

11282239
11/18/2011 1:50:00 PM \$47.00
Book - 9967 Pg - 8558-8574
Gary W. Ott
Recorder, Salt Lake County, UT
METRO NATIONAL TITLE
BY: eCASH, DEPUTY - EF 17 P.

MNT 25091

RECORDING REQUESTED BY:)
AND WHEN RECORDED MAIL TO:)

Robert A. McConnell)
PARR BROWN GEE & LOVELESS)
185 South State Street, Suite 800)
Salt Lake City, Utah 84111)

Parcels: 27.36.351.006, 005, ~~017, 018~~

27-36-151-017, 018 Space Above This Line Is For Recorder's Use Only

**DECLARATION AND ESTABLISHMENT
OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS**

**DECLARATION AND ESTABLISHMENT
OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS
AND GRANT OF EASEMENTS**

THIS DECLARATION AND ESTABLISHMENT OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS is made as of the 18th day of NOVEMBER, 2011 by DRAPER HOLDINGS, LLC, a Utah limited liability company ("Declarant").

RECITALS

A. Declarant is the owner of that certain parcel of real property located in the City of Draper, Salt Lake County, Utah, more particularly described on Exhibit "A" attached hereto (the "Development Parcel"), together with certain adjoining parcels more particularly described on Exhibit "B" attached hereto (the "Adjoining Parcels").

B. Declarant desires to facilitate the development of the Development Parcel as an office campus and related uses, and, for such purpose, does hereby fix and establish the "Restrictions" (as hereinafter defined), upon and subject to which all of the Development Parcel, or any part thereof, shall be improved, held, leased, sold and/or conveyed. Each and all of the covenants, conditions and restrictions set forth in this Declaration shall run with the land of the Development Parcel and every portion thereof, and shall apply to and bind the respective successors in interest to the Development Parcel and every portion thereof, for the benefit of the Development Parcel and the Adjoining Parcels and each portion thereof. Each and all of the covenants, conditions, and restrictions set forth in this Declaration are imposed on each portion of and interest in the Development Parcel as mutual equitable servitudes in favor of each and all other portions of and interests in the Development Parcel and the Adjoining Parcels (except to the extent otherwise stated herein) and constitute covenants running with the land pursuant to applicable law.

ARTICLE 1

DEFINITIONS

1.1 "ACC" shall mean the Architectural Control Committee established by the TSD Zone with the responsibility, as further defined pursuant to this Declaration, to review plans and specifications for the construction or modification of improvements and to administer and enforce the Design Guidelines.

1.2 "Building" shall mean any enclosed structure (excluding parking structures and parking facilities) designated for the exclusive use of an occupant or limited occupant(s), as the case may be, placed, constructed or located on a Parcel, which for the purpose of this Declaration shall include any appurtenant supports, service areas and other outward extensions.

1.3 "Building Area" shall mean the limited areas of the Development Parcel within which any Building may be constructed, placed or located.

1.4 "Declaration" shall mean this Declaration and Establishment of Protective Covenants, Conditions and Restrictions.

1.5 "Design Guidelines" shall mean the Design Guidelines for the Development Parcel as set forth on Exhibit "C" attached hereto, as the same may be amended from time to time pursuant to an amendment to this Declaration.

1.6 "Governmental Restrictions" shall mean any or all laws, statutes, ordinances, codes, decrees, rulings, regulations, writs, injunctions, orders, rules, conditions of approval or authorization of any governmental entity, agency or political subdivision, whether now in force or which may hereafter be in force, as and to the extent applicable to the Development Parcel.

1.7 "Mortgage" shall mean an indenture of mortgage or deed of trust on a Parcel or, a "Sale and Leaseback" (meaning a transaction whereby an Owner conveys its fee or a leasehold estate in such Parcel and such conveyance is followed immediately by a leaseback or sub-leaseback of the entire interest so conveyed or the improvements thereupon to such Owner, or to a party controlled by, or under common control with, such Owner).

1.8 "Mortgagee" shall mean any mortgagee under a Mortgage, or trustee or beneficiary under a deed of trust constituting a lien on all or any portion of any of the Parcels or any leasehold interest in the Parcels, or on any ground lessor under any ground lease or master lessor under any master lease with respect to all or any portion of any of the Parcels. The interest held by any Mortgagee in any Parcel shall be subordinate to this Declaration.

1.9 "Owner" shall mean each person, who, at any given time, holds fee title to any full Parcel or a lessee of any full Parcel (provided the Owner of such Parcel so designates such party, which designation must be set forth in a written statement recorded in the office of the County Recorder, Salt Lake County, Utah). An Owner shall not include lessees and sublessees of less than an entire Parcel. In the event, at any time, that an interest in the same Parcel shall be vested in more than one person, such persons shall designate one of them to act on behalf of all such persons in the performance of the provisions of this Declaration. Any such designation shall be in writing, duly executed and acknowledged by each such person and a copy of such designation shall be given to all other Owners in accordance with the notice provisions of this Declaration. An original of such designation shall be recorded in the office of the County Recorder, Salt Lake County, Utah. A majority of such persons shall have the right, from time to time, to change the designation made by executing, acknowledging, delivering and recording a new notice of designation in the same manner set forth above.

1.10 "Parcel" or "Parcels" shall mean the Development Parcel and such parcel or parcels, excluding any roads or public rights-of-way, that are created upon further subdivision of the Development Parcel, as such subdivision may be approved by Declarant or the ACC.

1.11 "Parties" shall mean the Owners.

1.12 "Permittees" shall mean the Owners of any and all portions of the Development Parcel and their respective heirs, successors, assigns, grantees, lessees and sublessees and all persons who now hold, or hereafter hold, portions of real property within the Development Parcel, or any leasehold estate, or building space thereon; and respective tenants or

subtenants thereof; and the officers, directors, members, managers, concessionaires, agents, employees, contractors, customers, visitors and licensees and invitees of any of them.

1.13 “Person” shall mean any natural person, partnership, trust, corporation, limited liability company or other legal entity.

1.14 “Prohibited Uses” shall mean any use or operation other than for the development or operation of the Development Parcel as a retail, commercial, entertainment, residential, office, cultural and/or community use parcel, together with all incidental and ancillary uses reasonably related, necessary or appropriate therefor, as reasonably determined by Declarant and generally applicable to the Development Parcel and the Adjoining Parcels, including, without limitation:

- a. Any use which constitutes a public or private nuisance;
- b. Any use which produces noise or sound which may be heard outside of any Building and is objectionable due to intermittence, beat, frequency, shrillness or loudness;
- c. Any use which produces any noxious odor which may be smelled outside any Building other than such odors as are typically incidental to retail operations, including odors typically incidental to beauty and nail salons, restaurants, fast food restaurants or other food service establishments;
- d. Any use which produces any excessive quantity of dust, dirt or ash; provided, however, this prohibition shall not (i) preclude the sale of items typically sold as an incident to the operation of a home improvement or other similar store (provided such items are sold in containers), or (ii) apply during approved construction, renovation, or other site or building improvement activities so long as commercially reasonable mitigation efforts, including, without limitation, hours of operation, and noise and dust control, are employed;
- e. Any use involving unusual fire, explosive or other damaging or dangerous hazards (including the storage, display or sale of explosives or fireworks); provided, however, this restriction shall not prohibit annual or other periodic displays of fireworks in connection with national, regional or other holidays or events of significance in the area of the Development Parcel;
- f. Any assembly, manufacturing, distillation, refining, smelting, agriculture or mining operation;
- g. Any mobile home or trailer court, mortuary, lot for the sale of new or used vehicles, labor camp, junkyard, stock yard or use involving animal raising; provided, however, first class pet stores shall be permitted within the Development Parcel;
- h. Any operation for drilling for and/or removal of subsurface substances;

i. Any operation involving dumping, disposal, incineration or reduction of garbage or refuse, other than in enclosed receptacles intended for such purposes;

j. Any commercial laundry or dry cleaning plant, laundromat, veterinary hospital or similar use;

k. Any use involving the display or distribution of pornographic materials, adult books and magazines or X-rated videos or similar productions; provided, however, the following shall be permitted within the Development Parcel: (i) the sale of such adult magazines and books as may be carried by a convenience, supermarket, drug, record or full-line book store, and (ii) the sale and/or rental of X-rated videos and similar productions from full-line record and/or video stores, provided such X-rated videos are not shown on screen in any such store, but are kept behind a counter or in a reserved area and are not advertised or placed on display to minors;

l. Any automobile body and fender repair shop operation;

m. Any off-track betting facility; and

n. Any use not permitted pursuant to the TSD Zone; provided, however, that any conditional uses permitted pursuant to the TSD Zone shall not be considered a Prohibited Use under this Declaration.

1.15 "Restrictions" shall mean those covenants and use restrictions fixed and established upon the Development Parcel pursuant to this Declaration.

1.16 "TSD Zone" shall mean the Transit Station District (TSD) zoning ordinance set forth in Sections 9-14-010 through 9-14-110 of the Draper City's Land Use Management Code, as the same may be amended from time to time.

ARTICLE 2

USE IN GENERAL

2.1 Lawful Use. Except as otherwise limited pursuant to this Declaration, a Parcel may be used for any lawful retail, commercial, entertainment, office, residential, cultural and/or community purpose not specifically prohibited herein. No portion of a Parcel shall be used for a Prohibited Use.

ARTICLE 3

CONSTRUCTION

3.1 Buildings and Improvements Only in Designated Areas. No Building or other structure of any kind (including parking structures) shall be erected, placed or maintained on any portion of a Parcel except upon those portions designated as Building Areas pursuant to a site

plan approved by the Declarant; provided, however, that approval of the ACC of a particular site plan shall be deemed approval by the Declarant pursuant this Section 3.1 in the event such Site Plan is processed for approval by the ACC pursuant to the requirements of the TSD Zone. Notwithstanding anything to the contrary contained in this Declaration, following the approval of Declarant or the ACC, as the case may be, any areas initially used for surface parking may, pursuant to plans and specifications approved by Declarant or the ACC pursuant to an additional or supplementary site plan approval process, be demolished and replaced with a Building or other improvements in furtherance of the further development of a Parcel.

3.2 Initial Building Approval. No Owner shall commence or permit the commencement of construction of any sign, Building or other structure within a Parcel unless the design, architecture, exterior elevations, configuration, height, dimensions, landscape design, location, exterior finishes, materials, colors and other attributes thereof shall have first been approved in writing by the Declarant in its reasonable discretion subject to the provisions of this Section; provided, further, that approval by the ACC of a particular Building or other structure shall be deemed approval by the Declarant pursuant this Section 3.2 in the event such Building or other structure is approved by the ACC pursuant to the requirements of the TSD Zone. Approval by the Declarant or the ACC, as the case may be, shall be in the form of approval of such Owner's detailed plans and specifications for such improvements which shall be submitted in advance to Declarant or the ACC, as the case may be. Such approval by the Declarant or the ACC, as the case may be, shall be given or withheld in writing within thirty (30) days after receipt of written request and receipt by Declarant or the ACC, as the case may be, of detailed plans and specifications therefor; provided, however, that any such approval shall not be withheld, conditioned or delayed so long as such plans and specifications are consistent with the Design Guidelines. Notwithstanding anything in this Declaration to the contrary, and without limitation, it shall be reasonable for Declarant or the ACC to withhold such approval if such improvements are not architecturally, functionally and/or aesthetically consistent with the Design Guidelines. Failure of the Declarant or the ACC, as the case may be, to respond in writing to a written request for such approval within thirty (30) days of its receipt shall constitute approval of such construction, reconstruction or alteration. All improvements shall be constructed in strict accordance with any such plans and specifications approved by Declarant or the ACC. No Owner shall make any material alterations to any of the foregoing matters without first obtaining a similar approval from Declarant or ACC as to such alteration. Any and all construction or other work performed by an Owner on a Parcel shall be subject to and performed in accordance with the Design Guidelines unless such deviation is expressly approved in writing by the Declarant or the ACC, as the case may be; provided, however, that if such deviation is required in order for an Owner to comply with any Governmental Restrictions or as a condition of any governmental approval for the construction of any improvements on a Parcel, neither Declarant nor the ACC, as applicable, shall withhold, condition or delay such approval.

3.3 Alteration Approval. In order to maintain the architectural and functional harmony of a Parcel, no Building or structure within a Parcel shall be reconstructed, altered, added to or maintained in such a fashion as to alter, in any material respect, the architectural appearance, character or motif or functional purpose of such item, unless such alteration is first approved in writing by the Declarant or the ACC, as the case may be, in its reasonable discretion subject to the provisions of this Declaration and such alteration is made in accordance with the Design Guidelines, as applicable. Such approval shall be given or withheld in writing within

thirty (30) days after receipt of written request and receipt by Declarant or the ACC, as the case may be, of detailed plans and specifications therefor; provided, however, that any such approval shall not be withheld, conditioned or delayed so long as such plans and specifications are consistent with the Design Guidelines. Failure of the Declarant or the ACC, as the case may be, to respond in writing to a written request for such approval within thirty (30) days of its receipt shall constitute approval of such construction, reconstruction or alteration. All alterations or improvements shall be constructed in strict accordance with the plans and specifications approved by Declarant or the ACC, as the case may be, and the Design Guidelines (as applicable), such that no material deviation shall be made from such plans and specifications without the prior written approval of Declarant or the ACC, as applicable.

3.4 ACC Membership and Voting. The composition of the ACC and the selection of its members shall be governed by the provisions of the TSD Zone, as the same may be amended from time to time. All decisions of the ACC shall be made by simple majority vote.

3.5 Construction Procedures.

a. All construction activities within a Parcel shall be performed in a good and workmanlike manner, using quality materials, and in compliance with all laws, rules, regulations, orders, and ordinances of the city, county, state, and federal governments, or any department or agency thereof, having jurisdiction over the Parcel.

b. All construction activities within the Parcels shall be performed so as not to unreasonably interfere with any construction work being performed on any other Parcels or the Adjoining Parcels, or any part thereof.

c. When an Owner is constructing, reconstructing, repairing, maintaining, remodeling, or enlarging any improvements on its Parcel, such party shall establish a staging and storage area on its Parcel prior to commencing such work. Notwithstanding anything to the contrary contained herein, such staging and storage areas shall be subject to the approval of Declarant or the ACC, in its reasonable discretion, or located in a permitted staging or storage area identified on an approved site plan. Upon completion of such work, such staging and storage area shall be restored to a condition at least equal to that existing prior to commencement of such work.

d. Each Owner and Declarant shall diligently complete all construction activities within its Parcel as quickly as possible, shall regularly clean the roadways and driveways used by its construction vehicles of mud, dirt and construction debris, and upon completion of all construction activities shall promptly restore such affected roadways and driveways to a condition which is equal to or better than the condition which existed prior to the commencement of such work.

e. Each Owner shall indemnify, defend and hold harmless each other Owner from and against any and all claims, losses, damages, liabilities, injuries, costs and expenses, including, without limitation, reasonable attorneys' fees, because of personal injury or death of persons or destruction of property arising from or as a result of construction by such

Owner on its Parcel, except for claims caused by the negligence or willful act or omission of the indemnified Owner, its licensees, concessionaires, agents, servants, or employees.

ARTICLE 4

OPERATION AND MAINTENANCE OF BUILDING AREA

4.1 Building and Improvement Maintenance. Except as and to the extent the responsibility of a third party, each Owner shall maintain, or cause to be maintained, in a safe, clean, attractive and tenantable condition, and in good condition and repair, all Buildings and other improvements located upon its Parcel or Parcels, including screening from view the garbage receptacle areas. Such obligations shall include (but shall not be limited to) the following, as reasonably necessary to maintain such facilities in a clean, safe and orderly condition:

- a. Resurfacing of walks, drives and parking areas;
- b. Cleaning, sweeping, snow and debris removal, painting, striping, disposal of rubbish and debris, removal of soil and stone washed into drainage facilities and all other tasks;
- c. Maintenance of all curbs, parking dividers, landscape enclosures, fences and retaining walls;
- d. Placing, keeping in repair and replacing any necessary and appropriate directional signs, markers and lines and keeping in repair and replacing when necessary such artificial lighting facilities and lighting fixtures;
- e. Maintenance of all landscaped areas, making such replacements of shrubs and other landscaping as is necessary, and keeping such landscaped areas at all times adequately weeded, fertilized and watered; and
- f. Maintenance of all utility lines, if applicable, (including, without limitation, storm water drainage lines and facilities, and power and emergency fire protection lines) within the subject Parcel that are not the responsibility of the utility company or the responsibility of another party pursuant to applicable matters of record.

ARTICLE 5

CASUALTY

5.1 Damage to Buildings and Other Improvements. In the event any Building or other improvement on a Parcel is damaged or destroyed by any casualty, the Owner upon whose Parcel such Building and/or improvement is/was located shall promptly (i) repair and/or reconstruct such Building or improvement in accordance with the applicable provisions of this

Declaration and applicable Governmental Restrictions, or (ii) remove the debris from the Parcel and keep the affected portions of the Parcel neat, orderly, and well maintained and covered with material or suitable ground cover reasonably required by Declarant, until subsequently improved or constructed upon in the discretion of the Owner.

ARTICLE 6

GENERAL PROVISIONS

6.1 Successors and Assigns. Each restriction and covenant contained herein shall be appurtenant to and for the benefit of all portions of the Development Parcel and shall be a burden thereon, for the benefit of all portions of a Parcel and the Adjoining Parcels. This Declaration and the restrictions, covenants, benefits and obligations created hereby shall inure to the benefit of and be binding upon Declarant, Owners and their successors, transferees and assigns; provided, however, that, if any Owner transfers all of its interest in the Parcel, the transferee thereof shall automatically be deemed to have assumed and agreed to be bound by the covenants and agreements herein contained, and the transferor shall thereupon be released and discharged from any and all obligations under this Declaration accruing after the date of any such transfer.

6.2 Run With the Land. The covenants, conditions and restrictions contained in this Declaration shall run with the land comprising any Parcel and be binding upon each and all of the Parties (and upon all persons claiming under them) for a period of ninety-nine (99) years, and shall thereafter renew automatically for successive ten (10) year periods, unless Declarant (if Declarant is still Draper Holdings, LLC) otherwise elects in a writing recorded with the County Recorder, Salt Lake County, Utah, and if Declarant is any party other than Draper Holdings, LLC, unless Owners owning at least fifty-one percent (51%) of the land area within the subject Parcel otherwise elect in a writing recorded with the County Recorder, Salt Lake County, Utah.

6.3 Modification.

a. This Declaration may be modified in any respect whatsoever with the consent of the Declarant and without the necessity of obtaining the consent of any other Owner; provided, however if such a modification:

(i) affects the access to, visibility of, or parking on a Parcel or the development of which the Parcel is a part; or

(ii) would result in an increase in financial obligations for an Owner;

then the Owner of any such affected Parcel must also consent to such modification.

b. If this Declaration is rescinded, all Owners of any portion of the Parcel must consent to such rescission.

c. Any modification or rescission of this Declaration shall be accomplished by a written instrument duly executed and acknowledged by the requisite Parties, and duly recorded in the office of the County Recorder of Salt Lake County, Utah.

6.4 No Dedication to Public. Nothing herein contained shall be deemed to be a gift or dedication of any portion of a Parcel to the general public or for the general public or for any public purposes whatsoever, it being the intention of Declarant that this Declaration shall be strictly limited to and for the purposes herein expressed.

6.5 No Cancellation. No breach of this Declaration shall entitle any Owner to cancel, rescind or otherwise terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Declaration.

6.6 Survival. If any clause, sentence or other portion of this Declaration shall become illegal, null or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remaining portions hereof shall remain in full force and effect.

6.7 No Merger. The ownership of each entire Parcel by the same party shall not effect a termination of this Declaration.

6.8 Mortgagee Protection. Breach of any of the covenants or restrictions contained in this Declaration shall not defeat or render invalid the lien of any Mortgage made in good faith and for value as to a Parcel or any part thereof, but all of the foregoing provisions, restrictions and covenants shall be binding upon and effective against any Owner whose title thereto is acquired by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

6.9 Remedies. Any Owner, any Owner-designated lessee of any portion of a Parcel, and/or the Declarant may prosecute any proceedings at law or in equity against any person or entity violating or attempting to violate any of the agreements, covenants, conditions and restrictions herein, to prevent it, him or them from so doing and/or to recover damages from or on account of such violation. All remedies set forth herein or otherwise available at law or equity shall be cumulative.

6.10 No Third Party Beneficiary. Except as herein specifically provided, no rights, privileges or immunities set forth herein shall inure to the benefit of any customer, employee, guest, licensee or invitee of any Owner, tenant or occupant of any portion of a Parcel, nor shall any customer, employee, guest, licensee or invitee of such Owner, tenant or occupant be deemed to be a third party beneficiary of any of the provisions contained herein.

6.11 Condemnation. In the event of condemnation (or sale under threat of condemnation) by any duly constituted authority for a public or quasi-public use of all or any part of a Parcel, that portion of the award attributable to the value of the interest in the Parcel so taken shall be payable to the Owner of such Parcel and no claim thereon shall be made by any other Owner of any part of a Parcel; provided, however, that the other Owners may file collateral claims with the condemning authority over and above the value of the interest to be taken, provided no such collateral claim shall reduce the award to the Owner of the condemned Parcel; provided further, however, that the Owner of any portion of a Parcel to be taken shall properly

repair and restore the remaining portion of the Parcel owned by such Owner as nearly as practicable to its condition immediately prior to the condemnation without contribution from any other Owner, with due consideration for the use, operation, access and improvement on the remainder of the Parcel.

6.12 Captions. The captions heading the various Articles of this Declaration are for convenience and identification only, and shall not be deemed to limit or define the contents of their respective sections.

6.13 Assignment. Except as otherwise expressly set forth herein, no Owner shall have the right to assign all or any portion of its rights, benefits, duties or obligations under this Declaration except in connection with a transfer or conveyance by such Owner of its interest in property within a Parcel (and, except in the event a Mortgagee shall acquire fee title to all or part of the Parcel, any conveyance made by deed of trust, Mortgage or other security instrument as security for any obligation or indebtedness shall not be deemed to be a transfer or conveyance within the meaning of the foregoing).

6.14 Notices. Any notice, demand, request or other communication required or permitted to be given by an Owner or Owner-designated lessee of a Parcel to another Owner or Owner-designated lessee shall be in writing, signed by the party giving the notice, and shall be given by delivering the same in person, by a recognized overnight courier service which maintains delivery records (such as Federal Express), confirmed electronic transmission, confirmed facsimile, or by depositing the same in the United States mail, registered or certified, return receipt requested, first class postage, and postage prepaid. All notices shall be sent to the respective mailing addresses of the parties hereto at the following addresses, until such addresses are changed as heretofore and hereinafter provided:

Declarant: Draper Holdings, LLC
5850 Avenida Encinas, Suite A
Carlsbad, California 92008
email: jeff.vitek@fsqp.com

To any other Owner: At such address as such Owner shall designate in writing to the Declarant, or at such Owner's address in a Parcel if such Owner shall fail to designate in writing another address to the Declarant.

The Declarant shall make all addresses furnished by any Owner pursuant to this Section 6.15 available to any Owner or Owner-designated lessee of a Parcel who shall so request such addresses. Any Owner may change its mailing address at any time by giving written notice of such change to the Declarant in the manner provided herein at least ten (10) days prior to the date such change is effective. Personal service and service by recognized overnight courier service will be deemed to be complete upon receipt and service by mail will be deemed complete on deposit of said notice in the United States mail.

6.15 Estoppel Certificates. Each Owner shall deliver to any other Owner, without charge, within fifteen (15) days after request therefor, a written statement setting forth that, to the best of such Owner's knowledge, the requesting Owner is not in default in the

performance of any of its obligations under this Declaration (or, if in default, setting forth the nature of such default).

6.16 Jurisdiction. Any matter arising between the Owners shall be governed by and determined in accordance with the laws of the State of Utah.

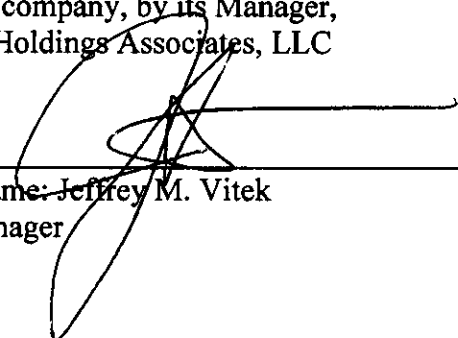
6.17 Declarant. So long as Draper Holdings, LLC, a Utah limited liability company, or an entity or Person controlling, controlled by or under common control with Jeffrey M. Vitek (a "Vitek Affiliate"), owns any Parcel within a Parcel or any of the Adjoining Parcels or portions thereof, Draper Holdings, LLC, a Utah limited liability company (or, in the absence of such entity, a Vitek Affiliate (if such party owns a Parcel)) shall be the "Declarant" for purposes of this Declaration. At any such time that Draper Holdings, LLC (or a Vitek Affiliate) no longer owns a Parcel or any other Adjoining Parcel or portion thereof or otherwise elects to no longer be the Declarant hereunder, the Owner of the largest Parcel among those comprising the Parcels shall be the "Declarant" for purposes of this Declaration.

IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first above written.

DECLARANT:

DRAPER HOLDINGS, LLC, a Utah limited liability company, by its Manager, Draper Holdings Associates, LLC

By: _____
Print Name: Jeffrey M. Vitek
Its: Manager



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

The foregoing instrument was acknowledged before me on November 16, 2011, by Jeffrey M. Vitek, the Manager of Draper Holdings Associates, LLC, the Manager of Declarant, who acknowledged that he executed the same in the capacity indicated.

Notary Public: Rodney A. Newman

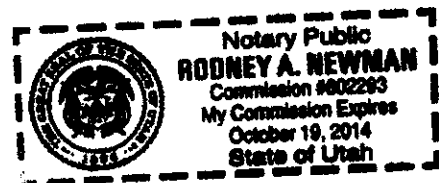


Exhibit "A"

Legal Description of Development Parcel

ALL THAT LAND DESIGNATED AS LOT 1 OF THE DRAPER TOD SUBDIVISION, IN THE STATE OF UTAH, COUNTY OF SALT LAKE, CITY OF DRAPER, BEING PART OF THE WEST HALF, OF SECTION 36, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND 7MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF GALENA PARK BLVD., SAID POINT BEING N00°01'13"E 1517.36', AND S89°58'47"E 306.00' FROM THE SOUTHWEST CORNER OF SAID SECTION 36, MARKED WITH A 3" COUNTY SURVEYOR BRASS CAP, SAID SECTION CORNER BEING N89°58'29"W GRID (UTAH COORDINATE SYSTEM NAD 83 (1994) CENTRAL ZONE) 2692.43 FEET FROM THE STONE MONUMENT AT THE SOUTH QUARTER CORNER OF SAID SECTION; THENCE N00°01'16"E ALONG EAST LINE OF SAID ROAD 1195.37 FEET, TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTHEAST, WITH A RADIUS OF 26.00 FEET; THENCE NORTHEASTERLY 40.84 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 90°00'00"; THENCE S89°58'44"E 887.61 FEET, TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTH WEST, WITH A RADIUS OF 26.00 FEET; THENCE SOUTHEASTERLY 40.83 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 89°58'44"; THENCE S00°00'00"E 1009.94 FEET, TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE WEST, WITH A RADIUS OF 763.00 FEET; THENCE SOUTHERLY 368.13 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 27°38'38"; THENCE S27°38'38"W 620.77 FEET, TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE NORTHWEST, WITH A RADIUS OF 26.00 FEET; THENCE WESTERLY 40.84 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 90°00'00", TO THE NORTH LINE OF SAID GALENA PARK BLVD; THENCE ALONG SAID NORTH LINE THE FOLLOWING TWO (2) COURSES: 1) N62°21'22"W 146.11 FEET, TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE NORTHEAST, WITH A RADIUS OF 747.00 FEET, AND 2) NORTHERLY 813.25 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 62°22'38", TO THE POINT OF BEGINNING.

CONTAINS 36.38 ACRES (1,584,716 SQUARE FEET), MORE OR LESS

Exhibit "B"

Legal Description of Adjoining Parcels (excluding access roadways)

ALL OF LOTS 2, 3, 4, 5 AND 6 OF THE DRAPER T.O.D. SUBDIVISION,
ACCORDING TO THE OFFICIAL PLAT RECORDED ON NOVEMBER 18, 2011 AS
ENTRY NO. 11281837 IN BOOK 2011 PAT PAGE 146 OF THE OFFICIAL
RECORDS IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER, STATE
OF UTAH.

Exhibit "C"
Design Guidelines

DESIGN GUIDELINES

1. All site development shall be in accordance with the applicable Draper City requirements of the Transit Station District zoning ordinance, as the same may be amended from time to time.
2. A visual connection between Buildings and the natural surroundings as well as compatibility with the scale and proportion of nearby structures is desirable and encouraged.
3. Building massing and scale shall allow sufficient light and air to penetrate each proposed Building. Building heights shall be compatible with, and not overwhelming to, the natural surroundings.
4. The distance between any Building line and the related front, side or rear lot line shall be a minimum of thirty (30) feet (the "**Building Setback**"), unless such other distance is proposed by an Owner. Building projections and structural elements, including, but not limited to canopies, awnings, foundations, underground laterals and similar structures and supports, may extend into the Building Setback.
5. Buildings, to the extent practicable, should be oriented to take advantage of the site's existing topography, solar and wind exposure, and viewsheds. Buildings, also to the extent practicable or appropriate, should present a face to the street on which each Building fronts, and, where appropriate, should include visual cues to indicate Building entrances and other functions. Design elements such as canopies or architectural articulation may serve this purpose.
6. Exterior materials shall be of high-quality and may include concrete, stone, stucco, metal panel, and glass. The amount of glass shall be sufficient to allow natural light to penetrate into interior Building spaces and shall be visually balanced by opaque materials. Highly reflective glass is discouraged. The color palette ideally shall complement the colors in the surrounding landscape. Contrasting elements and textures that create visual interest are preferred. Sculptural shading elements are encouraged.
7. Multiple Buildings on the site shall be visually compatible. Except where otherwise required by Draper City or applicable zoning ordinances, variation in Building height is desirable.
8. Building roofs may be flat, with rooftop equipment screened with opaque or semi-opaque walls or other appropriate screening elements.
9. Structured parking shall incorporate architectural elements as necessary to introduce articulation and texture in order to a) to the extent practicable, screen vehicles from view as seen from the at-grade elevation of the street on which such parking structure may front, and b) enhance the compatibility of the parking structure with adjacent Buildings and with the surrounding landscape.

10. Signage shall be scaled appropriately to any proposed Buildings and the site. Monument signs may be located at vehicle and pedestrian entrances to the site. Building signage may include identifying information such as corporate logos and address numbers near main entrances or elsewhere on the site. Wayfinding signs may be located on the site along drives and paths, as and where necessary or appropriate.
11. Public use space may include a combination of hardscape and landscape elements, including, but not limited to, plazas, lawns, game courts, picnic tables, benches, and other outdoor furniture, and other elements as appropriate or desired.
12. As and to the extent practicable, site development adjacent to streetscape elements should be compatible with such streetscapes and should include vegetative plantings and lighting elements where necessary or appropriate.
13. A vehicular driveway area may be provided near the main entry of the site's primary Building. This driveway area may be shared with pedestrians and incorporate special or differentiated paving materials or design. Site drives, parking islands and buffer spaces shall be landscaped appropriately and site drives, parking lots and walkways shall be lighted appropriately.
14. The landscape design may incorporate native, drought-tolerant plant materials consistent with, or in consideration of, the Jordan River ecosystem.
15. Exterior site furniture shall be a compatible design element of the Building and landscape design.