

When Recorded Return To:  
Oakwood Homes of Utah, LLC  
206 E. Winchester Street  
Murray, Utah 84107

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3/22/2017 4:09:00 PM \$120.00  
Book - 10540 Pg - 4969-4980  
Gary W. Ott  
Recorder, Salt Lake County, UT  
COTTONWOOD TITLE  
BY: eCASH, DEPUTY - EF 12 P.

**SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR THE VILLAGES AT WESTRIDGE**

*(An Expandable Planned Unit Development; West Valley City, Salt Lake County, Utah)*

This *Second Amendment to Declaration of Covenants, Conditions, and Restrictions for The Villages at Westridge* (this "**Amendment**") is made this 22<sup>nd</sup> day of March, 2017, by Oakwood Homes of Utah, LLC, a Delaware limited liability company (the "**Declarant**").

**RECITALS**

- A. The Villages at Westridge (the "**Property**" or "**Project**") is a planned unit development project located in West Valley City, Salt Lake County, Utah.
- B. The Declarant's predecessor-in-interest (HWL Westridge, LLC) previously executed and caused to be recorded a *Declaration of Covenants, Conditions, and Restrictions for The Villages at Westridge* (the "**Declaration**"). The Declaration was recorded in the real property records of Salt Lake County, Utah, on July 17, 2013, as Entry No. 11686073.
- C. The Declaration subjects the Property to the covenants, conditions, restrictions, easements, and limitations (the "**Covenants**") identified therein.
- D. The Declaration was previously amended to revise the legal description of the real property it encumbers as set forth in that certain Amendment to Declaration of Covenants, Conditions and Restrictions dated January 21, 2014, recorded with the Salt Lake County Recorder's Office on January 22, 2014, as Entry No. 11793690 (the "**First Amendment**").
- E. The undersigned Declarant has obtained a valid assignment of all "Declarant" rights under the Declaration from the original "Declarant" (HWL Westridge, LLC).
- F. Section 12.1 of the Declaration provides for the right of the Declarant to amend the Declaration. The undersigned represents that it holds the rights and authority to amend the Declaration in accordance with the provisions of Section 12.1.

G. The undersigned Declarant now wishes to amend the Declaration and the Covenants in certain respects, as more particularly set forth below.

### AMENDMENT PROVISIONS

NOW THEREFORE, Declarant does hereby amend the Declaration as follows, with the changes identified in this Amendment to be effective and binding against the Property and to run with the land as of the date this Amendment is recorded in the real property records of Salt Lake County, Utah:

1. **Recitals and Definitions.** The above-stated Recitals are incorporated herein. All capitalized terms in this Amendment, unless otherwise defined herein, shall have the meanings given to them in the Declaration. As used herein, the term "Unit" shall have the same meaning given to the term "Living Unit" in the Declaration.

2. **Updated Site Plan Map.** The Preliminary Plat of the Project attached as Exhibit "D" of the Declaration is hereby replaced by the updated Site Plan map attached as Exhibit "B" hereto. Accordingly, references in Section 1.6 and elsewhere of the Declaration to the "Map" shall mean and refer to the updated Site Plan map attached as Exhibit "B" to this Amendment.

3. **Declarant Assessments.** Section 6.2 of the Declaration is hereby superseded and replaced in its entirety by the following provisions:

Exempt Unit(s) shall mean each Lot and Living Unit in the Project while owned by Declarant or a Declarant Affiliate, until the earliest to occur of (i) the acquisition of title to the Living Unit by a person or entity other than Declarant or a Declarant Affiliate, or (ii) the one hundred eightieth (180<sup>th</sup>) day after the municipal authority having jurisdiction thereover issues a certificate of occupancy for the Living Unit. In addition, each Lot that does not contain a fully-constructed Living Unit shall be an "Exempt Unit," and each model unit owned by the Declarant shall be an "Exempt Unit" so long as the same is used as a model unit by the Declarant, a Declarant Affiliate, or their assign(s). Declarant shall have no obligation to pay any Assessments on Lots or Living Units that qualify as "Exempt Units" under this provision.

4. **Reinvestment Fee Covenant.**

Commencing with the original conveyance of title to a Unit by Declarant to the initial Owner of the Unit, and for each subsequent conveyance of title to the Unit to a new Owner, a fee in the amount of Five Hundred Dollars (\$500.00) (the "Reinvestment Fee") shall be paid by the buyer of the Unit to the Association. The Board shall have authority, by written resolution, to modify the amount of the Reinvestment Fee, according to the financial needs of the Association, so long as the amount is not less than \$300.00 and not more than \$900.00. To the fullest extent practicable, the Reinvestment Fee shall be collected at the closing of the purchase/sale transaction by the title company, escrow company, or other persons involved with the transaction, and paid directly to the Association.

The Association shall have a lien against the Unit of the buyer/New Owner to secure payment and collection of the Reinvestment Fee. The lien securing payment of the Reinvestment Fee shall be enforceable in the same manner and in all respects as the lien securing payment of Assessments as provided in the Declaration. The obligation to pay the Reinvestment Fee shall be a personal and continuing obligation of the buyer/New Owner, regardless of whether the buyer/New Owner acquired title to the Unit by regular conveyance, pursuant to a foreclosure sale (judicial or non-judicial), by inheritance or probate, or otherwise. The Association shall use the funds obtained from payment of all Reinvestment Fees to maintain, repair and/or replace the Common Areas and Facilities of the Project for the benefit of all of the Lots and Units in the Project. These provisions shall be interpreted and enforced in a manner that complies with the provisions pertaining to "reinvestment fee covenants" in Sections 57-1-46 et seq. of the Utah Code, as the same may be amended.

5. **Enforcement of Assessment Liens.**

There shall be a lien against each Lot and Unit to secure payment of Assessments to the Association. Such lien may be enforced by sale or foreclosure conducted in accordance with the provisions of law applicable to the exercise of powers of sale or foreclosure in deeds of trust or mortgages or in any other manner permitted by law including specifically, but without limitation, the method recognized under the laws of the State of Utah for the enforcement of a mechanics lien which has been established in accordance with the provisions of Chapter 1, Title 38, Utah Code Ann., as amended from time to time. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any Assessments against the Unit which shall become due during the period of foreclosure, and all such Assessments shall be secured by the lien being foreclosed. The Board shall have the right and power on behalf of the Association to bid at any foreclosure sale and to hold, lease, mortgage or convey the subject Unit in the name of the Association. In furtherance of such foreclosure rights, the Association may bring an action at law against the Owner personally obligated to pay the same or the Association may foreclose the lien in accordance with the provisions of the Act. The Board hereby appoints Paxton R. Guymon, Esq., of York Howell & Guymon, 6405 South 3000 East, #150, Salt Lake City, Utah 84121, as trustee for the purposes of exercising the power of sale in connection with non-judicial foreclosures as provided in Title 57, Chapter 1 Utah Code Ann. and made applicable hereto by Title 57, Chapter 8a Utah Code Ann.; provided, however, the Association reserves the right to substitute and appoint a successor trustee as provided for in Title 57, Chapter 1 Utah Code Ann. The Declarant hereby conveys and warrants pursuant to Utah Code Ann. Sections 57-1-20 and 57-8a-302 to Paxton R. Guymon, with power of sale, the Lots and Units and all improvements to the Lots and Units for the purpose of securing payment of Assessments under the terms of the Declaration. Each Owner also hereby conveys all of its right, title and interest in its Unit to such trustee, in trust, with a power of sale, to secure each Owner's obligations under the Declaration, including but not limited to the obligation to pay all Assessments and Reinvestment Fees. The Association may, through its duly authorized agents, bid on the Unit at any foreclosure sale and acquire, hold, lease, mortgage and convey the same.

6. **Dispute Resolution; Mandatory Binding Arbitration.** The following provisions are added as Section 13.11 of the Declaration:

### **13.11 Mandatory Dispute Resolution Provisions.**

Notwithstanding any provisions to the contrary in this Declaration or any other document pertaining to the Association or the Project, the following mandatory dispute resolution provisions shall apply:

Statement of Intent. Every Owner is capable of obtaining an inspection and is permitted to perform, or pay someone else to perform, any inspection on any Unit that Owner is purchasing or any aspect of the Project; all prior to purchasing a Unit. Moreover, if any warranty has been provided, it identifies the only items that are warranted by the Declarant. Having had the ability to inspect prior to purchasing a Unit, having received a written warranty if any warranty is provided, and having paid market price for a Unit in the condition it and the Units and Common Area are in at the time of purchase, it is acknowledged that it is unfair and improper to later seek to have the Declarant and/or any subcontractor performing work in the Project to change, upgrade, or add additional work to the Project outside of any express warranty obligation. Moreover, the Owners (by purchasing a Unit) and the Declarant acknowledge and agree that litigation is an undesirable method of resolving disputes and conflicts in that it can be slow, expensive, uncertain, and can often negatively impact the sale value and ability to obtain financing for the purchase of Units for years, unfairly prejudicing those Owners who must or want to sell their Unit during any period when litigation is pending. For this reason, the Owners by purchasing a Unit and the Declarant agree and acknowledge that claims and disputes shall not be pursued through court action, but shall be asserted and resolved only through certain specific alternative dispute resolution mechanisms and only after full disclosure, right to cure periods, and knowing approval of the Owners, as set forth herein. In addition, the Association and the Owners agree that they take ownership and possession of the Units, Common Areas, and Limited Common Areas AS IS, with no warranties of any kind except as otherwise required as a matter of law. The Declarant specifically disclaims any warranties of merchantability, fitness for a particular use, or of habitability, to the full extent allowed by law.

To the fullest extent permitted by law, all claims and disputes of any kind that any Owner or the Association may have involving the Declarant, or any agent, employee, executing officer, manager, affiliate or owner of the Declarant, or any engineer or contractor involved in the design or construction of the Project, which arises from or is in any way related to a Unit, Building, Common Areas and Facilities, Limited Common Areas and Facilities, or any other component of the Project (a "Dispute"), shall be submitted to final and binding arbitration. Binding arbitration shall be the sole remedy for resolving claims and disputes between or involving the Declarant and any Owner or between or involving the Declarant and the Association. Arbitration proceedings shall not be commenced unless the Pre-Arbitration Requirements set forth below have been satisfied in full. Without in any way limiting the foregoing, disputes subject to binding arbitration shall include:

1. Any allegation that a condition in any of the Units, Buildings, Common Areas and Facilities, Limited Common Areas and Facilities is a construction defect;
2. Any disagreement as to whether an alleged construction defect has been corrected;
3. Any disagreement about whether any warranties, including implied warranties, are applicable to the subject matter of any Dispute;
4. Any disagreement as to the enforceability of any warranties alleged to be applicable to the subject matter of any Dispute;
5. Any disagreement about whether any warranty alleged to be applicable to the subject matter of any Dispute has been breached;

6. Any alleged violations of consumer protection, unfair trade practice, or other statutes;
7. Any allegation of negligence, strict liability, fraud, and/or breach of duty of good faith, and all other claims arising in equity or from common law;
8. Any allegation that any condition existing in the Project or created by the Declarant, including construction-related noise, dust, and traffic, is a nuisance;
9. Any disagreement concerning the issues that should be submitted to binding arbitration;
10. Any disagreement concerning the timeliness of performance of any act to be performed by Declarant;
11. Any disagreement as to the payment or reimbursement of any fees associated with binding arbitration;
12. Any other claim or disagreement arising out of or relating to the sale, design, or construction of any of the Units, Buildings, Common Areas and Facilities, Limited Common Areas and Facilities.

**Pre-Arbitration Requirements.** An Owner or the Association may only pursue a claim against the Declarant, to the extent allowed herein or by law after the following efforts of dispute resolution have been completed: (1) Right to Cure: the Owner shall provide to the Declarant a written Notice of Claim (defined below) and permit the Declarant one hundred eighty (180) days to cure or resolve the claim or defect or to try to get the builder or the appropriate subcontractor to cure or resolve the claim or defect, prior to initiating any formal arbitration proceedings; (2) if the dispute is not resolved within the 180-day Right to Cure period, the parties agree to mediate the dispute prior to taking further action or commencing arbitration. If additional, different, or modified claims, damages, calculations, supporting information, or descriptions are added, provided to, or asserted against the Declarant that were not included in any previously submitted Notice of Claim, the Right to Cure period provided for in this section shall immediately apply again and any pending action or proceedings, including any mediation or arbitration, shall be stayed during the 180-day period.

“**Notice of Claim**” shall mean and include the following information: (1) an explanation of the nature of the claim, (2) a specific breakdown and calculation of any alleged damages, (3) a specific description of the claim along with any supporting opinions, information, or factual evidence upon which the claim is based, (4) photographs of any alleged condition, if applicable, (5) samples of any alleged defective conditions or materials, (6) all efforts taken to avoid, mitigate, or minimize the claim or any alleged damages arising therefrom, and (7) the names, phone numbers, and address of each person providing factual information, legal or factual analysis, or legal or factual opinions related to the claim.

If a claim or dispute has not been resolved after satisfying and complying with the above-described "Pre-Arbitration Requirements," then the claimant (Owner or Association) shall have the right to proceed with binding arbitration; however, the Association shall not pursue or commence binding arbitration unless such action is first approved by a majority of the Total Votes of the Association after first obtaining a written opinion from legal counsel advising the Association of the likelihood of success on the merits of the claims, the anticipated costs and legal fees, the anticipated expert witness fees, and the likelihood of recovery if the Association prevails. The written opinion from

legal counsel, addressing these topics, must be provided to all Owners before the formal vote on whether to proceed with binding arbitration. The binding arbitration shall be conducted by a member of the American Arbitration Association's Panel of Construction Arbitrators, or by a different arbitrator or arbitration service provider if mutually approved by the parties. The binding arbitration shall be conducted according to the rules and procedures set forth in the Construction Industry Arbitration Rules promulgated by the American Arbitration Association. The award of the arbitrator shall be final and may be entered as a judgment by any court of competent jurisdiction.

No Attorney Fee Awards. Each party shall bear its own attorney fees and costs (including expert witness costs) for the arbitration. The arbitrator shall not award attorney fees or expert witness fees to the prevailing party. The arbitration filing fee and other arbitration fees shall be divided and paid equally as between the parties.

No Waiver. If any Owner, the Association, or the Declarant files a proceeding in any court to resolve any Dispute, such action shall not constitute a waiver of the right of such party, or a bar to the right of any other party, to seek arbitration of that or any other Dispute and such court shall, upon motion of any party to the proceeding, stay the proceeding before it and direct that such Dispute be arbitrated in accordance with the terms set forth herein.

Waiver of Subrogation Rights. The Association and each Owner waives any right to subrogation against the Declarant and any builder and engineer in the Project. This waiver shall be broadly construed and applied to waive, among other things, any attempt by any insurer of any Owner or of the Association from pursuing or exercising any subrogation rights, whether arising by contract, common law, or otherwise, against the Declarant, the engineer, and builder, and their officers, employees, owners, and representatives. To the full extent permitted by law, the Association and Owners hereby release Declarant, the Project engineer, and builder, their respective officers, employees, owners, and representatives from any and all liability to the Association and 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 or builder, their officers, employees, owners, and representatives. The Association and 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 the Association or any Owner to recover thereunder. The Association and all Owners shall indemnify and defend the Declarant, the builder, 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.

7. **Annexation & Recording.** This Amendment shall be recorded against all of the real property described in Exhibit "A" hereto. If any of the real property described in Exhibit "A" hereto has not previously been annexed into the Project/Association and made subject to the Covenants and the Declaration, the recording of this Amendment against such real property shall serve to annex such property into the Project/Association and subject such property to the terms and provisions of the Covenants and the Declaration, as amended by this Amendment. This provision is intended to satisfy the requirements of Section 2.2 of the Declaration regarding expansion of the Project and recording a written supplement to the Declaration to expand the Project.

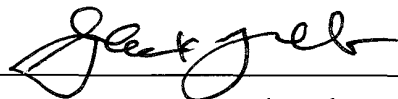
8. **Scope of Amendment.** Except as modified by this Amendment, all provisions of the Declaration (as amended by the First Amendment) shall remain in full force and effect.

9. **Certification.** Pursuant to Section 12.1.2 of the Declaration, the undersigned President and Secretary of the Association, by signing below, do hereby certify that this Amendment has been, and hereby is, duly adopted in accordance with the provisions of the Declaration.

IN WITNESS WHEREOF, the Declarant has executed this Second Amendment as of the date first set forth above.

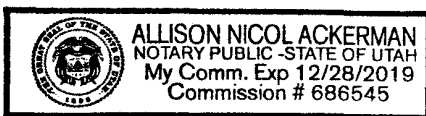
**DECLARANT**

Oakwood Homes of Utah, LLC

By:   
Printed Name: Glen K Lent  
Title: Director - Land

STATE OF UTAH                    )  
  :SS.  
COUNTY OF SALT LAKE    )

The foregoing instrument was acknowledged before me this 22<sup>nd</sup> day of March, 2017, by Glen Lent as the Director-Land of Oakwood Homes of Utah, LLC.



  
NOTARY PUBLIC





**Exhibit A to Second Amendment**

**Property Description**

LEGAL DESCRIPTION (OVERALL)

LOCATED IN THE SOUTHEAST CORNER OF SECTION 11, TOWNSHIP 2 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN.

BEGINNING AT A POINT ALONG THE SOUTH SECTION LINE, SAID POINT BEING NORTH 89°39'43" WEST, 294.40 FEET ALONG THE SOUTH SECTION LINE AND NORTH 00°17'57" EAST 57.00 FEET FROM THE SOUTHEAST CORNER OF SECTION 11, TOWNSHIP 2 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN;

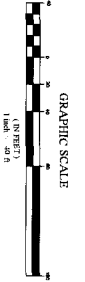
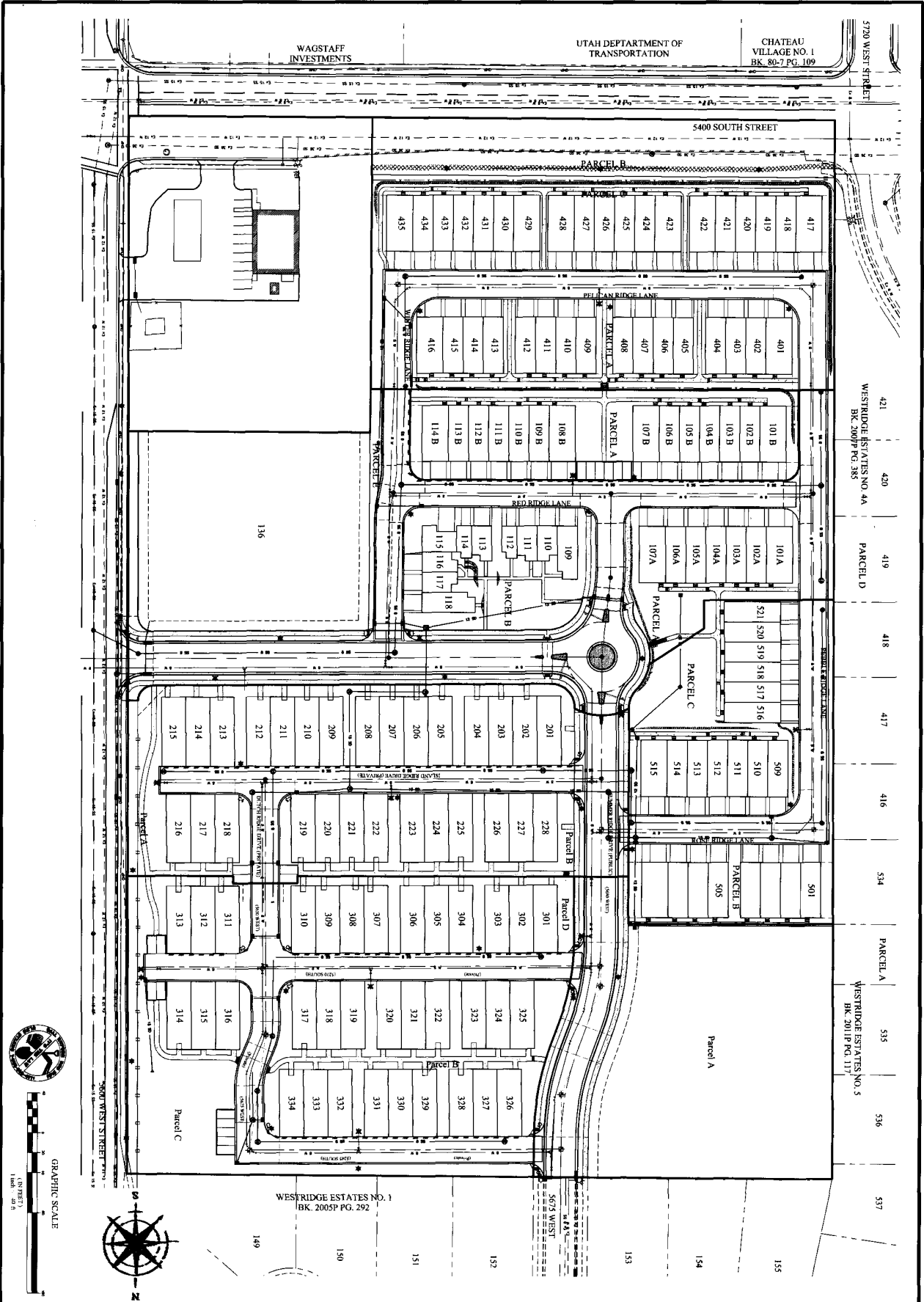
THENCE NORTH 89°39'43" WEST, 458.93 FEET; THENCE TO AND ALONG THE EAST BOUNDARY OF WESTRIDGE ESTATES NO. 4A SUBDIVISION AMENDED NORTH 00°02'00" WEST, 996.01 FEET TO THE SOUTHWEST CORNER OF WESTRIDGE ESTATES NO. 1 SUBDIVISION; THENCE ALONG THE SOUTH BOUNDARY OF SAID WESTRIDGE ESTATES NO. 1 SUBDIVISION SOUTH 89°39'41" EAST, 700.00 FEET; THENCE SOUTH 00°02'00" EAST, 540.56 FEET; THENCE SOUTH 89°43'59" WEST, 237.63 FEET; THENCE 4.94 FEET SOUTHWESTERLY ALONG THE ARC OF A 15.00 RADIUS CURVE TO THE LEFT (CHORD BEARS SOUTH 09°44'22" WEST 4.92 FEET); THENCE SOUTH 00°17'57" WEST, 448.07 FEET TO THE POINT OF BEGINNING.

CONTAINS: 588,301 SQFT OR 13.50 ACRES

PIN 20-11-400-074, 20-11-400-080, 20-11-400-082, 20-11-400-083, 20-11-400-116, 20-11-400-117, 20-11-478-030 through 20-11-478-056, 20-11-478-066 through 20-11-478-072, and 20-11-480-001 through 20-11-480-028

**Exhibit B to Second Amendment**

**Updated Site Plan Map**



Overall Site Plan Exhibit

| REV | DATE | DESCRIPTION |
|-----|------|-------------|
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|     |      |             |
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|     |      |             |
|     |      |             |

**Villages at Westridge**  
 West Valley City, UT  
 Overall Site Plan Exhibit

**FOCUS**  
 ENGINEERING AND SURVEYING, LLC  
 32 WEST CENTER STREET  
 MIDVALE, UTAH 84047 PH: (801) 852-0075  
 www.focusllc.com

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