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WHEN RECORDED RETURN TO:

Estates Managers, LC
P.O. Box 520370
Salt Lake City, Utah 84125

Page 1 of 5
Rhonda Francis Summit County Recorder
04/26/2024 01:37:15 PM Fee \$40.00
By METRO NATIONAL TITLE
Electronically Recorded

Tax Parcel Nos. STRS-1-106

MNT: 101337

DECLARATION OF RIGHT OF FIRST REFUSAL

Estates Managers, LC

THIS DECLARATION (this "*Declaration*") is effective as of the 18th day of April, 2024, and executed by **ESTATES MANAGERS, LC**, a Utah limited liability company ("*Declarant*"), whose address is P.O. Box 520370, Salt Lake City, Utah 84125.

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are acknowledged, Declarant declares as follows:

1. Right of First Refusal.

1.1. Definitions. As used in this Paragraph 1 or elsewhere in this Declaration, each of the following terms shall have the meaning indicated:

"*Home*" means a home constructed on the Lot for which a final certificate of occupancy has been issued.

"*Lot*" means the lot located in Summit County, Utah, described as follows:

Lot 106, STEWART RANCHES SUBDIVISION PHASE 1, according to the official plat thereof on file and of record in the office of the Summit County Recorder.

"*Mortgage*" means a mortgage or a deed of trust recorded in the office of the Summit County Recorder.

"*Owner*" means the person that at the time concerned is the legal owner of record (in the office of the Summit County Recorder) of a whole or undivided fee interest in the Lot (which term would include Declarant during the time that Declarant is the legal owner of record).

"*Permitted Title Exceptions*" means no lien, encumbrance, right-of-way, easement, defect, restriction, claim, right, estate (including a leasehold estate or other possessory right), interest or concession in favor of any third party, other than the following only: (i) the lien of then-current general taxes and special assessments; (ii) those rights-of-way, easements and other matters of record that exist prior to the recordation of this instrument; and (iii) any utility easements or other similar administrative matters required by utility companies or governmental authorities and granted in the normal course.

1.2. Grant. Following the conveyance of the Lot by Declarant to another Owner, if at any time prior to the construction of a Home on the Lot such other Owner desires to sell or transfer the Lot (with

“sell or transfer” including, without limitation, (i) the contribution by such Owner of the Lot or any right, title or interest of such Owner in the Lot to a partnership, corporation, limited liability company, trust or other entity in exchange for an interest in such entity, (ii) the transfer of any interest in such Owner from its owner(s) to another person that is not, prior to such transfer, already the owner of an interest in such Owner, or (iii) any other conveyance, assignment or transfer intended to avoid the provisions of this Paragraph 1.2), such Owner must first enter into a written purchase and sale agreement (the “*Written Agreement*”) with the proposed purchaser, clearly and accurately setting forth all the basic terms and conditions of such sale, including, without limitation, the identities of the persons involved, the amount, type and terms for payment of the consideration involved (which must be a dollar amount, and not an exchange for other property), a legal description of the Lot, the intended closing date and any other material terms and conditions. The Written Agreement shall be expressly subject to this Declaration and the rights of Declarant under this Declaration. Within seven (7) days after the full execution and delivery of the Written Agreement, such Owner shall deliver to Declarant a legible photocopy of the Written Agreement, with written notice (the “*Transfer Notice*”) of such Owner’s intention to sell the Lot in accordance with the Written Agreement unless Declarant exercises Declarant’s rights under this Paragraph 1.2. Declarant shall have an irrevocable option for a period of twenty (20) days after the receipt of the Written Agreement and the Transfer Notice to elect to purchase the Lot on the same terms and conditions as are set forth in the Written Agreement; provided, however, that notwithstanding the terms and conditions of the Written Agreement, if Declarant elects to purchase the Lot:

(a) the closing (the “*Closing*”) of the purchase and sale of the Lot shall occur in Salt Lake City at a time and place mutually acceptable to Declarant and such Owner;

(b) Declarant shall have the longer of (i) an additional forty-five (45) days after the expiration of such twenty (20)-day period, or (ii) the period set forth in the Written Agreement, to consummate the Closing;

(c) at the Closing, such Owner shall deliver to Declarant possession of the Lot, and convey and warrant to Declarant the Lot pursuant to a special warranty deed (unless the Written Agreement provides for a general warranty deed, in which case the Lot shall be conveyed to Declarant pursuant to a general warranty deed), subject only to the Permitted Title Exceptions;

(d) at the Closing, such Owner shall, at such Owner’s cost, provide to Declarant an ALTA owner’s standard coverage policy of title insurance (unless the Written Agreement provides for additional title insurance, such as extended coverage, in which case such additional title insurance shall be provided by such Owner) in the amount of the purchase price of the Lot; and

(e) Declarant may elect to pay the purchase price for the Lot in cash at the Closing.

If within such twenty (20)-day period, Declarant delivers to such Owner written notice that Declarant elects to purchase the Lot on the terms and conditions set forth in the Written Agreement, Declarant and such Owner shall enter into a purchase and sale agreement, and proceed to consummate such purchase transaction, in accordance with such terms and conditions, subject to the foregoing proviso. The failure of Declarant so to elect to purchase the Lot by giving such notice to such Owner shall be deemed to be an election not to purchase the Lot. *The right of refusal created by this Declaration shall not apply to the Lot after a Home is constructed on the Lot.*

1.3. Failure to Exercise. If Declarant elects or is deemed to have elected not to exercise the right of first refusal set forth in Paragraph 1.2, such Owner may sell the Lot to the proposed purchaser, but

only in accordance with all the terms and conditions, and for the consideration, set forth in the Written Agreement. Whether or not such sale to the proposed purchaser is consummated, the right of first refusal set forth in Paragraph 1.2 shall continue to apply to subsequent transfers of the Lot in accordance with its terms. If Declarant elects or is deemed to have elected not to exercise the right of first refusal set forth in Paragraph 1.2, and:

(a) after such actual or deemed election, such Owner and the prospective purchaser modify by more than two percent (2%) the purchase price, the amount of down payment or any interest being charged on the purchase price, or otherwise materially alter the terms or conditions of the Written Agreement; or

(b) the sale is not consummated within ninety (90) days after the receipt by Declarant of the Transfer Notice,

then the right of first refusal set forth in Paragraph 1.2 shall again apply to the Lot, and such Owner shall comply with the procedure, and Declarant shall have the rights, set forth in Paragraph 1.2.

1.4. Exceptions. The right of first refusal set forth in this Paragraph 1 shall not be triggered by any of the following events, and, therefore, shall continue in full force and effect after the occurrence of any such events, subject to the provisions of Paragraph 2.2:

(a) the granting of a *bona fide* first lien Mortgage recorded against the Lot in favor of a third-party, institutional lender (a “*Lender*”);

(b) a transfer to a trust or similar vehicle for *bona fide* estate planning purposes, or a transfer by operation of law or of estate planning documents as the result of the death of a natural person; or

(c) the sale or transfer of the Lot or of ownership interests in an Owner to an Owner Affiliate.

As used in the preceding sentence, “*Owner Affiliate*” means a *bona fide* entity existing as of the date of this Declaration, not organized or used for the purpose of avoiding the provisions of Paragraph 1.2, that, as of the date of this Declaration, controls, is controlled by, or is under common control with, Owner, where “*control*” is the holding, directly or indirectly, of at least seventy-five percent (75%) of the outstanding voting interests.

2. General Provisions.

2.1. Real Property Covenants. The provisions of this Declaration are perpetual covenants running with the land, binding on and enforceable against each Owner and (except as expressly provided in Paragraph 2.2) every person having any fee, leasehold, Mortgage lien or other interest in the Lot, in favor of Declarant, and shall be enforceable by Declarant by an action for damages for the violation of such covenants, an action to compel specific enforcement of such covenants, or an action to obtain an injunction to prevent the violation of such covenants. No remedy provided in this Declaration shall be exclusive of any other remedy at law or in equity (whether existing on or created after the date of this Declaration), and all remedies under this Declaration may be exercised concurrently, independently or successively from time to time. The failure on the part of Declarant to promptly enforce any provision of this Declaration shall not operate as a waiver of such provision, and the waiver of any default shall not constitute a waiver of any subsequent or other default.

Except as expressly provided in Paragraph 2.2, the interests in and rights concerning the Lot shall be subject and subordinate to the arrangement provided for in this Declaration, and the arrangement provided for in this Declaration shall be prior and superior to such interests and rights, as may be necessary to effectuate all the terms and provisions set forth in this Declaration.

2.2. Subordination. Notwithstanding anything contained in this Declaration to the contrary, the right of first refusal set forth in Paragraph 1 is and shall be subordinate and junior to any *bona fide* first lien Mortgage recorded against the Lot securing a loan in favor of a Lender.

2.3. Attorneys' Fees. If Declarant brings suit to enforce or interpret this Declaration, the prevailing party shall be entitled to recover from the other party the prevailing party's reasonable attorneys' fees and costs incurred in any such action or in any appeal from such action, in addition to the other relief to which the prevailing party is entitled.

2.4. General Provisions. This Declaration shall inure to the benefit of, and shall be binding on, each Owner and such Owner's successors and assigns. This Declaration shall be governed by, and construed and interpreted in accordance with, the laws (excluding the choice of laws rules) of the state of Utah.

[Remainder of page intentionally left blank; signature and acknowledgment on following page]

