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Gary W. Ott  
Recorder, Salt Lake County, UT  
VIAL FOTHERINGHAM LLP  
BY: eCASH, DEPUTY - EF 23 P.

WHEN RECORDED RETURN TO:  
515 South 400 East, Suite 200  
Salt Lake City, UT 84111

**[CORRECTED] THIRD AMENDED AND RESTATED  
DECLARATION OF PROTECTIVE  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR DRAPER HEIGHTS SUBDIVISION**

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This Declaration is made on the date executed below by the Association after being approved by at least 67% of all voting interests.

**RECITALS**

A. Draper Heights Subdivision is a planned unit development located in Draper City, Salt Lake County, Utah;

B. Draper Heights Subdivision was originally made subject to a Declaration recorded on July 3, 1996 as Entry No. 6398861 in the Salt Lake County Recorder’s Office (“Original Declaration”);

C. The Original Declaration was replaced by an Amended Declaration recorded on July 14, 1999 as Entry No. 7411899 in the Salt Lake County Recorder’s Office (“Amended Declaration”);

D. The Amended Declaration was replaced by the Second Amended Declaration of Protective Covenants, Conditions, and Restrictions recorded as Entry No. 955538 in the Salt Lake County Recorder’s Office (“Second Amended Declaration”);

E. On November 4, 2014, the Third Amended and Restated Declaration of Protective Covenants, Conditions, and Restrictions for Draper Heights Subdivision was recorded with the Salt Lake County Recorder as Entry No. 11940297 (“Third Amended Declaration”). The Third Amended Declaration was intended to replace and supersede the Second Amended Declaration;

F. The Association recently learned that the recorded Third Amended Declaration had minor deviations from the version actually approved by the Association members and therefore, now desires to record the correct version;

G. This [Corrected] Third Amended and Restated Declaration of Protective Covenants, Conditions, and Restrictions for Draper Heights Subdivision is the version that was approved by the Association’s members;

H. Therefore, this Declaration replaces, in its entirety, the Third Amended Declaration and any and all Declarations and Declaration amendments recorded previously

hereto;

I. All Owners, guests, invitees, agents, and Residents shall abide by the provisions of this Declaration;

J. These covenants, conditions, restrictions, easements, and limitations shall run with the land described in Exhibit "A" and shall be binding on and burden all parties having or acquiring any right, title, or interest to the land or any part thereof and shall create serviette tenements on the land. The covenants, conditions, restrictions, easements, and limitations shall also benefit all parties having or acquiring any right, title, or interest to the land and shall create dominant tenements on the land;

K. The Association may be incorporated as a Utah nonprofit corporation. If incorporated, it shall be entitled to the rights, obligations, and benefits of the Revised Nonprofit Corporation Act (Utah Code Ann. 16-6a-101, *et. seq.*) as amended from time to time;

L. Under Utah Code Ann. 57-8a-104, more than 67% of the Association's voting interests have approved this Declaration;

NOW THEREFORE, for the benefit of the Project and the Owners thereof, the following covenants, conditions, restrictions, and easements shall apply to and be binding on the Project:

## **1 DEFINITIONS**

Capitalized terms used in the Governing Documents (including recitals) have the following meanings:

### **1.1 Articles**

Articles mean the Articles of Incorporation for Draper Heights Homeowners Association, Inc.

### **1.2 Association**

Association means Draper Heights Homeowners Association, Inc. It is intended that the Association be a Utah non-profit corporation. Failure of the Association to maintain its corporate status will not result in dissolution of the Association. The Association may renew its corporate status, reinstate its corporate status, or incorporate without Owner approval.

### **1.3 Board**

Board means the Board of Directors. The Board is known as the Management Committee in the Bylaws. Board of Directors and Management Committee shall be synonymous. The Board governs the property, business, and affairs of the Association.

### **1.4 Bylaws**

Bylaws mean the bylaws of the Association, as amended or restated from time to time.

### **1.5 Common Areas**

Common Areas mean private roadways, entrances to the Project (including gates, walls, fencing and landscape features on the outside of the walls or fencing).

**1.6 Common Expenses**

Common Expenses mean all sums spent to administer, maintain, or replace the Common Areas; expenses agreed upon as common expenses by a majority of the Owners; expenses authorized by the Governing Documents or the Community Association Act as common expenses; any other expenses necessary for the common benefit of the Owners.

**1.7 Community Association Act**

Community Association Act shall mean Utah Code §§ 57-8a-1 *et seq.*, as amended or replaced from time to time.

**1.8 Declaration**

Declaration means this document, as amended, supplemented, or restated from time to time.

**1.9 Director**

Director means a member of the Board.

**1.10 Governing Documents**

Governing Documents mean the Declaration, Bylaws, Articles of Incorporation, Map, and rules and regulations.

**1.11 Lot**

Lot means a separately numbered parcel of property as shown on the Map. Lots shall include all utility lines and other installations exclusively serving the Lot whether under or over the Common Areas or not.

**1.12 Map**

Map means the record of survey map on file with the Salt Lake County Recorder.

**1.13 Member**

Member means an Owner.

**1.14 Owner**

Owner means the owner of the fee in a Lot together with an undivided interest in the Common Areas. If a Lot is subject to an executory purchase contract, the contract purchaser shall be considered the Owner. However, the seller and buyer may otherwise agree but must inform the Board in writing of the alternative arrangement.

**1.15 Person**

Person means an individual, corporation, partnership, association, trustee, or other legal entity.

**1.16 Project**

Project means Draper Heights Subdivision as shown on the Map. The project includes the land, buildings, improvements and structures, easements, rights, appurtenances, and articles of personal property intended for use in connection therewith. Exhibit "A" contains the legal description for the Project.

**1.17 Resident**

Resident means any Person living or staying at the Project. Residents include without

limitation; Owners, tenants, family members of Owners and tenants, and guests staying more than a week.

## **2 SUBMISSION**

The Project and the Governing Documents are submitted to provisions of the Community Association Act.

## **3 EASEMENTS**

### **3.1 Easement for Encroachment**

If any part of the Common Areas encroaches on a Lot, an easement for the encroachment and for maintenance shall exist. If any part of a Lot encroaches upon the Common Areas, an easement for the encroachment and for maintenance shall exist. Such encroachments will not be considered to be encumbrances to the Common Areas or Lots. Encroachment causes include, without limitation, errors in the original construction; errors in the Map; settling, rising, or shifting of the earth; or changes in position caused by repair or reconstruction of the Project.

### **3.2 Right of Ingress, Egress, and Enjoyment**

Each Resident, guest, or invitee has the right to ingress and egress across the Common Areas necessary for access the Lot. Subject to the rules and regulations, each Resident has a right to enjoyment of the Common Areas. The rights described in this Section are appurtenant to and pass with title to the Lot.

### **3.3 Association Easement**

The Association, its Board, employees, agents, and contractors shall have non-exclusive easements to use the Common Areas to perform their duties as assigned by the Governing Documents.

### **3.4 Easement for Utility Services**

The Project is subject to a blanket easement over, across, above, and under it for ingress, egress, installation, maintenance, repair, and replacement of utilities. Utilities include, without limitation, water, sewer, gas, telephone, electricity, data, video, and cable.

## **4 MAINTENANCE**

### **4.1 Common Areas**

The Common Areas shall be maintained by the Association, including portion of Steep Mountain Drive.

### **4.2 Lots**

Owners shall maintain, repair, and replace their Lot at their cost. An Owner's maintenance responsibility extends to all components of their Lot as defined in the Declaration, on the Map, and in the Community Association Act. Lots shall be maintained so as not to detract from the appearance of the project and to maintain the value of any other Lot. Lots shall be maintained to protect and preserve the health, safety, and welfare of the other Lots and Common Areas. Prior to maintaining, repairing, or replacing any exterior feature, an Owner must submit their plans showing color, style, and shapes for approval by the Association.

## **5 MEMBERSHIP AND ASSOCIATION**

### **5.1 Membership**

Every Owner is a Member of the Association. Membership in the Association is mandatory, is appurtenant to the Lot, and shall not be separated from the Lot.

### **5.2 Voting Rights**

Each Lot shall have one vote. Voting is governed by the Bylaws.

### **5.3 Status and Authority of Board**

The Board is the governing body of the Association. It is obligated to manage, operate, and maintain the Project and to enforce the Governing Documents. The Board has exclusive authority to act in the Association's name. Any action taken by the Board on behalf of the Association will be deemed to be done in the Association's name. The rights and powers of the Board are governed by the Bylaws.

### **5.4 Composition and Selection of Board**

The Bylaws govern how the Board is established and selected.

## **6 USE RESTRICTIONS**

### **6.1 Use of Lots**

Lots may be used for residential use only. Home businesses are allowed as long as they do not increase traffic flow or have exterior indication of a business. Home businesses must be licensed and comply with zoning code.

### **6.2 Gate Codes**

Gate codes are to be kept private. Limited distribution to immediate family members and other essential to the Owner's interest (*i.e.*, recurring service providers or emergency services) is permissible. Other individuals may be granted access codes with approval of the Association. To obtain an access code the individual must complete the Owner's Gate Authorization Form. Authorization Forms are available from the Association and may be posted on the Association website. In granting gate codes, the Owner assumes responsibility and liability for the guests, including the individuals given codes by the guest. Owner responsibility for guests and guests of guests with gate codes extends to compliance with the Governing Documents, state law, and local law. Owners shall not distribute the gate code for social events; guests must contact the Owner from the gate directory for access to the Project.

### **6.3 No Obstruction of Common Areas**

Owners and Residents shall not obstruct Common Area. Owners and Residents shall not use Common Areas for their private use, unless approved by the Board. Owners and Residents shall not store anything in the Common Areas, except for parking in designate parking areas. Owners and Residents shall not alter Common Areas. Owners and Residents may not damage or commit waste to the Common Areas.

### **6.4 Cancellation of Insurance/Nuisance**

Owners and Residents shall not do or keep anything in a Lot, which would result in the cancellation of insurance or increase the premium. Owners and Residents shall not do or keep



anything in a Lot which would violate a law. No noxious, destructive, or offensive activity shall be done in a Lot. No activity shall be done which creates a nuisance.

#### **6.5 Rules and Regulations**

Owners and Residents shall obey the rules created by the Board.

#### **6.6 Signs**

Signs, displays, balloons, or banners can be erected on a lot for up to one week, provided they are removed within 24 hours of the event. No signs, balloons, posters, banners, displays or other advertising devices of any character shall be permitted, or attached to the entrance gates, or shown on the Common Area. The restrictions of this paragraph shall not apply to any sign or notice ten square feet or smaller in size which states that the Lot is for rent or sale. No banners announcing a Lot for sale will be allowed, regardless of size. The Association may cause all unauthorized signs to be removed.

#### **6.7 Parking**

No articles, material, equipment or vehicles of any nature shall be parked or stored on any street located within the Subdivision. Licensed, regularly used and operable passenger vehicles (i.e. visitor vehicles) may be parked in the street of the Subdivision for brief periods of time (i.e. less than twenty-four hours). Parking of boats, campers, snowmobiles, recreational vehicles, trailers, etc., is permitted for a period not to exceed 72 hours while transitioning for use. No unlicensed or inoperable vehicles may be stored in the community. Any vehicle improperly parked is subject to towing at the owner's expense. Winter snow removal requires all vehicles be off the street, in accordance with the City of Draper snow removal regulations, to facilitate timely and safe snow plowing.

#### **6.8 Livestock and Poultry**

No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except that dogs, cats, and other household pets may be kept provided that they are not kept, bred, or maintained for any commercial purpose. No more than a combination of any two animals (such as cats, dogs and alike) will be allowed at any one time. Furthermore, cats and dogs shall not be released from a Lot without being leashed or otherwise physically constrained and supervised. Each dog owner is responsible for his or her particular dog's actions, including cleaning up a dog's excrement.

#### **6.9 Garbage and Refuse Disposal**

No Lot shall be used as or maintained as a dumping ground for rubbish, trash, garbage or other waste, and such materials shall not be kept on any Lot except in covered containers. All trash containers shall be covered and kept screened from view from the street in suitable enclosed areas, except during public collection. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. The burning of rubbish, leaves, or trash within the Subdivision is prohibited. Each Lot and its abutting street are to be kept free of trash, weeds, and other refuse by the Lot owner. No unsightly material or objects are to be stored on any Lot in view of the general public.

#### **6.10 Repair of Improvements**

No improvements on any Lot shall be permitted to fall into disrepair and such improvements shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any building or structure is damaged or destroyed, then, subject to Association approval, such building or structure shall be repaired or rebuilt or shall be

demolished at the sole expense of the owner of such Lot, within a reasonable amount of time.

#### **6.11 Restricted Trees**

Poplars, Russian Olives, Chinese Elms, Weeping Willows, Box Elder are prohibited in the Project.

#### **6.12 Leases**

Leases shall be subject to the following restrictions:

6.12.1 Lots may be rented only to a single family. Dormitory, hostel, hotel, or nightly rentals are strictly prohibited.

6.12.2 All leases and tenants shall be subject to the provisions of the Declaration, Bylaws, rules and regulations. Any owner who leases their Lot shall be responsible for assuring the occupants' compliance with the Governing Document.

6.12.3 The leasing of Lots shall comply with this Section. "Leasing," means granting the right to use or occupy a Lot to a non-Owner while no Owner occupies the Lot as their primary residence. Lots owned by business entities or trust shall be considered leased regardless of who occupies the Lot.

6.12.4 Minimum Occupancy Period. Prior to being eligible to lease a Lot, an Owner must occupy the Lot as a primary residence for 12 months. The Minimum Occupancy Period will not apply to a mortgagee who takes possession of the Lot through foreclosure.

6.12.5 Initial Lease Term. The initial lease term shall be a 12-month minimum.

6.12.6 Hardship Exemption. Notwithstanding the above, in order to avoid undue hardships or practical difficulties the following classes of Owners shall be exempt from the Lease Limit:

6.12.6.1 An Owner in the military for the period of the Owner's deployment;

6.12.6.2 A Lot occupied by the Owner's parent, child, or sibling;

6.12.6.3 An Owner who has relocated to perform charitable service;

6.12.6.4 An Owner experiencing extreme financial hardship or disability, as such is defined by Board resolution;

6.12.6.5 An Owner whose employer has relocated the Owner for no less than two years;

6.12.6.6 A Lot owned by a trust or other entity created for estate planning purposes or other estate planning entity was created for the estate of:

6.12.6.6.1 A current Occupant of the Lot; or

6.12.6.6.2 The parent, child, or sibling of the current Occupant of the Lot.

6.12.7 Application and Approval. Each Owner desiring to lease a Lot shall apply to the Board for approval. The application shall contain all supporting documentation necessary to prove the Owner either complies with the Minimum Occupancy Period or qualifies for a Hardship Exemption. The Board shall review the application and determine whether the Owner is current in payment of assessments, and complies with the Minimum Occupancy Period or qualifies for a Hardship Exemption. The Board shall:

- 6.12.7.1 Approve the application if it determines that the Owner is current in payment of assessments, complies with the Minimum Occupancy Period, the Initial Lease Term, and Lots are available for lease under the Lease Limit; or
- 6.12.7.2 Approve the application if it determines that the Owner is current in payment of assessments, qualifies for a Hardship Exemption, and the lease complies with the Initial Lease Term; or
- 6.12.7.3 Deny the application if it determines that the Owner is not current in payment of assessments, does not qualify for hardship, or there are no available Lots under the Lease Limit.

6.12.8 Review of Rental Application. The Board shall review applications within 10 business days of receipt. The Board shall approve or deny an application and shall notify the Owner of the result, and if, permission is not given, the reason for the denial within 15 business days of receipt of the application.

6.12.9 Application Form; Approval Process. An application form, the application and approval process, and any other rules deemed necessary by the Board to implement this section shall be established by resolution of the Board.

6.12.10 Lease Agreements – Required Terms. All Owners shall use and provide the Board with a copy of the written lease agreement. All lease agreements shall contain terms subjecting the Resident to the terms, conditions, and restrictions of the Governing Documents, as amended from time to time. The Owner shall provide the tenant with a copy of the Governing Documents. In the event the Governing Documents are amended, revised, changes, or supplemented by the Association, the Owner shall provide the tenant with a copy of the amendments, revisions, changes, or supplements within 10 calendar days of adoption by the Association, its Board, or membership.

6.12.11 Violations and Rental Restrictions. If an Owner fails to submit the required application, fails to use and submit a copy of a written lease agreement with the required terms, and leases a Lot, or leases their Lot after the Board has denied the Owner's application, the Board may assess fines against the Owner and the Lot in an amount to be determined by the Board pursuant to a schedule of fines adopted by the Board. Regardless of whether any fines have been imposed, the Board may seek any available legal or equitable remedies, including but not limited to, an action to terminate the lease agreement and eviction of tenant.

6.12.12 Failure to Take Legal Action. Failure by an Owner to take legal action against their Occupant who is in violation of the Governing Documents within 10 days after delivery of written demand to so do from the Board, shall entitle the Association to take any and all such action for and in behalf of said Owner and as his agent, including but not limited to the institution of legal proceedings on behalf of such Owner against his or her Occupant for eviction,

injunctive relief or damages. Neither the Association nor its agent shall be liable to the Owner or Occupant for any legal action commenced under this Section that is made in good faith.

**6.12.13 Recovery of Costs and Attorney Fees; Owner Liable.** The Association shall be entitled to recover from the offending Owner its costs and attorney's fees incurred for enforcement of this Section, regardless of whether any lawsuit or other action is commenced. The Association may assess such costs and attorney's fees against the Owner and the Lot as an assessment pursuant to this Declaration. Additionally, the Owner shall be liable for all fines, assessments, or other penalties levied due to violations of their tenant. The Owner shall be personally liable for any violations caused by their tenant. Any assessments, fines or penalties levied under this Section shall be collectable as an assessment.

**6.12.14 Grandfathered Lots.** Lots being leased on the date this Amendment was recorded shall be exempt for the Lease Limit until:

6.12.14.1 The Owner transfers the Lot by deed;

6.12.14.2 The Owner grants a life estate in the Lot;

6.12.14.3 If owned by a business entity, the Owner sells or transfers more than 75 % of its shares, stock membership interests, or partnership interest within a 12 month period.

Grandfathered Lots shall comply with all other provisions of this section including the Initial Lease Term. Grandfathered Lots shall be subject to the remedies authorized in this section for failure to comply with the restrictions herein.

### **6.13 Timeshares**

Timeshares and time-sharing of Lots is prohibited. Under no circumstances shall any Lot be owned or used as a "time period unit" as defined by Utah Code § 57-8-3(26), as amended from time to time.

### **6.14 Subdivision/Combination**

No Lot shall be further subdivided or separated into smaller Lots. Multiple Lots may be combined into a single Lot with written permission from the Association. However, the combined lots shall pay assessments on the number of original Lots. This provision shall not apply to any lot subdivided or combined prior to the effective date of this Declaration.

### **6.15 Firearms and Projectile Weapons**

The use of firearms, airsoft guns, BB guns, pellet guns, archery equipment, or any other projectile weapon, however powered, is prohibited

## **7 ARCHITECTURAL CONTROL**

### **7.1 Architectural Control Committee**

The Board shall serve as the Architectural Control Committee. The Architectural Control Committee shall insure that all improvements and landscaping within the Project comply with the requirement of this Declaration and harmonize with the surrounding homes.

## **7.2 Submission to Committee**

No home, accessory, addition, repair to the exterior of a home, or other improvement shall be constructed, maintained, or altered unless complete plans and specifications have first been submitted and approved by the Architectural Control Committee.

## **7.3 Standard**

In deciding whether to approve plans and specifications, the Architectural Control Committee shall use its best judgment to ensure that all improvements, construction, color schemes, and building materials harmonize with existing surroundings and structures.

## **7.4 Approval Procedure**

Any plans submitted to the Architectural Control Committee shall be approved or disapproved in writing within 30 days after submission. Architectural Control Committee failure to act and communicate the decision in 30 days results in approval of the proposed plans.

## **7.5 No Liability for Damages**

The Architectural Control Committee shall not be liable for damages by reason of any action, inaction, approval, or disapproval by it with respect to a request for approval.

## **7.6 Building Materials**

All structures constructed within the Project shall be of new materials (with exception of natural stone or rock) and shall be of good quality workmanship and materials. At least fifty percent (50%) of all exterior construction shall be brick, or stone. No more than fifty percent (50%) stucco mix and/or new wood on the exterior is allowed. Only those exterior materials which will blend harmoniously with the natural environment, with special emphasis on earth toned colors, shall be permitted. The main exterior color to the structure (house) must be at a minimum two shades lighter or two shades darker than existing homes immediately next door to the Lot. The typical roof pitch shall be at least 5/12. The Architectural Control Committee may grant a variance of the roof pitch. A minimum width of six (6) inches shall be required on the fascia. All stacks and chimney's from fireplaces which combustible materials other than gas are burned, shall be fixed with spark arrester. All Owners shall strictly comply *with* all state laws and city ordinances pertaining to fire hazard control.

Roofs may be constructed using asphalt shingles, asphalt laminated shingles, wood shake shingles, or clay tile shingles. Shingles must be top of the line and have a minimum 25-year warranty. Proposed colors, styles, and request for variance must be submitted in writing to the Architectural Control Committee for approval prior to installation.

No aluminum, vinyl or similar siding materials will be permitted, with the following exception. Aluminum and vinyl materials will only be allowed at soffit and fascia area. Log structures are prohibited.

## **7.7 Fences**

Chain link fence is prohibited unless it is factory color vinyl coated. Height of fence may not exceed Draper City requirements. A written exception may be given for Tennis Courts, upon request and approval of the Architectural Control Committee.

## **7.8 Fixtures**

Roof mounted air conditioners, roof mounted solar panels, roof mounted satellite dish less than

one meter in diameter, and roof-mounted antenna shall be installed so as not to be seen from the street, unless permitted pursuant to law.

#### **7.9 Minimum Dwelling Size**

No dwelling shall be permitted on any Lot wherein the floor area of the main structure of the dwelling, exclusive of garages and open porches, is less than the following measurements: (a) For a single story dwelling, 2,300 feet, not including basement area; (b) For two story dwelling, 1,700 square feet on the main floor and 1,300 square at the second floor totaling a minimum of 3,000 square feet for the combined two floors, not including basement; (c) For a three story dwelling, 1,700 square feet at the main level, 1,200 square feet at the second level and 800 square feet at the attic or within the roof area, totaling a minimum of 3,700 square feet, not including basement. The Architectural Control Committee may vary these minimum requirements if, for example, rambler type home substantially exceeds the main level (minimum square foot) allowances, then the second level (minimum square foot) allowance may be reduced.

#### **7.10 Detached Garages**

Detached garages shall not exceed two stories in height, nor have less than 8/12 roof pitch. Materials shall comply with the Governing Documents. Detached garages shall be first approved by the Architectural Control Committee before submission to Draper City for permit. No detached garage shall exceed the height of the dwelling.

#### **7.11 Exterior Security Lighting**

All dwellings will require at least one 110 volt electric outdoor post lamp retrofitted with a 20 amp electrical outlet (weather type) at the base of each post. The post lamp will require an activating light sensor with a minimum of 75 watts of lighting by either single bulb or by multiple bulbs. Exterior garage lighting must also be sensor activated with a minimum of two bulbs. Owners are responsible for the replacement of light bulbs. All security lighting and visibility must be maintained in good working order at all times. Failure to do within one week of written notice will result in the Association replacing or repairing the light and property Owner will be billed accordingly.

#### **7.12 Exterior Outlets**

At least two exterior outlets (weather type) shall be located at the front and at each end of the house. These outlets must be on separate amperage breakers and may be placed within the soffit.

#### **7.13 Exterior Hose Bibs**

Each dwelling shall have at least three hose bibs placed as follows: one in the front; one in the rear; and one on the side.

#### **7.14 Utility Connections**

Owners will be responsible for paying for the utility connections and related fees. Owners are not allowed to "reduce" the water meter in size.

#### **7.15 Lots with Swimming Pools**

Swimming pools must be constructed, fenced, and maintained in accordance with all state and municipal requirements.

## **8 ENFORCEMENT**

### **8.1 Compliance**

Each Owner and Resident shall comply with the Governing Documents. Failure to comply will be grounds for the remedies provided in this Declaration.

### **8.2 Remedies**

The remedies for violations shall be levied against the Owner in all cases and the Residents in cases involving injunctive relief. Remedies shall not be mutually exclusive and can be exercised concurrently. The Association shall have rights to take the following actions to correct violations of the Governing Documents:

8.2.1 After 15 days' notice, to enter a Lot and abate and remove any violation of the Governing Documents. Any expense incurred in abating the violation will be an individual assessment against the Owner. If the Association exercises this right of entry, they will not be guilty of any manner of trespass or nuisance;

8.2.2 To levy fines pursuant to procedures adopted by the Board. The procedures shall comply with the Community Association Act;

8.2.3 To bring suit for damages, to enjoin, abate, or remedy the violation on behalf of the Association and the Owners.

### **8.3 Action by Owner**

An Owner may bring an action against another Owner or the Association for damages, to enjoin, abate, or remedy a violation being committed by another Owner or the Association.

### **8.4 Hearings**

The Board shall adopt procedures for hearings. When a hearing is requested or required, the hearing shall be conducted in accordance with the Board's procedures.

## **9 ASSESSMENTS**

### **9.1 Covenant for Assessment**

By accepting a deed or other conveyance, each Owner covenants and agrees to pay the Association all regular assessments, special assessments, individual assessments, late penalties, and collection costs (including attorney's fees) whether or not a lawsuit is commenced. No Owner may exempt themselves from liability for assessments by abandonment of their Lot, failure of the Association to maintain the Common Areas, or non-use of the Common Areas. If an Owner loses their Lot to foreclosure or voluntarily conveys it, they shall remain personally liable for unpaid assessments, late fees, interest, and collection costs (including attorney's fees).

### **9.2 Annual Budget**

The Board shall prepare an annual budget for the Association. The annual budget shall provide for: the maintenance, repair, and replacement of the Common Areas; and the administration, management, operation, and reserves of the Association. If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect.

### **9.3 Reserve Account**

The Association shall establish a reserve account to fund long-term maintenance and replacement items. The Board shall use reasonable efforts to fund the reserve account. The Board shall not be personally liable for failure to fund the reserve unless gross negligence or intentional misconduct is proven in a court of law.

### **9.4 Regular Assessment**

The Association may collect the regular assessment on an annual basis, semi-annual basis, quarterly basis, or monthly basis. Written notice of the regular assessment amount and payment schedule shall be sent to Owners at least 30 days in advance of the beginning of the fiscal year for which the regular assessment will be due. Apart from the initial notice of regular assessment, the Association is not obligated to send periodic invoices for regular assessments. If the Board fails to fix a regular assessment, the amount of the last regular assessment and payment schedule will continue in effect.

### **9.5 Special Assessment**

The Association may levy a special assessment for the purpose of defraying in whole or in part the cost of any budget shortfall, construction, reconstruction, maintenance, repair, or replacement of the Common Areas. A special assessment must be approved by a majority of a quorum of Owners.

### **9.6 Emergency Assessment**

If the regular assessments are inadequate to pay the Common Expenses, the Board shall determine the amount of the shortfall. Once the amount of the shortfall is determined, the Board shall adopt a supplemental budget. The Association may levy an emergency assessment to fund the supplemental budget. The Association may levy an emergency assessment up to 50% of the original annual budget without approval from the Owners. If an emergency assessment exceeds 50% of the original annual budget, it must be approved by a majority of a quorum of Owners.

### **9.7 Individual Assessment**

Any expenses attributable to less than all the Lots may be assessed exclusively against the affected Lots. Individual assessments include, without limitation:

9.7.1 Assessments levied against a Lot to reimburse the Association for costs incurred in correcting a violation of the Governing Documents;

9.7.2 Fines, late fees, interest, collection costs (including attorney's fees);

9.7.3 Services provided to a Lot due to an Owner's failure to maintain, for emergency repairs, or to protect the health, safety, and welfare of adjoining Lots and Common Areas;

9.7.4 Reinvestment or transfer fees; and

9.7.5 Any charge described as an individual assessment by the Governing Documents;

### **9.8 Apportionment of Assessments**

Regular, special, and emergency assessments will be apportioned equally among the Lots. Individual assessments shall be apportioned exclusively to the Lots benefitted or affected.



### **9.9 Nonpayment of Assessment**

Assessments not paid within 30 days after the due date established by the Board will be late and subject to interest at 18% per annum on any delinquent balance and a late fee in an amount to be determined by the Board. Late fees may only be charged once for a missed payment.

### **9.10 Application of Partial Payments**

Partial payments shall be credited first to collection costs (including attorney's fees), then to interest and late fees, then to the oldest assessments, then the most recent assessments.

### **9.11 Suspension of Voting Rights**

If an Owner has a delinquent assessment balance, the Association may suspend their right to vote.

### **9.12 Lien for Assessment**

All assessments, late fees, interest, and collection costs (including attorney's fees) not timely paid shall be a charge and continuing lien upon each Lot against which the assessment is made. The Association shall file a notice of lien with the county recorder as evidence of nonpayment.

### **9.13 Enforcement of Lien**

Without waiving its right to personally pursue an Owner for unpaid assessments, the Association may foreclose its lien in the same manner as deeds of trust, mortgages, or any other manner permitted by Utah law.

### **9.14 Appointment of Trustee**

The Owners hereby convey and warrant pursuant to U.C.A. Sections 57-1-20 and 57-8a-402 to Draper Heights HOA attorney of record, with power of sale, the Lot and all improvements to the Lot for the purpose of securing payment of assessments under the terms of the Declaration.

### **9.15 Subordination of Lien**

A lien for assessments shall be subordinate to a first Mortgage now or hereafter placed upon a Lot. The sale of a Lot pursuant to foreclosure of a first Mortgage shall extinguish the lien for assessments which became due prior to the foreclosure sale. A foreclosure will not relieve the purchaser's obligation to pay 6 months of assessments, late fees, and penalties.

## **10 INSURANCE**

### **10.1 Types of Insurance Maintained by the Association**

To the extent reasonably available, the Association shall obtain the following insurance coverage:

10.1.1 Public liability for the Common Areas for at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate for property damage, bodily injury, or death;

10.1.2 Property, fire, and extended hazard for all Common Areas, if available and advisable;

10.1.3 Directors and officers for at least \$1,000,000.00;

10.1.4 Fidelity bond or dishonest acts insurance for at least the value of the reserves and

operating capital of the Association.

The Board may adopt insurance rules and policies to maintain the insurability of the Project, keep the premiums reasonable, and enforce responsibilities of the Owners.

**10.2 Insurance Company**

The Association shall use an insurance company knowledgeable with community association insurance, which is licensed in Utah.

**10.3 Premium as Common Expense**

The premiums for the Association's insurance policies shall be a Common Expense.

**10.4 Insurance by Owner**

Each Owner shall insure their Lot, home, and personal property.

**10.5 Payment of Deductible**

The deductible on a claim made against an Association policy shall be paid for by the party:

10.5.1 Who would be liable for the loss, damage, claim or repair in the absence of insurance; or

10.5.2 From whose Lot the cause originates.

If there are multiple responsible parties, the loss shall be allocated equally amongst the parties. If a loss is caused by an Act of God, nature, or risk or peril beyond the control of the parties, then the Owner shall be responsible for the deductible. Deductibles shall be determined by the Board. If the Board changes the deductible amount, 60 days' notice will be given to the Owners. Owners found to be responsible for the deductible, shall be so despite inadequate personal insurance. If the Board finds an Owner to be responsible for the deductible, it shall be an Individual Assessment.

**11 MISCELLANEOUS**

**11.1 Amendment of Declaration**

Owners representing 67% or more of the undivided ownership interests in the Common Areas must approve any amendment to the Declaration. However, the Board may amend without Owner approval, to correct misspellings, grammar, or to comply with changes in the loan underwriting guidelines, if failure to comply would disqualify the Project from financing eligibility.

**11.2 Termination of Declaration**

Owners representing 75% or more of the undivided ownership interests in the Common Areas must approve a termination of the Declaration.

**11.3 Votes without a Meeting**

The Association may collect votes without a meeting as outlined in the Bylaws.

**11.4 Service of Process**

The registered agent of the Association will be the Person named in the corporate records on file with the Utah State Department of Commerce.

If the corporate status of the Association expires, the president shall be the successor agent. The name and address of the president shall be kept with the Association's records at its principal place of business.

**11.5 Taxes on Lots**

Each Lot is subject to separate taxation of each taxing authority. Consequently, no taxes will be assessed against the Project except for Association personal property. Each Owner will pay all taxes which may be assessed against him or his Lot.

**11.6 Covenants Run with the Land**

The Declaration contains covenants, which run with the land and create equitable servitudes. The Declaration shall be binding upon and inure to the benefit of the Association, all parties who hereafter acquire any interest in or occupy a Lot or any part of the Project, their heirs, successors, assigns, grantees, devisees, personal representatives, guests, and invitees. Each Owner or Resident shall comply with the Governing Documents. All interests in the Lots shall be subject to the Governing Documents. Failure to comply shall be grounds for an action for damages or injunctive relief by the Association or an Owner. By acquiring any interest in a Lot, each Owner or Resident agrees to be bound by the Governing Documents.

**11.7 Severability**

If any provision of the Declaration is determined to be invalid or unenforceable, it shall not affect the remaining provisions of the Declaration.

**11.8 Waiver**

No provision of the Declaration shall be waived or abrogated by reason of a failure to enforce it.

**11.9 Gender**

The use of one gender shall be deemed to refer to all genders. The use of the singular shall be deemed to refer to the plural and vice versa.

**11.10 Headings**

The headings are for reference only and not to describe, interpret, limit, extend or affect the content of the Declaration.

**11.11 Conflicts**

If the Declaration conflicts with the Community Association Act, the Community Association Act shall control. If the Declaration conflicts with the Map, the Map shall control. If the Declaration conflicts with the Bylaws, Articles, or rules, the Declaration shall control.

**11.12 Effective Date**

The Declaration and any amendments take effect upon recording in the Salt Lake County Recorder's Office.

IN WITNESS WHEREOF, the Association has caused this Declaration to be executed by its duly authorized officers.

DATED this 19<sup>th</sup> day of May, 2015.

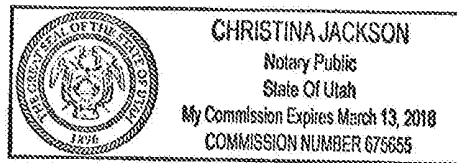
**Draper Heights Homeowners Association**

*Marshall E Erb*  
By: Marshall E. Erb  
Its: President

STATE OF UTAH )  
 )  
 ) :ss.  
County of Salt Lake )

On this 19<sup>th</sup> day of May, 2015, personally appeared before me Marshall Erb who being by me duly sworn, did say that they are the agent of the Association authorized to execute this Declaration and did certify that more than 67% of the voting interests approved this Declaration.

*Christina Jackson*  
NOTARY PUBLIC



**Exhibit A**

**Legal Description**

ALL LOTS DRAPER HEIGHTS PUD AS SHOWN ON THE OFFICIAL PLAT MAP  
THEREOF ON RECORD IN THE SALT LAKE COUNTY, UTAH

Parcel ID:

Lot / Quarter	Parcel Number
1	34-07-427-023-0000
2	34-07-427-022-0000
3	34-07-427-021-0000
4	34-07-427-020-0000
5	34-07-427-019-0000
6	34-07-427-013-0000
7	34-07-427-014-0000
8	34-07-427-015-0000
9	34-07-427-016-0000
10	34-07-427-017-0000
11	34-07-427-018-0000
12	34-07-429-017-0000
13	34-07-429-016-0000
14	34-07-429-015-0000
15	34-07-429-014-0000
16	34-07-429-013-0000
17	34-07-429-021-0000
18	34-07-429-018-0000
18	34-07-429-020-0000
19	34-07-429-010-0000
20	34-07-429-009-0000
21	34-07-429-008-0000
22	34-07-429-007-0000
23	34-07-429-001-0000
24	34-07-429-002-0000
25	34-07-429-003-0000
26	34-07-429-004-0000
27	34-07-429-005-0000
28	34-07-429-006-0000
29	34-08-301-002-0000
30	34-08-301-003-0000
31	34-08-301-004-0000
32	34-08-301-005-0000
33	34-08-301-006-0000
34	34-08-301-007-0000
35	34-08-301-008-0000
36	34-08-301-009-0000
37	34-08-301-010-0000

38	34-08-301-011-0000
39	34-08-301-012-0000
40	34-08-303-016-0000
41	34-08-303-012-0000
42	34-08-303-011-0000
43	34-08-303-010-0000
44	34-08-303-009-0000
45	34-08-303-008-0000
46	34-08-303-007-0000
47	34-08-303-006-0000
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49	34-08-303-004-0000
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61	34-07-477-012-0000
62	34-07-477-011-0000
63	34-07-477-010-0000
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74	34-07-430-012-0000
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76	34-07-430-010-0000
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82	34-07-428-031-0000
83	34-07-428-029-0000
83	34-07-428-031-0000
84	34-07-428-009-0000

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86	34-07-428-027-0000
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88	34-08-302-004-0000
89	34-08-302-005-0000
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121	34-07-428-024-0000
122	34-07-428-011-0000
123	34-07-428-010-0000