clover’s Proportionate Share is $1.28/2.55 = 50.20\%$; Diner Parcel owner’s Proportionate Share is $1.27/2.55 = 49.80\%$. Each party’s Proportionate Share of the costs for Defined Maintenance Work shall be computed on the basis of the immediately preceding period of twelve (12) consecutive calendar months, or as designated by Draper Spectrum, and estimated payments toward the same shall be made by each party in equal installments in advance on the first day of each calendar month in an amount to be established by Draper Spectrum. As soon as reasonably possible following the end of each twelve (12) month period Draper Spectrum shall furnish to each party a statement showing

the actual Defined Maintenance Work costs for such preceding period and any adjustments to be made as a result of such statement. If a party's Proportionate Share of actual Defined Maintenance Work costs was more than the estimated payments made, such party shall pay the amount of such deficiency to Draper Spectrum within fifteen (15) days after notice from Draper Spectrum. If a party's Proportionate Share of actual Defined Maintenance Work costs was less than the estimated payments made, Draper Spectrum shall apply the amount of such surplus to the next installment(s) of Defined Maintenance Work costs due from such party. A late fee in the amount of one hundred dollars (\$100.00) shall be included with any payment not received by Draper Spectrum on or before the first day of the calendar month. In addition, any payment not received within fifteen (15) days of the date due shall incur interest at the rate of ten percent (10%) per annum.

5. **Signs.**

The existing pylon sign located as shown on the Site Plan (the "Pylon Sign") shall be owned, managed and maintained by Draper Spectrum at Draper Spectrum's discretion, subject to governmental regulations. Black Clover shall have the right to one (1) sign panel location on both sides of the Pylon Sign, in the same panel locations which currently advertise Black Clover as of the date of this Agreement. The owner of the Diner Parcel shall have the right to one (1) sign panel location on both sides of the Pylon Sign, in the same panel locations which currently advertise Black Bear Diner as of the date of this Agreement. Each party shall be responsible for all costs in connection with its own sign panels. The design and installation of such sign panels shall be subject to the approval of Draper Spectrum, which approval shall not be unreasonably withheld. From and after the date of this Agreement, Draper Spectrum may invoice Black Clover and the owner of the Diner Parcel, on a regular monthly, quarterly or annual basis, as Draper Spectrum determines, for the maintenance and operating costs of such Pylon Sign based on the "Owner's Percentage" (defined below) and such owner shall be obligated to pay its Owner's Percentage for such maintenance and operating costs. Each owner that is obligated to pay its Owner's Percentage of the maintenance and operating costs for the Pylon Sign shall pay such costs within fifteen (15) days after such owner's receipt of an invoice therefor from Draper Spectrum. Additional signage on the Black Clover Parcel or Diner Parcel shall require Draper Spectrum's prior written approval. As used herein, "Owner's Percentage" means a fraction, the numerator of which is the number of square feet of the sign panels (or corresponding rectangular sign area, if not a panel) of such owner and the denominator of which is the total number of square feet of all sign panels (or corresponding rectangular sign area, if not a panel) on the Pylon Sign, as follows: Black Clover's Owner's Percentage is $403 / 3,274 = 12.3\%$; Diner Parcel owner's Owner's Percentage is $200.8 / 3,274 = 6.1\%$.

6. **Indemnification/Insurance.**

a. Indemnification. Except as specifically otherwise provided in Sections 3(d) and 3(e) of this Agreement, each party (the "indemnifying party") hereby agrees to indemnify, defend and save the other party harmless from any and all liability, damage, expense, causes of action, suits, claims or judgments arising from injury to person or property and occurring on such indemnifying party's own Parcel, except if caused by the negligence or willful misconduct of the other party hereto.

b. Insurance. Each party shall provide commercial general liability insurance affording protection to itself and the other party on its own parcel(s), naming the other party as an "additional insured" under the policy or policies, for a combined bodily injury and property damage limit of liability of not less than Two Million Dollars (\$2,000,000) per occurrence, Three Million Dollars (\$3,000,000) aggregate. The insurance company providing such insurance shall be rated at least A-VII, A.M. Best's rating. Such insurance may be a part of blanket liability coverage carried by a party so long as such blanket policy does not reduce the limits or diminish the coverage required herein.

c. Other Insurance Matters. All policies of insurance required by this Agreement shall insure the performance of the party insured thereunder of the indemnity obligations contained in this Agreement, shall name the other party as an additional insured and shall contain a provision that the insurance company will provide all parties with not less than twenty (20) days advance written notice of any cancellation or lapse, or of the effective date of any material reduction in the amounts or scope of coverage. Each party shall deliver to the other a certificate or statement from the party's insurance company that such insurance insures the performance by the party insured of the indemnity obligations herein and the existence of the insurance coverage to the limits herein required. Each party shall promptly notify each other party of any asserted claim with respect to which such party is or may be indemnified against hereunder and shall deliver to such party copies of process and pleadings.

7. **Agreement.**

a. Remedies for Default; Waiver. If the owner of any Parcel shall, during the term of this Agreement, default in the full, faithful and punctual performance of any obligation required hereunder and if at the end of thirty (30) days after written notice from any owner of a Parcel or the party to whom its authority has been delegated, stating with particularity the nature and extent of such default, the defaulting owner has failed to cure such default, and if a diligent effort is not then being made to cure such default, then any other owner of a Parcel of land subject to this Agreement or the party to whom its authority has been delegated shall, in addition to all other remedies it may have at law or in equity, have the right to perform such obligation of this Agreement on behalf of such defaulting owner and be reimbursed by such defaulting owner for the cost thereof with interest thereon at the

rate of ten percent (10%) per annum. Any such claim for reimbursement, together with interest as aforesaid, shall be a secured claim and a lien shall attach and take effect upon recordation of a property claim of lien by the claimant in the office of the county recorder of the county in which the land is located. The claim of lien shall include the following: (1) the name of the claimant; (2) a statement concerning the basis of the claim of lien, (3) the last known name and address of the owner or reputed owner of the Parcel against which the lien is claimed; (4) a description of the property against which the lien is claimed; (5) a description of the "work performed or payment made" which has given rise to the claim of lien hereunder and a statement itemizing the amount thereof; and (6) a statement that the lien is claimed pursuant to the provision of this Agreement reciting the date, book and page of the recordation hereof. The notice shall be duly verified, acknowledged and contain a certificate that a copy thereof has been served upon the party against whom the lien is claimed, either by personal service or by mailing (first class, certified, or return receipt requested) to the defaulting owner, at the address for mailing of tax statements with respect to the property against which the lien is claimed. The lien so claimed shall attach from the date of recordation solely in the amount claimed thereby and it may be enforced in any manner allowed by law for the foreclosure of liens. Notwithstanding the foregoing, such lien shall be subordinate to any mortgage or deed of trust given in good faith and for value now or hereafter encumbering the property subjected to the lien, and any purchaser at any foreclosure or trustee's sale (as well as any grantee by deed in lieu of foreclosure or trustee's sale) under any mortgage or deed of trust shall take free and clear from any such then existing lien, but otherwise subject to the provisions of this Agreement. The failure of the owner or owners of any of the Parcels subject to this Agreement to insist in any one or more cases upon the strict performance of any of the promises, covenants, conditions, restrictions or agreements herein, shall not be construed as a waiver or relinquishment of any future breach of the same or other provisions hereof.

b. Non-Merger. So long as a party is a tenant of a Parcel, this Agreement shall not be subject to the doctrine of merger, even though the underlying fee ownership to the Parcels described herein is vested in such party.

c. Duration. Unless otherwise cancelled and terminated, this Agreement and all the easements, rights and obligations hereof shall automatically terminate and be of no further force or effect after fifty-five (55) years from the date hereof, except that the access easements (but not the parking easements) described in Section 3(a) and except that the utility easements granted pursuant to Section 3(d) and 3(e) shall continue in full force and effect until terminated in writing by the parties entitled to modify this Agreement in accordance with the provisions hereof.

8. **Rights and Obligations of Lenders.**

Subject to, and except as provided under the provisions of Section 7(a) above, the restrictions and burdens of this Agreement are, and shall at all times be, prior and

therefore superior to the lien or encumbrance of any mortgage or deed of trust made in good faith and for value affecting the Draper Spectrum Parcel or the Black Clover Parcel or any part thereof, or any improvements now or hereafter placed thereon. However, a breach of any of the easements, covenants, or restrictions hereof shall not defeat or render invalid the lien or encumbrance of any mortgage or deed of trust. The superiority of this Agreement shall be limited to the extent that title to any property acquired through sale under foreclosure of any mortgage or deed of trust effected by powers of sale, judicial proceedings, or otherwise, shall be subject to all the restrictions and burdens affecting the Draper Spectrum Parcel and the Black Clover Parcel by virtue of this Agreement, as noted in Section 7(a) hereof.

9. **Release from Liability.**

Any person acquiring fee or leasehold title to the Draper Spectrum Parcel or the Black Clover Parcel or any portion thereon shall be bound by this Agreement only as to the Parcels or portion of the Parcels acquired by such person. Such person shall be bound by this Agreement only during the period such person is the fee or leasehold owner of such Parcel(s) or portion of the Parcel(s), except as to obligations, liabilities or responsibilities that accrue during said period. Although persons may be released under this Section, the easements, covenants and restrictions in this Agreement shall continue to be benefits and servitudes which run with the land as described in Section 10 below.

10. **Rights of Successors.**

The easements, covenants, conditions, restrictions, benefits, and obligations hereunder shall create mutual benefits and servitudes upon the Draper Spectrum Parcel and the Black Clover Parcel and shall run with the land. This Agreement shall bind and inure to the benefit of the parties hereto, their respective heirs, personal representatives, tenants, successors, and/or assigns. The singular number includes the plural and any gender includes all other genders.

11. **Dispute Resolution.**

All disputes or claims arising under this Agreement shall be mediated by a mediator to be agreed upon by the parties. If after good faith efforts by the parties mediation is unsuccessful in resolving the dispute(s), then any remaining controversy or claim arising out of or relating to this Agreement or the breach thereof may be resolved in a court of competent jurisdiction. The prevailing party in any such action shall be entitled to recover all costs, including reasonable attorneys' fees, incurred in enforcing the terms of this Agreement. This Agreement shall be governed by and construed in accordance with the law of the State of Utah that are applicable to contracts entered into and to be performed in Utah, without regard to rules relating to conflicts of law.

12. **Paragraph Headings.**

The paragraph headings herein contained are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.

13. **Not a Public Dedication.**

Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Common Areas to the general public or for the general public or for any public purposes whatsoever, it being the intention of the parties hereto that this Agreement shall be strictly limited to and for the purposes herein expressed. The right of the public or any person to make any use whatsoever of the Common Areas of the Parcels herein affected, or any portion thereof (other than any use expressly allowed by a written or recorded map, agreement, deed or dedication) is by permission, and subject to the control of the owner. Notwithstanding any other provisions herein to the contrary, the owners of the Parcels affected hereby may periodically restrict ingress and egress from the Common Areas in order to prevent a prescriptive easement from arising by reason of continued public use. Any restriction on ingress and egress shall be limited to the minimum period necessary to prevent the creation of a prescriptive easement and shall occur at such a time as to have a minimum effect on the parties in occupancy within the Shopping Center.

14. **Document Execution and Change.**

It is understood and agreed that until this Agreement is fully executed and delivered by both Black Clover and Draper Spectrum there is not and shall not be an agreement of any kind between the parties hereto upon which any commitment, undertaking or obligation can be based. It is further agreed that once this document is fully executed and delivered that it contains the entire agreement between the parties hereto and that, in executing it, the parties do not rely upon any statement, promise or representation not herein expressed, and this document, once executed and delivered, shall not be modified, changed or altered in any respect except by writing executed and delivered in the same manner as required for this document.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Restrictions, Easements and Maintenance Agreement the day and year first above written.

Draper Spectrum, L.C.

By: _____
John R. Thackeray, Manager

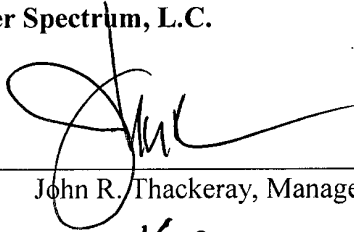
By: _____
Kevin S. Garn, Manager

Black Clover Enterprises, LLC
a Utah limited liability company

By:  / Black Clover
Steven Lichtie, Chief Operating Officer

IN WITNESS WHEREOF, the parties hereto have executed this Restrictions, Easements and Maintenance Agreement the day and year first above written.

Draper Spectrum, L.C.

By: 

John R. Thackeray, Manager

By: 

Kevin S. Garn, Manager

Black Clover Enterprises, LLC
a Utah limited liability company

By: _____
Steven Lichtie, Chief Operating Officer

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

Before me, the undersigned authority, on this day personally appeared JOHN R. THACKERAY, Manager of Draper Spectrum, L.C., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said limited liability company.

Given under my hand and seal of office on this 14 day of DEC., 2017



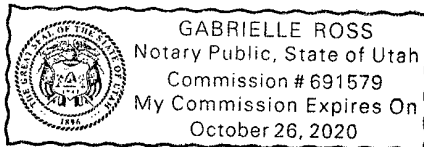
Gaylynn Hart
Notary Public
Notary's name printed: Gaylynn Hart

My Commission Expires:
8-7-19

STATE OF UTAH)
)
) : ss.
COUNTY OF Davis)

Before me, the undersigned authority, on this day personally appeared KEVIN S. GARN, Manager of Draper Spectrum, L.C., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said limited liability company.

Given under my hand and seal of office on this 15 day of December, 2017.



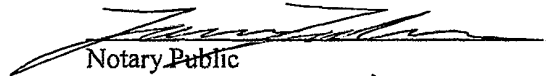
Gabrielle Ross
Notary Public
Notary's name printed: Gabrielle Ross

My Commission Expires:
10/26/2020

STATE OF Utah)
 : ss.
 COUNTY OF Salt Lake

Before me, the undersigned authority, on this day personally appeared Steven Lichtie, the Chief Operating Officer of Black Clover Enterprises, LLC, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said limited liability company.

Given under my hand and seal of office on this 19 day of December, 2017.


Notary Public
Notary's name printed: Jameson Jackson

My Commission Expires:
05/02/2020

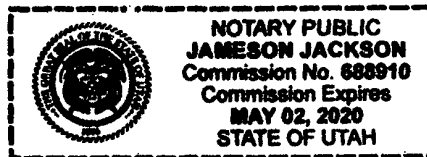
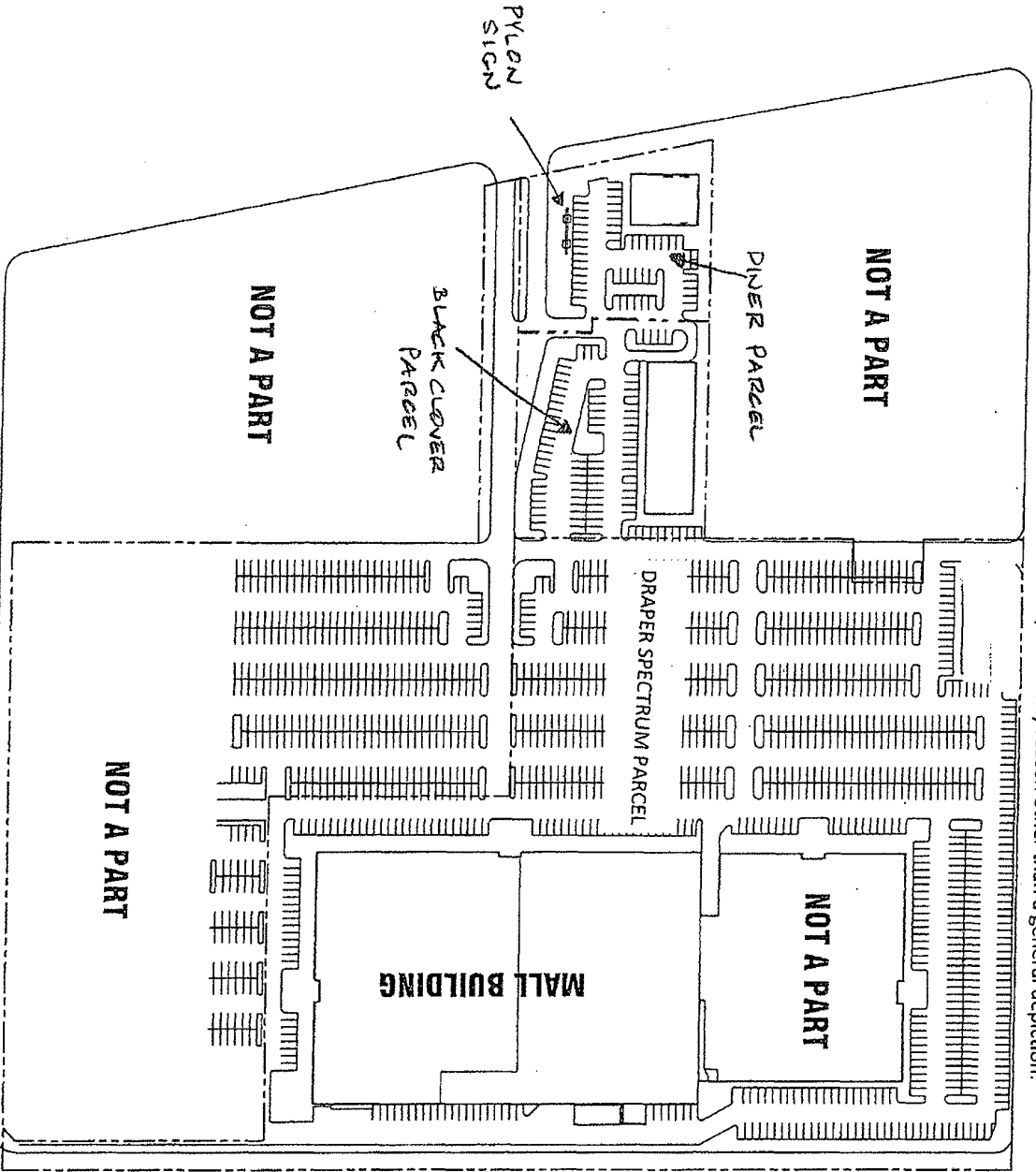



EXHIBIT "A"

General Depiction of the Shopping Center

[See attached]

This depiction is conceptual and provided for general reference only; the contents of this depiction are not entirely accurate and may not be relied upon for any reason other than a general depiction.





 GEORGE
 SITE PLAN
 SCALE: 1" = 100'
 1/2"

DRAPER SPECTRUM

12101 SOUTH
 FACTORY
 OUTLET DRIVE

THACKERAY COMPANY
 110 Republic Ave., Suite 270
 Salt Lake City, Utah 84102
NICHOLS • NAYLOR
 ARCHITECTS
 1150 EAST WASHINGTON AVENUE SUITE 200
 SALT LAKE CITY, UTAH 84102 (801) 487-3330

EXHIBIT "B"

DRAPER SPECTRUM PARCEL DESCRIPTION

Lot 102A of EASTGATE SUBDIVISION AMENDED, according to the official plat thereof, filed in Book "2013P" of Plats, at Page 247 of the Official Records of the Salt Lake County Recorder.

Together with

A parcel of land situate in the Northwest Quarter of Section 30, Township 3 South, Range 1 East, Salt Lake Base and Meridian, more particularly described as follows:

Commencing South 0°03'30" East 1759.96 feet and North 89°57'50" West 2368.34 feet from the North Quarter Corner of Section 30, Township 3 South, Range 1 East, Salt Lake Base and Meridian, and running;

thence South 00°02'10" West 126.88 feet;
thence East 46.21 feet;
thence South 109.62 feet;
thence South 89°57'28" West 233.70 feet to a point on the Easterly Right-of-Way of State Street;
thence North 11°34'55" West 241.75 feet along said Right-of-Way;
thence South 89°57'44" East 236.10 feet to the point of beginning.

Less & Excepting

Commencing South 0°03'30" East 1903.85 feet and West 2445.59 feet from the North Quarter Corner of Section 30, Township 3 South, Range 1 East, Salt Lake Base and Meridian, and running;

thence South 48.05 feet;
thence West 82.35 feet;
thence North 30.05 feet;
thence East 39.35 feet;
thence North 18.00 feet;
thence East 43.00 feet to the point of beginning.

Together with

A parcel of land situate in the Northwest Quarter of Section 30, Township 3 South, Range 1 East, Salt Lake Base and Meridian, more particularly described as follows:

Commencing South 0°03'30" East 1903.85 feet and West 2445.59 feet from the North Quarter Corner of Section 30, Township 3 South, Range 1 East, Salt Lake Base and Meridian, and running;

thence South 48.05 feet;
thence West 82.35 feet;
thence North 30.05 feet;
thence East 39.35 feet;
thence North 18.00 feet;
thence East 43.00 feet to the point of beginning.

Portion of Parcel No. 28-30-151-056

EXHIBIT "C"

BLACK CLOVER PARCEL DESCRIPTION

A parcel of land situate in the Northwest Quarter of Section 30, Township 3 South, Range 1 East, Salt Lake Base and Meridian, more particularly described as follows:

Part of Lot 101A, Eastgate Subdivision Amended, Amending Lots 101 and 103 of Eastgate Subdivision, according to the official plat thereof, filed in Book "2013P" of Plats, at Page 247 of the official records of the Salt Lake County Recorder, more particularly described as follows:

Commencing South 0°03'30" East 1759.96 feet and North 89°57'50" West 2110.74 feet from the North Quarter Corner of Section 30, Township 3 South, Range 1 East, Salt Lake Base and Meridian, and running;

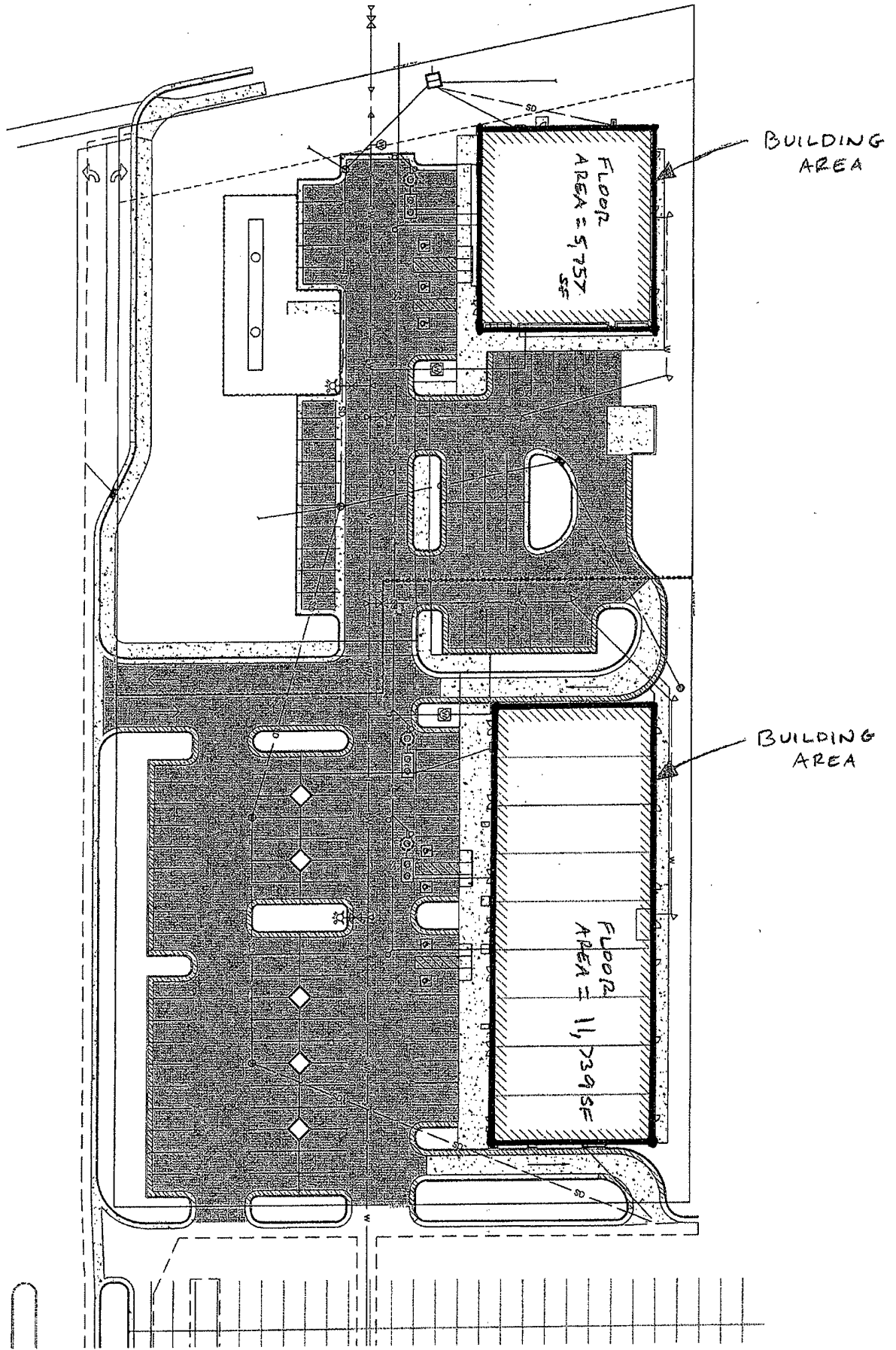
thence South 00°02'10" West 236.18 feet;
thence South 89°57'28" West 211.31 feet;
thence North 109.62 feet;
thence West 46.21 feet;
thence North 00°02'10" East 126.88 feet;
thence South 89°57'50" East 257.60 feet to the point of beginning.

(portion of Parcel No. 28-30-151-056)

EXHIBIT "D"

Site Plan Showing "Building Area" and "Floor Area"

[See Attached]



CONSENT AND SUBORDINATION


WELLS FARGO BANK, NATIONAL ASSOCIATION ("**Lender**"), is the current beneficiary under that certain Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of July 23, 2012, executed by Draper Spectrum, L.C., a Utah limited liability company ("**Borrower**"), as Trustor, in favor of Landmark Title Company, as Trustee, for the benefit of Lender, as Beneficiary, and recorded August 3, 2012, as Entry No. 11443536, in Book 10042, at Page 5937 of the official records of Salt Lake County, Utah (as the same may be further amended, modified, supplemented or replaced from time to time, "**Security Instrument**"), encumbering real property more particularly described in Exhibit A therein (the "**Subject Property**").

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged: (i) Lender consents to the execution and recordation against the Subject Property of that certain Restrictions, Easements and Maintenance Agreement between Borrower and Black Clover Enterprises, LLC, a Utah limited liability company, to which this Consent and Subordination is attached (the "**REM Agreement**"); and (ii) Lender subordinates its lien granted pursuant to the Security Instrument to the REM Agreement. A foreclosure of the Security Instrument shall not extinguish or impair the existence or priority of the REM Agreement.

Dated as of: DECEMBER 15TH, 2017


"LENDER"

WELLS FARGO BANK, NATIONAL ASSOCIATION

By: 
Name: Erik Bengtzen
Title: Vice President

STATE OF UTAH)
)
) :ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 15TH day of DECEMBER, 2017, by ERIK BENGTZEN, a Vice President of Wells Fargo Bank, National Association, a national banking association, for and on behalf of such national banking association.


NOTARY PUBLIC
Residing at: SALT LAKE

My commission expires: 2/2/21

