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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
KENNINGTON ESTATES, A PLANNED DEVELOPMENT**

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**KENNINGTON ESTATES HOMEOWNERS ASSOCIATION, INC.,**  
**a Utah nonprofit corporation**

(5/25/07 version)

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
KENNINGTON ESTATES**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS** (the "Declaration") is made this \_\_\_\_\_ day of May 2007, by Cletus Estates, LLC, a Utah limited liability company, collectively hereinafter called the "Declarant."

**RECITALS**

**A.** Capitalized terms in this Declaration are defined in Article I.

**B.** The Declarant is the Owner, in fee simple, of the tract of land in Draper City, Salt Lake County, Utah, which consists of approximately 12.27 acres, containing 13 lots, as shown on the Plat entitled KENNINGTON ESTATES ("Kennington Estates"), which Plat is recorded among the land records of Salt Lake County.

**C.** At full development it is intended, without obligation, that Kennington Estates will collectively have a recreation area which may include, open spaces, walkways and other social and cultural facilities.

**D.** The Declarant, for the purpose of creating and maintaining a general scheme of development and for the protection of the economic interests of the Declarant and all successors in interest, desires that the Lots in Kennington Estates be subject to the covenants, conditions and restrictions as herein set forth.

**E.** Declarant desires to form the Association as a nonprofit corporation for the purpose of benefitting Kennington Estates and its Owners and Residents which nonprofit association will (1) acquire, construct, operate, manage and maintain a variety of Community Areas and other areas within Kennington Estates; (2) establish, levy, collect and disburse the Assessments and other charges imposed hereunder; and (3) as the agent and representative of the Members of the Association and Residents of Kennington Estates, administer and enforce all provisions hereof and enforce use and other restrictions imposed on various parts of Kennington Estates.

**F.** The purpose of the Covenants, Conditions and Restrictions (hereinafter referred to as "Covenants and Restrictions") is to establish, enhance and uphold the quality of Kennington Estates, as hereinafter defined, and to support and preserve maximum property values for all property Owners within Kennington Estates. To further these purposes, the Declarant and each Lot Owner, has the individual right, (but not any obligation) to enforce these Covenants and Restrictions against any violation (actual or prospective) by any means provided herein or by appropriate legal or equitable proceedings. The Declarant has no legal obligation to enforce these Covenants and Restrictions but may selectively act to further its own best interests. Any property Owner within the Subdivision has the right to retain legal counsel to enforce any of the Covenants and Restrictions.

**NOW, THEREFORE**, the Declarant for itself, its successors and assigns, and all property Owners within the Subdivision hereby declares that all of the aforesaid tract of land known as Kennington Estates shall be subject to the covenants, conditions, restrictions and reservations herein set forth.

## **ARTICLE I** **DEFINITIONS**

The following words, when used in this Declaration, shall have the following meanings:

**1.01.** "Articles" or "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of the Association filed with the office of the Utah Secretary of State.

**1.02.** "Association" shall mean and refer to Kennington Estates Homeowners Association, Inc., a Utah nonprofit corporation, its successors and assigns.

**1.03.** "Common Areas" or "Facilities" shall mean and refer to that part of the Property which is not included within the Lots, including all improvements other than utility lines now or hereafter constructed or located thereon.

**1.04.** "Developer" shall mean and refer to the undersigned parties and their successors and assigns to the Declaration of Covenants, Conditions and Restrictions of Kennington Estates as the same may hereinafter be modified amended, supplemented or expanded in accordance with the law and the provisions, hereof.

**1.05.** "Dwelling" shall mean and refer to any building or portion of a building situated upon the Property and designated and intended for use and occupancy as a personal residence.

**1.06.** "Eligible Insurer" shall mean and refer to an insurer or governmental guarantor of a mortgage or trust deed who has requested notice in writing of certain matters from the Association in accordance with the Articles, Bylaws or Declaration.

**1.07.** "Eligible Mortgagee" shall mean and refer to a mortgagee, beneficiary under a trust deed, or lender who has requested notice in writing of certain matters from the Association in accordance with the Articles, Bylaws or Declaration.

**1.08.** "Eligible Votes" shall mean and refer to those votes available to be cast on any issue before the Association or the Board of Trustees. A vote which is for any reason suspended is not an "eligible vote".

**1.09.** "Governing Board" or "Board of Trustees" shall mean and refer to the Board of Trustees charged with governing the Association.

**1.10.** "Kennington Estates" shall mean and refer to the Lots and Common Areas described in the Subdivision of Kennington Estates, and more particularly described as attached as Exhibit "A" hereto and incorporated herein by this reference.

**1.11.** "Living Unit" shall mean and refer to a structure or portion of a structure which is designed and intended for use and occupancy as a Single-Family Residence, together with all improvements located on the Lot concerned which are used in conjunction such residence.

**1.12.** "Lot" shall mean and refer to those Properties designated as Lots 1 through 13 on the Plat.

**1.13.** "Lot Owner" shall mean and refer to every person, group of persons, corporation, trust or other legal entity, or any combination thereof, who holds legal title to a Lot in the Subdivision, provided, that (a) no Lessee (other than a Lessee under a 99 year lease creating a ground rent of such Lot), and (b) no Mortgagee or Trustee under a Deed of Trust of any Lot shall be deemed to be a Lot Owner unless and until such Mortgagee or Trustee acquires of record the Mortgagor's or Grantor's equity of redemption in said Lot.

**1.14.** "Majority" shall mean and refer to those eligible votes of Owners or other groups as the context may indicate totaling more than fifty (50%) percent of the total eligible number.

**1.15.** "Member" shall mean and refer to every person who holds membership in the Association.

**1.16.** "Mortgage" shall mean and include both a first mortgage or a first deed of trust on any Lot.

**1.17.** "Mortgagee" shall mean and include both a first mortgage and a beneficiary under a first deed of trust on any Lot.

**1.18.** "Plans and Specifications" shall mean engineering site plans, landscape plans, and architectural and/or construction working drawings and any other supporting documents which may be required by the Declarant.

**1.19.** "Plat" shall mean any subdivision plats or record of survey maps affecting Kennington Estates filed in the Office of the Recorder for Salt Lake County, Utah, as such may be amended from time to time.

**1.20.** "Property" shall mean and refer to all the real property shown on the Plat.

**1.21.** "Project" shall mean and refer to the Property and the schematic of the development and Ownership of the Property created and governed by the Articles, Bylaws or Declaration.

**1.22.** "Recreational Vehicle" shall mean and refer to any motor home, mobile home, truck other than a pick-up, snow removal equipment, garden and maintenance equipment, snowmobile, camper not on a truck, tractor, golf cart, mobile home or trailer (either with or without wheels), boat or other water craft, boat trailer, buses, camping vehicles, boats, boat trailers, two, three or four wheeled motor vehicles, or any recreational, commercial or oversized vehicle or device of any kind.

**1.23.** "Single Family Home" or "Residence" shall mean and refer to both the architectural style of a Living Unit and the nature of the residential use permitted.

**1.24.** "Subdivision" shall mean the final Subdivision of Kennington Estates as recorded among the Land Records of Salt Lake County; or as amended in accordance with this Declaration.

## ARTICLE II MEMBERSHIP VOTING RIGHTS

**2.01. Membership.** Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory shall be appurtenant to the Lot in which the Owner has the necessary interest, and shall not be separated from the Lot to which it appertains.

**2.02. Voting Rights.** Each Member shall be entitled to one vote for each Lot owned. In no event, shall more than one vote exist with respect to any Lot.

**2.03. Multiple Ownership Interest.** In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

## ARTICLE III PROPERTY RIGHTS IN COMMON AREAS

**3.01. Easement of Enjoyment.** Each Member shall have a right and easement of use and enjoyment in and to the Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Any Member may delegate the right and easement of use and enjoyment described herein to any family members, household guest, tenant, lessee, contract purchases, or other person who resides on such Member's Lot.

**3.02. Form for Conveyancing.** Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Lot shall describe the interest or estate involved substantially as follows:

"Lot No.(Lot No.) contained within Kennington Estates, as said Lot is identified in the Plat of said Development and in the 'Declaration of Covenants, Conditions and Restrictions of Kennington Estates recorded in the Recorder's Office of Salt Lake County, State of Utah, TOGETHER WITH a right and easement of use and enjoyment in and to the Common Areas described, and as provided for, in said Declaration of Covenants, Conditions and Restrictions."

Whether or not the description employed in any such instrument is in the above specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires interest in a Lot.

**3.03. Transfer of the Title.** The original Developer has conveyed to the Association title to the Common Areas free and clear of all liens.

**3.04. Limitation on Easement.** A Member's right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:

**3.04.1. Suspended Voting Rights.** The right of the Association to suspend a Member's voting right in the Association and a Member's right to the use of any recreational facilities included in the Common Areas for any period during which an assessment on such Member's Lot remains unpaid, and for a period not exceeding ninety (90) days for any infraction by such Member of the provisions of this Declaration or of any rule or regulation promulgated by the Association;

**3.04.2. Limitations on Guests.** The right of the Association to impose reasonable limitations on the number of guests per Member who at any given time are permitted to use the Common Areas;

**3.04.3. Limitations by Draper City.** The right of Draper City and any other governmental or quasi-governmental body having jurisdiction over the Property to access and rights of ingress and egress over and across any street, parking area, walkways or open area contained within the Property for purposes of providing police and fire protection, transporting school children, and providing other governmental or municipal service;

**3.04.4. Dedication or Transfers of Common Areas.** The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association. Any such dedication or transfer must, however, be assented to by two-thirds (2/3) of the votes which Members present in person or proxy are entitled to cast at a meeting and the action proposed shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date; and

**3.04.5. User Fees.** The right of the Association to charge a reasonable user's fee for the clubhouse (or any portion of the clubhouse for residential, commercial or mixed purposes).

## ARTICLE IV ASSESSMENTS

**4.01. Budget.** The Board of Trustees shall have the duty to prepare an estimated annual budget for each fiscal year. The proposed budget, which must be made available to each Lot Owner at least thirty (30) days prior to the Annual Association Meeting shall:

**4.01.1. Itemization.** Set forth an itemization of the anticipated Common Expenses for the twelve (12) month calendar year, commencing with the following January 1.

**4.01.2. Basis.** Be based upon advance estimates of cash requirements by the Board of Trustees to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas and regulation of the Association, which estimate shall include but is not limited to expenses of management, grounds maintenance, taxes and special assessments, premiums for all insurance which the Board is required or permitted to maintain, common lighting and heating, water shares, trash collection, sewer service charges, carpeting, painting, repairs and maintenance of the Common Areas and replacement of those elements of the Common Areas that must be replaced on a periodic bases, wages for the Association's employees, legal and accounting fees, and deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus or sinking fund, capital improvement reserve, and other expenses and liabilities which may be incurred by the Association for the benefit of the Association for the benefit of the Owners under and by reason of this Declaration.

**4.02. Personal Obligations and Lien.** Each Owner shall be acquiring; or in any way becoming vested lien with his interest in a Lot, be deemed to covenant and agree to pay to the Association the monthly and the special assessments on a pro rata basis described in this Article together with the hereinafter provided for interest and costs of collection. All such amounts shall be, constitute, and remain (a) a charge and continuing lien upon the Lot with respect to which such assessment is made; and (b) the personal obligation of the person who is the Owner of such Lot at the time the assessment falls due. No Owner may exempt himself or his Lot from liability for payment of assessments by waiver of his rights concerning the Common Areas, or by abandonment of his Lot. For purposes of this Article, the term "Owner" includes both the Buyer and Seller under an executory contract of sale, both of whom shall be jointly and severally liable for all assessments levied during the term of the contract.

**4.03. Purpose of Assessments.** Assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation health, safety and welfare of residents of the Property. The use made by the Association of funds obtained from assessments shall include payment of the cost of: taxes and insurance on the Common Areas; maintenance, repair, and improvement of the Common Areas; management and supervision of the Common Areas; establishment and funding of a reserve to cover major repairs of the Improvements within obligations, functions or purposes under this Declaration or its Articles of Incorporation.

**4.04. Amount of Monthly Assessment.** The Board of Trustees shall determine the amount of the monthly assessment based upon the current and future needs of the Association. The maximum monthly assessment shall not be fifteen percent (15%) or more for any year if the proposed increase is disapproved by at least a majority of the Members.

**4.05. Special Assessments.** From and after the date set under this Article IV, the Association may special assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonably capable of being fully paid with funds generated by monthly assessments; or (b) the cost of any construction, reconstruction, or unexpectedly required repair or replacement of any, improvement or of personal property upon the Common Areas. Any such special assessment must be asserted to by sixty percent (60%) of the votes which Members present in person or represented by Proxy are entitled to cast at a meeting duly called for the purpose. Written notice setting forth the purpose of the meeting shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to meeting date.

**4.06. Specific Assessments.** The Board of Trustees shall also have the power specifically to assess the Owners in a particular area pursuant to this Section as, in its discretion, it shall deem necessary or appropriate, provided the Lot Owner has the choice to accept or reject the benefit:

**4.06.1. Benefit only To Specific Lot.** If the expense benefits less than all of the Lots, then those Lots benefitted may be specifically assessed, and the specific assessment shall be equitably apportioned among those Lots according to the benefit received.

**4.06.2. Unequal or Disproportionate Benefit.** If the expense benefits all Lots, but does not provide an equal benefit to all Lots, then all Lots shall be specifically assessed, but the specific assessment shall be equitably apportioned among all Lots according to the benefit received.

Failure of the Board of Trustees to exercise its authority under this section shall not be grounds for any action against the Association or the Board of Trustees and shall not constitute a waiver of the Board of

Trustees' right to exercise its authority under this section in the future with respect to any expenses, including an expense for which the Board of Trustees has not previously exercised its authority under this section.

**4.07. Individual Assessments.** Individual Assessments shall be levied by the Board of Trustees against a Lot and its Owner to pay, compensate or reimburse the Association for: fines levied and costs incurred in enforcing the Plans and Specifications; costs associated with the maintenance, repair or replacement of Common Area for which the Lot Owner is responsible; any other charge, fee, due, expense, or cost designated as an Individual Assessment in the Plans and Specifications; and attorneys' fees, interest, and other charges relating thereto as provided in this Declaration.

**4.08. Quorum Requirements.** A quorum is defined as: At the first meeting called, the presence of Members or of proxies entitled to cast at least seventy percent (70%) of all the votes of Members shall Constitute a quorum. If a quorum is not present at the first meeting called, another meeting may be called at which those Members present in person or by proxy shall constitute a quorum. No such subsequent meeting shall be held earlier than twenty four (24) hours or later than forty-five (45) days following the immediately preceding meeting.

**4.09. Uniform Rate of Assessment.** Both monthly and special assessments shall be fixed at a uniform rate for all Lots.

**4.10. Monthly Assessment Due Dates.** The monthly assessments provided for herein shall commence as to all Lots when the first Common Areas need maintenance work to keep such Common Areas functional. At least, fifteen (15) days prior to the effective date of any change in the amount of the monthly assessment, the Association shall give each Owner written notice of the amount and first due date of the assessment concerned.

**4.11. Certificate Regarding Payment.** Upon the request of Owner or prospective purchaser or encumbrance of a Lot the Association shall issue a certificate stating whether or not all assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate all be conclusive in favor of all persons who in good faith rely thereon.

**4.12. Equitable Adjustments.** The Board of Trustees may make equitable adjustments in the annual assessment from time to time during the course of the fiscal year as necessary to pay common expenses provided each Lot Owner is given at least thirty (30) days notice of any change in the amount of his monthly assessment.

**4.13. Effect of Nonpayment – Remedies.** Assessments must be paid in a timely manner and shall be collected as follows:

**4.13.1. Time is of the Essence.** Time is of the essence and all Assessments shall be paid promptly when due.

**4.13.2. Delinquent Assessments.** Any assessments which are not paid when due are delinquent and a lien against the Lot affected shall attach automatically, regardless of whether a notice of lien is recorded.

**4.13.3. Late Assessments and Accruing Interest.** Any Assessments delinquent for a period of more than ten (10) days shall incur a late charge of ten dollars (\$10.00) or five percent (5%) of the delinquent amount, whichever is greater. Interest at the rate of one and one-half percent (1.5%) per month shall accrue on all late Assessments and accruing interest, but is not required to do so.

**4.13.4. Notice of Lien.** If any Assessment is a notice of lien evidencing the unpaid amounts, accruing interest, late charges, attorney's fees, the cost of a foreclosure or abstractor's report, and any other Additional Charges permitted by law should be filed with the County Recorder. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all other Owners. It may be executed by the Association's attorney, manager, Board of Trustees or other designated agent.

**4.13.5. Foreclosure of Lien and/or Collection Action.** If any Assessments remain unpaid, the Association may, as determined by the Board of Trustees institute suit to collect the amounts due and/or to foreclose the lien.

**4.13.6. Personal Obligation.** Each Owner, by acceptance of a deed or as a party to any other type of conveyance, vests in the Association or its agents the right and power to bring all actions against him or her personally for the collection of the charges as a debt or to foreclose the lien in the same manner as mechanics liens, mortgages, trust deeds or encumbrances may be foreclosed.

**4.13.7. No Waiver.** No Owner may waive or otherwise exempt himself or herself from liability for the Common Area assessments provided for herein, including but not limited to the non-use of Common Areas or the abandonment of his Lot.

**4.13.8. Duty to Pay Independent.** No reduction or abatement of Common Area Assessments shall be claimed or allowed by reason of any alleged failure of the Association or Board of Trustees to take some action or perform some function required to be taken or performed by the Association or Board of Trustees under this Declaration or the By Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay Common Area Assessments being a separate and independent covenant on the part of each Owner.

**4.13.9. Application of Payments.** All payments shall be applied as follows: additional charges, delinquent Common Area Assessments and current Common Area Assessments.

**4.13.10. Foreclosure of Lien as Mortgage or Trust Deed.** The lien for nonpayment of Common Area Assessments may be enforced by sale or foreclosure of the Owner's interest therein by the Board of Trustees. The sale or foreclosure shall be conducted in the same manner as foreclosures in deeds of trust or mortgages or in any other manner permitted by law. In any foreclosure or sale, the Owner shall pay the costs and expenses of such proceedings, including but not limited to the cost of a foreclosure report, reasonable attorney's fees, and a reasonable rental for the Lot during the pendency of the foreclosure action. The Association in the foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the mortgage security. The Board of Trustees may bid for the Lot at foreclosure or other sale and hold, lease, mortgage, or convey the same.

**4.13.11. Appointment of Trustee.** If the Board of Trustees elects to foreclose the lien in the same manner as foreclosures in deeds of trust, then the Owner by accepting a deed to the Lot hereby irrevocably appoints the attorney of the Association, provided he is a member of the Utah State Bar, as Trustee, and hereby confers upon said Trustee the power of sale set forth with particularity in Utah Code Annotated, Section 57-1-23 (1953 as amended). In addition, Owner hereby transfers in trust to said Trustee all of his right, title and interest in and to the real property for the purpose of securing his performance of the obligations set forth herein.

**4.13.12. Attorney in Fact.** Each Owner by accepting a deed to a Lot hereby irrevocably appoints the Association as his attorney in fact to collect rent from any person renting his Lot, if the Lot is rented and Owner is delinquent in his Common Area Assessments. Rent due shall be paid directly to the Association, upon written demand, until such time as the Owner's Common Area Assessments are current; and the Owner shall credit the renter, against rent due, for the amount of money paid to the Association.

## ARTICLE V OPERATION AND MAINTENANCE

**5.01. Maintenance of Living Units.** Each Living Unit and Lot shall be maintained by the Owner thereof so as not to detract from the appearance of the Property and so as not to affect adversely the value or use of any other Living Unit or Lot. The Association shall have no obligation regarding maintenance or care of Living Units or Lots except as set forth in Article 5.02.

**5.02. Operation, Maintenance and Alterations.** The Lots and Common Areas shall be maintained by the Lot Owners and the Association as follows:

**5.02.1. Area of Common Responsibility.** The Association shall maintain, repair and replace, as needed from time to time, the Common Areas and Facilities.

**5.02.2. Area of Personal Responsibility.** Each Lot Owner shall maintain, repair and replace, as needed from time to time, his Lot and all improvements constructed thereon.

**5.02.3. Standard of Care.** The Property shall be maintained in a usable, clean, functional, attractive and good condition, consistent with community standards.

**5.02.4. Standard of Care/Landscaping.** All landscaping in the Project shall be maintained and cared for in a manner consistent with community standards and the quality of design and construction originally established by Declarant or the Board of Trustees from time to time. All landscaping shall be maintained in a neat and orderly condition. Any weeds or deceased or dead lawn, trees, ground cover or shrubbery shall be removed and replaced. All lawn areas shall be neatly mowed and trees, shrubs and bushes shall be properly pruned and trimmed. All landscaping shall be aesthetic, tasteful and harmonious with the other landscaping in the Project so as not to affect adversely the value or use of any other Lot, or to detract from the uniform design and appearance of the Project.

**5.02.5. Neglect.** If the Board of Trustees determines that any Owner has failed or refused to discharge properly his obligation with regard to the maintenance, repair, or replacement of items for which he is responsible hereunder; or that the need for maintenance, repair, or replacement of the Common Area is caused through the willful or negligent act of any Owner, his family, guests, lessees,

or invites, and it is not covered or paid by insurance, in whole or in part, then the Association may, but is not obligated to provide such maintenance, repair or replacement at the Owner's sole cost and expense, subject to the following:

**5.02.5.1. Assessment.** Such costs as are incurred by the Association in the performance of an item included in the Area of Personal Responsibility (see §5.02.2.) shall be added to and become a part of the assessment to which such Owner and Lot is subject, and shall be secured by a lien against his Lot regardless of whether a notice of lien is filed.

**5.02.5.2. Notice of Intent to Repair.** Except in an emergency situation, the Association shall give the Owner written notice of the Association's intent to provide necessary maintenance, repair, or replacement at Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Board of Trustees. The Owner shall have ten (10) days after receipt of notice within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within ten (10) days.

**5.02.5.3. Emergency Situation.** If the Board of Trustees determines that an emergency exists, then notice and the opportunity to cure the default is not necessary.

**5.02.5.4. Optional Repairs.** The Association may, but is not obligated to, provide any such maintenance, repair, or replacement in the manner described above.

**5.02.5.5. Right of Entry.** The Association or its agents or employees shall have a right to entry upon or into any Lot or Common Area as necessary to perform such work and shall not be liable for trespass for such entry or work.

**5.02.6. Alterations to the Common Area.** No Owner or resident may make any structural alterations, modifications, changes or improvements to the Common Area, including but not limited to any additions, extensions, enclosures, fencing, decks, patios, walkways, structures or sheds not shown on the approved Plans and Specifications, without the prior written consent of the Board of Trustees.

**5.02.7. Storm Drain System.** A reciprocal easement on, over, under, through and across the Project (the "Subdrain and Storm Drain System"). No Lot Owner shall interfere with the Subdrain and Storm Drain System established by the Declarant, or its successors or assigns. Each Lot Owner shall be responsible to develop his Lot in a manner consistent with the Subdrain and Storm Drain System, and so as not to detract therefrom or interfere therewith, or the Established Drainage Pattern on any other Lot in the Project. For purposes of this Section, the term "Established Drainage Pattern" is defined as the approved drainage pattern, facilities and improvements in existence at the time such Lot is conveyed to a home purchaser by the Declarant, its successor or assign. The cost of all improvements, maintenance, repairs and replacements of the subdrain or storm drainage system located within the boundaries of any Lot shall be the responsibility of the Lot Owner. The cost of all improvements, maintenance, repairs and replacements of the subdrain and storm drainage system located in the Common Area shall be the responsibility of the Association.

**5.02.8. Structures.** No sheds, shacks, or similar structures may be installed or constructed on a Lot if it can be seen from the roads or Common Area.

**5.03. Utilities.** The Association shall pay for all utility services furnished to the Common Areas on a Lot if it can be seen from the roads or common area.

**5.04. Insurance.** The Association shall at all times maintain in force insurance meeting the following requirements:

**5.04.1. Hazard Insurance.** Fire and extended coverage insurance covering the insurable portions of the Common Areas and in an amount not less than one hundred percent (100%) of replacement cost of such insurable portions of the Common Areas and Facilities. The name of the insured under such policy or policies shall be in form and substance similar to, "The Kennington Estates Homeowners Association for the use and benefit of the individual Lot Owners in Kennington Estates."

**5.04.2. Fidelity Insurance.** Fidelity coverage against dishonest acts on the part of directors, managers, trustees, employees, or volunteers responsible for handling funds collected and held for the benefit of the Owners. The fidelity bond or insurance shall name the Association as the insured and shall be written in an amount sufficient to afford the protection reasonably necessary, but in no event less than one and one-half times the Association's estimated annual operating expenses and reserves. An appropriate endorsement to such policy shall be secured to cover any persons who serve without compensation if such policy would not otherwise cover volunteers.

**5.04.3. Liability Insurance.** A comprehensive policy of public liability insurance covering all of the Common Areas and Facilities. Such policy shall contain a "Severability of Interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners. The scope of coverage shall include all other coverage in the kinds and amounts commonly by private institutional mortgage investors for projects similar in construction, location, and use. The property damage shall be for at least \$1,000,000.00 per occurrence.

**5.04.4. General Requirements Concerning Insurance.** Each maintained pursuant to the foregoing sections 5.04.1., 5.04.2. and 5.04.3., above shall be written by an insurance carrier which is licensed to transact business in the State of Utah and which has a financial rating by Best's Insurance Reports of Class VI or better. No such policy shall be maintained where:

**5.04.4.1.** Under the terms of the carrier's charter, bylaws, or policy, contributions may be required from, or assessments may be made against an Owner, a Mortgagee, or the Association;

**5.04.4.2.** By terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of Trustees, policy holders, or members; or

**5.04.4.3.** The policy includes any limiting clauses (other than insurance conditions) which could prevent an Owner, a Mortgagee, or the Association from collecting insurance proceeds.

The provisions of this Article 5.04 shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage, in addition to any insurance coverage required

hereunder, in such amounts and in such forms as the Association may deem appropriate from time to time.

**5.05. Deductible.** On any claim made by a Lot Owner on an Association's insurance policy, the deductible (if any) shall be paid by the party who would be liable for the loss or repair in the absence of insurance and in the event of multiple parties shall be allocated in relation to the amount each party's loss bears to the total.

**5.06. Primary Coverage.** If a claim is covered by the Lot Owner's insurance and by the Association's insurance, the insurance coverage of the Lot Owner shall be primary.

**5.07. Manager.** The Association may carry out through a property manager and of its functions which are properly the subject of delegation. Any manager so engaged shall be an independent contractor and not an agent or employee of the Association, shall be responsible for managing the Property for the benefit of the Association and the Owners, and shall, to the extent permitted by the law and the terms of the agreement with the Association, be authorized to perform any of the functions or acts requirements or permitted to be performed by the Association itself.

## **ARTICLE VI PROPERTY SUBJECT TO DECLARATION AND MUTUALITY OF BENEFIT**

**6.01. Property.** The real property which is and shall be held, conveyed, hypothecated or encumbered, sold, leased, rented, used, occupied and improved subject to these restrictive covenants is located in Draper City, Salt Lake County, State of Utah, and is more particularly designated on the Plat.

**6.02. Benefit.** The restrictions and agreements set forth herein are made for the mutual and reciprocal benefit of each and every Lot in the Subdivision and are intended to create mutual, equitable servitudes upon each of said Lots in favor of each and all of the other Lots therein; to create reciprocal rights between the respective Owners of all of said Lots; to create a privity of contract and estate between the grantees of said Lots, their heirs, successors and assigns, and shall as to the Owners of each such Lot, their heirs, successors or assigns, operate as covenants running with the land for the benefit of each and all Lots in the Subdivision and their respective Owners.

## **ARTICLE VII ARCHITECTURAL REVIEW AND CONTROL**

**7.01. Architectural Review Committee.** Declarant, may, at any time, establish an Architectural Review and Control Committee consisting of one or more property Owners within the Subdivision, in which case, said persons as an Architectural Committee shall have all of the rights and authorities pertaining to architectural specifications and control as provided herein to the Declarant. Said Architectural Review and Control Committee (hereinafter "Architectural Committee" or "Committee") shall be established in writing and the same may (but is not required to) be recorded. The members of the Architectural Committee may be changed at any time by majority vote of the Owners within the Subdivision. It is anticipated that over time, the Declarant shall phase itself out of majority control of the Subdivision. Continuing governance of the Subdivision as it relates to the interpretation and enforcement of these Covenants and Restrictions shall be assumed by the Owners in the Subdivision, acting by a majority vote.

## 7.02. Requirements.

**7.02.1. Approvals by the Architectural Committee.** In addition to the requirements of Draper City (including, but limited to, building permits and City reviews), no building, fence, wall, hedge or structure or permanent improvement of any type, shall be constructed on any Lot until the plans and specifications, including design, location, description of materials, color scheme and a grading plan showing the location of the proposed structure or improvement, with all necessary supporting details associated therewith, have been approved in writing by the Declarant, or such Architectural Committee as Declarant may establish as provided hereunder. No later changes or additions after initial approval thereof or remodeling or reconstruction shall commence until such has also been approved in writing by the Declarant or its assignee or the Architectural Committee, as the case may be. Before commencement of any such construction, the Owners of Lots shall present their Plans and Specifications to the Declarant. Plans and Specifications must be acted on by the Declarant within thirty (30) days after submission. If the Declarant fails to act on said Plans and Specifications within said thirty (30) day period after submission, the Plans and Specifications shall automatically be approved.

**7.02.2. Basis for Approvals.** The Declarant shall have the right to refuse to approve any Plans and/or Specifications which are not suitable or desirable, in its opinion, for aesthetic or other reasons, and in so passing upon such plans and/or specifications, it shall have the right to take into consideration the suitability of the proposed building or other structure or improvements, the materials of which it is built, the site upon which it shall be erected, the harmony thereof with the surroundings and the effect of the building or other structure on the roadways as planned and the view from the adjacent or neighboring properties. In the event of the failure of the purchaser or purchasers of Lots in Kennington Estates to obtain or to comply with the required prior written approval of plans under this section, said purchasers hereby agree to reimburse the Declarant or its assigns for all costs and expenses to which it may be put as a result of said failure, including but not limited to court costs and any improvements required to correct the situation including costs of demolition and reconstruction, if necessary. To whatever extent consent, approval or authorization from Declarant or the Architectural Committee may be required hereunder, such consent, approvals and authorizations shall not be unreasonably withheld, nor shall these Covenants and Restrictions be arbitrarily or capriciously interpreted or applied.

**7.03. Time for Completion.** Any approved Dwelling constructed on a Lot in Kennington Estates shall be completed in every exterior detail within twelve (12) months from date of beginning such construction, which, unless otherwise authorized by Declarant or the Architectural Committee, as the case may be, shall commence within twelve (12) months of the closing of the subject Lot purchase by the Owner thereof. Front yard landscaping for all Lots must be completed by each Lot Owner within six (6) months of occupancy of said residence and the balance of the Property must be completely landscaped within twelve (12) months thereafter. Declarant reserves the right to charge a reasonable deposit to the pertinent land Owner to insure completion of landscaping in a timely manner or to accept such other tangible assurances as may be reasonably necessary to accomplish the intent and purpose of these covenants and restrictions. Each Lot Owner covenants and agrees to keep their Lot reasonably free of weeds and debris and no storage is permitted thereon during the time, if any, the Lot remains vacant before the completion of construction as required hereunder. Lots owned or retained by Declarant are an exception hereto and may be retained or offered for sale according to whatever timetable Declarant may determine. Declarant also reserves the right to store and maintain such equipment or other items as Declarant may reasonably determine is necessary or in the best interests of the Subdivision. Exceptions which extend the time for commencement of construction may be granted by the Declarant or the Architectural Committee as individual circumstances may warrant provided that reasonable assurances

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are obtained for the continuing maintenance of the Property in an acceptable condition that does not detract from the appearance of the Subdivision nor the reasonable protection of the Property values of other Lot Owners in the Subdivision.

**7.04. Liability.** Neither the Declarant, nor any architect or agent thereof shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such Plans and Specifications.

**7.05. Size of Dwellings.** Unless otherwise approved in writing by Declarant or the Architectural Committee, as the case may be, the finished above ground floor area of any residential structure, exclusive of any open porches and garages, shall not be less than the following:

**7.05.1.** On all individual building Lots which are larger than 20,000 square feet in size, the minimum finished above ground floor area shall be 2,300 square feet for a single story and not less than 3,800 square feet for a multi-story (in either case a basement of not less than 1,500 square feet is required, but may remain unfinished).

**7.05.2.** Declarant reserves the right to deviate from the above-referenced building standards as Declarant may reasonably determine to be necessary or in the best interests of the Subdivision regarding specific Lots based on such matters as space limitations, Lot configuration, or other such reasonable and practical considerations.

**7.06. Roofing and Exterior Materials.**

**7.06.1. General Requirements.** All exterior materials utilized on Dwelling and other structures shall consist of natural materials including stone, brick, etc. Aluminum, steel and vinyl are to be used only as soffit and fascia unless otherwise approved by the Architectural Committee in writing. (If approved by Declarant or the Architectural Committee, steel framing and vinyl windows are an exception hereto and may be permitted.) The roofing material on all homes or other structures built on any Lot shall be either cedar, tile or high grade architectural asphalt shingles, all as approved by Declarant or the Architectural Committee as to material, style and color. Unless otherwise approved by Declarant or the Architectural Committee, all roofs shall generally have a pitch of 8/12 or greater. Exceptions may be approved where individual circumstances may reasonably warrant such as the width or depth of the home, height of ceilings, etc. It is important that each structure on each Lot require limited maintenance. These covenants are designed to establish a quality development and to maintain its integrity as long as possible. Each Lot Owner covenants and agrees to promptly and adequately maintain all roofing and exterior materials and to paint, repair and otherwise preserve all such materials as conditions may require to continually maintain an attractive appearance for all of the homes within the Subdivision for the common benefit and enjoyment of all Owners within the Subdivision.

**7.06.2. Additional Standards Required for Structure Materials.** Unless otherwise approved by the Declarant or the Architectural Committee, the exterior materials utilized on all sides of the Dwellings and the structures shall generally consist (combined) of at least sixty percent (60%) stone or brick and the balance may be stucco or high quality siding if and to such extent as the same are approved by Declarant and/or the Architectural Committee. Aluminum and vinyl siding are not permitted unless approved by Declarant and provided such are not visible from the street or objectionable to neighboring property Owners who may be adversely affected thereby. Central air-conditioning is

required and no "swamp coolers" or "evaporative coolers" are permitted. Street lights are required in the Subdivision by Draper City. Declarant has paid in advance for the required number of street lights and such shall be installed by Draper City at locations determined by Draper City and as reflected in the recorded Plat. Each Lot Owner is required to install **ambient landscape lighting** in their front yard landscaping package as part of their overall landscaping design and is subject to review and approval by the Declarant or the Architectural Committee.

**7.07. Common Landscape Design for Park Strips and Other Amenities.** Each Lot includes a "park strip", which is understood to be that portion of the Property between the curb and sidewalk. Each Lot Owner covenants and agrees to landscape and maintain that stretch of Property with grass lawn, except for such complimentary shrubbery as may be part of an overall landscape design for the Lot Owner's individual residence and front yard, as approved by the Declarant or the Architectural Committee. In any event, each Lot Owner covenants and agrees to install and maintain the specific type, size, quantity and location of trees as required by the Subdivision design plan for tree planting as prepared by Declarant (referred to hereinafter as "landscape plans"). Regarding placement of park strip trees, each Lot Owner shall strive to not position the trees in such a way as would adversely block the view of their home from the street but also not to push the park strip trees to the extreme front Lot corners. The Owners of Lots that border on Property to be dedicated to and maintained by Draper City are required to provide and maintain the fencing associated therewith in its original condition and to not alter the original design and appearance of the Subdivision regarding fencing and landscaping as agreed between Draper City and the Declarant. Lots that border on open space must install their own irrigation/sprinkler systems so that the Homeowner Association has independent use of the water and sprinklers required to service the dedicated open space. The Subdivision includes a linear park and open space area as designated on the Plat. The Homeowner Association will own and maintain the park and open space area. Each of the Lot Owners and their family members, relatives, friends, guests and invitees agree, at all times, to abide by and comply with whatever reasonable rules, policies, terms, conditions or other requirements that the Homeowner Association may reasonably set for the open space at Kennington Estates.

## **ARTICLE VIII** **USE & BUILDING RESTRICTIONS**

**8.01. Land Use.** Lots as shown on the Plat shall be used for private, residential purposes only. No Dwelling shall be erected, altered, placed or permitted to remain on any Lot other than as a detached Dwelling, designed for single-family occupancy. Single-family occupancy shall not be construed to prevent the erection of a Dwelling with an attached apartment or living area for use by a Lot Owner or Member of the Lot Owner's family, provided that such additional improvements are approved by Declarant, the Architectural Committee, and Draper City, as the case may be. Residential use shall not bar a home office use of the Property provided the Owner of said Lot complies with the applicable zoning regulations of Draper City.

**8.02. Building Restrictions.** The following building restrictions shall apply to all Lots in the Subdivision:

**8.02.1. Temporary Structures.** No structure of a temporary character, such as but not limited to a trailer, shack, barn, shed, or tent, shall be placed or used on any of the Lots as a residence or for storage, or as an auxiliary building, either temporarily or permanently, except as may be submitted, reviewed and approved by the Declarant or the Architectural Committee. Notwithstanding anything hereunder to the contrary, a temporary structure may be placed or used on a Lot within the Subdivision if

used and operated solely in connection with the construction of permitted permanent improvements, provided, however, that such temporary structure shall be removed from the premises within thirty (30) days after completion of the construction of the permitted permanent improvements; and provided, further, that such structure shall be removed within a period of twelve (12) months from the date of its original construction, whichever shall occur first. Permanent sheds or other such structures of high quality construction may be permitted subject to review and approval by Declarant or the Architectural Committee.

**8.02.2. Garages.** Unless otherwise approved by the Declarant or the Architectural Committee, attached three car garages are required for all Dwelling within the Subdivision. Wherever possible, "side-load" garages rather than front entry garages are desired and encouraged throughout the Subdivision, but individual exceptions may be approved in relation to Lot size, individual building restrictions, the overall appearance and best interests of the Subdivision and the personal preference of the Lot Owners.

**8.02.3. Recreational Vehicles.** No recreation vehicles, such as, but not limited to, campers, motor homes, boats, trailers and tent vehicles, may be parked or kept on any Lot, where such placement is visible from the street without first obtaining written approval of Declarant or the Architectural Committee, which approval shall not be granted unless an acceptable parking pad is provided. The front of such a pad shall be appropriately fenced. (Indoor storage of such vehicles is desired and strongly encouraged and the design and construction of the garages should allow for such, where desired or necessary).

**8.02.4. Pets.** Unless otherwise approved by Declarant or the Architectural Committee, no pets or live poultry, hogs, cattle, rabbits, birds or other similar animals or livestock shall be kept on any Lot, with the exception that Lot Owners may each have one (1) horse, which is solely subject to the requirements of Draper City (e.g., Lot Owners do not have standing to object) that such use be request by way of application for a Conditional Use Permit and the conditions of said permit be met at all time by the applicant. Dogs and/or cats are considered to be common and reasonably acceptable house pets provided such are properly housed and cared for and are restricted to the Owner's Property and not kept in an unreasonable number, which is generally considered to be not more than a maximum of two (2) dog and two (2) cat. As recognized in section 8.02.8, below, any noise associated with pets and animals that becomes a nuisance to others is a breach of these covenants and shall be promptly stopped upon receipt of a written complaint from any third party. In no event shall Ownership and keeping of a horse be permitted unless the Lot Owner constructs a barn of compatible architecture as the residence and said barn is used to keep the horse indoors. The walking or exercise of the horse, rather than justify an outdoor corral or "run space" shall be satisfied instead by the Owner utilizing the nearby horse trails within the dedicated park space and trails within the Subdivision and the nearby Draper City Porter Rockwell Trail.

**8.02.5. Driveways.** Owners of Lots shall be responsible for providing driveway access to their homes from the paved portion of the public road or common driveway abutting the Owner's Lot as designated on the Plat. Any damage to the sidewalk, curb or gutter shall be repaired by the Owner at their sole expense. Each Lot Owner accepts the sidewalk, curb or gutter on their Lot in "as is" condition as received from the Declarant at the time of purchase. Under the terms of the Lot purchase contract, the initial Lot Owner shall deposit \$500.00 to cover any potential concrete repair made necessary by the Lot Owner's residential construction on said Lot or other forces for which the Lot Owner is responsible. Unless otherwise approved by Declarant, all driveways shall be constructed predominately with concrete

rather than asphalt or some other paved or unpaved surface. Exceptions may be approved by the Architectural Committee. Extensive length of road or driveway or other practical considerations may reasonably warrant an asphalt driveway where such would be compatible with and not objectionable to neighbors with whom the blended appearance of the homes in that area are to be evaluated in terms of combined visual attractiveness. Brick, stamped concrete and other such accents may also be used as part of the overall home driveway and walkway design, as approved by the Declarant and Architectural Committee.

**8.02.6. Trash.** All Lots in the Subdivision shall be kept free from rubbish and trash of every kind, clean and with lawns, including the area between the Lot line and the paved portion of the road, neatly mowed as necessary during the growing season, so that grass and weeds do not exceed a reasonable height. In the event the Owners of any Lots(s) do not so maintain their Lot(s), the Declarant shall have the right to enter upon said Lot to cut or remove the grass, weeds, rubbish or trash, and the Owner of any Lot or parcel so benefitted shall pay reasonable charges for such services as determined by the Declarant.

**8.02.7. Antennas and Wires.** Unless otherwise approved by the Declarant or the Architectural Committee, no future facilities, including poles and wire for the transmission of electricity, telephone and the like shall be placed or maintained above the surface of the ground on any Lot. Other than standard and customary satellite television transmission of a size and placement that is not unsightly to the neighboring view of others, no external or outside antennae towers or radio and television equipment of any kind shall be erected or installed without the prior written approval of the Declarant or the Architectural Committee.

**8.02.8. Offensive Activities.** No noxious or offensive activities shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, or individual neighbors or Owners of nearby Lots. No outdoor clothes drying or storage of any articles is permitted except in enclosed areas designed for that purpose. No outdoor storage of any articles, materials, equipment or vehicles of any nature is permitted in the front yard portion of any Lot except that regularly used passenger cars and light pickup trucks can be parked on driveway areas only. No vehicle shall be parked on any street in the Subdivision unless there is insufficient parking space on the individual Lot Owner's Property. Regardless, any vehicle parked on the street must be moved within 24 hours. Parking of any and all types of other equipment or vehicles are permitted only while being repaired and only in garages, or enclosed buildings. Unless otherwise approved, in general, storage of any equipment or vehicles in open areas is not permitted. A business cannot be operated on premises that would cause any noise, odor, excess traffic or parking, or that would be offensive to neighbors. Any business conducted on premises must be approved by the Architectural Committee.

**8.02.9. Site Walls and Fencing.** All site walls and fencing must be approved by the Architectural Committee and shall be installed in accordance with Draper City building codes, as approved by said Architectural Committee and in accordance with Exhibit "B". No fence, wall, hedge, tree or shrub planting which obstructs site lines at elevations between two and six feet above the roadways shall be placed or permitted to remain on any corner Lot within 30 feet from the street corner. Unless otherwise approved, any and all fencing shall extend from the rear of the applicable Lot along the side boundaries of such Property but not beyond the residential structure, i.e., shall not extend, at any height, beyond the prescribed termination point which is the distance from the front of the Lot to the front of the residence. Generally, that point is the front entry door to the completed residence but may be

different in cases where homes have "L" shaped configurations because of protruding garages or other portions of the residence. Thus, the closest vertical wall would be the prescribed termination point. Corner Lots may be an exception hereto as reasonably necessary to accommodate enclosure of backyards and such shall be resolved in a fair and reasonable manner to the mutual satisfaction of the affected Lot Owners. Although extensions of side fences are not permitted to protrude beyond the front of the residence, as provided herein, hedges and shrubbery are permitted to give definition to individual Lot lines but the flowing together of front lawns and/or planter areas at connecting front boundary lines is preferred and recommended.

**8.02.10. Approvals.** All materials used for construction of any fence within the Subdivision must be approved by the Declarant or the Architectural Committee. The Declarant or the Architectural Committee are authorized to require such color, materials, style and location as may be necessary to cause all such fences to blend together in an aesthetically appealing manner to create compatibility and uniformity in the Subdivision for the benefit of all Lot Owners therein. As provided hereinafter under section 8.02.10 of this article, a common design and overall color and material scheme for fencing in the Subdivision has been established by Declarant as set forth in Exhibit "B", which is attached hereto and incorporated herein by this reference. If and to such extent as the fencing design for the Subdivision may include a fence design for specific Lots, those Lot Owners also covenant and agree to preserve and maintain that design as established by Declarant or the Architectural Committee. Further, those Lot Owners desiring rear-yard fencing on Lots which were not received by them with such fencing in place at time of purchase, shall (unless otherwise approved by the Declarant or Architectural Committee) nonetheless install, preserve and maintain that type (material, style & color) of fence which is consistent with the overall scheme and design referenced herein to create visual harmony and overall consistency within the Subdivision. Unless changed hereafter in the approved manner provided herein, this design shall be uniformly upheld throughout the Subdivision at all times hereafter. To whatever extent Lot Owners with Lots that back up to the perimeter boundaries of the Subdivision and which may have a fence of a different type or color or material than what is prescribed in Exhibit "B" because such fence was previously installed by a rear neighbor who is not bound by these covenants, the affected Lot Owner in Kennington Estates may simply accept such fencing "as is" or they may install fencing consistent with Exhibit "B" or they may submit to the Architectural Committee for its approval some other design if found by the Architectural Committee to be reasonably in harmony with the best interests of the Subdivision and the stated goals and objectives of these Covenants and Restrictions.

**8.02.11. Utilities and Drainage.** Easements for installation and maintenance of utilities and drainage are reserved as shown in the recorded plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may change the direction or flow of drainage or any other utilization of the easements or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area on each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

**8.02.12. Signs.** No sign of any kind shall be displayed to public view on any Lot except one professional sign of a conventional size and provided that such is in accordance with Draper City sign ordinances, to advertise the Property for sale or rent. The same shall apply to signs used by a builder to advertise the Property under construction during a reasonable sales period associated therewith.

**8.02.13. Acts of God.** Any Dwelling or outbuilding on any Lot in the Subdivision which may be destroyed in whole or in any part by fire, windstorm, or from any other cause or act of God must be rebuilt or all debris removed and the Lot restored to a slightly condition with reasonable promptness.

**8.02.14. Damage to Roads.** DAMAGE TO THE ROAD SYSTEM RESULTING FROM IMPROPERLY INSTALLED AND MAINTAINED CONSTRUCTION ENTRANCES SHALL BE THE RESPONSIBILITY OF THE LOT OWNER.

**8.02.15. Bricks.** Kennington Estates is intended to be a custom home Subdivision where each home is individually designed for each purchaser and architecture and design are not substantially duplicated. Unless otherwise authorized by the Declarant or the Architectural Committee, no Dwelling may use the same style/color brick or stone selected by and approved for another nearby Property Owner in Kennington Estates. It is impractical in a Subdivision with 13 Lots to mandate that no color or style of brick can be used more than once within the Subdivision but reasonable care shall be taken to create an appealing variety of colors and styles and to reasonably space out any duplications that may exist because of the personal preference of the various home Owners and builders.

**8.02.16. Architectural Committee.** The provisions of Article VIII are incorporated herein by reference and are to be construed and applied, together with this Declaration in its entirety, in a manner consistent therewith. All references to required approvals by "the Committee" include and may be satisfied by the Declarant until such time as the Declarant establishes such a Architectural Committee and/or entirely withdraws from the Subdivisions and turns all matters pertaining to required approvals over to such Architectural Committee. There is no intended distinction or legal significance to any reference in the Declaration that refers to "the Committee" rather than those provisions elsewhere in the Declaration which require approval of "the Declarant or Architectural Committee".

**8.02.17. Landscaping.** An attractive blend of grass and shrubbery is required for all of the yards in the Subdivision, with reasonable allowance for driveways and sidewalks. The planting of fruit or vegetable gardens in the front yard is not permitted. Flowers, such as rose gardens, may be a permitted exception thereto.

**8.02.18. Mailboxes.** Each Lot Owner agrees to construct and install a mailbox for their residence in a manner, style, size, color, location and selection of materials as approved by Declarant and/or the Architectural Committee. The design for such shall be reasonably calculated to match and compliment the residence and blend with the other neighboring residences and their mailboxes as reasonably determined by Declarant or the Architectural Committee.

**8.03. Fencing, Entry and Other Amenities to Subdivision.** For the common benefit and enhancement of the Subdivision, a masonry entry feature, together with additional fencing and landscaping has or will be established at the entrances to the Subdivision for Subdivision identification. **Lots 1 and 13** are directly affected thereby. To the extent that the landscaping and maintenance of this design feature requires continuing access to electrical power and water availability, the cost and the physical requirements thereof shall be borne proportionally by the affected Lot Owners within the Subdivision. If at any time such becomes unreasonably burdensome to the affected Lot Owners, each of the Lots Owners within the Subdivision covenants and agrees to pay their respective individual share of the annual cost thereof to the extent such can be separately allocated between the costs normally associated with the individual Lot Owners and that which represents a common or general expense for the benefit of the entire Subdivision. The Owners of **Lots 1 and 13** covenant and agree to accept the entry

design features (as constructed and installed and including their location), together with the extended fencing associated therewith and will not alter, remove or interfere with such fencing in the construction of their homes, the landscaping of their yard and the use of their Property at any time, except as these Covenants and Restrictions may be amended hereafter as provided herein. The Owners of **Lots 1 and 13** shall make power and water available for the strip of land required to construct and maintain the entry to the Subdivision and the extended fencing and all landscaping associated therewith. The budget contribution and responsibilities of all other Lot Owners within the Subdivision may be adjusted accordingly as a majority of the Lot Owners may agree among themselves. Any such agreement must be approved by the Declarant or the Architectural Committee.

## **ARTICLE IX** GENERAL

**9.01. Provisions to Run With the Land.** The provisions herein contained shall run with and bind the land and shall inure to the benefit of and be enforceable by the Declarant or the Owner of any part of said land included in the Plat, their respective legal representatives, heirs, successors, and assigns. Failure by the Declarant, or any such Owner or Owners to enforce any restriction, condition, covenant or agreement herein contained shall in no event be deemed a waiver of the right to do so thereafter as to the same breach or as to one occurring prior or subsequent thereto. Enforcement of these Covenants and Restrictions shall be by proceedings at law or in equity against any person or persons violating or attempting to violate these Covenant and Restrictions, such action may either be to restrain violation or to recover damages and all other costs associated therewith, including reasonable attorneys fees.

**9.02. Term and Amendment.** These restrictions shall inure to the benefit of and shall be enforceable by the Declarant and any Lot Owner, their respective legal representatives, heirs, successors and assigns until December 31, 2030, at which time it will automatically be renewed for an additional period of thirty (30) years and then renewed in like fashion perpetually unless revoked, as provided below. This Declaration may only be amended and/or terminated in their entirety by an instrument signed by not less than seventy percent (70%) of the Lot Owners entitled to vote, which instrument shall be filed for recording among the Land Records of Salt Lake County, Utah or in such other place of recording as may be appropriate at the time of the execution of such instrument.

**9.03. Severability and Invalidation.** Invalidation of any of these covenants, agreement, restrictions or conditions by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

**9.04. Limitation.** These restrictions shall apply to the Lots as shown on the aforesaid Plat entitled Kennington Estates and shall not be binding on any other Property of the Declarant, its successors and assigns.

**9.05. Subdivisions.** No Lot shall be split, divided, or subdivided for sale, resale, gift, transfer or otherwise, after acquisition from the Declarant. With respect to any of said Lots while owned by the Declarant, the Declarant expressly reserves the right to alter Property lines, to alter setback lines, to alter any easements, and to otherwise revise the aforesaid Subdivision Plat and or Development Plan of Kennington Estates in any respect subject to applicable Draper City, Utah regulations and requirements. In connection therewith, the Declarant further reserves the right to modify the Subdivision Plat and/or Preliminary Plan as filed with Draper City, Utah, as to any Lots to be resubdivided. Included in this reservation is a special limited irrevocable power of attorney to sign on behalf of any interested party such

waivers or consents as may be required by Draper City, Utah, consenting to the alteration of the Subdivision Plat and/or Development Plan.

**9.06. Disclaimer of Liability and Responsibility.** Declarant disclaims and is expressly released from any liability associated with the Property boundaries and estimated square footage calculations of the Lots within the Subdivision, having relied in good faith upon the professional services of the engineering firm of PEPG Engineering, LLC in connection with the preparation of the Plat. Upon recordation of the Plat and dedication of all public roads and improvements, such shall be the responsibility thereafter of the pertinent entity receiving such dedications and transfer of public improvements.

## ARTICLE X MISCELLANEOUS

**10.01. Reservation of Rights.** The Declarant reserves an easement to exercise its right at any time prior to or subsequent to conveyance of individual Lots in Kennington Estates to enter upon any of the Property, to complete, in its sole discretion, development of the Property; such development includes but is not limited to tree cutting and grading and filling in order to install roads, storm drains and utilities. This reservation of an easement specifically includes the right to install a sign of Declarant's choice at the entrances to Kennington Estates at such locations (within ten (10) feet of the Property lines) as the Declarant in its sole discretion may deem appropriate.

**10.02. Waiver of Restrictions and Covenants.** The Declarant, its successors and assigns, reserves the right to waive such portion of the Restrictions and Covenants placed on this Property as the Declarant deems necessary or in the best interest of the Subdivision as determined by the Declarant. All waivers shall be in writing and a copy thereof shall be filed with the Declarant and a copy thereof shall be available to all Lot Owners upon request.

**10.03. Special Limited Power of Attorney.** AS STATED IN THIS DECLARATION, DECLARANT RESERVES THE RIGHT TO SIGN ON BEHALF OF ANY INTERESTED PARTY OR LOT OWNER SUCH WAIVERS OR CONSENTS AS MAY BE REQUIRED BY DRAPER CITY, UTAH OR OTHER PUBLIC AUTHORITY CONSENTING TO THE ALTERATION OF THE SUBDIVISION PLAT AND/OR PRELIMINARY PLAN.

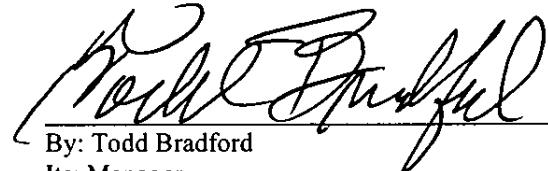
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**IN WITNESS WHEREOF**, the Declarant has caused this Declaration to be properly executed by its duly authorized representative as of the day and year first above written.

**DECLARANT:**

**CLETUS ESTATES, LLC**, a Utah limited liability company

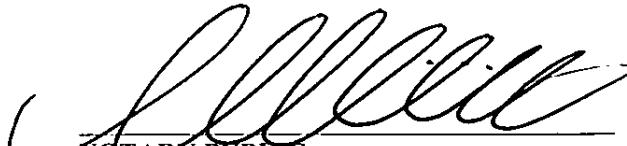
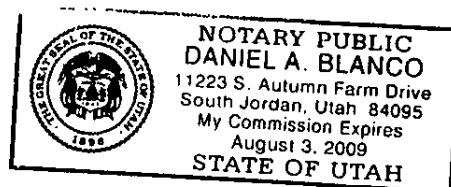
By: Todd Bradford  
Its: Manager



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

**I HEREBY CERTIFY**, that on this 8th day of March 2007, before me, the subscriber, a Notary Public of the State of Utah, personally appeared Todd Bradford, who acknowledge himself to be the manager of Cletus Estates, LLC, and he acknowledged that he executed the foregoing Declaration of Covenants and Restrictions on behalf of the said company for the purposes therein contained and he acknowledged the same to be the lawful act and deed of the aforesaid company.

AS WITNESS my hand and Notarial Seal.

  
NOTARY PUBLIC  
Residing at: South Jordan, UT

**EXHIBIT "A"**

**Legal Description**

## EXHIBIT "B"

### Site Walls and Fencing (§ 8.02.9)

In addition to being in compliance with Draper City, including, but not limited to permits and reviews, site walls or fences must appear as a visual extension of the residence, using similar materials and finishes. In no case will site walls or fences be permitted to arbitrarily delineate the building envelope, although it is understood that such walls or fences may define pet runs or small yards, courtyards or terraces in close proximity to the residence for the purpose of privacy. Site walls or fences must not exceed six (6) feet in height, measured from existing natural grade, and they may not encroach outside the building envelope. Fencing materials must be of stone, brick or beige vinyl.

The use of ornamental iron or other metal fencing is subject to approval by the Architectural Committee. Chainlink, metal, plain concrete block (unless veneered with stone) or wire fencing is prohibited.

Structural retaining walls may not exceed an above natural or finish grade height of six (6) feet, whichever is lower. Multiple terraced retaining walls must be utilized where the overall height of retained earth exceeds six (6) feet. Where multiple retaining walls are used, each tier must be separated by a six (6) foot planting area. Tiered retaining walls cannot exceed twelve (12) feet above natural or finished grade, whichever is lower. Retaining walls must jog in plan four (4) feet every twenty (20) feet and cannot exceed a maximum length of eighty (80) feet without approval from the Architectural Committee.

Retaining walls may be constructed of cast concrete or concrete masonry units; however, all exposed surfaces and edges must be stone veneer, so as to blend unobtrusively with its natural surroundings. Heavy timber wood retaining walls may also be approved. Certain textured concrete block may be allowed if it is also used on the home.