

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

THIS SECOND AMENDMENT TO DECLARATION OF COVENANTS AND RECIPROCAL EASEMENTS (this "Amendment") is made this 3 day of July, 2008, by DRAPER LTD., L.L.C., an Arizona limited liability company, DOUGLAS R. FELDING, and SANCHEZ UTAH II, L.L.C., a Utah limited liability company ("Declarants"), collectively Successors-in-Interest to FACTORY STORES OF AMERICA, INC., a Delaware corporation (formerly the "Declarant"), to amend the Declaration of Covenants and Reciprocal Easements dated October 27, 1995 ("DCRE") and recorded as Entry Number 6205722 in Book 7263, Pages 2549-2570 of the Official Records of Salt Lake County, Utah.

WITNESSETH:

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

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

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

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

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

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

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8/29/2008 11:09:00 AM \$22.00
Book - 9638 Pg - 9868-9874
Gary W. Ott
Recorder, Salt Lake County, UT
TITLE WEST
BY: eCASH, DEPUTY - EF 7 P.

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

two levels within Parcel 2, and a denominator being the building floor area of the first two levels within Parcel 2 plus the building floor area of the first two levels within Parcel 1. For instance, using current building plans for Parcel 2 and existing building floor area within Parcel 1, the pro rata share of Subject Area maintenance costs for Parcel 2 is 14.37% (37,120 SF / 258,244 SF). Additionally, the pro rata share shall be recalculated from time to time as improvements affecting entrance access and/or building floor area are completed in either Parcel.

The maintenance costs of the Subject Area will be determined by taking costs directly attributable to repairs and maintenance of the Subject Area plus a pro-rata share, based on the square footage ratio of the Subject Area to the entire paved area of Parcels 1 and 2, of snow removal and parking lot cleaning and sweeping costs. Nevertheless, said maintenance costs shall not include Capital Costs associated with reconfiguration of the Subject Area, such as removing the driveway island or re-paving in connection therewith elected by the Declarant.

The Owner's maintenance contribution shall be paid in monthly installments on the first day of each month in an amount to be estimated by the Declarant. Within sixty (60) days following the close of each calendar year, the Declarant will furnish to the Owner a statement of the actual amount of Subject Area maintenance costs and the Owner's share of said cost for such calendar year period. If the actual amount of the Owner's contribution is less than the total amount theretofore paid by the Owner for such period, the excess will be refunded to the Owner together with said statement. If the actual amount of the Owner's contribution exceeds the amount paid by the Owner for such period, the Owner shall pay to Declarant, within fifteen (15) days following the receipt of Declarant's statement, the amount shown as due thereon. The Owner shall have the right, for a period of one (1) year from the close of each calendar year, to audit the accounts of Declarant in connection with the maintenance contribution costs.

7. If D & T or the successor owner of Parcel 2 does not commence construction of a hotel on Parcel 2 on or before October 1, 2009, the provisions of this Amendment shall be null and void.

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

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

By: 

Its: manager member

DOUGLAS R. FIELDING

By: 

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

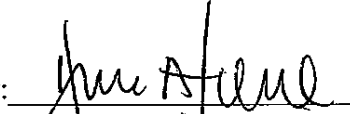

Manager

By: 

Its: Manager

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

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

By: 

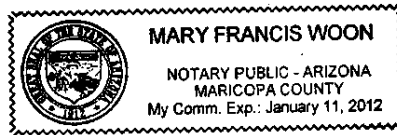
Its: President

ACKNOWLEDGMENTS

STATE OF Arizona)
COUNTY Maricopa) :ss.

On this 14 day of July, 2008, before me personally appeared Douglas R. Fielding, to me personally known to be Manager of DRAPER LTD., L.L.C, a Arizona limited liability company, that executed the within instrument, known to me to be the person who executed the within instrument on behalf of said limited liability company therein named, and acknowledged to me that such limited liability company executed the within instrument pursuant to its Operating Agreement..

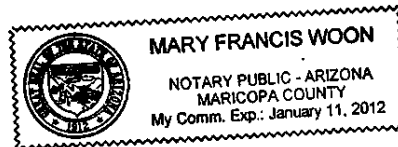
Mary Francis Woon
Notary Public



STATE OF Arizona)
COUNTY OF Maricopa) :ss.

On this 14 day of July, 2008, before me personally appeared DOUGLAS R. FIELDING who upon being duly sworn, did acknowledge to me that he executed the within instrument.

Mary Francis Woon
Notary Public

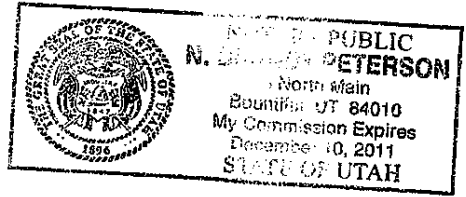


STATE OF Utah)
COUNTY Davis) :ss.

On this 3 day of July, 2008, before me personally appeared Joshua + Augustus Sanchez, to me personally known to be Manager of SANCHEZ UTAH II., L.L.C, a Utah limited liability company, that executed the within instrument, known to me to be the person who executed the within instrument on behalf of said limited liability company

therein named, and acknowledged to me that such limited liability company executed the within instrument pursuant to its Operating Agreement..

N. Brandy Peterson
Notary Public



STATE OF Utah)
 :SS.
COUNTY Salt Lake)

On this 18th day of July, 2008, before me personally appeared Dr. D. Kehl, to me personally known to be Manager of D & T INVESTMENTS, L.L.C, a Utah limited liability company, that executed the within instrument, known to me to be the person who executed the within instrument on behalf of said limited liability company therein named, and acknowledged to me that such limited liability company executed the within instrument pursuant to its Operating Agreement..

Tiffany M. Steele
Notary Public

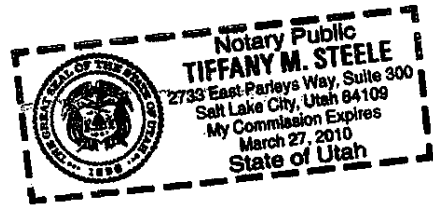


EXHIBIT "A"

That portion of Lot 2, FACTORY STORES OF AMERICA. SUBDIVISION, as recorded on September 18, 1995, in Book 95-9p of Plats on Page 235, as Entry No. 6168179 in the office of the Salt Lake County Recorder, and being more particularly described as follows:

Beginning at the Northwest corner of said Lot 2, and running thence North 89 degrees 56'35" East 442.87 feet; thence South 00 degrees 03 '25" East 246.06 feet; thence South 89 degrees 56'35" West 392.69 feet; thence North 11 degrees 35'00" West 251.13 feet to the point of beginning.

For information purpose only: Tax ID No.: 28-30-100-029