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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made this 19th day of SEPTEMBER, 1994, by Draper Industrial Park, L.C., a Utah Limited Liability Company (hereinafter the "Grantor").

WITNESSETH:

WHEREAS, the Grantor is the Owner, or Contract Purchaser of certain real property, located in the County of Salt Lake, State of Utah, commonly known as the City of Draper and collectively described upon Exhibit "A" attached hereto and incorporated herein by reference and (hereinafter either "DIP" or the "Property"); and

WHEREAS, the Grantor desire to subject the Property, in its entirety to the Protective Covenants hereinafter set forth, each and all of which are for the benefit of the Property and for each subsequent Owner and Occupant thereof;

NOW THEREFORE, the Grantor hereby declare and covenant that the Property shall be held, transferred, sold, conveyed, leased, subleased and occupied subject to the Conditions, Covenants, Restrictions, Easements and Reservations hereinafter set forth.

I. PURPOSE OF THIS DECLARATION.

This Declaration is made to require development improvement and use of the Property so as to:

- (a) Protect the Owner and Occupants of Building Sites against such use of neighboring Building Sites as might depreciate the value of their property;
- (b) Encourage the erection of attractive, permanent improvements appropriate located to ensure harmonious appearance and functions;
- (c) Assure adequate off-street parking spaces and off-street truck loading and maneuvering facilities;
- (d) Encourage the development of aesthetic, architectural and engineering design, including compatible landscaping and, in general, provide a harmonious development that will promote the general welfare of the Owners and Occupants of the Property.

II. DEFINITION OF TERMS.

The following terms and words are defined for use herein as follows:

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(a) Building - shall mean and include, but not be limited to the main portion of a structure built for permanent use and all projections or extensions thereof, including, but not limited to garages, outside platforms and docks, storage tanks, carports, canopies, enclosed malls and porches;

(b) Building Site - shall mean a tract of real property within the Property, as determined by the legal description to a conveyance or lease from the Owner thereof. If fee simple title to two (2) or more adjacent Building Sites, as defined hereinabove, is acquired by the same Owner, such commonly-owned Building Site may, at the option of said Owner, be combined and treated as a single Building Site for the purpose of this Declaration, provided that the location of the Improvements on such combined Building Site shall be subject to prior written approval by the Declarant;

(c) Declaration - shall mean this Declaration of Covenants, Conditions and Restrictions, together with all of the provisions contained herein;

(d) Improvements - shall mean and include, but not be limited to Buildings, out buildings, driveways, exterior lighting, fences, landscaping, lawns, loading areas, parking areas, railroad trackage, retaining walls, roads, screening walls, signs, utilities and walkways located on a Building Site;

(e) Landscaping - a space of ground covered with lawn and/or ground cover combined with shrubbery, trees and the like, which may be complemented with earth berms, masonry or similar materials, all harmoniously combined with themselves and with other improvements on the Building Site;

(f) Lawn - a space of ground covered with grass, kept neatly mown and maintained.

(g) Occupant - shall mean an entity, whether it be an individual, corporation, joint venture, partnership or association, which has purchased, leased, rented or has otherwise, legally acquired the right to occupy and use any Building, Building Site or portions of any Building or Building Site, whether or not such right is exercised;

(h) Owner - shall mean an entity, whether it be an individual, corporation, joint venture, partnership or association, which is record owner of any fee simple estate, or which has an equity of redemption in a Building Site;

(i) Sign - shall mean and include every advertising message, announcement, declaration, demonstration, display, illustration, insignia, surface or space erected or maintained in view of the observer thereof for identification, advertisement or promotion of

the interested of any person, entity, product or service. The definition of Sign shall also include the sign structure, supports, lighting system and any attachments, ornaments or other features used to draw the attention of observers. This definition does not include any flag, badge or ensign of any government agency erected for and used to identify said government or governmental agency;

(j) Street - shall mean any public street or highway, whether presently constructed, dedicated by plat or map or contemplated in the future, under a street plan approved by any public authority.

III. LAND USE.

Building Sites within the Property, shall be used for high quality commercial, industrial and retail purposes. The foregoing shall not, however, prevent an owner from constructing, owning, operating, leasing or conveying real property within DIP for service facilities consistent with the purpose of this Declaration.

IV. PROHIBITED USES.

No portion of the Property may be occupied by any of the following uses;

(a) Storage in bulk of any junk, wrecked autos or similar materials of any nature in or adjacent to the Building Site.

(b) No portion of the Building Site or any Building or structure thereon at any time shall be used for the manufacture, storage, distribution, or sale of any products or items which shall increase the fire hazard of adjoining property; or for any business which constitutes a nuisance or causes the emission of odors of a gas injurious to products manufactured or stored on adjoining Building Sites or which emit undue noise or for any purpose which will injure the reputation of said Building Site or the neighboring property or Building Site(s) or for any use which is in violation of any State, Federal or City laws or regulations.

V. RESTRICTIONS AND REQUIREMENTS ON IMPROVEMENTS.

The following restrictions and requirements are imposed on the Property subject to this Declaration and are binding on all Owners and Occupants, and may be enforced against such Owners and Occupants jointly and/or severally.

(a) Temporary Structures - No temporary Buildings or other temporary structures shall be permitted on any building Site; provided, however, trailers, temporary buildings and the like shall be permitted for construction purposes during the construction period of a permanent Building. The location and nature of such structures shall be places as inconspicuously as practicable, shall

cause no inconvenience to Owner or Occupants of other Building Sites, and shall be removed not later than thirty (30) days after the date of substantial completion for beneficial occupancy of the Building(s) in connection with which the temporary structure was used;

(b) Location of Buildings - All Buildings shall be set back at least twenty five feet (25') back from the street frontage. The side and rear yard setbacks shall be minimum distance of thirty feet (30') or more if required by DIP or local codes and ordinances except for underground improvements which may be placed within those portions setback areas which are not included in the ten foot (10') landscaped area as identified in paragraph (f) below;

(c) Parking, Loading and Unloading Areas - No parking shall be permitted on any street or drive, or any place other than parking areas located upon Building Sites. Each Owner and Occupant shall be responsible for compliance by its employees and visitors.

All driveways and areas for parking, maneuvering, loading and unloading shall be paved with asphalt, concrete or similar materials;

Paved parking areas on any Building Site shall have landscaping islands intermittently placed therein;

Loading areas shall not encroach into setback areas along street frontages. Off-street loading space shall be designed to include an additional area of means of ingress and egress which shall be adequate for maneuvering;

(d) Screening of Service Facilities and Storage Areas - Garbage and refuse containers shall be contained within Buildings, or shall be concealed by means of shrubbery or screening walls or fences. Fuel and other storage tanks shall be installed underground whenever practicable or screened from public view. Such improvements shall be integrated with the concept of the Building plan designed so as not to attract attention, and shall be inconspicuously located. Unless specifically approved in writing for display and similar purpose, no materials, supplies or equipment shall be stored in any area on a Building Site except inside a closed building or behind a visual barrier which screens such areas so they are not visible to the general public from the front view of neighboring Building Sites or from public streets.

(e) Landscaping - Every Building site shall be landscaped in accordance with local codes and ordinances. Landscaping shall be installed within ninety (90) days after completion of Building construction or as soon hereafter as weather will permit.

(f) Landscaping - Adjacent to Streets - Each Building Site shall be completely landscaped for a minimum depth of ten feet (10') inside the property boundary line along street frontages which shall constitute on-half of the twenty five foot (25') required street setback. The remainder of the required twenty five foot (25') street setback may be used for parking; provided, however, that intermittent landscaping is placed in the parking areas so used. In addition, any area lying between property lines and finished curb lines shall be planted in lawn. Such lawns and landscape area shall be maintained by Owner and Occupants of the Building Site.

(g) Exterior Materials, Colors - Architecturally and aesthetically suitable building materials shall be applied to or used on all sides of any Building which are visible to the general public and/or the front view of the neighboring Building Sites. Colors shall be harmonious and compatible with colors of the natural surroundings and other adjacent Buildings.

(h) Utilities - Mechanical Equipment - Roof Projections - All utility lines, including electrical, shall be underground. Pad-mounted transformers, switch gear and similar equipment, which must be installed above ground line, shall be screened with suitable landscaping consistent with safety and other regulations of the utilities companies.

Antennae shall be visually masked to the extent practicable and consistent with electromagnetic considerations.

(i) Pollutants - No trades services or activities shall be conducted upon the Property, nor shall anything else be done therein which may be or may become an annoyance or nuisance to the Owners or Occupants by reason of unsightliness or excess emission of fumes, odors, glare, vibrations, gases, radiation, dust, liquid wastes, smoke or noise;

(j) Exterior Lighting - All exterior and security lighting shall have underground service and shall be designed, erected, altered and maintained.

(k) Maintenance - Each Owner and Occupancy of the Property shall be responsible for keeping its Building Site or Sites, whether or not improved, Buildings, and other Improvements, including lawns and landscaping, maintained in a safe, clean, neat and orderly condition, and shall prevent rubbish, dunnage, replaced equipment or machinery and the like, from accumulating on its Building Site;

(l) Fences - Fences along street frontages shall be erected behind the ten foot (10') landscaped area required in paragraph (f) above;

(m) Signs - All signs must be approved in writing and must conform to the following standards in addition to any sign regulations adopted by Draper City.

(1) Only the following signs are allowed:

(1) Public necessity signs identifying danger or hazard on or near the Property;

(2) Property signs offering the property for sale or lease, or announcing contemplated improvements.

(3) On-premises building signs directing attention to a use, product, or service conducted on the property on which it is located.

(4) Identification signs indicating the nature of Buildings or uses other than commercial or industrial.

(5) Service signs giving information to public such as directions to parking facilities.

(6) Painted wall signs subject to size and type restrictions below.

(ii) In addition to signs prohibited in Draper City sign regulations, the following signs are specifically prohibited;

(1) Off-premises business signs advertising products or services not provided on the Property.

(2) Roof signs erected partly or wholly on or over the roof of a Building.

(iii) In addition to a front yard setback required by Draper City sign regulations, a side yard setback of at least fifteen feet (15') is required.

(iv) Maximum height of ground signs supported by a fixed, permanent frame or support in the ground shall be ten feet (10') above the adjacent finish ground elevation or one half of the height of the average main mass of the Building for which the sign is erected, whichever is greater.

(v) Business signs shall be limited to one or more signs not exceeding one square foot for each two linear feet of frontage occupied by the Owner or Occupant, but in no case shall the total area of all business signs associated with one Building exceed two hundred fifty (250) square feet.

(vi) Where Buildings are owned or occupied by more than one business entity in the same Building, business signs must

be standardized flat signs. The Owner or Occupant shall submit his selected standards for approval to the Declarant. Standards must include shape, background color, and size which will be limited to one hundred square feet per Occupant, except the Owner may select a predominant Occupant for whom a separate submittal for sign approval may be made. Size, type and location of the predominant Occupant sign shall conform to the on-premises business sign standards herein.

(vii) Where five or more business entities occupy the same Building or group of Building on one Building Site under common ownership, an approved directory service sign will be allowed in addition to the on premises business sign. Size of a directory sign shall be limited to an area of twenty-five square feet plus two square feet of each Occupant, provided, however, that the total area of the directory sign shall not exceed seventy-five square feet.

(n) Zoning - Zoning restrictions and regulations, applicable building codes, State and Local entities' requirements shall apply as minimum requirements for uses of the land and the construction of the Buildings and Improvements if not further restricted above.

VI. APPROVAL OF PLANS.

No construction or exterior alterations of any Building or other Improvements, including signs, may be commenced without written approval by the Declarant of the plans for such construction or alteration. Declarant shall either approve or disapprove plans submitted in writing within thirty (30) days from the date on which they are received, and failure to either approve or disapprove within this period shall constitute approval of said plans. Wherever approval in writing is required by the terms of this Declaration, such requirement shall mean written approval of the Declarant in the following manner:

(a) All applications to Declarant shall be addresses as follows:

Draper Industrial Park, L.C.
12433 South Fort Street
Draper, Utah 84020

or to any such address as the Declarant shall hereafter designate in writing, addressed to Owners and Occupants by certified or registered mail;

(b) Declarant shall exercise its best judgement to see that all Buildings and Improvements, including signs, constructed upon the Property reasonably conform to the purposes and requirements of this Declaration; provided, however, Declarant and its employees or agents shall not be liable to any Owner or Occupant or to anyone

submitting plans for approval, or to any other party by reason of a mistake in judgement, negligence or non-feasance arising out of, or in connection with the approval, disapproval or failure to approve any such plans;

(c) Upon receipt of approval of plans, Owner or Occupant shall diligently proceed with the commencement and completion of all approved construction. Unless work on the approved construction shall be commenced within one (1) year from the date of such approval and diligently pursued thereafter, then the approval shall automatically expire, unless Declarant has given a written extension of time;

(d) Approval of plans by the Declarant may be secured prior to acquisition of a Building Site pursuant to the Terms of a sales contract.

If, after initial construction of a Building Site, Owner or Occupant submits plans for alteration, addition or reconstruction, and having received a decision of Declarant, feels that said decision is not consistent with the provisions of this Declaration such Owner or Occupant may submit the decision to determination by arbitration in the following manner:

The party desiring arbitration shall serve upon Declarant a written notice naming an arbitrator. Within ten (10) days after the delivery of said notice, Declarant shall likewise appoint an arbitrator and notify the party desiring arbitration of such appointment, and if Declarant fails within said ten (10) days to do so, the arbitrator appointed by the party desiring arbitration shall proceed in the determination of plan approval and that decision as to such approval shall be final. If Declarant appoints an arbitrator within the prescribed time, the two arbitrators so appointed shall choose a third arbitrator. If the two arbitrators so chosen shall fail to agree upon the selection of a third arbitrator within a reasonable time, such arbitrator shall be the, upon application of either party, by a judge of the District Court of the United States for the district which shall then include the locality in which the Building Site is situated, but such application shall not be made until such party shall have given ten (10) days written notice to the other party of his intention to do so. The Board of Arbitrators, constituted as aforesaid, shall proceed to determine whether or not the proposed plans shall be approved and the decision of the board, or of any two members thereof, as to such shall be binding upon the parties hereto. All expenses of such arbitration shall be apportioned equally between the parties to the arbitration.

VII. CONFLICTS.

Zoning ordinances, building codes and regulations, and any other governmental restrictions and requirements shall be observed.

In the event of any conflict between this Declaration and any such governmental codes, regulations, restrictions and requirements, the more restrictive standards shall apply. Any approval of Declarant required in this Declaration does not in any way relieve Owners and Occupants from obtaining approvals required by any governmental body having jurisdiction.

VIII. NOTICE TO BE GIVEN BY OWNERS.

Any Owner of a Building Site within DIP, who shall transfer to another entity, whether such entity be an individual, corporation, joint venture, partnership or association, any title, interest in or right of occupancy to such Building Site or portion thereof, shall give actual notice of the requirements of this Declaration of Covenant, Conditions and Restrictions to such entity.

XI. ENFORCEMENT.

Enforcement of the provisions of this Declaration shall be by any appropriate proceeding at law or in equity against any Owner, Occupant, person, corporation or other entity violating or attempting to violate said provisions, either to restrain such violation, to enforce liability, or to recover damages, or by any appropriate proceeding at law or in equity against the land to enforce any lien or charge arising by virtue hereof. Declarant shall not be liable for enforcement of, or for failure to enforce, said provisions, and failure of Declarant or of any Owner or Occupant to enforce any of the provisions of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

X. MORTGAGES - DEEDS OF TRUST.

Breach of any of the foregoing Covenants shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value within DIP; but said Covenants shall be binding upon and effective against any Owner of said premises whose title hereto is acquired by foreclosure, trustee's sale or otherwise.

XI. DURATION, MODIFICATION AND TERMINATION.

The Conditions, Covenants, Restrictions and Reservations set forth in this Declaration shall run with the land; bind the Property and shall be and remain in effect, and shall inure to the benefit of, and be enforceable by the Declarant or the Owner of any property subject to this Declaration, their heirs, successors and assigns for a term of twenty (20) years from the date of recordation of this Declaration. This Declaration may be amended, extended or terminated by the Declarant by an instrument in writing, properly executed, acknowledged and filed with the Salt Lake County Recorder; and provided further that such amendment or termination shall not adversely affect an Owner's or Occupant's

rights to use its Building Site for purposes consistent with this Declaration.

XII. SEVERABILITY.

Invalidation of any one or more of the provisions of this Declaration by judgement or court order, shall in no way affect any of the other provisions which shall remain in full force and effect.

XIII. DECLARANT'S RIGHTS AND RESERVATIONS.

The Grantors herein specifically assign unto the Declarant the right to make all discretionary decisions as provided under the terms and conditions of this Declaration relative to the Property. All of the rights of Declarant under this Declaration may be assigned or transferred either or operation of law or through a voluntary conveyance, transfer or assignment, provided the assignee of the Declarant's rights is an Owner of all or a portion of the Property. The Declarant hereby reserves unto itself, and the Grantors hereby convey unto Declarant an easement and right of way, including but not limited to rights of ingress and egress upon Property for the limited purpose of constructing, erecting, operating and/or maintaining utilities and similar public or quasi-public improvements as necessary to complete, construct, develop, expand and improve the Project. Any use of this easement shall be performed in such a reasonable manner as to minimize the impact of such construction, maintenance, use, etc. upon the Property. Declarant, or its assignee, shall reasonably repair any damages to the property associated with the use of this easement.

IN WITNESS WHEREOF, Grantors have caused this instrument to be signed by its duly authorized officer and its corporate seal, as applicable, to be affixed hereto on the date first above written.

DRAPER INDUSTRIAL PARK, L.C.

BY: [Signature] PRESIDENT OF WASATCH PACIFIC INC.
ITS: MANAGER.

STATE OF UTAH)
: ss (Corporate acknowledgement)
COUNTY OF SALT LAKE)

This day, before me, a Notary Public of the State and County aforesaid, personally appeared Terry C. Diehl pres. Wasatch Pacific who being by me duly sworn, did say that he is the Manager of Draper Industrial Park, L.C., a Utah Limited Liability Company, and that said instrument was signed in behalf of said corporation by authority of its bylaws and said Terry C. Diehl as pres. of Wasatch Pacific Inc acknowledged to me that said corporation executed the same.

Witness my hand and official seal this 19th day of September, 1994.



[Signature]
NOTARY PUBLIC

STATE OF UTAH)
: ss (Corporate acknowledgement)
COUNTY OF SALT LAKE)

This day, before me, a Notary Public of the State and County aforesaid, personally appeared _____ who being by me duly sworn, did say that he is the _____ of _____, a Utah corporation, and that said instrument was signed in behalf of said corporation by authority of its bylaws and said _____ acknowledged to me that said corporation executed the same.

Witness my hand and official seal this _____ day of _____, 1994.

(Seal)

NOTARY PUBLIC

EXHIBIT "A"

LEGAL DESCRIPTION

BEGINNING AT A POINT ON THE EAST RIGHT-OF-WAY LINE OF THE DENVER AND RIO GRANDE RAILROAD AT A POINT SOUTH 89°49'19" WEST ALONG THE SECTION LINE 927.43 FEET FROM THE NORTH QUARTER CORNER OF SECTION 36, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE SOUTH 89°49'19" WEST ALONG THE SECTION LINE 50.00 FEET;

THENCE NORTH 01°51' WEST ALONG THE EAST RIGHT-OF WAY LINE OF SAID DENVER AND RIO GRANDE RAILROAD 1543.88 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF 12300 SOUTH STREET(53 FOOT HALF WIDTH);

THENCE SOUTH 89°59'09" EAST ALONG SAID SOUTH RIGHT-OF-WAY LINE 404.52 FEET;

THENCE SOUTH 01°51' EAST 194.545 FEET;

THENCE SOUTH 89°59'09" EAST 150.00 FEET;

THENCE SOUTH 01°51' EAST 507.79 FEET;

THENCE NORTH 89°57'37" EAST 693.85 FEET;

THENCE 0°02'23" WEST 102.25 FEET;

THENCE NORTH 89°50'03" EAST 229.54 FEET;

THENCE NORTH 0°02'23" WEST 598.34 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF 12300 SOUTH STREET (53 FOOT HALF WIDTH);

THENCE SOUTH 89°55'09" EAST ALONG SAID SOUTH RIGHT-OF-WAY LINE 453.67 FEET;

THENCE SOUTH 0°02'23" EAST 988.99 FEET;

THENCE NORTH 89°57'37" EAST 300.00 FEET;

THENCE SOUTH 0°02'23" EAST 540.41 FEET;

THENCE NORTH 89°30'59" EAST 545.20 FEET TO A POINT ON THE WEST LINE OF THE UTAH POWER PROPERTY;

THENCE SOUTH 14°32'01" WEST 1373.37 FEET;

THENCE SOUTH 89°50'53" WEST 2312.96 FEET TO THE EAST RIGHT-OF-WAY LINE OF THE DENVER AND RIO GRANDE RAILROAD;

THENCE NORTH 01°51' WEST ALONG SAID EAST RIGHT-OF-WAY LINE 1318.40 FEET TO THE POINT OF BEGINNING. CONTAINS 123.724 ACRES

BK 7023 PG 1790

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09/22/94 2:46 PM 32.00
KATIE L. DIXON
RECORDER, SALT LAKE COUNTY, UTAH
METRO NATIONAL TITLE
REC BY: B PHILLIPS , DEPUTY - WI

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