



**DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS**

**For**

**Heritage Place Garden Homes**

(A Neighborhood Sub-association  
within Heritage Place Master Community)  
In Washington County, Utah

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR Heritage Place Garden Homes, A Neighborhood Sub-association within Heritage Place Master Community (this "Garden Homes Declaration") is hereby adopted by Nisson Field, LLC, a Utah limited liability company, the Declarant, in accordance with that certain Amended & Restated Master Declaration of Covenants, Conditions & Restrictions of Heritage Place, a Master Community, recorded in Washington County Recorder's Office ("Master Declaration") and made effective as of the date recorded in the Washington County Recorder's Office.

In the event of conflict between this Garden Homes Declaration and the Master Declaration, the Master Declaration shall control, provided that, this Garden Homes Declaration may add further detail, specific and/or additional restrictions applicable to Owners within the Garden Homes Association. Notwithstanding for any amendment to the Garden Homes Declaration or required architectural approval, an Owner must receive written approval for Improvements from the Master Board or its established Master Architectural Control Committee.

The Master Association has approved the recording of this Garden Homes Declaration.

**RECITALS:**

(A) On or about February 23, 2022, a Plat Map depicting Phase 1 of the Master Community was recorded in the Washington County Recorder's Office, as Entry No. 20220010830, which will be added to on a phase-by-phase basis, with all phases collectively being the "Property", "Project" or "Master Community".

(B) On or about February 23, 2022, a Declaration of Easements, Covenants, Conditions, and Restrictions of Heritage Place ("Enabling Declaration") was recorded in the Washington County Recorder's Office, as Entry No. 20220010831.

(C) In conjunction with preparation of this Garden Homes Declaration, an Amended & Restated Master Declaration of Covenants, Conditions, and Restrictions of Heritage Place, a Master Community, as amended, was recorded in the Washington County Recorder's Office.

(D) This Garden Homes Declaration affects and concerns certain Lots within the Master Community located in Washington County, Utah, that are identified in the preliminary plat as Patio Homes within the real property more particularly described in Exhibit "A" and/or subsequently

recorded or amended plats for the Project that identify patio home style housing product within the Project ("Garden Homes" or "Subdivision").

(E) Declarant desires to subject the Garden Homes to the terms of this Garden Homes Declaration. Declarant intends to develop residential properties at the Garden Homes. Declarant will develop and convey all of the Lots within the Subdivision subject to a general plan of development, and subject to certain protective covenants, conditions, restrictions and easements, as set forth in this Garden Homes Declaration, as amended from time to time, which are deemed to be covenants running with the land mutually burdening and benefitting each of the Lots within the Subdivision. Common Areas and Limited Common Areas are those areas that are depicted in the recorded Plat(s), as amended, and as described in this Garden Homes Declaration. The Subdivision does not constitute a cooperative.

(F) Declarant have deemed it desirable, for the efficient preservation of the values and amenities of the Garden Homes, to create an entity which possesses the powers to maintain and administer the Common Areas and Limited Common Areas (where applicable) and otherwise administer and enforce the provisions of this Garden Homes Declaration. For such purposes, Declarant will cause to be registered with the Utah Department of Commerce the Heritage Place Garden Homes Owners Association, Inc. ("Garden Homes Association").

(G) The Garden Homes Association is governed by the terms of this Garden Homes Declaration, the Garden Homes Articles, and the Garden Homes Bylaws, which Garden Homes Bylaws are attached hereto as **Exhibit "B"** and shall be recorded in Washington County Recorder's Office contemporaneously with the recording of this Garden Homes Declaration.

(H) No provision of this Garden Homes Declaration shall prevent the Declarant from doing any of the following, which shall be deemed to be among Declarant's reserved rights in addition to such rights as may be described elsewhere in this Garden Homes Declaration: (1) installation and completion of the Subdivision Improvements; (2) use of any Lot owned by the Declarant as a temporary sales office or model; (3) installation and maintenance of signs incidental to sales or construction which are in compliance with applicable City or County ordinances; (4) assignment of Declarant's rights under this Garden Homes Declaration in whole or part; and (5) retention of Declarant's rights with respect to subsequent phases. A supplemental declaration, with such modifications or supplemental provisions as may be deemed appropriate by Declarant on a phase-by-phase basis, may be recorded to address differences in the circumstances affecting any Lots to be constructed after the initial phase.

(I) These Recitals are made a part of this Garden Homes Declaration.

**COVENANTS, CONDITIONS AND RESTRICTIONS****ARTICLE I**  
**DEFINITIONS**

1.0 Unless the context clearly requires the application of a more general meaning, the following terms, when used in the Garden Homes Declaration, shall have the following meanings:

(A) "Act" means the Community Association Act, Utah Code Ann. Sections 57-8a-101 *et. seq.*

(B) "Architectural Control Committee" or "ACC" shall mean the Master Architectural Control Committee created by the Master Declaration, the Master Bylaws, and/or Master Articles. If no ACC is established, the Master Board shall fulfill the duties of the ACC. The Master Association may adopt policies and procedures governing cooperation between the Master Association and the Garden Homes Association with regard to architectural review and approval.

(C) "Assessment" shall mean any monetary charge, fine or fee imposed or levied against an Owner by the Association, as provided in the Governing Documents, regardless of whether said assessment is identified as an assessment, master assessments, Garden Homes assessment, special assessment, individual assessment, reserve assessment, capital improvement assessment, fine, late fee or other charge.

(D) "Bulk Service Contract" or "Bulk Service Provider" shall mean a service provider for items such as; internet, television, cable, satellite, telephone, data, solar power and similar utilities and services.

(E) "City" shall mean Washington, Utah and its appropriate departments, officials and boards.

(F) "County" shall mean Washington County, Utah and its appropriate departments, officials and boards.

(G) "Common Area(s)" or "Garden Homes Common Areas" shall mean all property designated on the recorded Plat(s) for the Garden Homes or described in the Plat or this Garden Homes Declaration as Common Area, being intended ultimately to be owned by the Garden Homes Association for the common use and enjoyment of all Owners, together with all improvements thereon and all of the easements appurtenant thereto. The Master Association may coordinate with the Garden Homes Association with regard to any maintenance of any Master Association Common Areas that may be under the responsibility of the Master Association or other areas where coordination of Common Area maintenance is in the best interest of the Owners. Further, certain areas identified on Plat(s) may be designated as Common Areas owned by the Master Association.

1. Common Areas may include open space and landscaping outside of the footprint of the Dwelling. Sub-association visitor parking, if any, and other areas for common use by the

Owners of Sub-association.

2. Certain pathways or open space within the Garden Plats may be designated as Master Common Area or may be controlled or maintained by the Master Association for the benefit of all Members of the Master Association.

(H) "Common Expenses" means any and all costs, expenses and liabilities incurred by or on behalf of the Association, including, without limitation, costs, expenses and liabilities for (A) managing, operating, insuring, improving, repairing, replacing and maintaining the Common Areas; (B) providing facilities, services and other benefits to Owners as set forth in this Garden Homes Declaration; (C) administering and enforcing the covenants, conditions, restrictions, reservations and easements created hereby; (D) levying, collecting and enforcing the assessments, charges, fines, penalties and liens imposed pursuant hereto; (E) operating the Association; and (F) creating reserves for any such costs, expenses and liability as required by this Garden Homes Declaration or the Act.

(I) "Declarant" shall mean and refer to Nisson Field, LLC, and its successors and assigns.

1. "Declarant Related Entity or Entities" shall mean Declarant, parent companies, subsidiaries, assigns, successors, related or designated construction entities, or other entities established by Declarant or Declarant's members for the purpose of owning, developing, constructing and/or selling Lots or Units in the Subdivision. Declarant Related Entities shall include but are not limited to: Sullivan Homes.

(J) "Dwelling", "Unit", or "Patio Home" shall refer to any residential structure as the context requires, together with Improvements used in conjunction with such Unit, such as appliances, electrical receptacles and outlets, air conditioning compressors and other air conditioning apparatus, furnaces, stoves, fixtures and the like, shall be considered part of the Unit, whether located within or without said Unit. All pipes, wires, conduits, or other public utility installations serving only that Unit shall be considered part of the Unit. Exterior Improvements such as: steps, porches, driveways shall be considered part of the Unit.

(K) "Garden Articles" shall mean the articles of the Garden Association, as amended from time to time.

(L) "Garden Association" shall mean Heritage Place Garden Owners Association, Inc., and as the context requires, the officers or directors of that Garden Association. The Garden Association is one of three, separate sub-associations within the Master Community.

(M) "Garden Board" or "Board" shall mean the duly elected and acting Board of Directors of the Garden Association.

(N) "Garden Bylaws" shall mean the Bylaws of the Garden Association, as amended from time to time, a copy of which is attached hereto as **Exhibit "B."**

(O) "Garden Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions for Heritage Place Gardens, together with any subsequent amendments or additions through supplemental declarations.

(P) "Governing Documents" shall mean the Master Declaration, Garden Homes Declaration, Master Bylaws, Garden Homes Bylaws, Master Articles, Garden Homes Articles, Rules, and any other documents or agreements binding upon an Owner.

(Q) "Improvement" shall mean all structures and appurtenances of every type and kind, including but not limited to Dwellings, parking facilities, walkways, retaining walls, driveways, fences, landscaping, decks, stairs, poles, lighting, signs, satellite dishes or other antennas, and any mechanical equipment located on the exterior of any building.

(R) "Limited Common Area" shall mean all property designated on the recorded Plat Map(s), or as described in sub-association documents as Limited Common Areas, which may be owned by individual sub-association but for the exclusive use and enjoyment of one or more appurtenant Lots/Units but fewer than all of the Lots/Units including, but not limited to: the private area immediately behind certain Unit, as depicted on the Plat(s) and may include rear patio areas, block walls with wings in a charcoal color on the border of the rear patio area, and other Improvements, as approved by Declarant or the ACC.

(S) "Lot" shall mean any numbered lot shown on any official and recorded Plats, including all Improvement located thereon. Lot may also refer to the individual Dwelling/Unit. Lot may also be interchangeable with Dwelling/Unit in the context of townhomes.

(T) "Master Declaration" shall mean the Amended & Restated Declaration of Covenants, Conditions and Restrictions for Heritage Place, a Master Community together with any subsequent amendments or additions through subsequent recording amendments or supplements.

(U) "Master Association" shall mean Heritage Place Master Homeowners Association, Inc. and, as the context requires, the duly elected and authorized Board of Directors through its officers, directors and managers.

(V) "Master Board" means the Board of Directors of the Master Association elected pursuant to the Master Bylaws and serving as the management body of the Master Association.

(W) "Manager" shall mean any entity or person engaged by the Board of Directors to manage the Project.

(X) "Member" shall mean and refer to every person who holds membership in the Association, including an Owner and the Declarant as set forth herein.

(Y) "Owner" shall mean and refer to the person who is the Owner of record (in the office of the County Recorder of Washington County, Utah) of a fee simple or an undivided

interest in any Lot. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term "Owner" shall not mean or include a mortgagee or a beneficiary of trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof. Owner may include a non-natural, but legally recognized entity, such as a limited liability company, corporation, partnership, limited partnership, trust, and/or other legally entity recognized by Utah State law. Accordingly, such an Owner may designate a natural person of its selection as Owner's agent to serve and act in the Owner's place. Notwithstanding the foregoing, an Owner may designate only one natural person to serve as its agent at any one time.

(Z) "Person" shall mean a natural person or any legal entity with a right to hold title to real property in its own name in the State of Utah, including the authorized representative of such legal entity.

(AA) "Plat(s)" shall mean an official and recorded plat of the Heritage Place Master Community, including all subsequent phases, if any, when recorded, as approved by the City and recorded in the office of the Washington Recorder, as it may be amended from time to time, including the Plat specific to the Garden Homes.

(BB) "Rules" mean any instrument adopted by the Board, as approved by the Master Association, for the regulation and management of the Garden Homes Association, as provided in the Governing Documents.

(CC) "Subdivision Improvements" shall mean all improvements to be installed outside the boundaries of Lots or within easements as identified on the Plats that are necessary to provide public road access and/or private road access and utility service to the Lots and including other construction work required to comply with any conditions of City or County or other governmental agencies to the approval of the Subdivision or any Plat(s) thereof.

(DD) "Yard" shall, for the purposes of this landscaping maintenance, be divided as follows: "front yard" shall mean the area from the front corners of a Dwelling moving forward to the public street. "Backyard" shall mean from the front corners of a Dwelling moving to the rear property line of the Lot. The purpose and intent is to keep a clean and more uniform appearance for front yards in the Subdivision and providing Owners with more freedom of design in the backyards, consistent with this Declaration and local ordinances. Backyards are maintained by the Owners. Setbacks may be established by the Master Association that are more restrictive than local ordinances.

## **ARTICLE II** **EASEMENTS**

2.1 Easements & Rights Concerning Common Area. Each Owner shall have a nonexclusive right and easement of use and enjoyment in and to the Garden Homes Common Area. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom, or encumbered, pledged, assigned or otherwise alienated by an

Owner. Any Owner may temporarily delegate the right and easement of use and enjoyment described herein to any invitee on such Owner's Lot. Notwithstanding the foregoing, no Owner shall have any right or interest in any easements forming a portion of the Common Area except for the necessary parking, access, and utility easements for use in common with others.

- (a) The Garden Homes Association shall be the trustee for all Owners with respect to easements, licenses, agreements, and conveyances of Common Areas, consistent with the Declaration and Utah law.

2.2 Easements & Rights Concerning Limited Common Area. The Master Association and Garden Homes Association (collectively "Associations") shall have a non-exclusive easement for any utility or any required maintenance in and through the Limited Common Area.

- (a) The Garden Homes Association shall be the trustee for all Owners with respect to easements, licenses, agreements, and conveyances of Limited Common Areas, consistent with the Declaration and Utah law.

2.3 Limitation on Easement. An Owner's right and easement of use and enjoyment concerning the Common Area shall be subject to the following:

- (a) The right of the Master Association & Garden Homes Association to govern by Rules the use of the Common Area for the Owners so as to provide for the enjoyment of said Common Areas by every Owner in a manner consistent with the preservation of the residential purposes of the Lots by every Owner, including the right of the Associations to impose reasonable limitations on the number of guests per Owner who at any given time are permitted to use the Common Area;
- (b) The right of the Associations to suspend an Owner's right to the use of the Garden Homes Common Areas, or any amenities included therein, for any period during which an Owner is in violation of the terms and conditions of the Governing Documents or delinquent in the payment of a levied assessment or fee.
- (c) The right of the City, County, and any other governmental or quasi-governmental body having jurisdiction over the Garden Homes, to enjoy access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Common Areas and Garden Homes Common Areas for the purpose of providing police and fire protection, utility access/installation, and providing any other governmental or municipal service.

2.4 Reservation of Access and Utility Easements. Declarant hereby reserve an easement for access and utilities (including but not limited to electrical, gas, communication, phone, internet, cable, sewer, drainage and water facilities) over, under, along, across and through the Property, together with the right to grant to a City and County, or any other appropriate governmental agency, public utility or other utility corporation or association, easements for such purposes over, under, across, along and through the Garden Homes upon the usual terms and conditions required by the grantee thereof for such easement rights, provided, however, that such easement rights must be exercised in such manner as not to interfere unreasonably with the use of the Property by the Owners and the Associations and those claiming by, through or under the

Owners or the Associations; and in connection with the installation, maintenance or repair of any facilities as provided for in any of such easements, the Property shall be promptly restored by and at the expense of the person owning and exercising such easement rights to the approximate condition of the Property immediately prior to the exercise thereof. Each Owner in accepting the deed to a Lot expressly consents to such easements and rights-of-way and authorizes and appoints the Associations as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way.

2.5 Easements for Encroachments. If any part of the Garden Homes Common Areas as improved by Declarant now or hereafter encroaches upon any Lot or if any structure constructed by Declarant on any Lot now or hereafter encroaches upon any other Lot or upon any portion of the Common Area or Garden Homes Common Area, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. If any structure on any Lot shall be partially or totally destroyed and then rebuilt in a manner intended to duplicate the structure so destroyed, minor encroachments of such structure upon any other Lot or upon any portion of the Common Area or Garden Homes Common Area due to such reconstruction shall be permitted; and valid easements for such encroachments and the maintenance thereof, so long as they continue, shall exist.

2.6 Easements for Construction and Development Activities. Declarant reserve easements and rights of ingress and egress over, under, along, across and through the Garden Homes and the right to make such noise, dust and other disturbance as may be reasonably incident to or necessary for the (a) construction of Dwellings on Lots, (b) to maintain sales or leasing offices, management offices and models throughout the Project and to maintain one or more advertising signs on the Common Area with respect to the sales of Lots, or other property in the Project, (c) improvement of the Common Area, and construction, installation and maintenance thereon of roadways, walkways, buildings, structures, landscaping, and other facilities designed for the use and enjoyment of some or all of the Owners, and (d) construction, installation and maintenance on lands within, adjacent to, or serving the Property of roadways, walkways, and other facilities, planned for dedication to appropriate governmental authorities.

2.7 Easement in Favor of Master Association & Garden Homes Association. The Lots, Garden Homes Common Areas and Limited Common Area are hereby made subject to the following easements in favor of the Master Association and its directors, officers, agents, employees and independent contractors:

- (a) For inspection during reasonable hours in order to verify the performance by Owners or other persons of all items of maintenance and repair for which they are responsible;
- (b) For inspection, maintenance, repair and replacement of portions of the Common Areas and Garden Homes Common Areas;
- (c) For correction of emergency conditions;
- (d) For the purpose of enabling the Associations, ACC or any other committees to exercise and discharge during reasonable hours their respective rights, powers and duties;



2.8 Landscaping Easement. The Garden Homes Association shall have an easement and related access rights in order to maintain the Common Area landscaping or any other landscaping that is the Garden Homes Association's responsibility.

- (a) Unless changed by the Declarant in its sole discretion, the Declarant or initial builder shall design and install all front yard landscaping for the Lots in order to maintain a consistent appearance and comply with any local requirements.
- (b) The applicable association or sub-association shall perform general landscaping maintenance of the respective Common Areas, as determined between the Master Association and sub-association, and the front yards of the Lots.
  - i. The purpose and intent is to keep a clean and consistent appearance for front yards in the Subdivision and providing Owners with more freedom of design in the backyards, consistent with this Declaration and local ordinances. Backyards are maintained by the Owners. Setbacks may be established by the Master Association that are more restrictive than local ordinances.
  - ii. Play Structures. Play structures, trampolines, and other similar equipment may only be placed in backyards consistent with other rules and requirements of the associations.

2.9 Income Generated from Service Providers. Declarant and/or Declarant Related Entities invest time, experience, infrastructure and/or capital in the negotiation, provision or installation of certain utilities and amenities (e.g., internet, cable, fiber, phone, solar power, etc.) that provide services and benefits to owner in the Subdivision that would not otherwise be available or at a reduced cost. Any income gained by these parties from these efforts may be retained by the Declarant, Declarant Related Entities, or their assigns, even after the Declarant Control Period. The Association may enter into contracts with third parties related to the provisions of such utilities and amenities for the benefit of Owners in the Subdivision, which utilities and amenities may be paid for through Assessments. Owners contracting separately with individual third-party providers will still be required to pay any normal and customary access fee for applicable bulk rate contract services entered into by the Master or Garden Homes Associations.

2.10 Delegation of Use. Any Owner may delegate, in accordance with the Governing Documents, their right of enjoyment to the Garden Homes Common Area and any Common Facilities located thereon to the Owner's invitees.

2.11 Easement for Completion of Project. Declarant shall have a transferable easement over and on the Garden Homes Common Area for the purpose of completing construction of the Project and improvements therein as shown on the Plat and for the purpose of doing all things reasonably necessary or appropriate in connection therewith. To the extent that damage is inflicted on any part of the Project by any person utilizing such easement. Declarant and the person causing the damage shall be liable to the Master Association for the prompt repair of such damage.

2.12 Easements Deemed Created. All conveyances of a Lot within the Project hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve such reciprocal easements as are provided for herein even though no specific reference to such easements appears in any such conveyance.

2.13 Impact Fees. The Master Association shall have authority to impose Impact Fees for the cost of infrastructure and improvements benefiting the Lots, Common Areas, and Members of the Master Community. Impact Fees should be uniform for similar situated Lots and Units and their resulting benefit. Impact Fees are intended to offset the effect of development and occupancy of each Lot will have on the infrastructure, benefits and amenities within the Master Community. In the event Impact Fees collected are in excess of the cost of the infrastructure, amenity or facility for which the Impact Fee was levied, the Association may reimburse such amounts proportionate to the amount levied or may hold such funds for the future benefit of the Lots served by the Impact Fee. Impact Fees shall be treated as Special Assessments.

2.14 SWPPP Compliance. Owners shall be responsible for construction activities on their Lots and their contractors with respect to SWPPP compliance. Owners shall indemnify Declarant and Declarant Related Entities for any fines, costs, fees or enforcement action against Declarant for activities with regard to construction activities on an Owner's Lot or work provided by an Owners' contractors.

2.15 Amenity Access. Members of a particular association or sub-association shall have access to that entity's amenities. Notwithstanding, a particular association or sub-association can restrict access to only members of that specific association or sub-association that owns and maintains such amenity.

2.16 Amenity Creation & Trail Connections. The Declarant and Master Association have authority to develop and maintain trails and open space in the Property. Further, they may work with relevant government authorities or property owners for necessary or desired trail connections in or out of the Master Community.

2.17 Nisson Hill. Declarant reserves the right to sell/convey Nisson Hill and other opens space areas to the City.

2.18 Trespass. Whenever the Master Association, Garden Association, or Declarant is permitted by these covenants to correct, repair, clean, preserve, clean out or do any action on any portion of Subdivision, including Lots or Units, entering such areas, and taking such action shall not be deemed a trespass on the part of the associations, Declarant or their agents.

**ARTICLE III**  
**GARDEN HOMES ASSOCIATION COMMON AREAS,**  
**LIMITED COMMON AREAS & DWELLINGS**

3.1 **Common Areas.** The Common Areas consist of areas designated as such on the recorded Plat(s) or described in this Garden Homes Declaration, including any structures related to the operation or maintenance of the Common Areas, together with any rights of way and utilities, as shown on the recorded Plat(s). Notwithstanding anything contained in this Garden Homes Declaration to the contrary, all Common Areas appurtenant to each recorded Plat of the Project shall be conveyed to the Garden Homes Association upon recordation of a Plat depicting such Common Areas, reserving all easements as set forth in this Garden Homes Declaration.

- (a) The Garden Homes Association, or its duly designated agent, shall maintain all Common Areas including, without limitation, the landscaping located outside of the Dwelling footprint and on the Common Area in good order and repair and shall otherwise manage and operate all Common Areas as it deems necessary and appropriate. The Garden Homes Association shall have the authority to assess its members for the costs of said maintenance in accordance with the terms of this Garden Homes Declaration. The Garden Homes Association may adopt Rules to add further detail with regard specific landscape maintenance services provided by the Garden Homes Association. Notwithstanding, it is the intent that the Garden Homes Association shall generally provide for all landscaping within the Garden Homes Association.
- (b) **Snow Removal.** The Garden Homes Association may coordinate with the Master Association with respect to snow removal in the sub-association. The Garden Homes Association may adopt Rules to add further detail with regard specific snow removal services provided by the Garden Homes Association. Notwithstanding, it is the intent that the Master Association and/or Garden Homes Association shall generally provide for all snow removal on the Common Areas. The Garden Homes Association and/or Master Association may make reasonable and prudent efforts to contract with a third party for the removal of snow from Common Areas within the Subdivision. Unless the Board elects to provide snow removal for Limited Common Areas, Owners shall be responsible for such areas and other applicable areas on their Lot, including, but not limited to sidewalks immediately adjacent to or primarily serving an Owner's Lot and parking facilities within their Lot. Owners shall be responsible and take reasonable precautions with respect to ice and ice accumulation. The work of removing snow may be delegated to a third party, who will utilize its discretion in the frequency of the snow removal and the amount of accumulation meriting removal. To the extent allowed by law, the Garden Homes Association shall not be responsible or liable for said third party's discretion and removal of snow.

3.2 **Limited Common Areas.** Owners shall maintain, repair and replace the Limited Common Areas associated with their Lots.

3.3 Duty to Maintain. The Owner of a Lot shall maintain and repair the Dwelling and other related Improvements upon their Lot in good repair and consistent with best practices for safety, quality and aesthetics, which shall remain in a clean and sanitary condition, free of pests and rodents, and uncluttered at all times in order to preserve and enhance the enjoyment of the Project. The ACC or the Master Board may implement additional Rules relating to the maintenance of Lots.

3.4 Repairs by Association. In the event that an Owner permits their Lot or Improvements to fall into a state of disrepair that is dangerous, unsafe, unsanitary or unsightly condition or fails to comply with any other covenant or restriction in violation of this Garden Homes Declaration, the Garden Homes Association may give written notice to the Owner describing the condition complained of and demand that the Owner correct the condition within 15 days. If the Owner fails to take corrective action, the Garden Homes Association shall have the right, but not the obligation, to enter upon the offending Owner's Lot and take corrective action to abate the condition. All costs of abatement shall be charged to the Owner, who agrees to promptly pay the reasonable costs of any work performed under this provision, plus 15%. In addition, each Owner hereby grants to the Garden Homes Association a lien on the Lot and any improvements to secure repayment of any sums advanced pursuant to this section, which lien may be foreclosed at any time by the Garden Homes Association in the manner prescribed in Utah for the foreclosure of mortgages. Alternatively, without requiring foreclosure, the Garden Homes Association may seek collection of sums advanced directly from the Owner of the Lot in question. Unpaid amounts will bear interest from the date advanced at the lawful judgment rate under applicable state law.

3.5 Alterations of Exterior Appearance. The Owners will maintain their Lots and Improvements in substantially the same condition and appearance as originally constructed. No subsequent exterior alterations, improvement or remodeling, or any changes in landscaping, paint color or materials will be made without the advance consent of the ACC or the Master Board. Declarant shall be exempt from this provision.

3.6 Repair Following Damage. In the event of casualty loss or damage to the Improvements, the Owner will be entitled to reconstruct the Improvements as they existed prior to the damage or loss without review, provided however that alterations or deviations from the original approved plans will require review. Nothing in this Garden Homes Declaration is intended to prevent an Owner who has suffered property damage or loss from taking temporary measures to secure the property and prevent injury or dangerous conditions following loss or damage before re-construction begins. Such temporary measures may be taken without the consent or approval of the Board, provided that any such measure must be of a temporary nature, and repair or reconstruction must begin as soon as circumstances will permit. Unless delayed by City/County approval or insurance carrier approval, no damaged structure will be permitted to remain on any Lot for more than 90 days without repairs commencing and any damaged structure which does remain unrepaired after 90 days following the occurrence of damage is deemed a nuisance which may be abated by the Garden Homes Association.

**ARTICLE IV**  
**MEMBERSHIP, VOTING & CONTROL PERIOD**

4.1 Membership in the Garden Homes Association shall at all times consist exclusively of the Owners. Each Owner shall be a member of the Garden Homes Association and Master Association, so long as such Owner has an ownership interest in a Lot and such membership shall automatically terminate when the Owner ceases to have an ownership interest in the Lot. Upon the transfer of an ownership interest in a Lot the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Master Association and Garden Homes Association. If titled ownership to a Lot is held by more than one Person, the membership appurtenant to that Lot shall be shared by all such Person in the same proportional interest and by the same type of tenancy in which title to the Lot is held. Notwithstanding the foregoing, the Declarant shall also be granted voting rights as a Class "B" Member, as defined below.

4.2 The Garden Homes Association shall have two (2) classes of voting membership, Class "A" and Class "B", as follows:

(a) Class "A". Class "A" Members shall be all Owners with the exception of Class "B" membership, if any. Class "A" membership shall be entitled to one (1) equal vote for each Lot in which they are an Owner. Only an Owner that is current on all Assessments and/or other fees thirty days in advance of the meeting or vote shall be deemed in good standing and entitled to vote. With regard to any approval that requires a specified percentage of total membership, the total membership shall be calculated from the total number of Owners eligible to vote at the time such approval is sought. Since an Owner may be more than one Person, if only one of such Person(s) is present at the meeting of the Garden Homes Association that Person shall be entitled to cast the vote appertaining to that Lot. But if more than one of such Person(s) is present, the vote appertaining to that Lot shall be cast only in accordance with the agreement of a majority of them, and such consent shall be conclusively presumed if any one of them purports to cast the vote appertaining to that Lot without protest being made forthwith by any of the others to the person presiding over the meeting. The vote appurtenant to any one Lot may not be divided between Owners. If the vote of a majority of the owners of a Lot cannot be determined, no vote shall be cast in relation to such Lot.

(b) Class "B". The Class "B" Member shall be Declarant. In all matters requiring a vote, the Class "B" membership shall receive one hundred (100) votes for each recorded Lot or acre of property in the Undeveloped Land owned by Declarant. The Class "B" membership shall also be entitled to appoint the members of the Garden Homes Board and Garden Homes Association during the Class "B" Control Period.

4.3 The Class "B" Control Period runs until ninety (90) days after the first to occur of the following:

(a) Declarant no longer owns any Lots or Undeveloped Land; or

- (b) When, at its discretion, the Class B Member so determines.

4.4 Notwithstanding anything to the contrary in this Garden Homes Declaration, Declarant may exercise its discretionary termination of control in whole or in part as to any portion of the Subdivision at its sole election and determination. In doing so as to a portion of the Subdivision, it does not waive any reversionary or remaining control as to all other portions of the Subdivision, the control of which is not expressly terminated by Declarant.

#### ARTICLE V GARDEN HOMES ASSOCIATION

5.1 Organization. The Garden Homes Association has been created to effectively enforce the Governing Documents and shall operate as a non-profit corporation. The Garden Homes Association shall be comprised of the Owners within the Garden Homes and is established for the benefit of the Owners and the enforcement of the Governing Documents. Membership in the Garden Homes Association is deemed an appurtenance to the Lot and is transferable only in conjunction with the transfer of the title to a Lot. The Association shall serve as the organizational body for all Owners.

5.2 Master Declaration Controls. The Master Declaration and portions of this Garden Homes Declaration use the term "Neighborhood Sub-associations" when referring to sub-association within the Project that are subject to the Master Declaration and certain oversight and control by the Master Association. Neighborhood Sub-association governing documents shall not be inconsistent with the terms and provisions of the Master Declaration and any inconsistency shall be governed by the Master Declaration. Neighborhood Sub-associations may be formed with the approval of the Master Board and by satisfying all necessary legal requirements including, but not limited to, the preparation, execution and recording of Sub-association governing documents.

5.3 Relationship between Master Association and Neighborhood Sub-associations. It is the purpose and intent of the provisions of the Master Declaration and this Garden Homes Declaration that the Master Association shall be charged with and responsible for the management of all activities in the Project including, in addition to all other duties and responsibilities set forth herein, the following:

- (a) The approval of all rules and regulations of each Neighborhood Sub-association and providing of assistance, where deemed appropriate by the Master Association, to a Neighborhood Sub-association in the enforcement thereof;
- (b) Approval of responsibilities among the Master and Neighborhood Sub-associations; and
- (c) Collection of Assessments from each Neighborhood Sub-association in amounts required by the Master Declaration.

Nothing herein contained shall restrict or prohibit a Neighborhood Sub-association from owning, in its own name, Common Area or other property related thereto, the use of which shall be restricted to Members of that Neighborhood Sub-association. However, it is the intent of the

Master Declaration that any such Common Area owned by a Neighborhood Sub-association, the use and maintenance thereof and the activities of the Neighborhood Association, shall be consistent with and in furtherance of the Project objectives and the terms and provisions of this Master Declaration to assure that the whole of the Project is developed and approved as a quality community.

5.4 Enforcement Powers. The Garden Homes Association shall have all powers granted to it by the Governing Documents to enforce these covenants and restrictions by actions in law or equity brought in the name of the Garden Homes Association, and the power to retain professional services needed to the enforcement of the Governing Documents and to incur expenses for that purpose, including but not limited to: (1) record, lien, foreclose and other enforcement and collection actions against an Owner and their Lot; (2) initiate legal or similar proceedings; (3) impose fines; (4) collect any rents directly from tenant for past due assessments; (5) terminate an Owners' right to receive utility service paid as a common expense; (6) terminate an Owner's right to utilize Common Area and/or amenities; and (7) any other action or remedy allowed by the Governing Documents or Utah law. In the event the Garden Homes Association fails to exercise any power granted in this Article, the Master Association shall have the right to exercise enforcement powers.

(a) The Garden Homes Association shall have the exclusive right to initiate enforcement actions in the name of the Association. The Association may appear and represent the interest of the Project at all public meetings concerning zoning, variances, or other matters of general application and interest to the Owners.

(b) The Garden Homes Association shall have the authority to initiate and compromise claims and litigation on behalf of the Garden Homes Association resulting from the enforcement of the Governing Documents. In the event that the Garden Homes Association initiates legal action against a specific Owner or Owners to enforce these Governing Documents, whether or not such action results in the commencement of a formal legal proceeding, the Garden Homes Association shall have the right to assess the costs of such litigation, dispute, or enforcement action, including reasonable attorney fees, against the Owner(s) or Lot(s) in question and collect those assessment in any manner authorized in the Governing Documents or Utah law.

(c) The Board shall be afforded discretion to utilize its reasonable judgment to determine whether and how to impose fines, record liens, pursue legal action; otherwise enforce the Governing Documents; or when and how to settle or compromise claims.

5.5 Assessments. Assessments will be made to meet the anticipated and recurring costs, expenses and Common Expenses of the Garden Homes Association. The Garden Homes Association has the power to levy assessments against each Lot as necessary to carry out its functions. Assessments shall be levied against all Lots in the Property, whether vacant or improved. Each Owner shall by acquiring or in any way becoming vested with their interest in a Lot, be deemed to covenant and agree to pay to the Garden Homes Association the assessments described in these covenants, together with late payment fees, interest and costs of collection

(including reasonable attorney fees), if and when applicable.

- (a) All such amounts shall be, constitute and remain: (a) a charge and continuing lien upon the Lot with respect to which such assessment is made until fully paid; and (b) the personal, joint and several obligations of the Owner or Owners of such Lot at the time the assessment fails due. No Owner may exempt themselves or their Lot from liability for payment of assessments by waiver of their rights in the Common Areas or by abandonment of their Lot. In a voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments, late payment fees, interest and costs of collection (including reasonable attorney fees) which shall be a charge on the Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.
- (b) **Special Assessment.** The Garden Homes Association may levy special assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonably capable of being fully paid with funds generated by monthly assessments; or (b) the cost of any construction, reconstruction, or unexpectedly required repairs or replacement of the Common Areas.
- (c) **Individual Assessment.** The Garden Homes Association may levy individual assessments on every Lot, Owner or occupant that shall cause any damage to the Project or otherwise causes the Garden Homes Association to incur any individual expense for maintenance, repairs, or enforcement action taken under the provisions of the Governing Documents. The amount of any such individual assessments shall be determined by the cost of such repairs, maintenance or enforcement action, including all overhead and administrative costs (including reasonable attorney fees), and shall be allocated among the affected Owner(s) or Lot(s) according to the cause of damage, maintenance, repair work or enforcement action, as the case may be, which individual assessment may be levied in advance of the performance of work.
- (d) **Neighborhood Assessments.** Neighborhood Assessments will be made to meet the anticipated and recurring costs, expenses and Common Expenses of the Neighborhood Sub-associations. The Neighborhood Association has the power to levy assessments against each Lot as necessary to carry out its functions, together with late payment fees, interest and costs of collection (including reasonable attorney fees), if and when applicable. If the Neighborhood Sub-Association fails to levy and collect neighborhood assessments, the Master Association may elect to carry out those functions. Further, the Master Association may levy a Neighborhood Assessment to Owners in a specific Neighborhood for costs, special services or amenities available for Owners within that Neighborhood that are provided by the Master Association.
- (e) **Reserve Fund.** The Garden Homes Association may levy a reserve fund assessment,



as set forth in this article.

- (f) The Garden Homes Association may levy other assessments or fees, as authorized by the Governing Documents.

5.6 Budget. The Garden Homes Board is authorized and required to adopt a budget annually, which shall be presented to the Owners at a meeting of members.

- (a) The Garden Homes Board may revise the approved budget from time to time, as necessary to accurately reflect actual and/or anticipated expenses that are materially greater than previously budget.
- (b) The budget shall estimate and include the total amount for the Common Expenses, shall contain an appropriate amount for reserves, and may include an amount for other contingencies. The budget shall also be broken down into reasonably detailed expense and income categories.

5.7 Reserve Fund Analysis. Following the Class B Period, the Garden Homes Board shall cause a reserve analysis to be conducted no less frequently than every six (6) years to analyze the cost of repairing, replacing or restoring Common Area that have a useful life of three years or more and a remaining useful life of less than 30 years. This reserve analysis should be reviewed no less frequently than every three (3) years and updated if necessary. The Garden Homes Board may conduct a reserve analysis itself or may engage a reliable person or organization, as determined by the Garden Homes Board, to conduct the reserve analysis.

5.8 Reserve Fund Account Creation. The Garden Homes Association shall create a reserve fund account that is separate and distinct from the Garden Homes Association's general account, which account shall be funded from the reserve fund assessments. The amount of the reserve fund assessment shall be a separate line item in the approved budget. The Garden Homes Board shall cause an assessment to be made against all Owners in an amount sufficient, within the Garden Homes Board's discretion, to fund the reserve account.

5.9 Reinvestment Fee. With the exception of those Lots conveyed by Declarant or Declarant Related Entities, which shall be exempt from the Reinvestment Fee, the Garden Homes Association, in coordination with the Master Association, may levy or participate in reinvestment fees when a change in ownership of a Lot occurs in the amount set by the Master Board from time to time, not to exceed one-half of one percent (.005) of the sale price of the Lot.

5.10 One-time Initial Start-Up Development Assessment. With the exception of the Declarant, the initial Owner of record (following the Declarant and initial builder) of a Lot shall pay to the Garden Homes Association at closing an initial, start-up fee in an amount set by the Board from time to time not to exceed one-half of one percent (.005) of the sale price of the Lot. This fee shall be a one-time, initial start-up fee, shall not be prorated for any time left in the calendar year following closing, and is in addition to the prorated regular Assessment. The Association shall utilize this fee to assist in the administration, legal, operations, maintenance, and

other expenses and costs related to Garden Homes Association Garden Homes for the management of the affairs of the Association and the Common Areas for the benefit of the Association and its Members.

**5.11 Date of Commencement of Assessments.** Assessments shall commence upon acquisition of a Lot. Notwithstanding, in the beginning phases of the Project, Declarant may elect to phase in certain assessments based upon the availability and construction schedule of certain amenities. Assessments shall be due and payable in a manner and on a schedule, as the Garden Homes Board may provide. Notwithstanding, Assessments for those Lots owned by Declarant or Declarant' Related Entities shall not commence until the completed Dwelling is conveyed to an Owner that is not the Declarant or a Declarant' Related Entity. No amendment of this Garden Homes Declaration changing the allocation assessments with regard to Declarant or Declarant Related Entities shall be valid without the consent of the Declarant.

**5.12 Fines.** The Garden Homes Association shall have the power to assess a fine against an Owner (or their Lot) for a violation of the terms and conditions of the Governing Documents in an amount and schedule established by the Garden Homes Board.

**5.13 Hearing Process.** The Garden Homes Board shall have authority to create a reasonable hearing process, consistent with the Act, applicable when the Garden Homes Association takes an adverse action related to any particular Owner(s).

**5.14 Garden Homes Association Rules.** The Garden Homes Board from time to time and subject to the provisions of the Governing Documents, may adopt, amend, repeal and enforce Rules governing the community.

- (a) During the Class B Period, Declarant shall be exempt from the rule making procedure required by Utah Code § 57-8a-217.

**5.15 Statement of Account & Payoff Information.** Upon a written request from an Owner that the Association provide the Owner with a statement of their account, the Association may charge a fee, not to exceed \$10.00, for providing such statements. In addition, when a request is made to the Association to provide payoff information needed in connection with the financing, refinancing, or closing of a Lot Owner's sale of their Lot, the Association may charge a fee not to exceed \$50.00.

## **ARTICLE VI**

### **NONPAYMENT OF ASSESSMENTS & THE APPOINTMENT OF TRUSTEE**

**6.1 Delinquent Assessment.** Any assessment not timely paid shall be delinquent, and the Garden Homes Association may invoke any and all remedies to recover said delinquent assessments including by: suit, judgment, lien, foreclosure, or other remedy authorized by the Governing Documents or the Act.

**6.2 Due Date, Charges & Interest.** Unless otherwise established by the Board, monthly assessments shall be due and payable on the first of each month and late if not received by the 10<sup>th</sup>

of each month. The Board may charge late fees in an amount set by the Board. In addition to late fees, interest shall accrue on all unpaid balances, including prior, unpaid interest and attorney fees (resulting in compounding interest), late fees, and assessments at 18% per annum or 1.5% per month. The Board may also impose other reasonable charges imposed by a Manager related to collections.

6.3 Lien. Upon recording of a notice of lien on any Lot, there shall exist a perfected lien for unpaid assessments prior to all other liens, except: (1) all taxes, bonds, assessments, and other levies which by law would be superior thereto; and (2) the lien or charge of any first or second mortgage of record made in good faith and for value recorded prior to a recorded notice of lien by the Garden Homes Association.

6.4 Foreclosure Sale. The Garden Homes Association shall have all rights and power of foreclosure granted by the Act, both judicially and non-judicially. The Garden Homes Association may also bid for the Lot at foreclosure sale, acquire, hold, lease, mortgage, and convey the same. During the period in which a Lot is owned by the Garden Homes Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be charged or levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its equal pro rata share of any Special Assessment that would have been charged had such Lot not been acquired by the Garden Homes Association as a result of foreclosure. Suit to recover a money judgment for unpaid assessments and attorney fees shall be maintainable without foreclosing or waiving the lien securing the same.

6.5 Other Remedies. All rights and remedies of the Garden Homes Association shall be cumulative, and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy. The "One Action Rule" shall not be a defense to the enforcement of all rights and remedies of the Garden Homes Association. The Garden Homes Association may elect to bring an action to recover for a delinquent Assessment against the Owner or other obligee personally. Any attorney fees or costs incurred in these efforts shall also be assessed against the Owner(s), their Lot(s), and/or other obligees jointly and severally.

6.6 Payment by Tenant. The Garden Homes Association shall be entitled to demand and collect from a tenant of any Lot, the amount of any assessment that is more than sixty (60) days past due.

6.7 Attorney Fees. In addition to the recovery of costs and attorney fees as provided herein, the Garden Homes Association shall be entitled to recover all reasonable attorney fees and costs incurred as a result of an Owner breach of the Governing Documents, including meetings, research, memoranda, monitoring and other legal work incurred in response to an Owner breach or violation of the Governing Documents. These fees may be collected by special or individual assessment against the subject Owner's Lot.

6.8 Appointment of Trustee. The Declarant hereby convey and warrant pursuant to U.C.A. Sections 57-1-20 and 57-8a-212 to Burt R. Willie, Esq., a licensed member of the Utah State Bar, and assigns, with power of sale, the Lot and all Improvements to the Lot for the purpose

of securing payment of assessments under the terms of this Garden Homes Declaration.

6.9 Powers Extended to Master Association. In the event the Garden Homes Association fails to exercise any power granted in this Article IX, the Master Association shall have the right to exercise enforcement powers.

**ARTICLE VII**  
**ARCHITECTURAL RESTRICTIONS & ARCHITECTURAL CONTROL COMMITTEE**

7.1 Design Guidelines. As approved by the Master Association, the Garden Association may adopt Design Guidelines specific to the Garden Homes.

7.2 Application & Review. Submission and construction of Improvements shall be pursuant to the procedures set forth in the Master Declaration.

7.3 Soils Tests. The ACC may require that the single family detached house owner obtain a soils test approval following the recommendations set forth in the soils test document. NOT WITHSTANDING ANY OTHER LANGUAGE CONTAINED HEREIN, BY ACCEPTING A DEED TO, OR CONVEYANCE OF, ANY LOT OR OTHER PART OR PORTION OF THE PROPERTY BY THE GRANTEE THEREIN NAMED OR BY THEIR LEGAL REPRESENTATIVES, HEIRS, EXECUTORS, ADMINISTRATORS, SUCCESSORS OR ASSIGNS, ANY LOT OWNERS ARE THEREBY WAIVING ANY CLAIMS AGAINST THE DEVELOPER OR ANY OF THE DEVELOPER'S OWNERS, AGENTS, EMPLOYEES, OR REPRESENTATIVES IN ANY WAY RELATED TO THE SOIL CONDITIONS OF ANY LOT AND ANY EXCAVATION OR COMPACTION OF THE SOIL OF ANY LOT. EACH LOT OWNER OR POTENTIAL LOT OWNER IS HEREBY ADVISED TO OBTAIN A SOILS TEST AND RECOMMENDATION ON FOUNDATION PRIOR TO PURCHASING A LOT AND PRIOR TO COMMENCING CONSTRUCTION OF ANY STRUCTURE ON ANY LOT. FOOTPRINT, PAD SIZE, AND SETBACKS. (Note: AGECC reports are noted on final plats).

7.4 Declarant Exemption. Any and all Improvements constructed by Declarant and Declarant Related Entities on the Property are not subject to review and approval by the ACC and shall be exempt from the provisions of this Article.

**ARTICLE VIII**  
**USE LIMITATIONS & RESTRICTIONS**

8.1 Master Declaration. The Garden Homes are subject to the Use Limitation & Restrictions set forth in the Master Declaration. The Garden Homes Association may amend, with consent of the Master Association, to adopt additional or modify use restrictions applicable to the Garden Homes Lots.

**ARTICLE IX**  
**INSURANCE**

9.1 **Insurance Requirement.** The Garden Homes Association shall obtain insurance as required in this Garden Homes Declaration and as required by applicable law. The Garden Homes Association may obtain insurance that provides more or additional coverage than the insurance required in this Garden Homes Declaration. Different policies may be obtained from different insurance carriers and standalone policies may be purchased instead of or in addition to embedded, included coverage, or endorsements to other policies.

9.2 **Property Insurance.**

- (a) **Blanket Policy of Property Insurance.** The Garden Homes Association shall maintain a blanket policy of property insurance covering all Common Areas and Limited Common Areas in an amount not less than one-hundred percent (100%) of current replacement cost of all property covered by such policy at the time the insurance is purchased and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry.
- (b) **Garden Homes Association's Obligation for Property Insurance Deductible.** The Garden Homes Association shall keep an amount equal to the Garden Homes Association's property insurance policy deductible or \$10,000, whichever is less. This requirement shall not apply to any earthquake or flood insurance deductible.
- (c) **Garden Homes Association's Right to Not Tender Claims that are Under the Deductible.** If, in the exercise of its business judgment, the Garden Homes Board determines that a claim is likely not to exceed the Garden Homes Association's property insurance policy deductible: (a) the Owner's policy is considered the policy for primary coverage to the amount of the Garden Homes Association's policy deductible; (b) an owner who does not have a policy to cover the Garden Homes Association's property insurance policy deductible is responsible for the loss to the amount of the Garden Homes Association's policy deductible; and (c) the Garden Homes Association need not tender the claim to the Garden Homes Association's insurer.

9.3 **Comprehensive General Liability (CGL) Insurance.** The Garden Homes Association shall obtain CGL Insurance insuring the Garden Homes Association, the agents and employees of the Garden Homes Association, and the Owner, against liability incident to the use, ownership or maintenance of the Common Area or membership in the Garden Homes Association. The coverage limits under such policy shall not be less than one million dollars (\$1,000,000) covering all claims for death of or injury to any one person or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage which would preclude the insurer from denying the claim of an Owner because of the negligent acts of the Garden Homes Association or another Owner.

9.4 **Directors and Officers Insurance.** The Garden Homes Association shall obtain Directors and Officers liability insurance protecting the Garden Homes Board, the Officers, and

the Garden Homes Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Governing Documents, and breach of contract (if available). The policy shall:

- (a) Include coverage for volunteers;
- (b) Include coverage for monetary and non-monetary claims;
- (c) Provide for the coverage of claims made under any fair housing act or similar statute or that are based on any form of discrimination or civil rights claims; and
- (d) Provide coverage for defamation. In the discretion of the Garden Homes Board, the policy may also include coverage for any manager and any employees of the manager and may provide that such coverage is secondary to any other policy that covers the manager or any employees of the manager

9.5 Insurance Coverage for Theft and Embezzlement of Garden Homes Association Funds. The Garden Homes Association may obtain insurance covering the theft or embezzlement of funds.

9.6 Named Insured. The named insured under any policy of insurance shall be the Garden Homes Association. Each Owner shall also be an insured under all property and CGL insurance policies.

9.7 Garden Homes Association's Right to Negotiate All Claims and Losses and Receive Proceeds. Insurance proceeds for a loss under the Garden Homes Association's property insurance policy shall be payable the Garden Homes Association and shall not be payable to a holder of a security interest. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property if the property is to be repaired and restored as provided for in this Garden Homes Declaration. After any repair or restoration is complete and, if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Garden Homes Association. If the property is not to be repaired or restored, then any proceeds remaining after such action as is necessary related to the property has been paid for, shall be distributed to the Owners and lien holders, as their interests remain with regard to the Dwellings. Each Owner hereby appoints the Garden Homes Association, as attorney-in-fact for the purpose of negotiating all losses related thereto, including: the collection, receipt of, and the execution of releases of liability and the execution of all documents and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representative, successors or assigns of an Owner.

9.8 Owner Act Cannot Void Coverage under Any Policy. Unless an Owner is acting within the scope of the Owner's authority on behalf of the Garden Homes Association and under direct authorization of the Garden Homes Association, an Owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.

9.9 Owners' Individual Coverage. EACH OWNER SHOULD PURCHASE

INDIVIDUAL PROPERTY COVERAGE IN THE AMOUNT RECOMMENDED BY THE OWNER'S INDEPENDENT INSURANCE AGENT.

9.10 Special Assessment. If the damage or destruction to the Common Areas for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the members, levy a special assessment against all Owners as provided in the Governing Documents.

**ARTICLE X**  
**ANNEXATION & DE-ANNEXATION**

10.1 Annexation. Additional phases of may be added to the Garden Homes pursuant to the procedures set forth in the Master Declaration.

**ARTICLE XI**  
**MISCELLANEOUS PROVISIONS**

11.1 Condemnation. Whenever all or any part of the Common Areas shall be taken (or conveyed in lieu of and under threat of condemnation), the Board may act on behalf of the Association in negotiating and completing such transaction.

11.2 Damage & Destruction. Immediately after damage or destruction by fire or other casualty to all or any part of the Common Areas covered by insurance written in the name of the Association, the Board, or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Common Areas. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Common Areas to substantially the same condition in which they existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

- (a) Any damage or destruction to the Common Areas shall be repaired or reconstructed unless Owners representing at least seventy-five (75%) percent of the total vote of the Association, shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the costs of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) additional days. No mortgagee shall have the right to participate in the determination of whether the damage or destruction to Common Areas shall be repaired or reconstructed; provided, however, this provision shall not apply to construction mortgagees providing construction financing for such damaged property.
- (b) In the event, that it should be determined in the manner described above that the damage or destruction to the Common Areas shall not be repaired or

reconstructed and no alternative improvements are authorized, then and in that event the affected portion of the Common Areas shall be restored to their natural state and maintained by the Association, in a neat and attractive condition.

- (c) If the damage or destruction to the Common Areas for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the members, levy a special assessment against all Owners as provided in the Governing Documents.

11.3 Severability. Each of the covenants contained in this Declaration shall be independent of the others, and in the event that any one is found to be invalid, unenforceable, or illegal by a court of competent jurisdiction, the remaining covenants shall remain in full force and effect.

11.4 Consent, Power of Attorney, Waiver. By acceptance of a deed, lease, or other conveyance of an interest in Lot, each Owner or Occupant consents to the rights reserved to the Association in this Declaration, including but not limited to, the right to prepare, execute, file, process, and record necessary and appropriated documents and other items to establish and grant easements and to make necessary and appropriate amendments of this Declaration, the Plat and Bylaws. By such acceptance, each Owner or Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same; and such acceptance shall be deemed an appointment of the Association, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on Owner's or Occupant's behalf; and such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Association's reserved rights as set forth in this Declaration and shall not be affected by the disability of any such Owner or Occupant.

11.5 No Representations and Warranties. Each Owner and occupant understand, agree, and acknowledges through taking title or residing in the Project that the Declarant, Association, and the Board have not made any representations or warranties of any kind related to the Project and that each Owner or occupant has not relied upon any reorientations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose relative to the Project.

11.6 Amendment. At any time while this Garden Homes Declaration is in effect, the covenants herein contained can be modified by the Declarant or Declarant's successors and assigns during the Class B Control Period at the sole discretion of the Declarant. Thereafter, the covenants herein contained can only be modified by the affirmative vote of the Owners representing not less than sixty-seven (67%) percent of the total votes of the Garden Homes Association. No meeting or voting shall be required for an amendment, if the required, written consent is obtained from the requisite number of Owners. The Garden Homes Association must receive written permission from the Master Board approving any amendment of the Garden Homes Declaration.

11.7 Constructive Notice. Every person who owns, occupies, or acquires any right, title



or interest in any Lot in the Project is conclusively deemed to have notice of this Declaration and its contents, and to have consented to the application and enforcement of each of the provision of this Declaration against their Lot, whether or not there is any reference to this Declaration in the instrument by which they acquire interest in any Lot.

11.8 Liberal Interpretation. The provisions of this Declaration shall be interpreted liberally to further the goal of creating a uniform plan for the development of the Project. Headings are inserted for convenience only and shall not be considered in interpretation of the provisions. Singular will include plural, and gender is intended to include masculine, feminine and neuter as well.

11.9 Right to Modify Lot Boundaries and Interior Boundary Lines. Declarant reserves the unilateral right to modify Lot boundaries and interior boundary lines and/or combine Lots so long as it owns the Lots; provided, however, such changes may not extensively alter the boundaries of the Common Area and facilities nor change the percentages of ownership interest.

11.10 Violation Deemed a Nuisance. Any violation of these covenants that is permitted to remain on the Property is deemed a nuisance and is subject to abatement by the Association.

(a) Any single or continuing violation of the covenants contained in this Declaration may be enjoined in an action brought by the Association. In any action brought to enforce these covenants, the prevailing party shall be entitled to recover as part of its judgment the reasonable costs of enforcement, including reasonable attorney fees and court costs.

(b) Nothing in this Declaration shall be construed as limiting the rights and remedies that may exist at common law or under applicable federal, state or local laws and ordinances for the abatement of nuisances, health and safety, or other matters. This Declaration is to be construed as being in addition to those remedies available at law.

(c) The remedies available under this Declaration and at law or equity generally are not to be considered as exclusive, but rather as cumulative.

(d) The failure to take enforcement action shall not be construed as a waiver of the contents contained in this Declaration in the future or against other similar violations.

11.11 Association Litigation. Any association litigation shall be subject to procedures and requirements set forth in the Master Declaration.

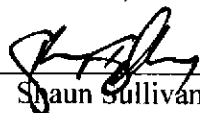
11.12 Repurchase Option for Construction Defect Claims. Declarant retains a repurchase option as set forth in the Master Declaration.

11.13 Amendment Requires Consent of Declarant. Notwithstanding any other provision of this Garden Homes Declaration, during the Class B Period, this Garden Homes Declaration and its subsections may not be amended except with the prior written consent of the Declarant.

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

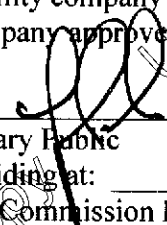
Declarant

Nisson Fields, LLC

  
By: Shaun Sullivan  
Its: Co-Manager

STATE OF UTAH )  
 : ss  
COUNTY OF WASHINGTON )

On this 10 day of August, 2022, personally appeared before me Shaun Sullivan, who being by me duly sworn, did say that he is an authorized co-manager of Nisson Fields, LLC, and that the within and foregoing instrument was signed on behalf of said limited liability company by authority and said member duly acknowledged to me that said limited liability company approved the same.

  
Notary Public  
Residing at: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_



**Exhibit "A"**  
**Legal Description**

**HERITAGE PLACE LEGAL DESCRIPTION:**

BEGINNING AT A POINT THAT LIES NORTH 88°47'50" WEST ALONG THE SECTION LINE 1338.24 FEET AND SOUTH 00°54'46" WEST 516.96 FEET AND NORTH 88°37'36" WEST ALONG THE CENTER LINE OF 1575 SOUTH STREET 17.87 FEET TO THE EAST LINE OF HERITAGE COVE SUBDIVISION AS FILED IN THE WASHINGTON COUNTY RECORDERS OFFICE, WASHINGTON COUNTY, UTAH, THENCE ALONG SAID HERITAGE COVE THE FOLLOWING THREE (3) COURSES: 1) SOUTH 03°31'54" WEST 161.14 FEET, 2) SOUTH 86°56'09" WEST 113.08 FEET, AND 3) NORTH 88°47'46" WEST 14.97 FEET, FROM THE NORTHEAST CORNER OF SECTION 26, TOWNSHIP 42 SOUTH, RANGE 15 WEST, SALT LAKE BASE AND MERIDIAN, THE TRUE POINT OF BEGINNING, AND RUNNING THENCE SOUTH 01°12'16" WEST 194.08 FEET; THENCE SOUTH 00°54'46" WEST 327.59 FEET; THENCE SOUTH 89°28'19" EAST 132.43 FEET MORE OR LESS TO THE WEST LINE OF WASHINGTON FIELDS ROAD, THENCE ALONG SAID LINE THE FOLLOWING TWO (2) COURSES: 1) SOUTH 00°21'48" WEST 842.29 FEET, AND 2) SOUTHERLY ALONG A 862.60 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT, (LONG CHORD BEARS SOUTH 11°14'30" EAST A DISTANCE OF 364.03 FEET, CENTER POINT LIES SOUTH 89°03'37" EAST), THROUGH A CENTRAL ANGLE OF 24°21'47" A DISTANCE OF 366.79 FEET; THENCE NORTH 00°21'56" EAST 6.25 FEET MORE OR LESS TO THAT CERTAIN WESTERLY LINE OF SAID ROAD ESTABLISHED BY DOC. NO. 20070060832 OFFICIAL RECORDS WASHINGTON COUNTY, UTAH, THENCE ALONG SAID LINE THE FOLLOWING TWO (2) COURSES: 1) SOUTHEASTERLY ALONG A 860.10 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT, (LONG CHORD BEARS SOUTH 28°10'44" EAST A DISTANCE OF 154.21 FEET, CENTER POINT LIES NORTH 66°57'52" EAST), THROUGH A CENTRAL ANGLE OF 10°17'11" A DISTANCE OF 154.42 FEET, AND 2) SOUTHERLY ALONG A 25.00 FOOT RADIUS REVERSE CURVE TO THE RIGHT, (LONG CHORD BEARS SOUTH 08°34'24" WEST A DISTANCE OF 34.03 FEET, CENTER POINT LIES SOUTH 56°40'41" WEST), THROUGH A CENTRAL ANGLE OF 85°47'27" A DISTANCE OF 37.43 FEET TO THE NORTH LINE OF 2000 SOUTH STREET, THENCE ALONG SAID LINE THE FOLLOWING FIVE (4) COURSES: 1) SOUTH 52°28'37" WEST 22.66 FEET, 2) SOUTHWESTERLY ALONG A 220.00 FOOT RADIUS CURVE TO THE RIGHT, (LONG CHORD BEARS SOUTH 68°53'04" WEST A DISTANCE OF 124.35 FEET, CENTER POINT LIES NORTH 37°31'53" WEST), THROUGH A CENTRAL ANGLE OF 32°49'54" A DISTANCE OF 126.07 FEET, 3) SOUTH 00°54'46" WEST 14.51 FEET AND 4) NORTH 89°02'31" WEST 1256.26 FEET MORE OR LESS TO THE EAST LINE OF 300 EAST STREET, THENCE ALONG SAID LINE NORTH 00°30'22" EAST 1129.37 FEET; THENCE NORTH 87°20'34" WEST 16.51 FEET TO THE CENTERLINE OF SAID 300 EAST STREET, THENCE NORTH 00°30'22" EAST ALONG SAID LINE 151.78 FEET; THENCE LEAVING SAID ROAD AND RUNNING SOUTH 85°32'36" EAST 263.87 FEET; THENCE NORTH 23°58'24" EAST 198.45 FEET; THENCE NORTH 06°15'34" EAST 92.12 FEET TO THE SOUTH LINE SAID HERITAGE COVE, THENCE ALONG SAID LINE THE FOLLOWING EIGHT (8) COURSES: 1) SOUTH 38°59'31" EAST 59.91 FEET, 2) SOUTH 39°02'06" EAST 180.97 FEET, 3) SOUTH 80°17'20" EAST 76.66 FEET, 4) NORTH 31°49'57" EAST 437.65 FEET, 5) NORTH 39°02'40" WEST 105.55 FEET, 6) NORTH 46°59'09" EAST 34.36 FEET, 7) SOUTH 74°08'02" EAST 248.45 FEET AND 8) NORTH 30°16'37" EAST 184.62 FEET TO THE POINT OF BEGINNING.

CONTAINING 1,931,949 SQUARE FEET OR 44.35 ACRES

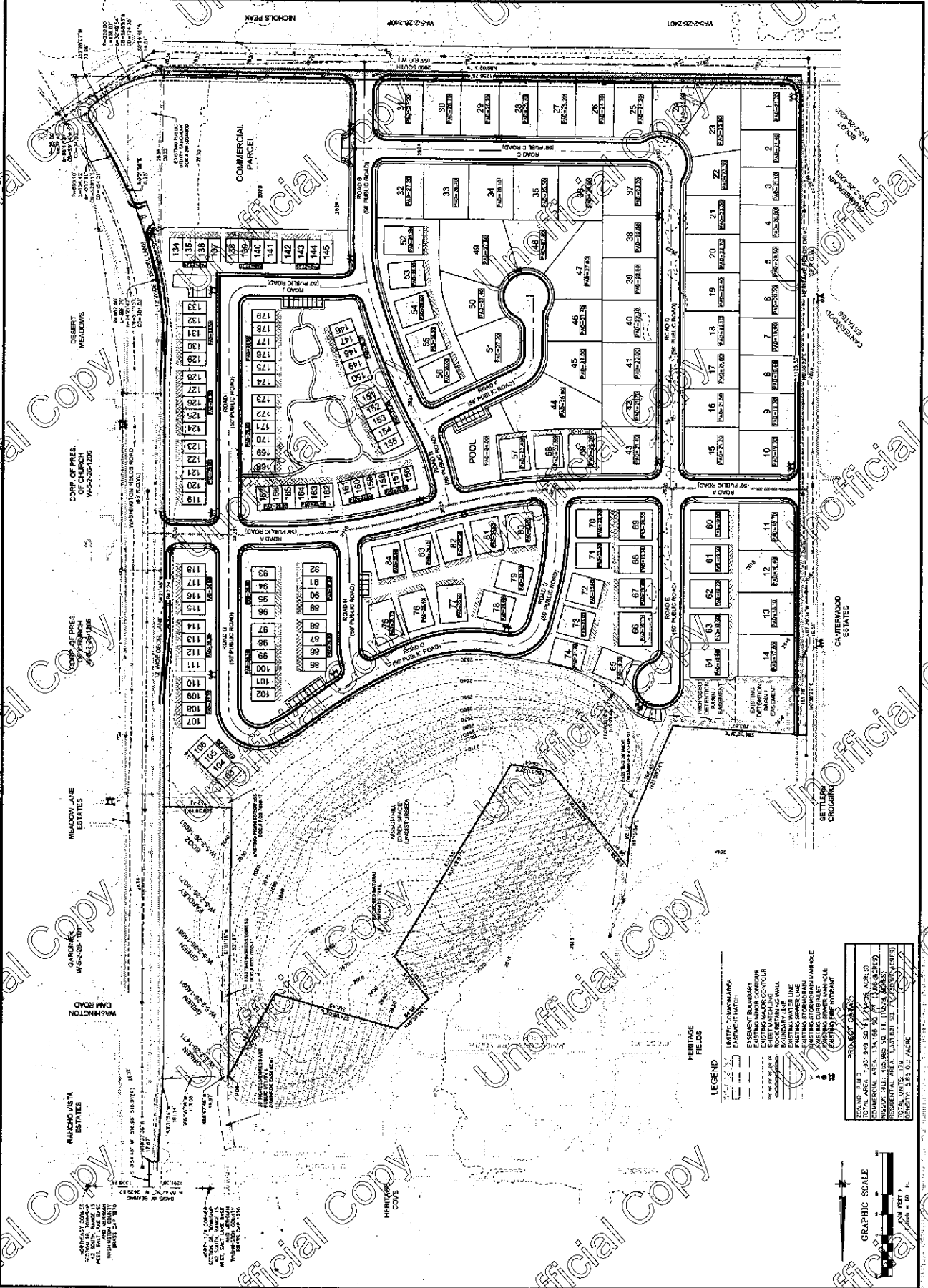
- Tax I.D. W-S-2-26-14041
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- W-S-2-26-132
- W-S-2-26-133
- W-S-2-26-142
- W-S-2-26-135
- W-S-2-26-136



**BUSH & GUGGEL, INC.**  
Engineers - Planners - Surveyors  
205 East Taborville Blvd. #4  
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Phone (636) 973-3115  
www.bushguggel.com

DATE: 08/17/2022  
SCALE: 1" = 40'  
PROJECT: HERITAGE PLACE  
SHEET NO.: 29 OF 32

**BOUNDARY & SITE OVERVIEW**  
PRELIMINARY PLAN  
HERITAGE PLACE  
WASHINGTON CITY, UTAH




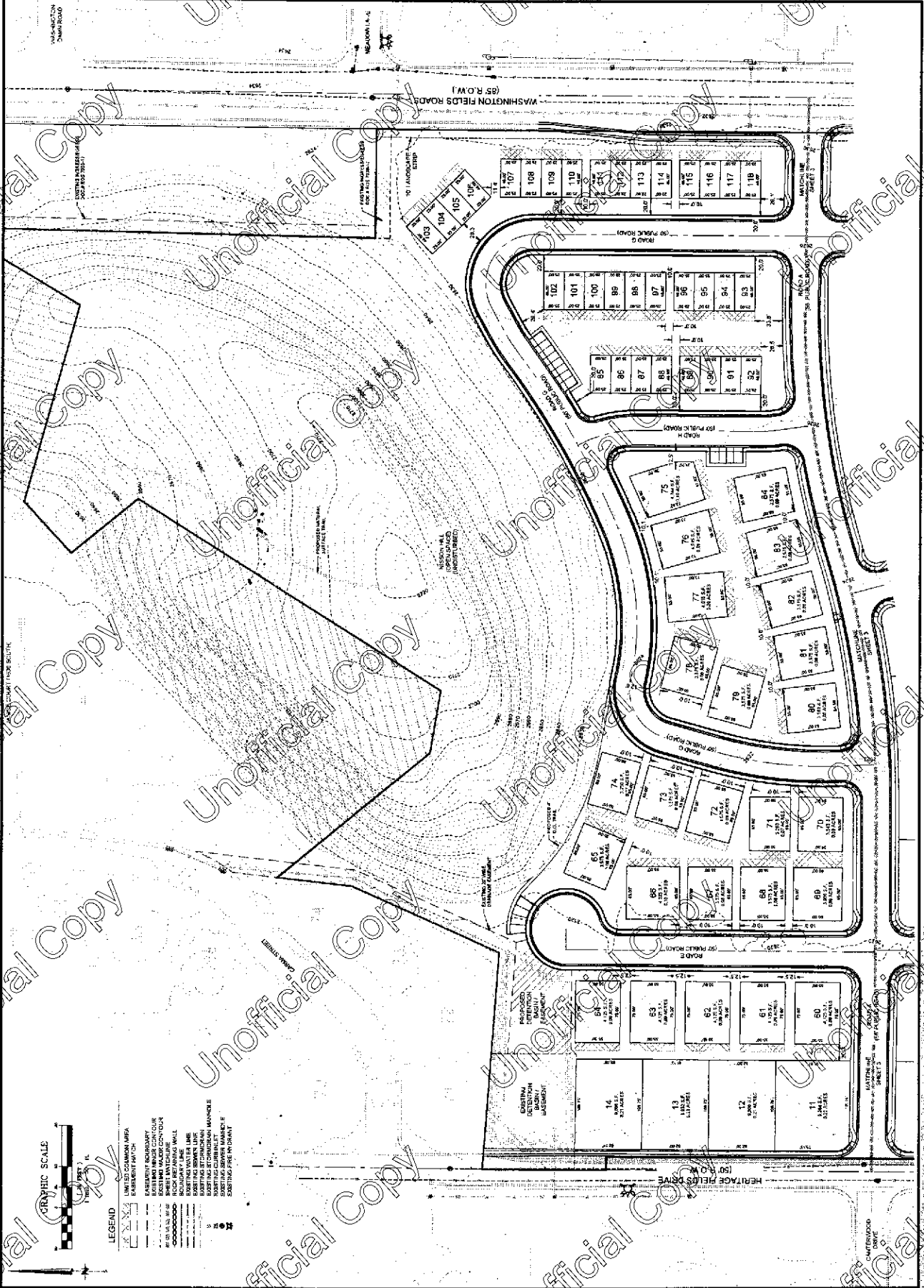
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	<b>BUSH &amp; GUGGELL, INC.</b> Engineers - Planners - Surveyors 205 East Fairbanks Blvd. #4 St. George, Utah 84770 Phone: (435) 673-2327 / Fax: (435) 673-2168 www.bushandguggell.com	DATE: 08/17/2022 DRAWN: JLD CHECKED: JLD SCALE: AS SHOWN SHEET NO.: 31 OF 32	<b>NORTH DETAIL</b> PRELIMINARY PLAT HERITAGE PLACE WASHINGTON CITY, UTAH
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DATE: 08/17/2022 DRAWN: JMT PROJECT: 20220039569 SCALE: 1/8" = 1'-0"	 <b>BUSH &amp; GUDGELL, INC.</b> Engineers - Planners - Surveyors 205 East Tennessee Street St. George, Utah 84770 Phone (435) 673-2337 / Fax (435) 673-3161 www.bushandgudgell.com	NO. 10	NO. 9	NO. 8	NO. 7	NO. 6	NO. 5	NO. 4	NO. 3	NO. 2	NO. 1
		NO. 11	NO. 10	NO. 9	NO. 8	NO. 7	NO. 6	NO. 5	NO. 4	NO. 3	NO. 2

