

WHEN RECORDED, RETURN TO:

CW Land Co., LLC
Attn: Legal Department
1222 W. Legacy Crossing Blvd., STE 6
Centerville, UT 84014

Affecting Parcel Number(s): 22-02⁷1-0-0501 through 22-027-0-0526

**AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS,
AND RESERVATION OF EASEMENTS FOR
WELLS CROSSING PHASES 5 – 7**

This AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS, AND RESERVATION OF EASEMENTS FOR WELLS CROSSING PHASES 5 – 7 (“**Declaration**” or “**Amended and Restated Declaration**”), is made and executed as of the date first written below on the signature page and is effective when recorded in the office of the Tooele County Recorder by CW Land Co., LLC, a Utah limited liability company (“**Declarant**”).

RECITALS

A. Declarant was or is the fee title owner of certain real property located in Tooele County, Utah as more particularly described on Exhibit A attached hereto (the “**Property**”). The Property has been or will be developed as a single-family residential development.

B. On September 29, 2022, Declarant recorded in the office of the Tooele County Recorder, a Declaration of Covenants, Conditions, and Restrictions, and Reservation of Easements for Wells Crossing Phases 5 – 7 Owners Association, Inc.

C. Declarant for the mutual benefit of all future Owners and Occupants of the Project, certain covenants, conditions, restrictions, easements, rights, privileges, assessments, and liens as set forth herein, which shall run with and be a burden upon each Unit within the Project, desires now to amend and restate the previously recorded document, as shown herein.

D. Declarant hereby establishes and adopts this Amended and Restated Declaration of Covenants, Conditions, and Restrictions, and Reservation of Easements for Wells Crossing Phases 5 – 7, to establish standards and procedures for the development, maintenance, and preservation of the Property. By signing this Declaration, Declarant subjects the Property to the terms, covenants, and restrictions contained herein.

E. This Declaration is intended to and shall run with the land and shall be binding upon the Declarant and the Owners and their respective successors and assigns, and any other Person that now, or hereafter, has any legal, equitable, or beneficial interest in any portion of the Project. By taking title to a Unit, an Owner joins in and accepts the intent, purpose, and objectives of the Declaration and agrees to be bound by it, and acknowledges the benefits received from its existence and from the Declarant's development of the Project and accepts the burdens and responsibilities that accompany these benefits.

F. Capitalized terms in this Declaration are defined in Article 1 herein, or in other sections of this Declaration.

DECLARATION

NOW, THEREFORE, for the reasons recited above and subject to the Restrictions set forth below, the Declarant hereby adopts this Declaration. The Recitals above are incorporated into and made a part of this Declaration.

1. DEFINITIONS

1.1 **"Accessory Structure"** shall mean and refer to any detached, subordinate building or structure incidental to the primary residence constructed on the Lot and shall include any shed, shack, detached garage, or other outbuilding in compliance with Section 9.5 herein.

1.2 **"City"** shall mean and refer to Grantsville City, a political subdivision of the State of Utah, located in Tooele County, Utah.

1.3 **"Claim"** (or collectively, **"Claims"**) means any and all claims, demands, suits, actions, causes of action, counterclaims, judgments, liabilities, losses, damages, costs, and expenses, including, but not limited to, attorney fees and costs.

1.4 **"Code"** shall mean and refer to the Utah Code Annotated (**"Utah Code Ann."**), as amended.

1.5 **"Declarant"** shall mean and refer to CW Land Co., LLC, a Utah limited liability company, and its respective affiliates, successors, and assigns.

1.6 **"Declarant Control Period"** shall mean and refer to the period of time commencing with the recording date of this Declaration and expiring the date the Declarant executes and records a written waiver of its rights to control.

1.7 **"Declarant Related Parties"** shall mean any entity controlling, controlled by, or under common control with Declarant or any entity in which a principal of Declarant has an interest and their respective members, managers, shareholders, officers, directors, partners, co-venturers,

committee members, servants, agents, representatives and employees regarding all acts or omissions related to any of the foregoing representative capacities.

1.8 “**Design Guidelines**” shall mean and refer to Wells Crossing Phases 5 - 7 Design Guidelines established for the Project herein and/or as a supplemental document hereto, as the same may be amended from time to time.

1.9 “**Development Agreement**” shall mean and refer to any Development Agreement that is recorded against the Property.

1.10 “**Governing Documents**” shall mean and refer to this Declaration, including the Design Guidelines, the Plat, the Rules, and any other written instrument by which the Declarant may exercise power or manage, maintain, or otherwise affect the Project.

1.11 “**Lender**” shall mean and refer to a holder of a first mortgage or deed of trust on a Unit.

1.12 “**Lot**” shall mean and refer to an individual lot created on the Plat on which a single-family dwelling is or will be constructed and is included within the definition of Unit below. More than one Lot is referred to herein as “Lots.”

1.13 “**Occupant**” shall mean and refer to a Person or Persons, other than an Owner, in possession of, using, or living in a Unit within the Project, including, without limitation, family members, tenants, guests, and invitees of an Owner or an Occupant.

1.14 “**Owner**” shall mean and refer to the Person or Persons who are vested with record title to a Unit, and whose interest in the Unit is held (in whole or in part) in fee simple, according to the records of the Tooele County Recorder. The term “Owner” shall not include a mortgagee or trustee or beneficiary under a deed of trust unless and until such party acquires title to a Unit pursuant to foreclosure or any arrangement or proceeding in lieu thereof. The term “Owner” also shall not include the Declarant. More than one Owner is referred to herein as “Owners.”

1.15 “**Person**” shall mean and refer to a natural person, corporation, estate, limited liability company, partnership, trustee, association, governmental subdivision or agency, or any other legal entity. More than one Person is referred to herein as “Persons.”

1.16 “**Plat**” shall mean and refer to the record of survey map or maps for Wells Crossing Phase 5 (“**Phase 5**”); Wells Crossing Ph. 6 (“**Phase 6**”); and Wells Crossing Phase 7 (“**Phase 7**”) and any portions thereof, recorded or to-be-recorded with the Tooele County Recorder, and all recorded amendments and supplements thereto.

1.17 “**Proceeding**” shall mean and refer to a lawsuit, arbitration, mediation, or an administrative or governmental proceeding.

1.18 **“Project”** shall mean and refer to Phases 5, 6, and 7 of Wells Crossing and all structures and improvements thereon including the Units and the Common Area and Facilities. The Project shall include any additional land made subject to the Declaration at such time the Supplemental Declaration and plat map for the additional land is recorded.

1.19 **“Property”** as previously defined herein, shall include the real property made subject to this Declaration and all easements and rights appurtenant thereto.

1.20 **“Released Persons”** shall mean the Declarant and the Declarant Related Parties.

1.21 **“Restrictions”** shall mean and refer to any one or all of the terms, covenants, conditions, restrictions, easements, rights, privileges, and obligations set forth in the Governing Documents.

1.22 **“Rules”** shall mean and refer to the rules and regulations and policies adopted by the Declarant.

1.23 **“Subdivision”** shall mean and refer to Phases 5, 6, and 7 of Wells Crossing, including all Units, Common Area and Facilities, and other property within the Project as shown on the Plat covering the entire Property.

1.24 **“Subdivision Improvements”** shall mean and refer to all improvements that have or will be constructed or installed within the Subdivision not part of any Unit that are necessary to provide public road access and/or utility service to the Units, and includes such other and further construction or installations required to comply with any requirement of the Development Agreement.

1.25 **“Supplemental Declaration”** shall mean and refer to any amendment or supplement to this Declaration to annex additional land into the Project and subject such additional land to the covenants, conditions and restrictions contained in the Declaration. A Supplemental Declaration shall also mean and refer to any recorded instrument designating Benefitted Common Area. A Supplemental Declaration may also include Additional Covenants applicable only to the annexed land or Benefitted Common Area or Service Area.

1.26 **“Transfer”** shall mean any of the following: (a) a conveyance, sale, or other transfer of a Lot or Unit as reflected by the recordation of a deed or other instrument in the records of the Tooele County Recorder, regardless of whether it is pursuant to the sale of the Unit or not, excluding the grant of an interest in a Lot through a mortgage or deed of trust, (b) the granting of a life estate in a Unit, or (c) if the Unit is owned by a limited liability company, corporation, partnership, or other business entity, the sale or transfer of more than seventy-five percent (75%) of the business entity’s share, stock, membership interests, or partnership interests in a twelve (12) month period.

1.27 “Unit” shall mean and refer to a subdivided Unit, within the Subdivision depicted as a separately identified parcel on the Plat or a survey, which may be independently owned and conveyed and is zoned or otherwise intended for development, use, and occupancy as a residential unit. The term “Unit” refers to land, if any, which is part of a Unit, including the Lot, as well as to any structures or other improvements on the Unit. In the case of a building or other structure containing multiple residential dwellings, each dwelling shall be deemed to be a separate Unit. A parcel of land shall be considered a single Unit until a subdivision plat or survey is recorded subdividing it into more than one Unit.

2. THE PROJECT

2.1. **Binding Effect of Governing Documents.** The Declarant hereby declares that the Property is part of the Project and that the Project and all of the Units shall be subject to the Restrictions, which Restrictions, to the extent they are included in recorded documents, shall constitute equitable servitudes, covenants, and conditions running with the land and shall be binding upon and inure to the benefit of the Declarant and each Owner, including his/her heirs, executors, administrators, personal representatives, successors and assigns. By acquiring any interest in a Unit, such Owner consents to, and agrees to be bound by, each and every Restriction in the Governing Documents.

2.2. **Nature of Project.** The Project shall be consistent with the terms and provisions of the Development Agreement recorded against the Property.

2.3. **Project Name.** The Project is named “Wells Crossing Phases 5 - 7”. Notwithstanding, the name commonly used for the Project may be different than the name identified in this Declaration and on the Plat. The name of the Project may be modified or changed pursuant to a lawful amendment to this Declaration and in accordance with applicable land use management codes.

3. UNITS AND ALLOCATED INTERESTS

3.1. **The Unit.** The distinct Unit number that identifies the Unit on the Plat may or may not be consistent with the mailing address of the Unit. Each Unit generally consists of all structures on or within the boundary of the Unit, including, but not limited to all interior and exterior walls, wall surfaces, floors, ceilings, roofs, foundations, and fixtures. All pipes, wires, conduits, chutes, flues, ducts, shafts, public utility, water or sewer lines, or any other similar fixtures lying inside the designated vertical boundaries of a Unit or located beyond the vertical boundaries of the Unit but designated and designed to serve only that Unit, shall be part of the Unit.

3.1.1. **Variiances between the Plat and As-Built Construction.** The original construction shall be the initial installation of foundations, framing, wallboard, and the like (the “Original Construction”) and shall be the controlling dimensions for any Unit.

3.2. **Plat.** The Plat and all dimensions, descriptions, and identification of boundaries therein shall be binding on the Project. If any conflict exists between the Plat and this Declaration, the Plat shall control except to the extent provided for on the Plat or as otherwise provided by the application or controlling law.

4. **COVENANTS, CONDITIONS, AND RESTRICTIONS; DESIGN GUIDELINES**

4.1. **Use of Lots.** All Lots within the Project shall be used only for the construction and occupancy of one single-family dwelling. Off-street parking must provide for an equivalent number of vehicles to the number of vehicles garaged. Lots may also be used for the construction of typical residential amenities such as a family swimming pool. All Lots shall be used, improved, and devoted exclusively for such single-family residential use. No gainful occupation, profession, trade, or other nonresidential use shall be conducted on any such Lot and no persons shall enter into any Lot for engaging in such uses or for the purpose of receiving products or services arising out of such usage. Notwithstanding the foregoing, an individual Lot Owner, whose principal place of business is not said Owner's Lot or residence, may maintain a home office to conduct work related activities (which do not involve receiving or providing products and or services at such Owner's Lot or residence) outside of regular work hours, on weekends, during holidays, or as local, State, or Federal circumstances necessitate.

4.2. **Nuisances; Construction Activities.** No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such Lot or any portion thereof, or activity thereon, unsanitary, unsightly, offensive, or detrimental to any other Lot in the vicinity thereof or to the occupants of such other Lot. No other nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other Lot in the vicinity thereof or to its occupants. Normal construction activities and parking in connection therewith shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate.

4.3. **Garbage and Refuse Disposal.** No Lot shall be used as or maintained as a dumping ground for rubbish, trash, garbage, or other waste and such materials shall not be kept except in covered containers. All trash containers shall be covered and kept screened from view from the street in suitable enclosed areas, except during collection. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. The burning of rubbish, leaves, or trash within the Project is prohibited. Each Lot and its abutting street are to be kept free of trash, weeds, and other refuse by the Lot Owner. No unsightly material or objects are to be stored on any Lot in view of the general public.

4.4. **Intentionally omitted.**

4.5. **Repair of Improvements.** No improvements on any Lot shall be permitted to fall into disrepair and such improvements shall at all times be kept in good condition and repair and

adequately painted or otherwise finished. In the event any building or structure is damaged or destroyed, then such building or structure shall be immediately repaired, rebuilt, or shall be demolished.

4.6. **Restriction on Further Subdivision, Property Restrictions, and Rezoning.** Except by the Declarant during the Declarant Control Period, no Lot shall be further subdivided or separated into smaller Lots by any Owner, and portion less than all of any such Lot, or any easement or other interest therein, shall be conveyed or transferred by any Owner. Except by the Declarant during the Declarant Control Period, no further covenants, conditions, restrictions, or easements shall be recorded by any Owner or other person against any Lot and any covenants, conditions, restrictions, or easements recorded without such approval being evidenced thereon shall be null and void. Except by the Declarant during the Declarant Control Period, no application for rezoning of any Lot, and no applications for variances or use permits, shall be filed with any governmental authority. Notwithstanding the foregoing, nothing herein shall limit the rights reserved by the Declarant.

4.7. **Design Guidelines.**

- 4.7.1. **Minimum Square Footage of Dwelling.** The minimum living floor area, exclusive of garages, balconies, porches, decks, and patios is as follows: (a) a minimum of 1,400 ft² for single-story Units, and (b) a minimum of 2,000 ft² for two-story Units.
- 4.7.2. **Height Restrictions.** The maximum stacking height for dwellings shall be the lesser of (a) 2 ½ stories, and (b) the maximum height allowed by City codes and ordinances.
- 4.7.3. **Garages and Driveways.** The following guidelines shall be applicable to all garages and driveways constructed within the Property:
- 4.7.3.1. Front-loaded garages shall not project more than eight feet six inches (8'-6") from the unit's façade.
 - 4.7.3.2. Front-loaded garages shall not project more than 6 feet from the main building face/front porch.
 - 4.7.3.3. Architectural forms, materials, and design details shall be present in each dwelling's garage elevation.
 - 4.7.3.4. Garage doors shall match the style of the dwelling and shall only be made of wood-grained, manufactured, or composite wood (no natural wood), or factory finished metal doors.

- 4.7.3.5. Exposed façade above the garage doors shall not exceed 36 inches.
- 4.7.3.6. Garage doors shall be sectional roll-up types.
- 4.7.3.7. Single-car garages shall be set back at least 12 inches from the front face of a double-car garage.
- 4.7.3.8. Driveways of dwellings with a setback of more than 30 feet shall be between 13 feet and 28 feet wide at the sidewalk.
- 4.7.3.9. Oversized garages:
 - 4.7.3.9.1. Cannot exceed the maximum height permitted under all applicable City codes and ordinances.
 - 4.7.3.9.2. Shall only include single-car garage doors.
 - 4.7.3.9.3. Shall have a separate roof form.
 - 4.7.3.9.4. Shall be offset from the main garage elevation.

4.7.4. **Roof.** The following guidelines shall be applicable to all roofs constructed within the Property:

- 4.7.4.1. Roofing material shall either be dimensional composition shingles, standard compositions shingles, concrete tile, slate, or metal. Asphalt shingle roofs shall have a 30-year minimum grade. Concrete tile colors shall have integral flashed finish and consist of a blend of homogeneous colors. Metal roofing shall be a minimum of 24-gauge metal, and seam spacing shall not exceed 18 inches.
- 4.7.4.2. Gables, dormers, and other smaller roof elements shall be proportionate to the overall roof size and form.
- 4.7.4.3. Main body roofs shall be between 4/12 and 12/12 roof pitch.
- 4.7.4.4. For roof pitches 6/12 or steeper, overhangs shall be at least 12 inches.

4.7.4.5. For roof pitches 6/12 and under, overhangs shall be at least 18 inches.

4.7.4.6. Fascia shall be at least 6" in width.

4.7.5. **Exterior Materials.** The following guidelines shall be applicable to all exterior dwelling materials within the Property:

4.7.5.1. The front of the dwelling must contain either (i) 20% masonry, stone, or brick, or (ii) 100% composite siding or stucco. In no event shall brick and stone be used together on the same dwelling.

4.7.5.2. All exterior materials shall be of high quality (composite board, brick, stone, stucco, or synthetic stone).

4.7.5.3. No grooved plywood or drop siding shall be allowed.

4.7.5.4. Shakes and shingles shall be manufactured.

4.7.5.5. The height of horizontal lap siding does not exceed 8 inches on any elevation.

4.7.6. **Material Changes and Transitions.** The following guidelines shall be applicable to all material changes and transitions within the Property:

4.7.6.1. All cladding materials and associated colors on the front of a dwelling shall wrap a minimum of 24 inches around all sides of the dwelling facing a right-of-way.

4.7.6.2. All colors on the front of a dwelling shall wrap a minimum of 24 inches around all sides of the dwelling facing a right-of-way.

4.7.6.3. All siding details on the front of a dwelling (including, but not limited to, board and batten, shake, lap siding, etc.) wrap a minimum of 24 inches around all sides of the dwelling facing a right-of-way.

4.7.6.4. Cladding materials, colors, and details (including, but not limited to, board and batten, shake, lap siding, etc.) on architectural elements on the front elevation shall extend to the inside corner of the wall.

- 4.7.6.5. All materials shall wrap architectural elements in their entirety.
 - 4.7.6.6. Masonry elements shall appear to be substantial and integral to architecture and not merely and applied feature.
 - 4.7.6.7. Frequent material changes shall be avoided. No more than three (3) dominant materials shall be used.
 - 4.7.6.8. Foundation wall finish materials facing a right-of-way shall not exceed 36 inches in height from the finished grade.
- 4.7.7. **Exterior Lighting.** The following guidelines shall be applicable to all exterior lighting within the Property:
- 4.7.7.1. Skylights (when included) shall be integrated with the roof design and be parallel to roof pitches. Skylight glazing shall be flat, clear, solar bronze, or gray in color and in no event shall glazing be reflective.
 - 4.7.7.2. Finished trim material shall be copper, bronze, or colored to match the surrounding roofing material.
 - 4.7.7.3. Exterior lighting shall be designed to avoid spilling onto adjacent dwellings.
 - 4.7.7.4. Exterior lighting shall be designed to reduce harsh glares by only illuminating downward.
 - 4.7.7.5. Each dwelling shall include a minimum of two (2) coach lights on either side of the garage door or recessed can lights installed above the garage door.
- 4.7.8. **Architectural Improvements.** The following guidelines shall be applicable to all architectural improvements within the Property:
- 4.7.8.1. Awnings, canopies, shutters, security shields, tile, iron, stone or other such architectural improvements on the front of the dwelling must conform to the these and color scheme of the dwelling and Property.
 - 4.7.8.2. Awnings and canopies must be a high quality and durable fabric of solid color which complements the dwelling.

4.7.8.3. Awnings must be retractable and horizontally stabilized.

4.7.8.4. The square footage of an architectural improvement shall not exceed 10% of the livable square footage of a dwelling.

4.7.9. **Accessory Structures and Sheds.** All accessory structures shall match the architectural details, color, and materials of the dwelling. Each Owner is required to apply for and obtain a building and other required permit from the City. Manufactured storage sheds (e.g., tough sheds or similar products) shall be permitted if (i) a City permit is not required to have the same on a Lot, and (ii) the shed is constructed of material and colors which complement the dwelling.

4.7.10. **Fences.** The following guidelines shall be applicable to all fences constructed within the Property:

4.7.10.1. Fences shall be constructed of maintenance free materials.

4.7.10.2. Fencing shall not be constructed of natural wood or chain link.

4.7.10.3. Owner is responsible to confirm with the City that its chosen fence color does not violate any City codes and ordinances.

4.7.11. **Landscaping.** LOTS NOT IMMEDIATELY CONSTRUCTED ON SHALL BE MAINTAINED IN ACCORDANCE WITH ALL CITY CODES AND ORDINANCES TO AVOID OVERGROWN AND NOXIOUS WEEDS AND/OR OTHER POTENTIAL HAZARDS TO THE GENERAL PUBLIC'S SAFETY AND WELLBEING. The following guidelines shall be applicable to all landscaping within the Property:

4.7.11.1. Generally.

4.7.11.1.1. THE OWNER SHALL NOT CHANGE OR ALTER IN ANY WAY THE GRADE OF THE LOT. ANY DAMAGE RESULTING FROM VIOLATION OF THIS SECTION SHALL BE THE SOLE RESPONSIBILITY OF THE APPLICABLE OWNER THAT CHANGED THE GRADE.

- 4.7.11.1.2. No trees, shrubs, or plants shall overhang and encroach closer than 8 feet upon any sidewalk, street, right-of-way, bike path, or pedestrian way.
- 4.7.11.1.3. Each Owner shall maintain and keep its respective Lot and landscaping neatly trimmed, properly cultivated, and free of trash, weeds, and other unsightly material.
- 4.7.11.1.4. Potted plants not considered decorative or lawn art, unless they are larger than 4 feet tall and 4 feet wide or that are in non-natural colors.
- 4.7.11.1.5. No dwelling, structure, accessory dwelling unit, landscaping, fencing, walls, etc., shall obstruct or interfere with the flow of water as shown on approved drainage plans.

4.7.11.2. Front Yards.

- 4.7.11.2.1. Each Owner shall install landscaping improvements, with sprinkler/drip irrigation systems in compliances with any and all landscaping plans applicable to the Property.
- 4.7.11.2.2. Landscaping shall be completed within ninety (90) days from certificate of occupancy of any dwelling constructed on a Lot.
- 4.7.11.2.3. For occupancy permits issued between October and April, front yards shall be landscaped no later than May 31 of the following year.

4.7.11.3. Backyards.

- 4.7.11.3.1. Each Owner shall be responsible for installation of all backyard landscaping on their respective Lots.
- 4.7.11.3.2. Landscaping shall be completed within twelve (12) months from certificate of occupancy.
- 4.7.11.3.3. For occupancy permits issued between October and April, front yards shall be landscaped no later than May 31 of the following year.

4.7.12. **Signage.** The following guidelines shall be applicable to all signage within the Property:

- 4.7.12.1. Signs in connection with development and disposition of Lots and/or dwellings constructed thereon shall be allowed; provided, however, each Owner shall be limited to one (1) professionally letter "for sale" sign no larger than 30 inches by 24 inches.
- 4.7.12.2. Signs required by legal proceedings shall be allowed.
- 4.7.12.3. Political signs may not exceed 9 ft² and shall only be allowed sixty (60) days prior to an election and must be removed within three (3) days following an election.
- 4.7.12.4. Signs for a local school's extracurricular activities shall be allowed.

4.8. **Declarant's Exemption.** Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of temporary structures, trailers, improvements, or signs necessary or convenient to the development, marketing, or sale of property within the Project.

5. DURATION AND AMENDMENT

5.1. **Duration.** This Declaration shall be effective, and the Declaration shall encumber the Property, from the date the Declaration is recorded in the office of the Tooele County Recorder and, as amended from time to time, this Declaration shall continue in full force and effect against the Project and the Restrictions shall run with the land in perpetuity, for as long as the law allows unless amended or terminated.

5.2. **Amendment.** During the Declarant Control Period, the Declarant shall have the right to amend this Declaration without the consent of any other Owner. After the Declarant Control Period, this Declaration may be amended by the affirmative vote of not less than sixty-seven percent (67%) of the Owners and must also be approved by the Declarant in writing before it can be effective. No amendment to this Declaration shall be effective until it is recorded in the office of the Tooele County Recorder.

5.3. **Termination.** An agreement to terminate this Declaration and the Restrictions set forth herein, shall require same approval required for an amendment as set forth in Section 5.2 above.

6. EMINENT DOMAIN

6.1. **Taking of a Unit.** If a Unit is taken by eminent domain, or sold under the threat thereof, or if a portion of a Unit is taken by eminent domain, or sold under the threat thereof, leaving the Owner with a remnant that may not practically or lawfully be used for any purpose permitted by this Declaration, the award shall compensate the Owner for the Owner's Unit and Allocated Interest, regardless of whether any Common Area and Facilities are taken.

6.2. **Taking of Entire Project.** In the event the Project, in its entirety, is taken by eminent domain, or sold under threat thereof, the Project shall be terminated.

6.3. **Priority and Power of Attorney.** Nothing contained in this Section 6 shall entitle an Owner to priority over any Lender under a lien encumbering the Owner's Unit as to any portion of any condemnation award allocated to such Unit.

7. INTERPRETATION, CONSTRUCTION, AND APPLICATION

7.1. **Conflicting Provisions.** In the case of any conflict between Utah law and any of the Governing Documents, the order of priority from the highest to the lowest shall be Utah law, the Plat, the Declaration, and then the Rules. If there is a conflict between the Governing Documents and any Additional Covenants (or rules or policies adopted pursuant to any such Additional Covenants), the Governing Documents shall control, except where the Additional Covenants are allowed to differ by the Governing Documents.

7.2. **Interpretation of Declaration and Applicability of the Act.** The Declarant intends that the Project shall be governed by the Code, except where (in compliance with the Code) specific provisions in this Declaration that legally vary, supersede, or supplement the Code, in which event such specific provisions of this Declaration that are contrary to the Code shall govern the Project to the extent allowed by the Code. In the case of any conflict between this Declaration and the Code, to the extent the Code does not legally allow this Declaration to contain provisions contrary to the Code, the Code shall control and this Declaration shall be deemed modified accordingly, but only to the extent necessary to come into compliance with the Code.

7.3. **Cumulative Remedies.** All rights, options, and remedies Owners in the Governing Documents are cumulative, and none shall be exclusive of any other, and the Owners shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief that may be provided by law; simultaneously, consecutively, or alternatively.

7.4. **Severability.** Invalidation of any one or a portion of the Restrictions by judgment or court order shall in no way affect any other Restrictions, all of which shall remain in full force and effect.

7.5. **Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a planned unit development and for the maintenance of the Project. The article and section headings have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction. References in this Declaration to section numbers herein, unless otherwise expressly provided, are to the article and section in this Declaration. To the extent permitted by law, the provisions of the Governing Documents shall not be interpreted for or against or strictly for or against any Owner, or any other Person subject to their terms.

7.6. **Applicable Law.** Except as otherwise expressly provided in this Declaration related to Code, this Declaration is specifically made subject to the Code and the law as it is constituted and exists at the time this Declaration is recorded. Amendments to the Code after the date of recording of this Declaration shall not be applicable to this Declaration or the Project unless they are applicable as a matter of law or unless the made applicable by an amendment to the Declaration.

7.7. **Gender and Number.** Whenever the context of the Governing Documents requires, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and the neuter, and vice versa.

7.8. **Effect of Declaration.** This Declaration is made for the purposes set forth in the Recitals herein, and the Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances, regulations and the like applicable thereto. Declarant shall have no liability whatsoever if any Restriction is determined to be unenforceable in whole or in part for any reason.

7.9. **Notices.** Any notice provided under this Declaration shall be provided in writing and sent or transmitted by one of the following means: (a) personally served, (b) sent by overnight courier by a national delivery service that maintains tracking information, or (c) sent by United States certified mail, return receipt requested, with postage prepaid; addressed to the Owner at the Owner's address within the Project. Such notices, demands or declarations shall be deemed sufficiently served or delivered for all purposes hereunder when delivered or when delivery is denied if attempted to be delivered at the appropriate address.

8. GENERAL PROVISIONS

8.1. **Enforcement.** Any Owner shall have the right to enforce, by proceedings at law or in equity, all Restrictions, including the right to prevent the violation of any such Restrictions and the right to recover damages and other sums for such violation, including, but not limited to attorneys' fees and costs incurred in conjunction with such enforcement.

8.1.1. Each Owner, by taking title to a Unit, acknowledges and agrees that because a breach of the Governing Documents will result in immediate and irreparable injury an Owner or Owners for which he/she/it/they will not have an adequate remedy at law, Owner(s), if any such breach shall occur, be attempted, or be threatened, shall be entitled to an order of specific performance and to a temporary and permanent injunction enjoining such breach and to any and all other remedies to the Owner(s) which he/she/it/they may be entitled pursuant to the Governing Documents or applicable law, without posting bond or furnishing other security and without proving special damages or irreparable injury, together with an award of attorney fees.

8.2. **No Liability of Officers.**

8.2.1. To the fullest extent permitted by applicable law, Declarant shall not be liable to any Owner, Occupant, or any other Person for any damage, loss, or prejudice suffered or claimed on account of any decision, approval or disapproval, course of action, act, omission, error or negligence.

Each Owner, Occupant, and other Person having any interest in the Project or entering upon or using any portion of the Project is deemed to acknowledge and accept the following:

(a) Declarant, including its parent entities, affiliates, members, managers, employees, owners, representatives, attorneys, or any other person or entity purporting to act on Declarant's behalf ("**Released Persons**"), shall not be liable or responsible for, or in any manner be guarantor or insurer of, the health, safety, or welfare of any Owner, Occupant or other Person entering upon or making use of any portion of the Project, including the transmission of any infectious disease or illness. Each Owner, Occupant and other Person assumes all risks associated with the use and enjoyment of the Project, including but not limited to, any recreational facilities upon or within the Project.

(b) None of the Released Persons shall be liable or responsible for any personal injury, illness, or any other loss or damage caused by the presence or malfunction of any utility line, equipment or substation, adjacent to, near, over, or on the Project. Each Owner, Occupant and other Person assumes all risks of personal injury, illness or other loss or damage arising from the presence of malfunction of any utility line, equipment or substation adjacent to, near, over or on the Project.

(c) No provision of this Declaration or any other Governing Document shall be construed or interpreted as creating a duty by any of the Released Persons to protect or further the health, safety or welfare of any Person.

8.3. **Owner Liability and Indemnification.** Each Owner, by taking title to a Unit, agrees to indemnify each and every other Owner and Occupant in such other Owner's Unit, and to hold such other Persons harmless from, and to defend against, any claim of any Person for personal injury or property damage occurring within that Owner's Unit.

8.4. **Areas of Owner Responsibility.**

8.4.1. **Single-Family Unit Maintenance.** Each single-family Unit Owner shall have the obligation to provide interior maintenance of their Unit and their yards. Each single-family Lot Owner shall be responsible for the Lot and Unit exterior maintenance, repair, and upkeep of the Owner's Unit, including snow and ice removal during winter months. Likewise, each Owner shall be responsible to maintain the landscaping and other improvements to the Owner's Lot. If applicable, each Owner of a Lot shall be responsible for the maintenance and upkeep of any landscaped park strip area adjacent to the Owner's Lot, in compliance with City ordinances.

8.5. **Security.** The Declarant shall not, in any way, be considered an insurer, guarantor, or provider of security from criminal conduct within or relating to the Project. The Declarant shall not be liable for any loss or damage by reason of criminal conduct arising, for any reason, including any failure to provide security or any ineffectiveness of security any measures undertaken. Each and every Owner and Occupant in the Project acknowledges that the Declarant does not have any duty to any Owner or Occupant related to security or to prevent criminal conduct. By taking title to a Unit and/or residing in the Project, each Owner and Occupant acknowledges and agrees that the Declarant is not an insurers of the safety or well-being of Owners or Occupants or any of their personal property as it relates to criminal conduct, and specifically waives any such claim and assumes all risks for loss or damage to Persons or property resulting from criminal conduct.

8.6. **No Representations and Warranties and Disclaimers.** EACH OWNER AND OCCUPANT UNDERSTANDS, AGREES, AND ACKNOWLEDGES THROUGH TAKING TITLE OR RESIDING IN THE PROJECT THAT THE DECLARANT HAS NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND RELATED TO THE PROJECT AND THAT EACH OWNER OR OCCUPANT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE PROJECT. OWNERS HEREBY ACKNOWLEDGE THAT THEY UNDERSTAND THAT THE PROJECT MAY ADJOIN FUTURE UDOT EXPANSION, FUTURE DEVELOPMENT, AND FARM LAND THAT MAY CAUSE ODORS IN AND AROUND THE PROJECT.

9. **DECLARANT RIGHTS AND CONTROL**

9.1. **Special Declarant Rights**. Notwithstanding any other provisions in the Governing Documents to the contrary, the Declarant shall have the all rights and powers provided for in this Section 18. If any other article in this Declaration contains the words “notwithstanding anything to the contrary,” or words of similar import, the article shall all nonetheless be subject to the terms in this Section 18.

9.2. **Declarant Retains All Rights and Authority During Declarant Control Period**. During the Declarant Control Period, the Declarant shall retain control, power, and authority over, and all decision-making ability or authority for the Project. During the Declarant Control Period, the Declarant may pre-approve plans. Notwithstanding anything in this Declaration to the contrary, during the Declarant Control Period, the Declarant shall have the discretion, without obligation, to hire a professional manager to manage the Project during the Declarant Control Period.

9.3. **Easement Rights**. The Declarant shall have and hereby retains an easement for access over, under, across and through the entire Project and may utilize, allow anyone else to utilize, or may grant easements over, under across, and through any easement right reserved to anyone in the Declaration.

9.4. **Right to Amend Plat**. Subject to necessary approvals from any applicable municipality or government agency, during the Declarant Control Period, the Declarant shall have the right to amend, change, supplement, or modify any Plat, subject only to the requirement that the Declarant get approval from any Owner of a Unit that has any boundary modified by the Plat.

9.5. **Right to Amend Governing Documents**. Until the expiration of the Declarant Control Period, the Declarant shall have the right to unilaterally amend, revise, and modify this Declaration, any Supplement to the Declaration establishing Additional Covenants, and the Rules in any way and at any time, including adding, removing, or changing substantive and material provisions, without any additional approvals from anyone including, but not limited to the Owners. Pursuant to §57-8a-217(6) of the Code, the Declarant's promulgation or amendment of any Rules shall be exempted from the Code's rule-making process. Any amendment to this Declaration shall be effective upon the recordation of the amendment duly executed by an authorized officer of the Declarant. When recorded, any such amendment shall be binding upon the Project and all Persons having an interest therein including Owners. Without limiting the generality of the foregoing, the Declarant alone may amend or terminate this Declaration prior to the closing of a sale or transfer of any Unit.

9.6. **Assignment of Special Declarant Rights**. The Declarant, at any time, may assign, transfer, or share all or some of its control, power, rights, exemptions, authority, or decision-making ability to any other Person prior to the end of the Declarant Control Period. In the case of the abandonment of the Project by the Declarant, the cessation of business by the Declarant, or the foreclosure of any undeveloped property that is subject to the provisions of this Declaration, the rights of the Declarant as provided for in this Declaration may be exercised by any owner of the undeveloped land within the Project or to be expanded into the Project.

9.7. **No Modification of Declarant Rights.** Any Declarant Rights in the Governing Documents and, specifically, in this Section 18, may not be substantively or procedurally altered during or after the Declarant Control Period without the written consent of the Declarant. Any document or amendment purporting to do so without the proper consent shall be void ab initio.

9.8. **Use of Units and Common Area and Facilities for Sales Activities.** During the Declarant Control Period, the Declarant shall have the right to use any Unit owned by it, and any part of the Common Area and Facilities and any part of any Benefitted Common Area in furtherance of any activities designed to accomplish or facilitate construction, improvement and sale of all Units owned by the Declarant or to be added to the Project, and the construction and improvement of all Common Area and Facilities and Benefitted Common Area as the Declarant, from time to time, may desire. The Declarant shall have the right to maintain one or more sales offices. Such offices may be located on any Unit with the permission of the Owner of that Unit, who may be the Declarant, or in one or more separate structures, trailers, or facilities placed in the Project for the purpose of aiding the Declarant's sales efforts, or any combination of the foregoing. The Declarant shall also have the right to maintain any number and size of promotional, advertising, or directional signs, banners, or similar structures or devices at any place or places in the Project. The Declarant shall also have the right to designate by signs or otherwise any street or other parking as parking for sales only or to otherwise restrict and use any Common Area parking. The Declarant shall have the right from time to time to relocate, move, remove, or add to any of its sales offices, parking restrictions, signs, banners or similar structures or devices.

9.9. **Facilities Open to the Public.** The Declarant shall have the right to establish certain facilities and areas within the Project for the use and enjoyment of the public. Such facilities and areas may include, by way of example, open space, trails, paths, parks and other neighborhood areas conducive to public gatherings.

9.10. **Declarant Rights Do Not Impose Obligations.** The Declarant Rights provided for in this Section 18 shall not be construed to impose any obligation, legal or equitable, related to any matter or issue to which they might apply. Each Owner, by taking title to a Unit, waives and disclaims any such duty and affirmatively acknowledge that no such duty exists or should be imposed as a result of the Special Declarant Rights.

9.11. **Declarant Exemption from Statutory Obligations.** Pursuant to §57-8a-217(6) of the Code, Declarant is hereby exempt from the provisions of §57-8a-217 of the Code. Pursuant to §57-8a-211(10) of the Code and elsewhere herein, §57-8a-211(2)-(9) of the Code shall not apply or have any effect during the Declarant Control Period and, as allowed specifically by law, the Declarant shall have no duty whatsoever to obtain a Reserve Analysis or to fund any Reserve Fund during the Declarant Control Period.

9.12. **Authority to Grant Exemptions.** In its sole discretion, Declarant may grant exemptions from any provisions of this Declaration or other Governing Documents to a Person engaged in the construction, development, marketing, or selling of Lots or Units within the Property. This includes, without any limitation, exemption from Design Guidelines, and so forth.

10. CONFLICT AND LITIGATION AVOIDANCE

10.1. **Statement of Intent**. Every Owner is capable of obtaining an inspection and is permitted to perform any inspection on any Unit that Owner is purchasing or may otherwise be acquiring and on any aspect of the Project. Having had the ability to inspect prior to purchasing a Unit, it therefore is acknowledged that it is unfair and improper thereafter to seek to have the Declarant or any subcontractor performing work in the Project change, upgrade, or add additional work to the Project outside of any express warranty obligation. Moreover, each Owner (by taking title to a Unit) and the Declarant acknowledge and agree that litigation is an undesirable method of resolving certain conflicts in that it is slow, expensive, uncertain, and can often negatively impact the value, sale, and ability to obtain financing for the purchase of a Unit for years, unfairly prejudicing those Owners who must sell or who want to sell their respective Units during any period when litigation is pending. For this reason, each Owner, by taking title to a Unit, and the Declarant agree and acknowledge that certain disputes simply shall not be pursued, to the extent permitted by law, and that other disputes shall be pursued only through certain specific alternative dispute resolution mechanisms and only after full disclosure, right to cure periods, and knowing approval of the Owners. The intent of this Section 10 is to eliminate, to the extent possible, claims against or involving the Declarant and claims related to the construction of the Subdivision Improvements and the Units in the Project, and, when and if any such claim is permitted as a matter of law or pursuant to this Declaration, to ensure that every opportunity is made to resolve the claim outside of litigation. This effort shall include, but not be limited to, the right to cure and the requirements for mediation and arbitration.

10.2. **Owner Warranties**. The Declarant, builder, or contractor may have provided certain warranties to the Owners related to the Unit purchased ("**Owner Warranties**" or an "**Owner Warranty**"). The first Owner of a Unit to whom any warranty is issued or with whom a legal warranty arises, and only that Owner, shall have the right to directly enforce and seek performance from the entity providing such warranty of any terms of the warranty and only consistent with the warranty itself.

10.3. **Limitation on Claims**. Any Claims by any Owner against Declarant or any building, contractor and/or subcontractor for judicial, arbitral, or administrative relief for acts, errors, omissions, or breach arising out of or related the sale of or conveyance of any portion of the Project, or this Declaration or any other agreement, whether based in tort, contract, warranty, strict liability, indemnity, contribution, or other source of law shall be commenced within the shorter of two (2) years of substantial completion of the Project or within the applicable statute of limitations under the Code. The Owners waive all Claims not asserted within this time. This Section is expressly intended to set forth a period of repose enforceable under Section 78B-2-225(9) of the Code and to reduce the periods of limitation and repose prescribed by Section 78B-2-225 of the Code. Also, the Owners waive all Claims for consequential damages, including but not limited to lost rents, rental expenses, loss of use, financing, stigma, and loss of reputation. To the extent the Owners damages are covered by insurance or a third-party warranty, including but not limited to the Owner Warranties, the Owners waive all rights against Declarant and the

builders, contractors, subcontractors, designers, consultants, agents, and their employees for damages. The Owners agree that they shall not participate in any class action proceeding and that any Claims shall not be joined or consolidated with the Claims made by any other party, including any other Owner. In the event an Owner does participate in any class action or joins or consolidates the Claims with the Claims of any other party, the Owner understands that such action is a material default under this Declaration and the Owner shall thereby waive and generally and completely release any and all Claims whatsoever, known or unknown against Declarant and the builders, contractors, subcontractors, designers, consultants, agents, and their employees.

10.4. **Waiver of Subrogation and Release.** Each Owner waives, and shall cause its insurance carrier to waive, any right to subrogation against the Declarant or any builder or contractor of any portion of the Project. This waiver shall be broadly construed and applied to waive, among other things, any attempt by any insurer of any Owner from pursuing or exercising any subrogation rights, whether arising by contract, common law, or otherwise, against the Declarant, a builder, a contractor, or a subcontractor, and their officers, employees, owners, and representatives. To the fullest extent permitted by law, the Owners hereby release Declarant and builder and contractors and subcontractors, their officers, employees, owners, and representatives from any and all liability to all Owners, and anyone claiming through or under them by way of subrogation or otherwise, for any loss, injury, or damage to property, caused by fire or any other casualty or event, even if such fire or other casualty shall have been caused by the fault or negligence of Declarant, builder, contractor, or subcontractor, their officers, employees, owners, and representatives. Each Owner agrees that all policies of insurance shall contain a clause or endorsement to the effect that this release and waiver of subrogation shall not adversely affect or impair such policies or prejudice the right of any Owner to recover thereunder. All Owners shall indemnify and defend the Declarant, the builder, the contractor and any of their officers, employees, owners, or representatives from any Claims barred or released by this provision, including but not limited to any Claim brought under any right of subrogation.

10.5. **Waiver of Claims by Owner.** Notwithstanding any other provision in this Declaration, except as to an Owner Warranty and to the fullest extent permitted by the law, an Owner shall not and agrees not to commence or maintain any litigation, arbitration, or other action against the Declarant, the builder, the contractor, and/or the subcontractors, or any of their officers, directors, members, employees, or agents for any reason, including but not limited to alleged construction defects, any related damages, or any damages arising therefrom.

10.6. **Indemnification and Waivers by Owners.** By purchasing a Unit, the Owner specifically disclaims and releases the Declarant, the builder and/or the contractor from any Claim, known or unknown, related to any defect in the Project not specifically covered by an Owner Warranty, except only as limited by law. Each Owner acknowledges and agrees that the Owner Warranties, if provided, and whatever coverage they might provide are the sole remedy of an Owner related to any alleged or actual construction defects. In case of any Claims, litigation or legal proceedings asserted or related to any construction defect arising in any Unit, the Owner agrees to defend the Declarant, builder and/or contractor (which shall permit the Declarant, builder, and/or contractor to select counsel and require the Owner to advance all costs and fees

related to any such Claim) from any such Claim and to indemnify Declarant, the builder, the contractor, and/or the subcontractors from any liability arising therefrom.

10.7. **Acceptance of Condition**. Subject only to the provisions in the Owner Warranties (if any), the Owners take ownership and possession of the Units “AS IS” and “WITH ALL FAULTS” with no warranties of any kind except as otherwise required as a matter of law. The Declarant specifically disclaims, and all Owners hereby waive, any warranties of merchantability, fitness for a particular use, or of habitability, to the full extent allowed by law.

10.8. **Dispute Resolution**. Declarant, and all Owners (each a “**Bound Party**” as used in this Section) agree to encourage the amicable resolution of any disputes, grievances, and Claims regarding the design, initial construction, allegations of latent or patent construction defects, condition, or sale of any part of the Project or any improvements thereon involving any Bound Party without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to the following mandatory procedures for resolving all Claims.

10.8.1. If otherwise allowed by law notwithstanding the terms of this Declaration or if allowed in this Declaration, prior to any Owner (a “**Claimant**”) initiating a Claim or making any demand or commencing any mediation, arbitration, or litigation (any “action”) (other than Claims made solely upon an Owner Warranty against a contractor or subcontractor), a Declarant or any builder, contractor, or subcontractor involved in the original construction of the Project (“**Respondent**”) (the Claimant and Respondent referred to herein being individually referred to as a “**Party**” or collectively referred to as the “**Parties**”) shall notify each Respondent in writing (“**Notice**”), stating plainly and concisely:

- (a) The nature of the Claim, including the Persons involved and Respondent’s role in the Claim;
- (b) The legal basis of the Claim (i.e. the specific authority out of which the Claim arises);
- (c) A specific breakdown and calculation of any alleged damages;
- (d) A specific description of the Claims along with any supporting opinions, information, or other factual evidence upon which the Claims are based;
- (e) Photographs of any alleged condition, if applicable;
- (f) Samples of any alleged defective conditions or materials;
- (g) All efforts taken to avoid, mitigate, or minimize the Claims or any alleged damages arising therefrom;

(h) The names, phone numbers, and address of every Person providing factual information, legal or factual analysis, or legal or factual opinions related to the Claims;

(i) The proposed remedy;

(j) The fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim; and

(k) That the Person alleged to be responsible shall have one hundred eighty (180) days to cure or resolve the Claim.

10.8.2. Within sixty (60) days of providing the Notice, the Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.

10.8.3. In the event that the Claim is not resolved within sixty (60) days following the meeting or in a time period as agreed to by the Parties; or if the meeting fails to take place within the time period required above despite good faith efforts, the Claimant may proceed with a Proceeding against the Respondent following one hundred eighty (180) days of the original Notice, except as may be limited by Section 11 below.

10.8.4. Any post-turnover litigation involving the Bound Parties shall strictly comply with each of the provisions of this Section. The Parties hereby covenant, stipulate, and agree that in the event the Bound Parties fail to satisfy the prerequisites set forth herein, the non-compliant party will indemnify, defend, hold harmless, and exculpate the other Bound Party to the fullest extent permissible by law, and the non-breaching Bound Party shall be entitled to recover any and all attorney fees and costs expended as a result of enforcing this Section, which fees and costs may include, without limitation, pre-litigation attorney fees, costs incurred in connection with investigation of potential Claims, including expert and consultant fees, testing fees, contractor fees, and insurance deductibles. The Bound Parties further covenant, stipulate, and agree that failure to comply with this Section herein will result in damages to Declarant including, without limitation, reputational harm, lost revenues, and loss of business and sales opportunities.

10.8.5. The dispute resolution procedures in this Section are in addition to and are not superseded by those protections provided to the Declarant by the Code, including, but not limited to, §57-8a-228.

10.8.6. The Owners agree that any Claims or Actions, the subject matter of any proceeding, and the results of any proceeding, including any settlement, shall be confidential and not disclosed to any other person or entity, including any other Owner, other than (a) in confidence with its own legal, financial, insurance or tax professionals, (b) in necessary communication with appropriate federal, state or local tax authorities, (c) to any person necessary to perform or satisfy the award, or (d) to any other person as may be required to comply with a subpoena, court order or legal process; provided, however, that Declarant shall be afforded a reasonable opportunity after

written notice to object to the same. The Owners shall advise any legal, financial, insurance, or tax professional to whom such party discloses any confidential information or information about the Claims and/or Actions and any settlement or award that such information as permitted herein is to be held in confidence.

10.8.7. ALL PARTIES HEREBY AGREE TO RESOLVE ANY CLAIM ACCORDING TO THE PROVISIONS OF THIS SECTION AND SUCH PARTIES WAIVE THEIR RESPECTIVE RIGHTS TO PURSUE THE CLAIM IN ANY MANNER OTHER THAN AS PROVIDED IN THIS SECTION.

11. MANDATORY BINDING ARBITRATION FOR MATTERS INVOLVING DECLARANT

In addition to the requirements and procedures set forth in Section 10 above, each Owner is deemed to have accepted and agreed to comply with the terms of this Section.

11.1. Any and all Claims, controversies, breaches, or disputes (each a “**Dispute**”) involving the Declarant or any affiliate of the Declarant, and any Owner (individually referred to as a “**Party**” or collectively referred to as the “**Parties**”) arising out of or related to this Declaration, the Units, the sale of a Unit, or any transaction related thereto, whether such Dispute is based on contract, tort, statute, or in equity, including, without limitation, any Dispute over: breach of contract, negligent or intentional misrepresentation or fraud, nondisclosure, breach of any alleged duty of good faith and fair dealing, allegations of latent or patent construction defects, breach of any fiduciary duty, or any other matter arising out of or related to the interpretation of any term or provision of this Declaration, sales agreement, or otherwise, shall be arbitrated pursuant to the Federal Arbitration Act (9 U.S.C. §1, et seq.) (“**FAA**”) and subject to the procedures set forth in Sections 19.

11.2. Such Dispute shall be submitted to binding arbitration by and pursuant to the rules of the American Arbitration Association (“**AAA**”), pursuant to its construction arbitration program, or such alternative as mutually agreed by the Parties. If AAA is not available and the Parties involved in the Dispute are unable to agree on another alternative, then either Party may, pursuant to the applicable provisions of the FAA, apply to a court of competent jurisdiction to designate an arbitration service provider, which designation shall be binding upon the Parties. The rules and procedures of such alternative arbitration service in effect at the time the request for arbitration is submitted shall be followed.

11.3. The following are general arbitration provisions:

11.3.1. The matters herein involve and concern interstate commerce and are governed by the provisions of the FAA now in effect and as the same may from time to time be amended, to the exclusion of any different or inconsistent state or local law, ordinance, regulation, or judicial rule. Accordingly, any and all disputes shall be arbitrated – which arbitration shall be mandatory and binding – pursuant to the FAA.

11.3.1.1. To the extent that any state or local law, ordinance, regulation, or judicial rule shall be inconsistent with any provision of the rules of the arbitration service under which the arbitration proceeding shall be conducted, the arbitration service rules shall govern the conduct of the proceeding.

11.3.1.2. This Section 11.3 shall inure to the benefit of, and be enforceable by, the Declarant, affiliates of the Declarant, subcontractors, agents, vendors, suppliers, design professionals, insurers and any other person whom the Owner contents is responsible for any alleged defect in or to the Project.

11.3.1.3. In the event any dispute is submitted to arbitration, each Party shall bear its own attorney fees and costs (including expert costs) for the arbitration, unless the arbitrator orders otherwise in accordance with the terms of Section 15.

11.3.1.4. The arbitrator shall be authorized to provide all recognized remedies available in law or in equity for any cause of action that is the basis of the arbitration. The decision of the arbitrator shall be final and binding. The Parties expressly agree that an application to confirm, vacate, modify, or correct an award rendered by the arbitrator shall be filed in any court of competent jurisdiction in Tooele County.

11.3.1.5. The participation by any party in any judicial proceeding concerning this Section 20.3 or any matter arbitration-able hereunder shall not be asserted or accepted as a reason to delay, to refuse to participate in, or to refuse to enforce this Section 11.3. Attorney fees and costs shall be borne pursuant to Section 3.1.3 above.

11.3.1.6. The fees to initiate the arbitration shall be advanced by the Party bringing the Claim and subsequent fees and costs of the arbitration and/or arbitrator shall be borne equally by the Parties to the arbitration; provided, however, that the fees and costs of the arbitration and/or the arbitrator shall ultimately be borne as determined by the arbitrator.

11.3.1.7. The arbitrator appointed to serve shall be a neutral and impartial individual.

11.3.1.8. If any provision of this Section 11.3 shall be determined to be unenforceable or to have been waived, the remaining provisions shall be deemed to be severable therefrom and enforceable according to their terms.

11.3.1.9. All parties governed by this Declaration acknowledge and agree that they are waiving any rights to have the Disputes described by this Section 11.3 decided in a court or by a jury trial.

11.4. **Landowners.** All Persons owning land that is initially or subsequently incorporated into the Project and who sign the Declaration or any amendment thereto subjecting that land to the

Declaration and incorporating it into the Project, shall be afforded the same rights, protections, and litigation avoidance procedures that are provided for the Declarant in this Section 19.

12. HUD APPROVAL

The Declarant desires that the Project shall become and remain an approved project by the U.S. Department of Housing and Urban Development (“**HUD**”) and the Federal Housing Administration (“**FHA**”). It is acknowledged that the requirements for approval by HUD and FHA may change over time. In the event of any conflict between the terms and conditions of the HUD and/or FHA approval guidelines for the Project, the terms and conditions of this Declaration and the Governing Documents shall be modified to be in compliance with the then existing requirements of FHA and HUD subject to the Act and any applicable laws. In the event of any conflict between the Act (and any applicable laws), the Declaration, and any HUD and/or FHA approval guidelines, the Code (and any applicable laws) shall control and govern. Notwithstanding the above, the Declarant during the Period of Administrative Control may modify this provision whereby the Declaration and other Government Documents shall no longer be subject to the then existing requirements of FHA and HUD.

[CERTIFICATION AND SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by a duly authorized representative.

DATED as of the 21st day of June, 2023.


DECLARANT

CW LAND CO., LLC,
a Utah limited liability company

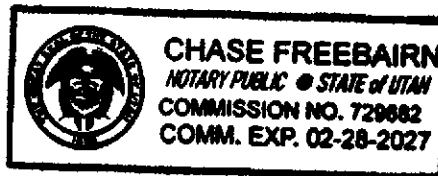
Darlene Carter
By: Darlene Carter Darlene Carter
Its: Manager

STATE OF UTAH)
 §
COUNTY OF DAVIS)

On the 21st day of June, ~~2022~~ ²⁰²³, personally appeared before me Darlene Carter who by me being duly sworn, did say that she/he is an authorized representative of CW Land Co., LLC, and that the foregoing instrument is signed on behalf of said company and executed with all necessary authority.



(Notary Signature)



(Seal)

729682

EXHIBIT "A"

PROPERTY LEGAL DESCRIPTION

ALL OF LOTS 501 THROUGH 526 AS SHOWN ON THE WELLS CROSSING SUBDIVISION PHASE 5 FINAL PLAT RECORDED IN THE OFFICE OF THE TOOELE COUNTY RECORDER ON JUNE 8, 2022 AS ENTRY NO. 574220 IN BOOK 22 ON PAGE 27.

Parcel Numbers: 22-027-0-0501 through 22-027-0-0526