

When Recorded Return To:
Eric Saxey
Everest Builders
232 E Ensign Vista Dr.
Salt Lake City, Utah 84103

13295625
6/11/2020 1:13:00 PM \$136.00
Book - 10959 Pg - 3256-3265
RASHELLE HOBBS
Recorder, Salt Lake County, UT
TERRY JESSOP & BITNER
BY: eCASH, DEPUTY - EF 10 P.

**FIRST AMENDMENT TO
AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
DRAPER CREEKSIDE TOWNHOMES
A Planned Unit Development**

THIS FIRST AMENDMENT TO AMENDED AND RESTATED DECLARATION of Covenants, Conditions and Restrictions of Draper Creekside Townhomes is made and executed this 10th day of June, 2020, by DRAPER CREEKSIDE LLC, a Utah limited liability company, with its principal place of business located in Salt Lake City, State of Utah (hereinafter referred to as "Declarant").

RECITALS:

A. Declarant owns certain land located in Salt Lake County, Utah, which land is more particularly described on Exhibit A attached hereto, together with buildings, structures, and other improvements located thereon.

B. Declarant created a planned unit development on such land pursuant to the provisions of the Utah Community Association Act, Utah Code Sections 57-8a-101, et. seq., as the same may be amended from time to time. The planned unit development is known as the "Draper Creekside Townhomes."

C. Declarant recorded that certain Declaration of Covenants, Conditions, And Restrictions of Draper Creekside Townhomes, A Planned Unit Development, in the Salt Lake County Recorder's Office on May 23, 2014, as Entry 11854363, in Book 10232 at Page 9418.

D. Declarant executed and recorded the following amendments to the Declaration in the Salt Lake County Recorder's Office:

(i) First Amendment to Declaration of Covenants, Conditions and Restrictions of Draper Creekside Townhomes, recorded on December 9, 2014, as Entry 11958579, Book 10280, Page 4935.

(ii) Second Amendment to Declaration of Covenants, Conditions and Restrictions of Draper Creekside Townhomes, recorded on April 22, 2016, as Entry 12265037, Book 10423, Page 7497.

(iii) Third Amendment to Declaration of Covenants, Conditions and Restrictions of Draper Creekside Townhomes, recorded on June 22, 2016, as Entry 12305462, Book 10444, Page 5925.

E. In September 2017, the Declarant amended and restated the Declaration, so as to incorporate all prior amendments, and to expand the development, to include Lots 45-58 of the development, and to further amend the Declaration. The Amended and Restated Declaration of Covenants, Conditions and Restrictions of Draper Creekside Townhomes was recorded in the Salt Lake County Recorder's Office on September 18, 2017, as Entry 12618486, Book 10599, Page 7148 (the "Amended and Restated Declaration").

F. The Development is still within the Development Period, but the Declarant desires to turn over control of the Development to the Owners in the near future.

G. Prior to turning over control, Declarant now desires to further clarify certain provisions of the Declaration for the benefit of the Development.

NOW, THEREFORE, Declarant in consideration of the recitals set forth above, the Declarant hereby declares and certifies as follows:

1. **Amendment to Paragraph 6.1(c)**. Paragraph 6.1(c) of the Amended and Restated Declaration is hereby amended to read as follows:

(c) **Common Area Maintenance and Maintenance of Living Units**

i. *Living Units 1 through 14*: With respect to Living Units 1 through 14, the Association shall maintain, repair, and replace all landscaping and improvements in the Common Areas, including but not limited to the maintenance of all exterior trees, shrubs, grass, Private Streets and other Common Area improvements. The Association may elect to maintain all grasses, trees, and bushes on the exterior yard of any Living Unit (i.e., units 1 through 14) if the same were installed by the Developer as part of the construction of the Development, even if located upon a Lot, but the Association shall have no obligation to perform any maintenance of any landscaping installed by an Owner without the Association's express agreement to maintain such landscaping.

ii. *Living Units 15 through 58*: With respect to Living Units 15 through 58, the Association shall maintain, repair, and replace all landscaping and improvements in the Common Areas (so long as any such landscaping and improvements are located in the front yards of Units 15 through 58), including but not limited to the maintenance of all exterior trees, shrubs, grass, Private Streets and other Common Area improvements. The Association may elect to maintain all grasses, trees, and bushes on the exterior front yard of any Living Units 15 through 58 if the same were installed by the Developer as part of the construction of the Development, even if located upon a Lot, but the Association shall have no obligation to perform any maintenance of any landscaping installed by an Owner without the Association's express agreement to maintain such landscaping. Likewise, the Association shall have no obligation to perform any maintenance for any of the back yard, Limited Common Areas of Living Units 15 through 58. The Owners of those Units are encouraged, but not obligated, to install concrete or artificial turf in said back yard, Limited Common Areas.

iii. *All Living Units*: With respect to all Living Units, the Association shall provide exterior maintenance of the Living Units including painting, repair, replacement and care of roofs, gutters, downspouts, and exterior building surfaces. In accordance with the requirements of Section 7.10, each Owner shall paint, repair, and otherwise maintain

the interior of his Living Unit and shall maintain all mechanical devices, including but not limited to, appurtenant electrical, plumbing, heating, ventilating and air conditioning systems. Each Owner shall also be responsible for exterior window cleaning and timely snow removal from the driveway of the Owner's Living Unit. In the event that the need for maintenance or repair of Common Areas or the exterior of a Living Unit (including exterior landscaping) as specified herein is caused through the willful or negligent acts of an Owner, or through the willful or negligent acts of the family, guests or invitees of an Owner, the Officers may cause such repairs to be made by the Association and the cost of such maintenance or repair (and administrative expenses equal to ten (10%) percent of such costs) shall be added to and become part of the Reimbursement Assessment (as set forth in Section 5.5) to which such Lot is subject.

2. **Amendment to Paragraph 5.3.** Paragraph 5.3 of the Amended and Restated Declaration is hereby amended to read as follows:

Maximum Monthly Assessment. As of the date set under Section 5.7, each of Lots 1 through 58 shall be subject to a monthly assessment, including that portion attributable to the Exterior Maintenance Assessment, of not more than One Hundred Eighty Five Dollars (\$185.00). From and after January 1, 2020, the maximum monthly assessments set forth above shall be increased by ten percent (10%) per year over the previous year's maximum assessment without the vote of the Members or such maximum assessment amounts may be increased in a greater amount or decreased so long as the change is assented to by not less than a majority of the Members other than the Declarant (or if the two class voting structure is still in effect as provided herein, a majority of the votes of each Class of Members) present in person or represented by proxy at a meeting duly called for such purposes. 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 the meeting date. The Officers of the Association may from time to time and in their discretion set the amount of the monthly assessment at any sum not in excess of the then applicable maximum amount.

3. **Amendment to Paragraph 6.6.** Paragraph 6.6 of the Amended and Restated Declaration is hereby amended to read as follows:

Quorum Requirements. The quorum required for any action by the Members hereunder, unless otherwise specifically set forth in this Declaration, shall be as follows: At the first meeting called the presence of Members or of proxies entitled to cast thirty-three percent (33%) of all outstanding votes shall constitute a quorum. If a quorum is not present at the first meeting, another meeting may be called at which a quorum shall be constituted by those present at the meeting. No such subsequent meeting shall be held sooner than one hour after the first meeting, nor more than forty-five (45) days following the immediately preceding meeting.

4. **Amendment to Paragraph 11.4.** Paragraph 11.4 of the Amended and Restated Declaration is hereby amended to read as follows

Leases. Long-term leases, meaning the rental of a Unit for not less than six (6) months, are allowed. However, no more than 28 Units in the Development may be leased at any given time. Any such agreement for the leasing, rental, or occupancy of a Unit (hereinafter in this Section referred to as a "Lease") shall be in writing. Every Lease shall provide that its terms shall be subject in all respects to the provisions of the Project Documents. Said Lease shall further provide that any failure by the resident(s) thereunder to comply with the terms of the foregoing documents shall be a default under the Lease. If any Lease does not contain the foregoing

provisions, such provisions shall nevertheless be deemed to be a part of the Lease and binding on the Owner and resident(s) by virtue of their inclusion in this Declaration. No Owner shall be permitted to lease his Unit for transient, seasonal, and corporate executive use or purposes. Daily or weekly rentals and timeshares are not permitted. Furthermore, no Owner may lease individual rooms to separate persons or less than his or her entire Unit. Any Owner who shall lease his Unit shall be responsible for assuring compliance by the resident with the Project Documents. Failure by an Owner to take legal action, including the institution of a forcible entry and unlawful detainer proceeding against the resident who is in violation of the Project Documents within ten (10) days after receipt of written demand so to do from the Board of Trustees, shall entitle the Association to take any and all such action including the institution of proceedings in forcible entry and unlawful detainer on behalf of such Owner against his resident. Neither the Association nor any agent retained by the Association to manage the Project shall be liable to the Owner or resident for any eviction under this Section that is made in good faith. Any expenses incurred by the Association, including attorney's fees and costs of suit, shall be repaid to it by such Owner. Failure by such Owner to make such repayment within ten (10) days after receipt of a written demand therefor shall entitle the Association to levy an individual assessment against such Owner and his Unit for all such expenses incurred by the Association. In the event such assessment is not paid within thirty (30) days of its due date, the Board of Trustees may resort to all remedies of the Association for the collection thereof. Other than as stated in this Section, there is no restriction on the right of any Owner to lease or otherwise grant occupancy rights to a Unit.

11.4.1. Exceptions.

Notwithstanding the foregoing, the following are exempt from the rental restrictions set forth above:

- (a) a Unit Owner in the military for the period of the lot owner's deployment;
- (b) a Unit occupied by a Unit Owner's parent, child, or sibling;
- (c) a Unit Owner whose employer has relocated the Unit Owner for no less than two years;
- (d) a Unit owned by an entity that is occupied by an individual who:
 - (i) has voting rights under the entity's organizing documents; and
 - (ii) has a 25% or greater share of ownership, control, and right to profits and losses of the entity; or
- (e) a Unit owned by a trust or other entity created for estate planning purposes if the trust or other estate planning entity was created for:
 - (i) the estate of a current resident of the Unit; or
 - (ii) the parent, child, or sibling of the current resident of the Unit.

In addition, a Unit Owner who has a rental in the association before the time the rental restriction described above is recorded with the Salt Lake County Recorder may continue renting the Unit until: (x) the Unit Owner occupies the lot; (y) an officer, owner, member, trustee, beneficiary, director, or person holding a similar position of ownership or control of an entity or trust that holds an ownership interest in the Unit, occupies the Unit; or (z) the Unit is transferred. The Association shall create, by rule or resolution, procedures to determine and track the number of rentals and Units in the Association subject to the provisions described above; and to ensure consistent administration and enforcement of the rental restrictions.

5. **Amendment to Exhibit B.** An amended Exhibit B (“Percentage Interests”), as referred to in paragraph 1.16 and elsewhere in the Amended and Restated Declaration, is attached hereto and is hereby incorporated into the Amended and Restated Declaration. Henceforth, as a result of the amendment of Exhibit B, the rate of assessment for each Lot shall be equal among the Owners (as opposed to staggered), as will the number of votes appurtenant to each Living Unit.

6. **Representations of Declarant.** Declarant represents that this Amendment is made pursuant to and complies with paragraph 11.2 of the Amended and Restated Declaration, as it appears in the Amended and Restated Declaration, as the Subdivision is still in the Development Period.

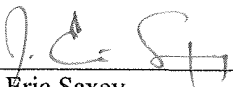
7. **Incorporation of Prior Terms.** It is expressly agreed that this Amendment is supplemental to the Amended and Restated Declaration, which is by reference made a part hereof, and all the terms, conditions, and provisions thereof, unless specifically modified herein, are to apply to this Amendment and are made a part of this Amendment as though they were expressly rewritten, incorporated and included herein. In the event of any conflict, inconsistency or incongruity between the provisions of this Amendment and the Amended and Restated Declaration, the former shall in all respects govern and control.

8. **Effective Date.** This Amendment shall take effect upon its being filed for record in the office of the County Recorder of Salt Lake County, Utah.

EXECUTED the day and year first above written.

DRAPER CREEKSIDE LLC,
a Utah Limited Liability Company

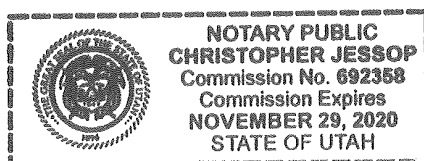
By: Everest Builders, L.L.C.

By: 
Name: Eric Saxey
Title: Manager

ACKNOWLEDGEMENT

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

On the 10th day of June, 2020, personally appeared before me **James Eric Saxey**, who being by me duly sworn did say that he is the Manager of Everest Builders, L.L.C., and that Everest Builders, L.L.C., is the Manager of **Draper Creekside LLC**, that the within and foregoing instrument was signed in behalf of said limited liability companies by authority of resolutions of its members or in accordance with the terms of its operating agreements and said James Eric Saxey duly acknowledged to me that said limited liability companies executed the same.




NOTARY PUBLIC

EXHIBIT A
LEGAL DESCRIPTION

Beginning at a point which is South 89°51'15" East, along the section line 68.23 feet and South 00°08'45" West, 124.85 feet from the Witness Monument marking the Northwest Corner of Section 6, Township 4 South, Range 1 East, Salt Lake Base and Meridian (said witness monument on record being North 89°59'24" East, 144.94 feet from the said Northwest Corner of Section 6); and running thence along the record deed line (Entry 11625785 in Book 10131 at Page 459) the following three (3) courses: East, 82.50 feet, thence South, 5.00 feet; thence East, 565.77 feet to a point on a westerly boundary of the Smith Properties Survey (Record survey# S96-04-0244); and running thence along said Smith Survey the following course: South 00°06'15" East, 201.00 feet; thence North 89°59'58" West, 371.43 feet; thence South 00°16'38" East, 174.50 feet; thence North 68°40'59" West, 11.06 feet; thence North 58°31'00" West, 28.72 feet; thence South 52°38'00" West, 34.60 feet; thence South 78°28'00" West, 25.00 feet; thence South 30°46'00" East, 24.43 feet; thence South 51°51'00" West, 17.80 feet; thence North 67°03'00" West, 46.15 feet; thence North 57°06'00" West, 11.91 feet; thence West, 6.00 feet; thence North 57°05'00" West, 8.34 feet; thence South 36°19'00" West, 24.82 feet; thence North 86°59'00" West, 13.60 feet to a point of intersection with UDOT deed (Entry 6640451 in Book 7663 at Page 267); thence along said UDOT right of way for the following three (3) courses: North 36°19'00" East, 13.35 feet; thence North 22°46'26" East, 26.00 feet; thence North 67°13'34" West, 62.59 feet to a point of intersection with UDOT deed (Entry 6640452 in Book 7663 at Page 629) and running thence along said UDOT right-of-way the following three (3) courses: North 11°13'41" West, 145.66 feet to a point on a 1610.42 foot radius curve to the right; thence 169.10 feet along said curve through a central angle of 06°00'59" (chord bears North 08°13'19" West, 169.03 feet); thence (5) North 05°12'46" West, 40.80 feet to the point of beginning.

Contains: 3.90 Acres

TOGETHER WITH the following described real property located in Salt Lake County, Utah:

Beginning at a point which is located on the South bounds of Draper Creekside Townhomes Subdivision, said point located thence North 89°59'24" East, a distance of 144.94 feet (A.R.P. REC.) to a witness monument (not found); thence South 89°51'15" East, a distance of 27.59 feet to a street monument; thence continue easterly along section line South 89°51'15" East, a distance of 317.53 feet; thence South, a distance of 330.30 feet from the Northwest Corner of Section 6, Township 4 South, Range 1 East, Salt Lake Base and Meridian:

Running thence South 89°59'58" East, along said Creekside a distance of 372.21 feet to the Westerly bounds of Pinnacle Reserve Apartments; thence along said boundary South 00°06'15" East a distance of 185.49 feet; thence North 77°15'44" West, a distance of 27.92 feet; thence North 62°15'06" West, a distance of 77.40 feet; thence North 49°19'04" West, a distance of 69.42 feet; thence South 80°05'08" West, a distance of 68.15 feet; thence South 22°41'57" West, a distance of 10.34 feet; thence South 76°28'07" West, a distance of 38.66 feet; thence North 88°51'54" West, a distance of 54.36 feet; thence South 46°26'18" West, a distance of 20.79 feet; thence South 82°22'40" West, a distance of 45.74 feet; thence North 00°16'38" West, a distance of 147.69 feet to the point of beginning.

Containing 50,010 square feet, or 1.15 acres, more or less.

The Property is also described as follows:

All of Lots 1 through 58, contained within DRAPER CREEKSIDE Townhomes, A Planned Unit Development, as the same is identified in the Plat recorded as Entry No. 11851974 in Book 10231, at Page 9648 (as to Lots 1-44), or as identified in the Plat recorded as Entry No. 12664240 in Book 2017P, at Page 324 (as to Lots 45-58), and in the “Amended and Restated Declaration of Covenants, Conditions and Restrictions of Draper Creekside Townhomes, A Planned Unit Development,” recorded on September 18, 2017, as Entry No. 12618486, in Book 10599, beginning at page 7148 in the official records of the Salt Lake County Recorder.

TOGETHER WITH a right and easement of use and enjoyment in and to the Common Areas and Private Streets described and provided for in said Declaration of Covenants, Conditions and Restrictions and in the Record of Survey Map in the official record of the Salt Lake County Recorder.

Parcel ID Numbers:

34-06-104-001-0000; 34-06-104-002-0000; 34-06-104-003-0000; 34-06-104-004-0000;
34-06-104-005-0000; 34-06-104-006-0000; 34-06-104-007-0000; 34-06-104-008-0000;
34-06-104-009-0000; 34-06-104-010-0000; 34-06-104-011-0000; 34-06-104-012-0000;
34-06-104-013-0000; 34-06-104-014-0000; 34-06-104-015-0000; 34-06-104-016-0000;
34-06-104-017-0000; 34-06-104-018-0000; 34-06-104-019-0000; 34-06-104-020-0000;
34-06-104-021-0000; 34-06-104-022-0000; 34-06-104-023-0000; 34-06-104-024-0000;
34-06-104-025-0000; 34-06-104-026-0000; 34-06-104-027-0000; 34-06-104-028-0000;
34-06-104-029-0000; 34-06-104-030-0000; 34-06-104-031-0000; 34-06-104-032-0000;
34-06-104-033-0000; 34-06-104-034-0000; 34-06-104-035-0000; 34-06-104-036-0000;
34-06-104-037-0000; 34-06-104-038-0000; 34-06-104-039-0000; 34-06-104-040-0000;
34-06-104-041-0000; 34-06-104-042-0000; 34-06-104-043-0000; 34-06-104-044-0000;
34-06-104-045-0000; 34-06-104-057-0000; 34-06-104-058-0000; 34-06-104-059-0000;
34-06-104-060-0000; 34-06-104-061-0000; 34-06-104-062-0000; 34-06-104-063-0000;
34-06-104-064-0000; 34-06-104-065-0000; 34-06-104-066-0000; 34-06-104-067-0000;
34-06-104-068-0000; 34-06-104-069-0000; 34-06-104-070-0000; 34-06-104-071-0000;
34-06-104-072-0000

**EXHIBIT B
PERCENTAGE INTERESTS**

LOT/ UNIT NO.	SIZE- Sq. ft.	PERCENTAGE INTEREST	VOTES
1	2323	1.73	1.73
2	2323	1.73	1.73
3	2295	1.73	1.73
4	2295	1.73	1.73
5	1900	1.73	1.73
6	1900	1.73	1.73
7	1900	1.73	1.73
8	1900	1.73	1.73
9	2323	1.73	1.73
10	2323	1.73	1.73
11	2295	1.73	1.73
12	2295	1.73	1.73
13	2323	1.73	1.73
14	2323	1.73	1.73
15	1900	1.73	1.73
16	1900	1.73	1.73
17	1900	1.73	1.73
18	1900	1.73	1.73
19	2323	1.73	1.73
20	2323	1.73	1.73
21	1900	1.73	1.73
22	1900	1.73	1.73
23	1900	1.73	1.73
24	1900	1.73	1.73
25	1900	1.72	1.72
26	1900	1.72	1.72

27	1900	1.72	1.72
28	1900	1.72	1.72
29	1900	1.72	1.72
30	1900	1.72	1.72
31	1900	1.72	1.72
32	1900	1.72	1.72
33	1900	1.72	1.72
34	1900	1.72	1.72
35	1900	1.72	1.72
36	1900	1.72	1.72
37	1900	1.72	1.72
38	1900	1.72	1.72
39	2323	1.72	1.72
40	2323	1.72	1.72
41	2295	1.72	1.72
42	2295	1.72	1.72
43	2323	1.72	1.72
44	2323	1.72	1.72
45	1900	1.72	1.72
46	1900	1.72	1.72
47	1900	1.72	1.72
48	1900	1.72	1.72
49	1900	1.72	1.72
50	1900	1.72	1.72
51	1900	1.72	1.72
52	1900	1.72	1.72
53	1900	1.72	1.72
54	1900	1.72	1.72
55	1900	1.72	1.72

56	1900	1.72	1.72
57	1900	1.72	1.72
58	1900	1.72	1.72
TOTALS	117,646	100%	100.00