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South Jordan, UT 84095

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Book - 10759 Pg - 414-424
RASHELLE HOBBS
Recorder, Salt Lake County, UT
SURETY TITLE
BY: eCASH, DEPUTY - EF 11 P.

**FIRST AMENDMENT AND SUPPLEMENT TO THE NEIGHBORHOOD DECLARATION
OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR CHOCOLATE HOMES AT
WESTGATE**

This First Amendment and Supplement to the Neighborhood Declaration of Covenants, Conditions, and Restrictions for Chocolate Homes at Westgate (“Amendment”), is executed on the date set forth below by Alpine Homes, LLC.

RECITALS

- A. The Neighborhood Declaration of Covenants, Conditions, and Restrictions for Chocolate Homes at Westgate was recorded in the Salt Lake County Recorder’s Office on June 1, 2016, as Entry No. 12291652 (the “Declaration”). All capitalized terms in this First Amendment that are not otherwise defined herein shall have the same meaning as in the Declaration.
- B. Pursuant to Section 2.2 of the Declaration, Chocolate Homes at Westgate, LLC and Chocolate Holdings, LLC executed a Declaration of Supplement to Include Additional Land, adding Lots 142 through 161 to the Declaration and the Project (the “Supplement”). The Supplement was recorded in the Salt Lake County Recorder’s Office on September 11, 2018, as Entry No. 12846504.
- C. This amendment affects the real property located in Salt Lake County, Utah, described in Exhibit A.
- D. The original Declarant under the Declaration was Chocolate Homes Westgate, LLC. Alpine Homes, LLC purchased Lots 142 through 161 from Chocolate Homes Westgate, LLC. Pursuant to Section 1.9 of the Declaration, Alpine Homes is the successor Declarant because it “purchase[d] unimproved land in bulk for the purpose of developing it for resale to the public or in bulk to homebuilders.”
- E. Alpine Homes desires to amend certain provisions of the Declaration to provide for the incorporation of Lots 142 through 161 and to incorporate changes to the Project pursuant to the Westgate Aclaime at Independence Subdivision 1st Amended Plat, recorded on October 26, 2018, as Plat Number 12875035.
- F. Additionally, due to a clerical error, the Declaration was not recorded against certain Common Area. Alpine Homes desires to subject the Common Area to the Declaration by recording this Amendment against the Common Area.

G. Pursuant to Section 12.1.3 of the Declaration, Alpine Homes, as Declarant and as owner of Lots 142 through 161, amends the Declaration as witnessed by the signature of its authorized representative.

NOW, THEREFORE, Declarant hereby supplements the Declaration as follows:

1. Incorporation of Declaration. Declarant hereby supplements the Declaration to subject the land in Exhibit A, if not previously subjected, to the Declaration. All land described in Exhibit A shall now be subject to the Declaration as it may be amended, restated, supplemented, or annexed from time to time.

NOW, THEREFORE, Declarant hereby amends the Declaration as follows:

Article 1, Section 1.6 of the Declaration is amended to state the following:

1.6 Common Areas

Common Areas mean the open space and any improvements constructed thereon as shown on the Map. The Common Areas also include Parcel 33-11-379-164 [Albion Meadow Way], Parcel 33-11-379-163 [Private Driveway for Lots 162-181], and an undivided 1/3 interest in Parcel 33-11-379-162 [Wildcat Ridge Drive/Kanarra Creek Lane/Parking Lot], as such Parcels are generally depicted on the Map. The Common Areas may consist of landscaping, irrigation equipment, walkways, and other improvements. The Association owns all Common Areas.

Article 1, Section 1.7 of the Declaration is amended to state the following:

1.6 Common Expenses

Common Expenses mean all sums spent to administer, maintain, or replace the Common Areas except for Parcel 33-11-379-163 [Private Driveway for Lots 162-181]; administer and enforce the Governing Documents; expenses agreed upon as common expenses by a majority of a quorum of Owners; expenses authorized by the Governing Documents or the Community Association Act as common expenses; any other expenses necessary for the common benefit of all of the Owners.

Article 1, Section 1.9 of the Declaration is amended to state the following:

1.9 Declarant

Declarant means Alpine Homes, LLC, its successor or assigns, or any entity who purchases unimproved land in bulk for the purpose of developing it for resale to the public or in bulk to homebuilders.

Article 1, Section 1.15 of the Declaration is amended to state the following:

1.15 Map

Map means the plat map for Westgate Aclaime at Independence Subdivision, on file with the Salt Lake County Recorder and any amendments or supplements thereto or any plat maps recorded for additional phases. It is intended that Map will only refer to lots 142 through 181 and any Common Areas described herein.

Article 1, Section 1.21 of the Declaration is amended to state the following:

1.21 Project

Project means Lots 142 through 181 as shown on the Westgate Aclaime at Independence Subdivision Map and all Common Areas described in this Declaration. The project includes the land, buildings, improvements and structures, easements, rights, appurtenances, and articles of personal property intended for use in connection therewith. Exhibit "A" contains the legal description for the Project.

Article 1, Section 1.25 is hereby added to the Declaration:

1.25 Phase I

Phase I means Lots 162 through 181 and Parcel 33-11-379-163 [Private Driveway for Lots 162-181].

Article 1, Section 1.26 is hereby added to the Declaration:

1.26 Phase II

Phase II means Lots 142 through 161.

Article 1, Section 1.27 is hereby added to the Declaration:

1.26 Phase I Expenses

Phase I Expenses means all sums spent to administer, maintain, or replace Parcel 33-11-379-163 [Private Driveway for Lots 162-181] and the landscaping on Phase I Lots. Phase I Expenses shall also include any other sums spent solely for the benefit of Phase I Lots or Parcel 33-11-379-163.

Article 3, Section 3.2.1 of the Declaration is amended to state the following:

3.2.1 Right of Entry. The Association and any person authorized by the Association may at any reasonable time, and from time to time at reasonable intervals, enter upon Phase I Lots for the purpose of performing maintenance and determining whether or not the Lot is in compliance with the Governing Documents. Requests for entry shall be made in advance. Entry shall be made at a time convenient to the Owner, except in the case of an emergency, when such right shall be immediate. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Lot. The right of entry granted by this subsection is in addition to the Association's enforcement rights and applies only to Phase I Lots.

Article 5 of the Declaration is amended in its entirety to state the following:

5.1 Association Responsibility

The Association shall improve, develop, supervise, manage, operate, examine, insure, inspect, care for, repair, replace, restore and maintain the Common Areas. The Association shall maintain the landscaping on Phase I Lots and all Common Areas, including the irrigation of such landscaping.

The Association shall also be responsible for 33% of the maintenance, repair and upkeep of, and 33% of the property taxes/assessments pertaining to, Parcel 33-11-379-162 [Wildcat Ridge Drive/Kanarra Creek Lane/Parking Lot]; and 100% of the maintenance, repair and upkeep of, and 100% of the property taxes/assessments pertaining to, Parcel 33-11-379-164 [Albion Meadow Way], and Parcel 33-11-379-163 [Private Driveway for Lots 162-181].

The Board, after notice and opportunity for hearing, or in the case of an emergency immediately, may assume the maintenance responsibility over any Lot, including Phase I and Phase II Lots, if, in the opinion of the Board, the Owner is unwilling or unable to adequately provide such maintenance. Should the Board exercise its right under this provision, it shall not be liable for trespass or nuisance and shall have the right to levy an Individual Assessment to recover its maintenance costs.

5.2 Owner Responsibility

Except as otherwise provided in the Governing Documents, all maintenance, repair, and replacement of the Living Units, Lots, and improvements shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in good repair and in accordance with the Governing Documents. Owners of Lots in Phase II are expressly responsible to maintain the landscaping on their Lots, including the irrigation of such landscaping.

Article 6 of the Declaration is amended in its entirety to state the following:

6.1 Covenant for Assessment

By accepting a deed or other conveyance, each Owner covenants and agrees to pay the Association all regular assessments, special assessments, supplemental assessments, individual assessments, late penalties, and collection costs (including attorney's fees) whether or not a lawsuit is commenced. No Owner may exempt themselves from liability for assessments by abandonment of their Lot, failure of the Association to maintain the Common Areas, or non-use of the Common Areas. Except for foreclosures, the personal obligation for unpaid assessments, late fees, interest, and collection costs, including attorney's fees, shall pass to the successor in title. A successor in title is entitled to a statement from the Association setting forth the amounts due by the prior owner. The amounts set forth in the statement shall be binding upon the Association. If an Owner loses their Lot to foreclosure or voluntarily conveys it, they shall remain personally liable for unpaid assessments, late fees, interest, and collection costs (including attorney's fees).

6.2 Declarant's Covenant for Assessments

Declarant shall not be obligated to pay assessments on any Lot owned by it. Assessments against a Lot shall begin once Declarant transfers the Lot to an Owner that intends to use the Lot for residential purposes, whether they live in the Lot themselves or rent the Lot to tenants in accordance with the Governing Documents.

6.3 Annual Budget

The Board shall prepare an annual budget for the Association. The annual budget shall include two separate categories: Common Expenses and Phase I Expenses. The annual budget shall provide for all Common Expenses and Phase I Expenses, and for Common Expense reserves and Phase I Expense reserves. . If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect.

6.4 Reserve Account

The Association shall establish a reserve account or accounts to fund long-term maintenance and replacement items. The Association shall either establish two separate reserve accounts or maintain separate accounting in one account for long-term maintenance and replacement of items that qualify as Common Expenses and those that are Phase I Expenses. The Board shall use reasonable efforts, subject to the Owners' rights under the Community Associations Act, to fund the reserve account or accounts. The reserve account intended for Common Expenses shall be funded by all Owners. The reserve account for items that are Phase I Expenses shall be funded solely by Owners of Phase I Lots. The Board shall not be personally liable for failure to fund the reserve unless gross negligence or intentional misconduct is proven in a court of law.

6.5 Regular Assessment

Regular assessments shall cover all items on the annual budget. Common Expenses and Common Expense reserves shall be split equally between all Lots. Phase I Expenses and Phase I Expense reserves shall be split equally between all Phase I Lots. Phase II Lots shall not be assessed with any portion of Phase I Expenses or Phase I Expense reserves.

The Association may collect the regular assessment on an annual basis, semi-annual basis, quarterly basis, or monthly basis. Written notice of the regular assessment amount and payment schedule shall be sent to Owners at least 30 days in advance of the beginning of the fiscal year for which the regular assessment will be due. Apart from the initial notice of regular assessment, the Association is not obligated to send periodic invoices for regular assessments. If the Board fails to adjust a regular assessment, the amount of the last regular assessment and payment schedule will continue in effect, whether or not notice is sent.

6.6 Special Assessment

The Association may levy a special assessment for the purpose of defraying in whole or in part the cost of any construction, reconstruction, maintenance, repair, or replacement of the Common Areas or exteriors of Lots. The Association may levy a special assessment up to 50% of the annual budget without approval from the Owners. If a special assessment exceeds 50% of the annual budget, it must be approved by a majority of a quorum of Owners.

Special assessments for Common Expenses shall be split equally between all Lots. Special assessments for Phase I Expenses shall be split equally between only Phase I Lots.

6.7 Supplemental Assessment

If the regular assessments are inadequate to pay the Common Expenses and/or Phase I Expenses, the Board shall determine the amount of the shortfall. Once the amount of the shortfall is determined, the Board shall adopt a supplemental budget with separate categories for Common Expenses and Phase I Expenses. The Association may levy a supplemental assessment to fund the supplemental budget. The Association may levy a supplemental assessment up to 50% of the original annual budget without approval from the Owners. If a supplemental assessment exceeds 50% of the original annual budget, it must be approved by a majority of a quorum of Owners.

Supplemental assessments for Common Expenses shall be split equally between all Lots. Supplemental assessments for Phase I Expenses shall be split equally between only Phase I Lots.

6.8 Individual Assessment

Any expenses attributable to less than all the Lots may be assessed exclusively against the affected Lots. Individual assessments include, without limitation:

6.8.1 Assessments levied against a Lot to reimburse the Association for costs incurred in correcting a violation of the Governing Documents;

6.8.2 Fines, late fees, interest, collection costs (including attorney's fees);

6.8.3 Reinvestment fees due at the time a Lot transfers to a new Owner. The amount of the reinvestment fee shall be set by the board and shall not exceed ½% of the purchase price of the Lot. In the absence of another amount, the reinvestment fee shall be ½% of the purchase price of the Lot;

6.8.4 Services provided to a Lot due to an Owner's failure to maintain, for emergency repairs, or to protect the health, safety, and welfare of adjoining Lots and Common Areas; and

6.8.5 Any charge described as an individual assessment by the Governing Documents.

6.9 WADRC Assessments

Owners shall pay any and all assessments levied by the WADRC as allowed by the Master Governing Documents.

6.10 Apportionment of Assessments

Regular, special, and supplemental assessments will be apportioned equally among the Lots, except that Phase I Expenses and reserves shall be assessed solely against Phase I Lots, or as otherwise provided in the Governing Documents. Individual assessments shall be apportioned exclusively to the Lots benefitted or affected.

6.11 Nonpayment of Assessment

Assessments not paid within 10 days after the due date established by the Board will be late and subject to interest at 18% per annum on any delinquent balance and a late fee established by rule. Late fees may only be charged once per missed payment.

6.12 Application of Payments

Payments shall be credited first to collection costs (including attorney's fees), then to interest and late fees, then to the oldest assessments, then the most recent assessments.

6.13 Acceleration

If an Owner fails to pay their assessments for 61 days or more, the Board may elect to accelerate the remainder of the Assessments due that year.

6.14 Suspension of Voting Rights

If an Owner has a delinquent assessment balance, the Association may suspend their right to vote.

6.15 Lien for Assessment

All assessments, late fees, interest, and collection costs (including attorney's fees) not timely paid shall be a charge and continuing lien upon each Lot against which the assessment is made. The Association shall file a notice of lien with the county recorder as evidence of nonpayment.

6.16 Enforcement of Lien

Without waiving its right to personally pursue an Owner for unpaid assessments, the Association may foreclose its lien in the same manner as deeds of trust, mortgages, or any other manner permitted by Utah law.

6.17 Appointment of Trustee

The Owners hereby convey and warrant pursuant to U.C.A. Sections 57-1-20 and 57-8a-402 to a member of the Utah State Bar, with power of sale, the Lot and all improvements to the Lot for the purpose of securing payment of assessments under the terms of the Declaration.

6.18 Subordination of Lien

A lien for assessments shall be subordinate to a first Mortgage now or hereafter placed upon a Lot. The sale of a Lot pursuant to foreclosure of a first Mortgage shall extinguish the lien for assessments which became due prior to the foreclosure sale. A foreclosure will not relieve the purchaser's obligation to pay six months of assessments, late fees, and penalties.

Article 7, Section 7.19 of the Declaration is amended to state the following:

7.19 Alternative Energy Solutions

After receiving approval from the Association as to the type, appearance, and location, an Owner may install alternative energy solutions on their Lot. The Association may not restrict the installation of a solar energy system's size, location, or manner of placement unless the restriction complies with the Community Association Act.

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IN WITNESS WHEREOF, the undersigned executes this First Amendment to the Neighborhood Declaration of Covenants, Conditions, and Restrictions for Chocolate Homes at Westgate and certifies that Declarant has approved this amendment.

Alpine Homes, LLC

[Signature]
By: S Ross Mitchell
Its: Vice President

3/8/2019
Date

STATE OF Utah)

County of Salt Lake) :SS

On this 8 day of March, 2019, 2018, before me, personally appeared Ross Mitchell, who, being first duly sworn, did prove on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument and did say that he is the authorized agent of Alpine Homes, LLC, and who signed the preceding document in my presence.

[Signature]
Notary Public

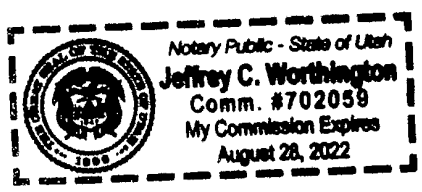


Exhibit "A"
LEGAL DESCRIPTION

Lots

Lots 142 through 181 of Westgate Aclaime at Independence Subdivision as said lots are shown on the official map thereof, as amended or supplemented, on file with the Salt Lake County Recorder, Utah.

Parcel Nos. 33-11-379-120 through 33-11-379-150

Wildcat Ridge Drive/Kanarra Creek Lane/Parking Lot

BEG N 89°40'00" E 1919.10 FT & N 343.07 FT FR THE SW COR OF SEC 11, T4S, R1W, SLM; NE'LY ALG A 23.00 FT RADIUS CURVE TO THE L 13.63 FT (CHD N 16°58'53" E 13.43 FT); N 342.70 FT; NE'LY ALG A 66.08 FT RADIUS CURVE TO THE R 19.29 FT (CHD N 08°20'44" E 19.22 FT); N 89°32'43" E 4.84 FT; NW'LY ALG A 15.00 FT RADIUS CURVE TO THE L 17.00 FT (CHD N 29°04'18" W 16.10 FT); NW'LY ALG A 35.00 FT RADIUS CURVE TO THE L 14.26 FT (CHD N 73°12'04" W 14.16 FT); S 00°27'17" E 18.33 FT; S 89°32'43" W 47.50 FT; N 00°27'17" W 18.50 FT; S 89°32'43" W 30.86 FT; S 00°27'56" E 17.99 FT; S 89°31'53" W 32.00 FT; N 00°27'17" W 18.00 FT; S 89°32'43" W 11.50 FT; N 00°27'17" W 30.00 FT; N 89°32'43" E 16.99 FT; N 00°27'17" W 18.00 FT; N 89°32'43" E 87.00 FT; S 00°27'27" E 18.00 FT; N 89°32'43" E 14.41 FT; SE'LY ALG A 65.00 FT RADIUS CURVE TO THE R 41.41 FT (CHD S 72°14'51" E 40.71 FT); SE'LY ALG A 15.00 FT RADIUS CURVE TO THE L 16.75 FT (CHD S 85°58'39" E 15.89 FT); NE'LY ALG A 61.00 FT RADIUS CURVE TO THE R 29.27 FT (CHD N 75°47'18" E 28.99 FT); N 89°32'07" E 68.30 FT; NE'LY ALG A 4.50 FT RADIUS CURVE TO THE L 7.07 FT (CHD N 44°32'47" E 6.36 FT); N 00°26'33" W 15.55 FT; N 89°33'27" E 131.00 FT; S 00°26'33" E 15.49 FT; SE'LY ALG A 4.50 FT RADIUS CURVE TO THE L 7.07 FT (CHD S 45°27'13" E 6.37 FT); N 89°32'07" E 161.65 FT; NE'LY ALG A 28.00 FT RADIUS CURVE TO THE L 13.29 FT (CHD N 75°56'08" E 13.17 FT); S 51.18 FT; NW'LY ALG A 10.00 FT RADIUS CURVE TO THE L 15.98 FT (CHD N 45°46'20" W 14.33 FT); S 89°32'07" W 388.11 FT; SW'LY ALG A 28.00 FT RADIUS CURVE TO THE L 26.51 FT (CHD S 27°07'13" W 25.53 FT); S 342.09 FT; SE'LY ALG A 28.00 FT RADIUS CURVE TO THE L 13.74 FT (CHD S 14°03'34" E 13.60 FT); S 89°32'43" W 45.23 FT TO BEG. (BEING THE PRIVATE STREETS WILDCAT RIDGE LN & KANARRA CREEK LN WITHIN WESTGATE ACLAIMÉ AT INDEPENDENCE SUBDIVISION) 0.94 AC M OR L.

Parcel No. 33-11-379-162

Private Driveway for Lots 162-181

BEG N 89°40'00" E 1961.03 FT & N 626.17 FT FR THE SW COR OF SEC 11, T4S, R1W, SLM; N 20.00 FT; N 89°32'43" E 410.01 FT; S 20.00 FT; S 89°32'43" W 410.01 FT TO BEG. (BEING A PRIVATE DRIVEWAY WITHIN WESTGATE ACLAIMÉ AT INDEPENDENCE SUBDIVISION). 0.19 AC M OR L.

Parcel No. 33-11-379-163

Albion Meadow Way

BEG N 89°40'00" E 1961.03 FT & N 485.39 FT FR THE SW COR OF SEC 11, T4S, R1W, SLM; N 89.00 FT; SE'LY ALG A 28.00 FT RADIUS CURVE TO THE L 27.21 FT (CHD S 27°50'29" E 26.15 FT); N 89°32'43" E 384.98 FT; NE'LY ALG A 23.00 FT RADIUS CURVE TO THE L 13.63 FT (CHD N 72°33'50" E 13.43 FT); S 45.23 FT; NW'LY ALG A 28.00 FT RADIUS CURVE TO THE L 13.74 FT (CHD N 76°23'43" W 13.60 FT); S 89°32'43" W 369.01 FT; SW'LY ALG A 28.00 FT RADIUS CURVE TO THE L 43.76 FT (CHD S 44°46'22" W 39.44 FT) TO BEG. (BEING THE PRIVATE STREET ALBION MEADOW WY WITHIN WESTGATE ACLAIME AT INDEPENDENCE SUBDIVISION). 0.36 AC M OR L.

Parcel No. 33-11-379-164