

WHEN RECORDED, MAIL TO:
William A. Meaders
KIRTON & MCCONKIE
60 E. South Temple St., Suite 1800
Salt Lake City, Utah 84111

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02/14/2005 04:11 PM \$36.00
Book - 9094 Pg - 4152-4164
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
WILLIAM A MEADERS
60 E SOUTH TEMPLE ST STE 1800
SALT LAKE CITY UT 84111
BY: JLJ, DEPUTY - WI 13 P.

NOTICE OF AGREEMENT

SORENSEN ASSOCIATES, L.L.C., a Utah limited liability company, hereby gives notice of an Amendment and Restatement of Agreement (hereinafter the "Agreement") entered into on October 1, 2003, between Sorenson Associates, L.L.C. and DH-DRAPER, LLC.

The land referred to in the Agreement includes the following:

Beginning at the Southwest corner of Section 7, Township 4 South, Range 1 East, Salt Lake Base and Meridian and running thence 89° 51' 23" East 1023.00 feet along the North section line of said section; thence South 45° 06' 23" West 1453.039 feet; to the West section line of said section; thence North 00° 21' 24" East 1023.00 feet along said section line to the point of beginning.

The above described property also known by the street address of:
145 East Steep Mountain Drive, Draper, Utah 84020.

(For information purposes only, Tax Parcel No. 34181010270000)

For the terms and conditions of the Agreement, reference is made to the complete copy of the Agreement which is attached hereto and incorporated by reference herein.

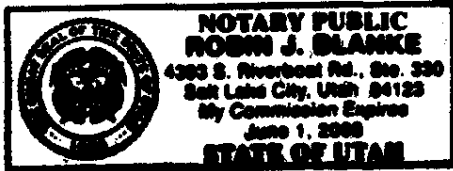
DATED this ¹⁰14 day of February, 2005.

Sorenson Associates, L.L.C.,
A Utah limited liability company

By: 
Title: Manager

STATE OF UTAH)
:
COUNTY OF SALT LAKE)

The foregoing Notice of Agreement was personally acknowledged before me this 14th
day of February, 2005 by Ralph O. Johnson, the Manager
of Sorenson Associates, L.L.C.



Robin J. Blanke
Notary Public

My commission expires: June 1, 2008

AMENDMENT AND RESTATEMENT OF AGREEMENT

1st THIS AMENDMENT AND RESTATEMENT OF AGREEMENT is made this day of October, 2003, by and between SORENSON ASSOCIATES, L.L.C., a Utah limited liability company ("Sorenson") and DH-DRAPER, LLC, a Utah limited liability company ("Dearbourne").

Recitals

A. Sorenson owns certain real property located at approximately 65 East in the City of Draper, County of Salt Lake, State of Utah, (the "Sorenson Property"). The Sorenson Property is more particularly described on Exhibit "A" attached hereto.

B. Dearbourne owns certain real property (the "Dearbourne Property") near to the Sorenson Property. The Dearbourne Property is more particularly described on Exhibit "B" attached hereto.

C. Dearbourne requires an easement for access and utilities over and across a portion of the Sorenson Property in order to construct a residential TownHome development on the Dearbourne Property. Sorenson is willing to grant such easement to Dearbourne, subject to the terms and conditions of this Agreement.

D. Dearbourne, Sorenson and Alliance Capital Development, L.L.C. have previously entered into an agreement dated November 26, 2002 (hereafter "Agreement"), to provide an easement, to define the terms pertaining thereto, and to provide for the construction of a road thereon.

E. Sorenson reserved the right under said Agreement to relocate the easement and has given notice of its intent to do so which has necessitated some modifications of the Agreement.

Terms and Conditions

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Sorenson and Dearbourne agree to amend the Agreement replacing all the terms thereof to read as follows:

1. Easement. Sorenson has previously granted a temporary, non-exclusive easement (the "Easement") for the benefit of the Dearbourne Property, allowing construction of improvements for access and utilities on certain property (the "Prior Easement Parcel.") The parties will now sign an Amendment to Access and Utilities Easement (the "Amendment to Easement"), relocating the Easement to that certain parcel described on Exhibit "C" hereto (the "New Easement Parcel"). The Amendment to Easement will be in the form attached as Exhibit "D", and the Easement will be subject to all of the provisions contained in the original grant and in Exhibit "D". Neither the Amendment to Easement nor any notice thereof shall be recorded until Sorenson has approved the location and details of the Temporary Road pursuant to paragraph 2 below.

2. Construction of Initial Improvements. In consideration for the grant of the Easement, Dearbourne will construct an asphalt road together with underground utilities within the Easement (the "Road") meeting all the requirements of the City of Draper for dedication thereof for public use. Plans showing the location and details of the Road shall be submitted to Sorenson for approval in writing prior to commencement of construction. The Road will be constructed in a good workmanlike manner, in accordance with the plans approved by Sorenson, and in accordance with all applicable rules, codes and requirements of Draper City and any other governmental entities having jurisdiction required for construction and public dedication. At the request of Sorenson during construction of the Road or at any time within 24 months thereafter, Dearbourne agrees to prepare all documentation and to pay all expenses necessary in order for the parties to complete the dedication of the Road. Each of Dearbourne and Sorenson will also cooperate by executing and providing any documents required in order to complete such dedication. When completed, the Road will be available for use by Dearbourne, the Metropolitan Water District, their respective successors and assigns, and by Sorenson and any others permitted by Sorenson, and by the public when dedicated. Dearbourne may be reimbursed for the cost of the Road by Draper City through impact fees and/or reimbursement agreements, but Dearbourne agrees that Sorenson will not be required to reimburse Dearbourne for any portion of such cost other than as described in paragraph 4 below. Dearbourne will use its best efforts to cause the Sorenson Property to be exempted from any such impact fees or reimbursement agreements. In the event that Sorenson or any purchaser of the Sorenson Property or any portion thereof pays amounts, as impact fees or pursuant to reimbursement agreements or similar agreements, which are then paid over to Dearbourne to reimburse Dearbourne for any portion of the cost of the Temporary Road, Dearbourne will repay those amounts to the payor.

3. Easement to Terminate Upon Construction, Dedication and Acceptance of Road. The parties anticipate that the Road may be dedicated for public use. Upon the completion, dedication and acceptance of the Road by the City of Draper, the Easement will automatically terminate and expire without any further action or approval by any party hereto. Notwithstanding the forgoing, Dearborne, at the request of Sorenson, shall execute and deliver to Sorenson a quitclaim deed or other document required by Sorenson to be recorded in the Salt Lake County Recorder's Office to give notice of such termination of this easement.

4. Sharing of Cost of Road. Sorenson and Dearbourne will share the costs of construction of the Road (the "Construction Costs"). The Construction Costs will include, without limitation: (a) all costs of planning, engineering, grading, asphaltting, and installation of sidewalks, curbs, gutters, water and sewer lines, storm drain lines, electrical, gas, telephone, cable lines and all other costs of infrastructure related to the Road, and (b) the price of the land required for the right-of-way for the Road at the rate of \$8.00 per square foot, which price will be paid to Sorenson. Because the Metropolitan Water District of Salt Lake and Sandy has an obligation to the City of Draper to pay up to \$500,000 of the Construction Costs of the Road, the remaining balance of the Construction Costs after said funding shall be paid 50% by Sorenson and 50% by Dearbourne. Sorenson, at its option, may elect to receive a credit for the price of the land against its share of the Construction Costs rather than pay cash.

5. Amendment of Prior Easement. The execution and recording of the Amendment to Easement attached hereto shall relocate the Easement and shall automatically

terminate all rights of Dearbourne in any of the Prior Easement Parcel which is not part of the New Easement Parcel as described in the Amendment to Easement. The parties agree to execute such further documents, if any, as may be required to terminate Dearbourne's easement rights in the Prior Easement Parcel and grant the same easement rights in the New Easement Parcel, and to record the same in the Salt Lake County Recorder's Office.

6. Gas Deposit for 65 East. Dearbourne shall pay Sorenson \$5,700.00 to reimburse Sorenson for a deposit to Questar for the installation of a gas line for the construction of 65 East Road to which the Road connects. At such time as Sorenson is reimbursed for the deposit, Sorenson shall reimburse Dearbourne such amount.

7. Miscellaneous.

- a. Modification or Amendments. No amendment or modification of this Agreement shall be valid unless in writing and signed by all of the parties hereto.
- b. Binding Nature; Successors and Assigns. The terms and provisions contained herein shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.
- c. Attorney's Fees. Should any party breach any of the covenants or agreements made by that party herein, the party committing the breach shall pay all costs, expenses (including, without limitation, expert witness fees), and reasonable attorneys' fees which any other party may incur in enforcing or terminating this Agreement, or in pursuing any other remedy provided for hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise.
- d. Entire Agreement. This Agreement, including all exhibits attached hereto, constitutes the entire understanding and agreement of the parties and any and all prior agreements, understandings or representations (either verbal or written) relating to the subject matter of this Agreement are hereby terminated and canceled in their entirety and are of no force and effect. All exhibits attached hereto and referred to herein are incorporated into this Agreement by reference and form a part hereof.
- e. Captions. The captions appearing in this Agreement are for convenience in reference only. Should there be any conflict between any caption and the paragraph with which it appears, the paragraph and not the caption shall control.
- f. Counterparts and Faxed Copies. This Agreement may be executed in any number of counterparts, provided each counterpart is identical in its terms. Each such counterpart,


when executed and delivered will be deemed to be an original, and all such counterparts shall be deemed to constitute one and the same instrument. Facsimile transmission of a signed counterpart shall be deemed to constitute delivery of the signed original.

- g. Applicable Law and Severability. This Agreement shall, in all respects, be governed by the internal laws of the State of Utah, excluding local laws governing choice of law.

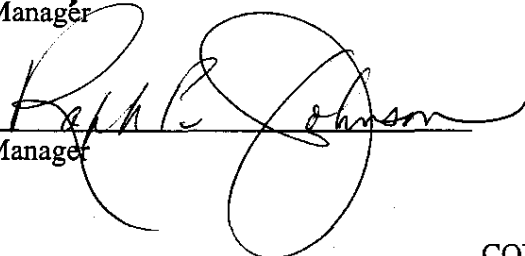
8. Prior Agreement Superseded. This Amendment and Restatement of Agreement supersedes and replaces the Agreement of November 26, 2002 between Sorenson, Dearbourne and Alliance Capital Development, L.L.C. (the "Prior Agreement.") Upon execution and delivery of this Amendment and Restatement of Agreement, the Prior Agreement will cease to be in effect. Alliance Capital Development, L.L.C. does not own any interest in the New Easement Parcel and is therefore not made a party to this Amendment and Restatement of Agreement. By signing below, Alliance Capital Development, L.L.C. consents to the termination of the Prior Agreement.

IN WITNESS WHEREOF, the parties have executed this Amendment of the Agreement as of the day and year first above written.

SORENSEN ASSOCIATES, L.L.C.

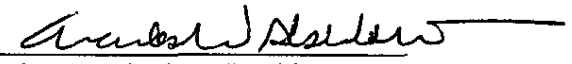


Manager



Manager

DH DRAPER, LLC by
Dearbourne Heights LLC, Its Manager
by Proterra Companies,
Inc., its Manager

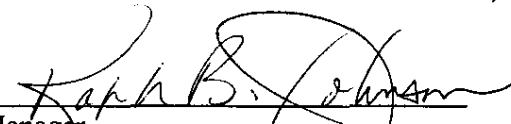


Charles W. Akerlow, President


CONSENT

ALLIANCE CAPITAL DEVELOPMENT, L.L.C. ("Alliance") signs below to signify its consent to the termination of the Prior Agreement as stated in paragraph 8 of the foregoing Amendment and Restatement of Agreement.

ALLIANCE CAPITAL DEVELOPMENT, L.L.C.



Manager



Manager

Exhibit "A"

Columbia Drive Construction Easement - Sorenson

Beginning at the northwest corner of Lot 3, as shown on the subdivision plat entitled "South Pointe Commerce Center Subdivision," Book 2003P, Page 6, in the office of the Salt Lake Country Recorder, Township 4 South, Range 1 East;

thence along the northerly boundary of said subdivision N 60°19'24" E, 855.68 feet to a point on a non-tangent 75.00 foot radius curve to the right, said point also being on the Right-Of-Way of 65 East (radius bears N 28°45'41" E);

thence along said curve and continuing along said R.O.W 125.11 feet, through a central angle of 95°34'29";

thence N 65°33'29" W, 11.00 feet to a point on a non-tangent 61.00 foot radius curve to the right (radius bears N 65°33'29" W);

thence along said curve 48.17 feet, through a central angle of 45°14'41";

thence S 69°41'12" W, 50.17 feet to a point on a 287.50 foot radius curve to the left (radius bears S 20°18'48" E);

thence along said curve 147.28 feet, through a central angle of 26°21'05";

thence S 40°20'07" W, 61.57 feet to a point on a 202.50 foot radius curve to the right (radius bears N 49°39'53" W);

thence along said curve 70.64 feet, through a central angle of 19°59'18";

thence S 60°19'24" W, 613.46 feet;

thence S 29°40'36" E, 48.55 feet;

thence N 70°30'59" E, 121.20 feet to the point of beginning and containing 77,824.29 sq.ft. or 1.787 acres.

EXHIBIT B
Dearbourne Heights Parcel

The land referred to in this commitment, is situated in the County of SALT LAKE, State of UTAH, and is described as follows:

Beginning at the Southwest corner of Section 7, Township 4 South, Range 1 East, Salt Lake Base and Meridian and running thence North $89^{\circ}51'23''$ East 1023.00 feet along the North section line of said section; thence South $45^{\circ}06'23''$ West 1453.039 feet; to the West section line of said section; thence North $00^{\circ}21'24''$ East 1023.00 feet along said section line to the point of beginning.

The above described property also known by the street address of:

145 East Steep Mountain Drive, Draper, Utah 84020

* * *

Exhibit "C"

Columbia Drive Construction Easement - Sorenson

Beginning at the northwest corner of Lot 3, as shown on the subdivision plat entitled "South Pointe Commerce Center Subdivision," Book 2003P, Page 6, in the office of the Salt Lake Country Recorder, Township 4 South, Range 1 East;

thence along the northerly boundary of said subdivision N 60°19'24" E, 855.68 feet to a point on a non-tangent 75.00 foot radius curve to the right, said point also being on the Right-Of-Way of 65 East (radius bears N 28°45'41" E);

thence along said curve and continuing along said R.O.W 125.11 feet, through a central angle of 95°34'29";

thence N 65°33'29" W, 11.00 feet to a point on a non-tangent 61.00 foot radius curve to the right (radius bears N 65°33'29" W);

thence along said curve 48.17 feet, through a central angle of 45°14'41";

thence S 69°41'12" W, 50.17 feet to a point on a 287.50 foot radius curve to the left (radius bears S 20°18'48" E);

thence along said curve 147.28 feet, through a central angle of 26°21'05";

thence S 40°20'07" W, 61.57 feet to a point on a 202.50 foot radius curve to the right (radius bears N 49°39'53" W);

thence along said curve 70.64 feet, through a central angle of 19°59'18";

thence S 60°19'24" W, 613.46 feet;

thence S 29°40'36" E, 48.55 feet;

thence N 70°30'59" E, 121.20 feet to the point of beginning and containing 77,824.29 sq.ft. or 1.787 acres.

EXHIBIT "D"
Amendment to Easement

WHEN RECORDED, MAIL TO:

AMENDMENT TO ACCESS AND UTILITIES EASEMENT

THIS AMENDMENT TO ACCESS AND UTILITIES EASEMENT is made this 1st day of October, 2003, by and between SORENSON ASSOCIATES, L.L.C., a Utah limited liability company ("Grantor") and DH-DRAPER, LLC, a Utah limited liability company ("Grantee.")

Recitals

A. On or about November 26, 2003, Grantor and Alliance Capital Development, L.L.C. signed an Access and Utilities Easement (the "Original Easement") granting certain easement rights to Grantee.

B. The Original Easement was recorded on Dec. 3, 2002, ~~2003~~, as Entry No. 8444037, in Book 8696, at Page 3081 of the official records in the Office of the Salt Lake County Recorder.

C. The parties now desire to amend the Original Easement in order to relocate the easement granted therein. Grantor is the sole owner of the property to which the easement will be relocated. Grantee is the sole owner of the property benefited by the Original Easement.

Terms of Amendment

NOW, THEREFORE, for Ten Dollars and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to amend the Original Easement as follows:

1. Relocation of Easement. The "Easement Area" defined in the Original Easement and legally described on Exhibit A attached to the Original Easement is hereby amended to be at the location legally described on Exhibit 1 attached to this Amendment.

2. Termination of Rights in Prior Location. The Original Easement stated, in part: "In the event of relocation, the parties shall execute an amendment to this instrument specifying the relocated route at the time of any such relocation. Recording the amendment shall terminate all rights of the Grantee in the parcel from which the parties move the easement rights of Grantee." In accordance with said provision, the parties acknowledge and agree that upon recording of this Amendment, the easement held by Grantee pursuant to the Original Easement and this Amendment will affect only that property described on Exhibit 1 attached to this Amendment and will automatically terminate as to any other property of Grantor. Grantee


hereby disclaims any interest in any parcel of parcels which were subject to the Original Easement but which are not included in the legal description on Exhibit 1 attached to this Amendment.

3. Reaffirmation of Easement. Except as expressly modified herein and except as stated in paragraph 2 hereof, the Original Easement remains in full force and effect in accordance with its terms.

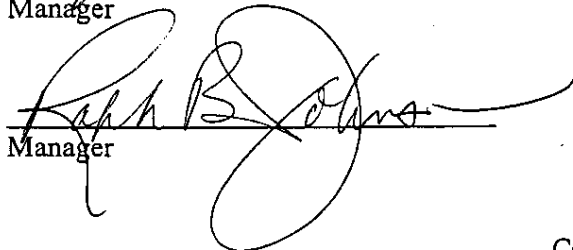
4. Parties to Easement. Alliance Capital Development, L.L.C. ("Alliance") does not own any of the property described on Exhibit 1 attached hereto and therefore does not join as a grantor in this Amendment. However, by signing below, Alliance indicates its consent to this Amendment.

GRANTOR:

SORENSEN ASSOCIATES, L.L.C.



Manager



Manager

GRANTEE:

DH DRAPER, LLC by
Dearbourne Heights LLC, Its Manager by
Proterra Companies,
Inc., its Manager




Charles W. Akerlow, President

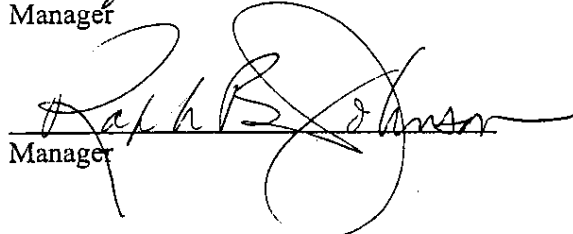
CONSENT

ALLIANCE CAPITAL DEVELOPMENT, L.L.C. ("Alliance") signs below to signify its consent to the foregoing Amendment to Easement.

ALLIANCE CAPITAL DEVELOPMENT, L.L.C.



Manager



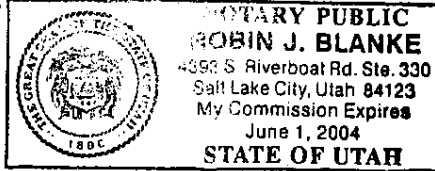
Manager

STATE OF UTAH)

: SS.

COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 1st day of October, 2003 by Ralph B. Johnson and Jim Salenon of Sorenson Associates, LLC.



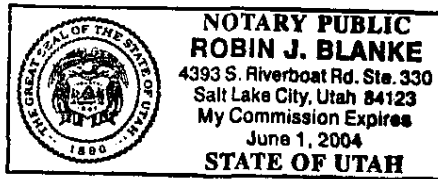
Robin J. Blanke
Notary Public

STATE OF UTAH)

: SS.

COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 1st day of October, 2003 by Charles W. Akerlow, the president of DH DRAPER, LLC by Dearbourne Heights LLC, Its Manager by Proterra Companies.



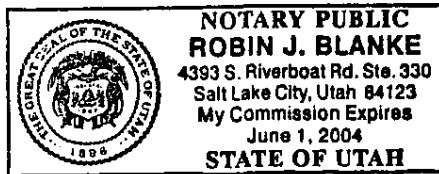
Robin J. Blanke
Notary Public

STATE OF UTAH)

: SS.

COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 1st day of October, 2003 by Ralph B. Johnson and Jim Salenon of Alliance Capital Development, LLC.



Robin J. Blanke
Notary Public