

DOC # 20230011475Restrictive Page 1 of 16
Gary Christensen Washington County Recorder
04/25/2023 10:32:24 AM Fee \$ 40.00
By SOUTHERN UTAH TITLE CO

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
THE ESTATES AT BURKE SPRINGS, PHASE II**

THIS DECLARATION of covenants, conditions and restrictions (the "Declaration") is made by LM Land Holdings LLC, a Utah Limited Liability Company, hereinafter referred to as "Declarant".

WITNESSETH

WHEREAS, Declarant is the owner of certain real property located in Washington City, Washington County, State of Utah, more particularly described as:

SEE EXHIBIT A, attached hereto and incorporated by reference.

WHEREAS, Declarant intends to convey the lots (hereafter collectively the "Lots" and individually a "Lot") identified on the plat map, which is on file with the Washington County Recorder's Office, within the legal description identified on Exhibit A subject to certain protective covenants, conditions, restrictions, reservations, liens, charges and assessments as provided hereafter.

WHEREAS, Declarant intends by recording this Declaration to establish a general plan of development of the property described in Exhibit A (the "Project").

WHEREAS, Declarant intends that all owners of Lots will be members of the Association (as defined below).

WHEREAS, the Association will have no ownership of any common areas; however, the Association will be responsible for maintaining a water detention basin (the "Detention Basin"), more particularly described as:

SEE Exhibit B, attached hereto and incorporated by reference.

NOW THEREFORE, Declarant hereby declares, for the purpose of protecting the value and desirability of the Lots, that all of the Lots shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which shall run with the Lots, and be binding on all parties having any right, title or interest in the Lots or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

HOMEOWNERS ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS

SECTION 1. Declarant, as an owner of Lots, and every other owner of a Lot shall be a member of The Estates at Burke Springs Phase II Homeowners' Association ("the "Association") to be established by Declarant at such time as the Declarant deems advisable, but in any event, no later than on a date prior to which the last Lot owned by Declarant is conveyed to a third party. The rules and regulations governing the function of the Association shall be adopted by the members of the association, unless otherwise set forth in this Declaration, the Articles of Incorporation or in the By Laws of the Association.

SECTION 2. The voting rights of the Association members shall be as specified in the Articles of Incorporation filed by the Declarant with the Utah Division of Corporations and Commercial Code and/or in the Bylaws of the Association initially adopted by Declarant acting as incorporator of the Association.

ARTICLE II

ASSESSMENTS

SECTION 1. Creation of Lien and Personal Obligation for Special Assessments. Declarant and each owner of any Lot by accepting a deed to or executing a contract for a Lot (whether or not it shall be so expressed in such instrument), shall be deemed to covenant to pay the Association special assessments as hereinafter described. Such assessments, together with interests, costs, and reasonable attorney's fees, shall be a personal obligation of the owner of each Lot at a time when the assessment is due. Delinquent assessments, together with interest, costs, and reasonable attorneys' fees, shall become a lien upon the Lot if the Association files a Claim of Lien describing the Lot with the Washington County Recorder's Office. The priority of such lien shall be based upon the date the Claim of Lien is filed.

SECTION 2. Purpose of Special Assessments. Any special assessments levied by the Association shall be used exclusively to administer and enforce the Residential Area Covenants described in Article V hereof and for any other reason specifically provided for in this Declaration, the Articles of Incorporation or Bylaws, to preserve the quality of the Project generally to promote the health, safety, comfort, convenience, and welfare of the owners of Lots in the Project. Specifically, without limitation, the special assessments may be used to engage legal counsel to file such actions as may be necessary to enforce the Residential Area Covenants.

SECTION 3. Approval of Special Assessments. Any such assessment shall have the consent of sixty percent (60%) of the votes entitled to be cast by the owners of the Lots or their proxies at a meeting duly called for this purpose. Such assessment shall be separately billed and accounted for by the Association.

SECTION 4. Quorum for Approval of Special Assessments. Written notice of any meeting called for the purpose of levying a special assessment shall be sent to all owners of the Lots not less than ten (10) days nor more than fifty (50) days in advance of

the meeting. The presence of persons or their proxies entitled to cast forty percent (40%) of all votes entitled to be cast shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements and the required quorum at such subsequent meetings shall be one-half of the required quorum at the preceding meeting.

SECTION 5. Creation of Lien and Personal Obligation for Detention Basin Maintenance Assessment. Each owner of a Lot by accepting a deed to or executing a contract for such Lot (whether or not it shall be so expressed in such instrument), shall be deemed to covenant to pay the Association Detention Basin maintenance assessments as described in Article IV below (the "Detention Basin Maintenance Assessment(s)"). Such Detention Basin Maintenance Assessment, together with interests, costs, and reasonable attorney's fees, shall be a personal obligation of the owner of each Lot at a time when the assessment is due. Delinquent Detention Basin Maintenance Assessments, together with interests, costs, and reasonable attorneys' fees, shall become a lien upon a Lot if the Association files a Claim of Lien describing such Lot with the Washington County Recorder's Office. The priority of such lien shall be based upon the date the Claim of Lien is filed. The initial Detention Basin Maintenance Assessment shall be \$120 per Lot per year, except that Declarant shall not be liable to pay Detention Basin Maintenance Assessments to the Association for any Lot owned by it at the Project. Thereafter the Detention Basin Maintenance Assessment for any year may be adjusted as permitted by the Articles of Incorporation or Bylaws.

Parcel No. W-EBKS-2-218 shall be exempt from Detention Basin Maintenance Assessments indefinitely but will be subject to other assessments permitted under this Declaration after January 1, 2050 or when said property changes ownership. Which ever comes fist.

SECTION 6. Purpose of Common Area Maintenance Assessment. The Detention Basin Maintenance Assessment shall be used exclusively to administer and enforce the Detention Basin Maintenance Covenant described in Article IV, below, to preserve the quality of The Estates at Burke Springs, Phase II development and generally to promote the health, safety, comfort, convenience, and welfare of the owners of all Lots. Specifically, without limitation, the Detention Basin Maintenance Assessments may be used to engage legal counsel to file such actions as may be necessary to enforce the Detention Basin Maintenance Covenant.

SECTION 7. RESERVED.

SECTION 8. RESERVED.

SECTION 9. Effect of Non-Payment of Assessments; Remedies of the Association. Any assessment permitted by this Article II not paid by the due date as established by the Association, is delinquent and shall bear interest from that date at the rate set forth in the Bylaws. The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose any lien against the Lot in the

same manner as an action to foreclose a mortgage on real property. No owner subject to assessments may waive or otherwise escape liability for the assessments provided for herein by abandonment of his or her Lot.

SECTION 10. Subordination of the Lien to Mortgages. Any lien upon a Lot allowed by this Declaration shall be subject and subordinate to and shall not affect the rights of the holder of the indebtedness secured by any first mortgage (meaning a mortgage with first priority over other mortgages) or equivalent security interest on any Lot, made in good faith and for value, recorded prior to the date any such assessment becomes due. Any holder of a first mortgage lien or equivalent security interest on a Lot who comes into possession by virtue of the foreclosure of a mortgage, or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale will take said Lot and the improvements appurtenant thereto free of any claims for unpaid assessment charges against said Lot which accrue prior to the times such holder comes into possession of the Lot, except for the claims for a share of such expenses or charges resulting from a reallocation of such assessment or charges to all Lots including the mortgaged Lot. Any first mortgagee, who obtains title to a Lot in the Project pursuant to the remedies in the mortgage / deed of trust or through foreclosure of the mortgage / deed of trust or any other security instrument, shall not be liable for more than six (6) months of the Lot's unpaid assessments which have accrued before the acquisition of title to the Lot by the mortgagee through foreclosure. However, no such sale or transfer shall relieve such Lot from liability for any assessments which thereafter become due or from the lien thereof.

SECTION 11. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein:

- (a) All property dedicated to, accepted by and owned by any local public authority; and
- (b) Lots owned by the Declarant;

ARTICLE III

ARCHITECTURAL CONTROL

SECTION 1. The initial Architectural Control Committee ("Committee") shall be composed of Michael J. Stewart, Lester Jessop, and Christina Young. Upon and following formation of the Association, the Association shall appoint one of its members to act as the third member of the Committee, replacing one of the initial members of the Committee as chosen by the initial members. In the event of death or resignation of any members of the Committee, the remaining members of the Committee shall have full authority to select a successor. Neither members of the Committee, nor designated representatives shall be entitled to any compensation for services performed pursuant to this covenant.

SECTION 2. The Committee's approval or disapproval as required in these covenants shall be in writing on the owner's plans or in a letter form and shall be based on a review of such plans to determine the sufficiency and completeness of the plans submitted, the compliance of the plans with the requirements of Article 5 of this Declaration and the compliance of the plans with all other applicable laws and regulations. The owner must submit a set of formal plans, specifications, and site plan to the Committee before the review process may commence. In the event the Committee or its designated representative fails to approve or disapprove within thirty (30) days after plans and specifications have been submitted to it, approval will not be required and the related covenants shall be deemed to have been fully complied with. Provided however, nothing herein shall be deemed to release or discharge the Lot owner's obligations to comply with the covenants described in Article V hereof.

SECTION 3. No building or other structure shall be commenced, erected or maintained upon the Project, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, exterior color combinations and location of the same shall have submitted to the Committee in compliance with Section 2 of this Article III.

SECTION 4. No fence shall be commenced, erected, or maintained upon the Lots in the Project unless the plans meet the local zoning safety requirements of Washington City.

ARTICLE IV

DETENTION BASIN MAINTENANCE COVENANT

SECTION 1. Detention Basin Maintenance. The owners of Lots shall be responsible for the costs of maintaining the Detention Basin and all improvements installed and constructed upon the Detention of the Project. The Association shall contract with necessary parties to maintain the Detention Basin, as well as the improvements installed and constructed upon the Detention Basin and shall bill each owner of a Lot its pro rata share of such costs in accordance with the provisions of Article II, above. Any damage to the Detention Basin caused by a particular owner of a Lot, his/her invitees or assigns shall be repaired by the Association solely at the expense of such owner, and the costs of such repair shall constitute a lien on such owners' Lot in accordance with Article II, Section 9 hereof.

SECTION 2. RESERVED.

SECTION 3. RESERVED.

SECTION 4. Declarant's Option to Assume Duties. Declarant shall have the option at its sole discretion and not by way of obligation, to assume the duties and pay the costs for such duties set forth under this Article IV until such time as it gives written

notice to the Association that it no longer shall perform and pay for such duties, and in any event for a period no longer than the period that lasts until it conveys its' last Lot owned in the Project. At such time as the Declarant ceases to assume the duties and pay the costs for such duties set forth under this Article IV, the Association and the owners of the Lots shall immediately assume the obligations required hereunder and shall take all necessary steps to transfer any obligations under any contracts in place to accomplish the provisions of this Article IV from the name of the Declarant to the name of the Association at which time the Declarant shall have no further contractual obligation to perform the duties hereunder and no further obligation to the Association for the performance of such duties.

ARTICLE V

RESIDENTIAL AREA COVENANTS

SECTION 1. Quality of Construction of the Project and Rules Relating to Such Construction.

1. No Lot shall be used except for residential purposes.
2. Each dwelling constructed on a Lot shall have an attached garage for a minimum of two (2) vehicles and may have a detached garage with a maximum of four (4) vehicles; provided that neither may encroach upon any easement.
3. No dwelling constructed on a Lot shall exceed two stories in height, not including any areas within a roof structure.
4. All new construction shall be comprised of new materials, except that used brick may be used with the prior written consent of the Committee.
5. The main exterior materials used on any dwelling constructed on a Lot shall be brick, stucco, stone or artificial stone and shall be of a color indigenous to the area. No aluminum, vinyl or wood siding shall be used as an exterior wall finish. Any other exterior wall finish shall be first approved by the Committee.
6. All dwellings constructed on a Lot shall comply with the ordinances adopted by the City of Washington, Utah, including such ordinances relating to the setbacks applicable to all dwelling structures from Lot lines.
7. No pipe, wood or temporary mailboxes shall be allowed in the Project.
8. Lot owners shall be responsible to adjacent Lot owners for any activities upon their Lot that effects the lateral or subjacent support, or both, of an adjacent Lot. Lot owners shall be responsible for all damage proximately caused by drainage from their Lot to an adjacent Lot.

A dwelling already exists on Parcel No. W-EBKS-2-218 and that dwelling in its current status shall be exempt from the requirements identified in Paragraphs 2 and 5 of Section 1, Article V. Parcel No. W-EBKS-2-18 shall not be exempted from any requirements of Article V for any improvements or alterations that are made to the dwelling on that parcel after the recording of this Declaration and after said property has changed ownership from Jan Chapman to any other entity or person.

SECTION 2. Dwelling Size. The following dwelling sizes apply to any dwelling structure constructed on a Lot at the Project, exclusive of garages and porches.

1. Rambler: 1,500 square foot minimum on the main level.
2. Two Story: 1,800 square foot minimum on a combination of the main level and the upper level.
3. Tri-Level: 1,500 square foot minimum on a combination of the main level and the upper level.

SECTION 3. City Ordinances. All improvements on a Lot shall be completed and maintained in accordance with the laws and ordinances of the City of Washington, Washington County and the State of Utah that may be applicable, including without limiting the generality of the foregoing, all applicable zoning and land use ordinances.

SECTION 4. Easements. Easements necessary for the installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plats of the Project. Within these easements no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may obstruct or retard the flow of water through drainage channels in the easements.

SECTION 5. Nuisances. No obnoxious or offensive activity shall be carried out upon any Lot that is contrary to generally acceptable standards of conduct, nor shall anything be done upon any Lot that shall constitute a nuisance. Without limiting the generality of the foregoing, no driveway or front yard area of any Lot shall be used to store for any period of time longer than ninety-six (96) hours any automobile or recreational vehicle that is in a dilapidated or broken-down condition. Moreover, unless extenuating circumstances as are acknowledged and approved by the Committee render it otherwise impossible, all recreational vehicles or vehicles for use in conjunction with any particular vocation shall be stored on RV Pads constructed on the sides of dwelling structures or in garages that are a part of such dwelling structure or constructed for such storage purposes.

SECTION 6. Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuildings shall be used on any Lot at any time as a residence, either temporarily or permanently.

SECTION 7. Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All Lot owners may allow for the temporary storage of construction related materials on a Lot during the construction of a dwelling structure in a manner that is consistent with construction industry practices. Lot owners shall be responsible to ensure that any subcontractor building on their Lot utilizes an on-site dumpster during the construction process and that the Lot is cleaned of all debris on a daily basis during construction. Lot owners shall be responsible to ensure that subcontractors or contractors do not track dirt or mud from a Lot onto the roads of the Project. The Association may levy a \$500 fine against any Lot owner for a violation of this Section 7. Such a fine shall become a lien on such owners' Lot in accordance with Article II, Section 9 hereof.

SECTION 8. Landscaping. All front and side yards of a Lot must be landscaped within one (1) year following the initial permanent occupancy of any dwelling structure constructed on a Lot. Notice is hereby given that the total area of landscaping requiring irrigation on any given lot shall be restricted to a maximum of five thousand (5,000) square feet, in order to comply with the conservation requirements set by Washington City and the Washington County Water Conservancy District.

SECTION 9. Damages to Infrastructure. Any damage to roads, curbs, gutters, sidewalks, concrete, or utilities caused by a Lot owner or by any party performing work on any Lot, shall be repaired as soon as possible after such damage occurs. The expense of such repairs shall be solely born by the Lot owner causing the damage or by the Lot owner whose agents, employees, contractors or subcontractors caused such damage. If the responsible Lot owner does not perform, or cause to be performed, substantial repairs for such damage within ten (10) days of the initial damage, then the Association may elect, but is under no obligation to, arrange and pay for the repairs. If the Association so elects, the cost of repairing such damages shall become a lien on such owners' Lot in accordance with Article II, Section 9 hereof.

SECTION 10. Maintenance of Lots and Dwelling Structures. All Lot owners are responsible for maintaining their Lot and dwelling structures and to keep the same in a state of good repair and to immediately repair the same if damaged, so as to maintain the aesthetic quality and value of the overall Project. Failure of any owner of a Lot to comply with this provision shall give rise to a temporary easement in favor of the Association to enter onto such non-compliant Lot, to make any and all repairs deemed necessary, in the sole discretion of the Association, and to impose a special assessment for the costs of such repairs on the owner of such Lot in accordance with Article II. Such special assessment shall become a lien on such owners' Lot in accordance with Article II, Section 9 hereof.

ARTICLE VI

PROPERTY RIGHTS

SECTION 1. No Property Rights in Detention Basin. Neither the Association nor any owner of a Lot shall have any property rights in the Detention Basin.

SECTION 2. RESERVED

ARTICLE VII

INSURANCE

SECTION 1. Detention Basin. The Association shall keep any improvement and all other insurable property on the Detention insured against loss or damage by fire for the full insurance replacement cost thereof and including extended coverage for not less than 100% of the replacement costs of insurable property, and shall obtain insurance against such other hazards and casualties as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Detention Basin shall be written in the name of, and the proceeds thereof shall be payable to the Association, for the benefit of the owners of the Lots. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association shall be expenses payable by including such expenses in the Detention Basin Maintenance Assessments made by the Association.

SECTION 2. Insurance Obligations of Owners. Each owner of a Lot shall insure his entire dwelling structure against loss or damage by fire or by any other casualty, under the standard form of extended endorsement and broad form now in use in the State of Utah or under such other insurance as may be required by a mortgagee of a dwelling structure. All such insurance shall be for the full replacement value of the dwelling structure with automatic inflation coverage. All such policies shall contain a provision that the same shall not be canceled or terminated except upon at least thirty (30) days written notice to the Association.

SECTION 3. Replacement or Repair of Property. In the event of damage to or destruction of any part of the Detention Basin, or any improvement thereon or any other portion of the Project insured by the Association, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of such repair or replacement of the improvements damaged or destroyed, the Association may make a Special Assessment against all Lot owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other Assessment made against such Lot owners, in accordance with the provisions of Article II of this Declaration.

SECTION 4. Waiver of Subrogation. As to each policy of insurance maintained by the Association, which will not be voided or impaired thereby, the Association hereby waives and releases all claims against, the Lot owners, any officers of the Association or board members thereof, the Declarant, and the agents and employees of each of the foregoing with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

SECTION 5. Liability Insurance. The Association shall obtain comprehensive public liability insurance in the minimum amount of \$1,000,000 per occurrence for personal injury and/or property damage arising from the activities of the Association or with respect to the Detention Basin including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured. Such insurance shall contain a "Severability of Interest" clause or endorsement which shall preclude the insurer from denying the claim of a Lot owner because of the negligent acts of the Association or other Lot owners. Such insurance must include other coverage in kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location, and use.

SECTION 6. Miscellaneous.

- (a) **Minimum Financial Rating of Carrier.** Each hazard-insurance policy must be written by a hazard insurance carrier which has a financial rating by Best's Insurance Reports of Class VI or better. Hazard insurance policies are also acceptable from an insurance carrier which has a financial rating by Best's Insurance Reports of Class V, provided it has a general policy holder's rating of at least A. Each carrier must be specifically licensed or authorized by law to transact business within the State of Utah.
- (b) **No Assessments.** Policies are unacceptable where: (i) under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against the Association or any owner or any first mortgagee or its successors and assigns; or (ii) by the terms of the carriers' charter, by-laws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent the Association or any owner of any first mortgagee, or its successors and assigns, from collecting insurance proceeds.
- (c) **Other Requirements.** All policies of hazard insurance must contain or have attached the standard mortgagee clause commonly accepted by private institutional mortgage investors in the area in which the Project is located. The mortgagee clause must provide that the

insurance carrier shall notify the first mortgagee named in such policies at least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy.

- (d) Other Insurance and General. The Association may also obtain, Worker's Compensation Insurance and other liability insurance as it may deem desirable, insuring each Lot owner, the Association, any board members of the Association, members of the Architectural Committee, and any manager of the Association from liability in connection with the Detention Basin, the premiums for which shall be expenses payable by Detention Basin Maintenance Assessments made against the Lot owners. Such insurance policies shall have severability of interest clauses or endorsements which shall preclude the insurer from denying the claim of a Lot owner because of the negligent act of the Association or other Lot owners. All policies shall be reviewed at least annually by the Association and limits increased at its discretion.

ARTICLE VIII

ANNEXATION OF ADDITIONAL PROPERTY

SECTION 1. Reservation of Option to Expand. Declarant hereby explicitly reserves an option until the tenth (10) anniversary of the recording of this Declaration to expand the Project by adding additional land to the Project (the "Additional Land") to be covered by this Declaration from time to time, without the consent of a Lot owner, the Association or mortgagee. The option to expand may be terminated prior to such anniversary only upon the filing by the Declarant of an amendment to this Declaration. Declarant expressly reserves for itself, its successors and assigns, to add any or all portions of the Additional Land at any time, at different times, in any order, without limitation; provided however that the Additional Land shall be contiguous with the Property or located within five thousand (5,000) feet from any boundary of the Property.

SECTION 2. Assurances. Declarant makes no assurances as to the location of buildings or other improvements upon the Additional Land. At such time as the Project is expanded, the maximum number of dwelling structures on the Additional Land shall be no more than two hundred (200). Declarant makes no assurances as to whether any building to be constructed on the Additional Land will be compatible with the quality, materials, or style of the buildings contained within the initial Project. No assurances are made by the Declarant whether any dwelling structures will be substantially identical or similar to those within the original Project. Declarant expressly reserves the right to create and designate common areas on the Additional Land. Declarant makes no assurances as to the type, size, or maximum number of such common areas. In the event the Declarant decides not to add any Additional Land,

Declarant shall nevertheless have the right to own, operate and develop the same without restriction. The maximum dwelling units per acre that may be created on any portion of the Additional Land added to the Property shall be thirty (30) units per acre. No dwelling constructed on the Additional Land shall be used for anything other than residential purposes.

SECTION 3. No Obligation to Expand. Notwithstanding anything to the contrary herein, this Declaration is not intended, and shall not be construed so as, to impose upon the Declarant in any way with regard to: (i) the submission of any portion of the Additional Land, (ii) the creation, construction, or addition to the Project of any Additional Land; (iii) the carrying out in any particular way or within any particular time, any development which may be undertaken; or (iv) the taking of any particular action with respect to any Additional Land, or the Project. Declarant may create on any additional land not made subject to this Declaration, any development which would be entirely independent and unrelated to the development created by this Declaration.

SECTION 4. Annexation by Declarant. The annexation of Additional Land into the Project covered by this Declaration shall be effective upon the recordation in the office of the County Recorder of Washington County, Utah, of a Supplementary Declaration which (a) describes the Additional Land being annexed, (b) declares that the Additional Land is to be held, sold, conveyed, encumbered, leased, occupied and improved as part of the Project subject to this Declaration, and (c) sets forth such additional limitations, restrictions, covenants and conditions that Declarant desires to apply to the Additional Land. When such annexation becomes effective, the Additional Land shall become part of the Project and shall be subject to the terms of the covenants, conditions and restrictions, which terms, covenants, conditions and restrictions run with the land, of this Declaration and any supplements or amendments thereto. Such annexation may be accomplished in one or more annexations or plats without limitation as to the size of the Additional Land.

SECTION 5. Limitations on Annexation. Declarant's right to annex the Additional Land to the Project shall be subject to the following limitations:

- (a) Declarant's right to annex the Additional Land shall expire ten (10) years from the date of the recordation of this Declaration.
- (b) Owners of dwelling structures constructed on Additional Land shall be Members of the Association and shall have the same rights to the use and enjoyment of the Project and facilities of the Association as any other Member. The common areas in the Additional Land shall be deeded by the Declarant to the Association, free and clear of all encumbrances and liens prior to the conveyance of the last Lot contained in the Additional Land and the Association must accept the deed to such common areas.

- (c) Declarant shall not effectuate any annexation of land which would cause the total number of dwelling units existing or planned for the Project to exceed three-hundred (300) total dwelling units.
- (d) Declarant reserves unto itself and its assigns the right to create or not to create common areas and facilities within any Additional Land.

SECTION 6. Supplemental Declaration. The annexation of the Additional Land pursuant to this Chapter shall be made by filing and recording a Supplementary Declaration of Covenants, Conditions and Restrictions or similar instrument together with an official plat with respect to such Additional Land which shall extend the plan of this Declaration to such Additional Land. Such Supplementary Declaration may contain any complementary additions or modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the Additional Land and as are not inconsistent with the plan of this Declaration. The recordation of such Supplementary Declaration and plat shall constitute and effectuate the annexation of said real property described herein, making said real property subject to this Declaration and subject to the functions, powers and jurisdiction of the Association, and thereafter all of the owners of lots in said Additional Land shall automatically be members of the Association.

SECTION 7. Declarant's Right to Amend. Until all portions of the Additional Land are included in the Project, or until the right to annex Additional Land to the Project expires, whichever occurs first, Declarant shall have, and is hereby vested with the right to unilaterally amend the Declaration or the plat, or both as may be necessary, reasonable or desirable: (a) to adjust the boundaries of the Lots, including adding or deleting Common Area so as to accommodate design changes or changes in the type of dwelling structures to be constructed or to reconfigure the Lot configuration on any plat; (b) to more accurately express the intent of any provisions of the Declaration in the light of then existing circumstances or information, workability of the arrangement which is contemplated by the Declaration; or (c) to facilitate the practical, technical, administrative or functional integration of any Additional Land into the Project.

SECTION 8. Expansion of Defined Terms. In the event the Project is expanded through the annexation of Additional Land, the defined terms used in this Declaration automatically shall be expanded to encompass and refer to the Project as so expanded by the Additional Land.

ARTICLE IX

GENERAL PROVISIONS

SECTION 1. Enforcement. Any owner of a Lot shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of

this Declaration. Failure by any owner to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right of the Lot owner or any other Lot owner to enforce the same at a later time.

SECTION 2. Severability. Invalidation of any portion or provision of this Amended Declaration by judgment or court order shall in no way affect any other provision hereof which shall be deemed to remain in full force and effect.

SECTION 3. Covenants Run with the Land. The covenants, conditions and restrictions of this Amended Declaration are intended to and shall run with the land, and shall be binding upon and shall inure to the benefit of the Declarant and all other owners of any Lot and their respective grantees, transferees, heirs, devisees, personal representatives, agents, successors and assigns.

SECTION 4. Amendments. Any amendment to this declaration, other than as is permitted by Article VIII, Section 8 above, shall have the consent of two-thirds (2/3) of all the votes entitled to be cast by the owners of any Lots or their proxies at a meeting duly called for this purpose. Written notice of such meetings shall be sent to all Lot owners not less than ten (10) nor more than fifty (50) days in advance of the meeting. The presence of persons or their proxies entitled to cast forty percent (40%) of all votes entitled to be cast shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements and the required quorum at such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. Any amendment approval shall be reduced to writing, signed, and recorded against the Lots.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand this 21 day of April, 2023.

DECLARANT:

LM LAND HOLDINGS LLC,
A Utah Limited Liability Company.

By: [Signature]
Lester Jessop, its Manager

STATE OF UTAH)
)ss.
COUNTY OF WASHINGTON)

The foregoing instrument was acknowledged before me by Lester Jessop, Manager of LM Land Holdings LLC.

[Signature]
NOTARY PUBLIC

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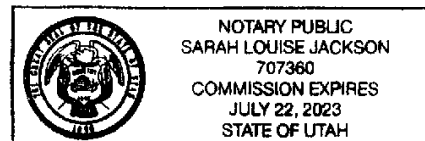


Exhibit A

THE ESTATES AT BURKE SPRINGS SUBDIVISION PHASE 2

BEGINNING AT A POINT S 89°02'50" E 1324.20 FEET ALONG THE SOUTH LINE OF SECTION 6, TOWNSHIP 42 SOUTH, RANGE 14 WEST, SALT LAKE BASE AND MERIDIAN, TO THE SOUTHEAST CORNER OF SAID SECTION 6, AND N 1°11'11" W 417.59 FEET ALONG THE EAST LINE OF SAID SECTION 6, FROM THE EAST 1/16TH CORNER OF SAID SECTION 6, POINT BEING ON THE BOUNDARY OF AREA 2 - PHASE 1, CORAL CANYON DEVELOPMENT, RECORDED AND ON FILE IN THE OFFICE OF THE RECORDER, WASHINGTON COUNTY, STATE OF UTAH, AND RUNNING THENCE ALONG SAID BOUNDARY THE FOLLOWING THREE (3) COURSES, (1) N 89°03'20" W 133.85 FEET, TO THE POINT OF CURVATURE OF A 662.50 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT, WITH A RADIUS WHICH BEARS S 32°27'38" E, (2) THENCE ALONG THE ARC OF SAID CURVE 292.16 FEET THROUGH A CENTRAL ANGLE OF 25°16'01", (3) THENCE N 89°03'20" W 74.75 FEET, TO A POINT ON THE BOUNDARY OF THE ESTATES AT BURKE SPRINGS SUBDIVISION PHASE 1, RECORDED AND ON FILE IN THE OFFICE OF SAID RECORDER; THENCE ALONG SAID BOUNDARY THE FOLLOWING SEVEN (7) COURSES, (1) N 51°49'29" W 53.75 FEET, (2) THENCE S 38°10'31" W 34.86 FEET, (3) THENCE N 51°49'29" W 55.00 FEET, (4) THENCE S 38°10'31" W 20.00 FEET, (5) THENCE N 51°49'29" W 35.94 FEET, (6) THENCE N 89°03'05" W 270.98 FEET, (7) THENCE N 1°10'55" W 492.98 FEET, TO A POINT ON A PARCEL MORE PARTICULARLY DESCRIBED IN ENTRY NO. 914198, RECORDED AND ON FILE IN THE OFFICE OF SAID RECORDER; THENCE ALONG SAID PARCEL THE FOLLOWING TWO (2) COURSES, (1) N 1°10'55" W 89.61 FEET, (2) THENCE S 89°03'04" E 275.64 FEET, TO THE SOUTHWEST CORNER OF A PARCEL MORE PARTICULARLY DESCRIBED IN DOCUMENT NO. 20150044294, RECORDED AND ON FILE IN THE OFFICE OF SAID RECORDER; THENCE S 89°03'04" E 559.59 FEET ALONG THE SOUTH LINE OF SAID PARCEL TO A POINT ON THE SAID EAST SECTION LINE OF SECTION 6, POINT ALSO BEING ON THE WEST BOUNDARY OF SAID AREA 2 - PHASE 1, CORAL CANYON DEVELOPMENT; THENCE S 1°11'11" E 417.69 FEET ALONG SAID LINE, TO THE POINT OF BEGINNING.

CONTAINS 10.44 ACRES MORE OR LESS

Exhibit B

Outlined area to be maintained by Estates At Burke Springs Phase 2

