

When Recorded, Return To:

Craig T. Jenson
SNELL & WILMER L.L.P.
Gateway Tower West
15 West South Temple, Suite 1200
Salt Lake City, Utah 84101

Affects Tax Parcel Nos.: 58-021-0394;
58-021-0249

DESIGNATION OF BUILDER AND CERTIFICATION OF BUILDER RIGHTS
(Wildflower Master Planned Community)

This DESIGNATION OF BUILDER AND CERTIFICATION OF BUILDER RIGHTS (this "*Agreement*"), dated as of November 10, 2021 ("*Effective Date*"), is made by and between **WILDFLOWER DEVELOPER, LLC**, a Utah limited liability company ("*Declarant*"), and **TOLL SOUTHWEST LLC**, a Delaware limited liability company ("*Toll*").

RECITALS

A. Tanuki Investments, LLC, a Utah limited liability company ("*Tanuki*") and Toll entered into that certain Purchase and Sale Agreement and Escrow Instructions dated July 21, 2021 (as the same may be amended from time to time, the "*Purchase Agreement*"), pursuant to which Tanuki agreed to sell and convey to Toll certain real property located in Utah County, State of Utah, more particularly described in **Exhibit A** attached hereto (the "*Property*").

B. The Property is subject to that certain Master Declaration of Covenants, Conditions, and Restrictions for Wildflower recorded on February 23, 2018 as Entry No. 17973:2018 in the Utah County Recorder's Office, State of Utah, as amended by that certain First Amendment to the Master Declaration of Covenants, Conditions, and Restrictions for Wildflower recorded on December 11, 2020 as Entry No. 198101:2020 in the Utah County Recorder's Office, State of Utah (as amended, the "*Declaration*"). Declarant is the "*Declarant*" under the Declaration. Capitalized terms used but not defined herein shall have the same meanings as set forth in the Declaration.

C. Declarant and Toll are entering into this Agreement to (1) provide for the designation and confirmation that Toll is a "*Builder*" under the Declaration and is entitled to all of the rights of a "*Builder*" under the Declaration, and (2) certify certain rights of Toll as a Builder under the Declaration with respect to the Property, and only as expressly set forth herein, under the Declaration.

D. The execution and delivery of this Agreement is a requirement under the Purchase Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the recitals set forth above and incorporated herein, and for other good and valuable consideration, the parties agree as follows:

1. Designation of Builder and Certification.

(a) Builder. As of the Effective Date, Declarant hereby (i) designates and confirms that Toll is a “Builder” under the Declaration, and (ii) to the extent applicable under the Declaration, Declarant assigns and confirms any attendant rights that relate to a “Builder” under the Declaration to Toll, and delegates to Toll all of the duties, obligations, and liabilities of a “Builder” under the Declaration.

(b) Builder Rights. In accordance with Sections 1.8, 10.4(f), and 15.7 of the Declaration, among others, Declarant hereby certifies and affirms that Toll, as Builder, and its respective successors and assigns, on a non-exclusive basis and solely with respect to the Property, shall have the following rights or exemptions as Declarant under the Declaration, without the obligation to exercise such rights or exemptions:

The control, power, rights, and authority to develop, construct, market, and sell the Property, including, without limitation, the right to erect and maintain temporary structures, trailers, sales offices, model Dwellings, or improvements, but not including signage without Declarant’s approval in accordance with the Declaration, necessary or convenient, and in compliance with applicable laws, for the development, marketing, or sale of the Property, as discussed in Sections 7.13, 10.4, 15.3 (including, without limitation, the right to transfer Common Areas to the Master Association), and 15.10 of the Declaration, among others;

Except for the limited and specific rights assigned and obligations delegated under this Agreement, Toll shall have no rights, liabilities, or obligations as Builder under the Declaration. Further, the rights, liabilities, and obligations designated or assigned to Toll under this Agreement shall be limited to the Property, and Toll shall have no liabilities or obligations as Builder with respect to any other real property covered by the Declaration.

2. Acceptance and Assumption. Toll hereby accepts the designation, confirmation, and assignments set forth in Section 1 above, and assumes and promises to perform all of the duties, obligations, and liabilities of “Builder”, as applicable, under the Declaration.

3. Declarant Retention of Rights. Declarant shall retain all rights, obligations, and liabilities as Declarant under the Declaration.

4. Term. This Agreement shall commence on the Effective Date and shall continue until such time as Toll no longer has any interest in the Property.

5. Non-Interference. Each party agrees not to take any action that could reasonably be expected to have a material and adverse impact on the other party’s exercise of its Builder’s or Declarant’s rights.

6. Limited Assignments. Declarant shall have no right to transfer or further assign, for security or other purposes, its rights assigned hereunder without Toll’s prior written consent.

7. Choice of Law. This Agreement shall be construed, interpreted, enforced and governed by and in accordance with the laws of the State of Utah, excluding the principles thereof governing conflicts of law.

8. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of such counterparts shall together constitute one and the same instrument.

[SIGNATURE PAGE(S) FOLLOW]

EXECUTED as of the Effective Date.

DECLARANT:

WILDFLOWER DEVELOPER, LLC, a Utah limited liability company

By: _____
Name: Nathan Shipp
Title: Manager

STATE OF Utah)
: ss.
COUNTY OF Salt Lake)

The foregoing instrument was acknowledged before me this 9th day of November, 2021 by Nathan Shipp, the Manager of **WILDFLOWER DEVELOPER, LLC**, a Utah limited liability company, for and on behalf of said company.



Diane G Kunz
Notary Public
Residing at: Salt Lake

TOLL:

TOLL SOUTHWEST LLC, a Delaware limited liability company

By: _____
 Name: Benjamin Gillen
 Title: Vice President

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

The foregoing instrument was acknowledged before me this 9th day of November, 2021 by Benjamin Gillen, the Vice President of TOLL SOUTHWEST LLC, a Delaware limited liability company, for and on behalf of said company.



1 [Signature]
 Notary Public
 Residing at: Salt Lake

**EXHIBIT A
PROPERTY DESCRIPTION**

PARCEL 1:

Proposed WILDFLOWER VILLAGE 4, PLAT K-1, being more particularly described as follows:

A portion of the Southwest quarter and the Northwest quarter of Section 3, and the Northwest quarter of Section 10, Township 5 South, Range 1 West, Salt Lake Base and Meridian, described as follows:

Beginning at a point located North 89°32'24" West along the section line 1309.47 feet and North 211.26 feet from the South quarter corner of Section 3, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence South 51°26'41" West 280.86 feet; thence South 34°41'14" East 197.57 feet; thence South 55°18'46" West 29.86 feet; thence South 34°41'14" East 250.52 feet; thence along the arc of a non-tangent curve to the right 20.50 feet with a radius of 4179.00 feet through a central angle of 00°16'52", chord: North 16°06'44" East 20.50 feet; thence along the arc of a curve to the right 198.97 feet with a radius of 129.50 feet through a central angle of 88°01'47", chord: North 60°16'03" East 179.97 feet; thence along the arc of a curve to the right 56.07 feet with a radius of 1029.50 feet through a central angle of 03°07'13", chord: South 74°09'26" East 56.06 feet to the Westerly right-of-way line of the Mountain View Corridor; thence along said Westerly right-of-way line the following two (2) courses: the arc of a non-tangent curve to the left 619.48 feet with a radius of 4000.00 feet through a central angle of 08°52'24", chord: South 13°40'33" West 618.86 feet; thence South 09°14'21" West 126.21 feet; thence South 89°37'56" West 641.04 feet; thence North 05°03'04" East 1287.02 feet; thence North 84°56'56" West 192.46 feet; thence along the arc of a non-tangent curve to the right 15.61 feet with a radius of 226.31 feet through a central angle of 03°57'03", chord: North 03°04'32" East 15.60 feet; thence North 05°03'04" East 293.82 feet; thence South 84°56'52" East 195.47 feet; thence South 05°06'14" West 21.91 feet; thence South 85°19'19" East 200.71 feet; thence North 04°57'34" East 199.94 feet; thence North 85°06'52" West 243.04 feet; thence North 05°03'04" East 736.36 feet; thence North 84°56'56" West 164.80 feet; thence North 05°03'04" East 2461.03 feet; thence North 89°52'43" East 238.84 feet; thence South 05°03'04" West 1024.33 feet; thence South 12°34'22" West 196.07 feet; thence North 55°42'48" East 165.56 feet; thence North 86°47'27" East 59.00 feet; thence along the arc of a non-tangent curve to the right 21.38 feet with a radius of 170.50 feet through a central angle of 07°11'08", chord: North 00°23'01" East 21.37 feet; thence along the arc of a curve to the right 19.07 feet with a radius of 12.00 feet through a central angle of 91°04'29", chord: North 49°30'49" East 17.13 feet; thence South 84°56'56" East 180.08 feet; thence South 10°42'09" East 67.98 feet; thence South 56°51'25" East 106.46 feet; thence South 32°20'06" East 176.57 feet; thence South 05°03'04" West 563.04 feet; thence South 16°13'59" West 144.88 feet; thence South 34°38'23" West 147.67 feet; thence South 61°43'13" West 329.60 feet; thence South 23°44'44" West 97.10 feet; thence North 70°41'06" West 23.58 feet; thence South 00°18'06" West 42.05 feet; thence South 08°43'02" East 179.72 feet; thence along the arc of a non-tangent curve to the right 88.10 feet with a radius of 179.50 feet through a central angle of 28°07'11", chord: North 67°13'22" East 87.21 feet; thence North 81°16'58" East 51.09 feet; thence South 08°43'02" East 148.24 feet; thence South 34°23'52" East 160.98 feet; thence South 16°14'34" East 76.67 feet; thence South 05°05'22" East 510.95 feet; thence South 05°57'25" West 50.63 feet; thence South 30°43'11" West 294.32 feet to the point of beginning.

PARCEL 2:

Proposed WILDFLOWER VILLAGE 4, PLAT K-2, being more particularly described as follows:

A portion of the Southwest quarter and the Northwest quarter of Section 3, and the Northwest quarter of Section 10, Township 5 South, Range 1 West, Salt Lake Base and Meridian, described as follows:

Beginning at a point located North 89°32'24" West along the section line 1529.12 feet and North 34.44 feet from the South quarter corner of Section 3, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence North 51°26'41" East 280.86 feet; thence North 30°43'11" East 294.32 feet; thence North 05°57'25" East 50.63 feet; thence North 05°05'22" West 510.95 feet; thence North 16°14'34" West 76.67 feet; thence North 34°23'52" West 160.98 feet; thence North 08°43'02" West 148.24 feet; thence South 81°16'58" West 51.09 feet; thence along the arc of a curve to the left 88.10 feet with a radius of 179.50 feet through a central angle of 28°07'11", chord: South 67°13'22" West 87.21 feet; thence North 08°43'02" West 179.72 feet; thence North 00°18'06" East 42.05 feet; thence South 70°41'06" East 23.58 feet; thence North 23°44'44" East 97.10 feet; thence North 61°43'13" East 329.60 feet; thence North 34°38'23" East 147.67 feet; thence North 16°13'59" East 144.88 feet; thence North 05°03'04" East 563.04 feet; thence North 32°20'06" West 176.57 feet; thence North 56°51'25" West 106.46 feet; thence North 10°42'09" West 67.98 feet; thence South 84°56'56" East 140.63 feet; thence along the arc of a curve to the right 42.60 feet with a radius of 220.50 feet through a central angle of 11°04'09", chord: South 79°24'52" East 42.53 feet; thence South 16°07'13" West 100.00 feet; thence South 61°37'19" East 51.17 feet; thence South 37°06'24" East 51.17 feet; thence South 13°18'08" East 51.03 feet; thence South 05°11'47" West 150.00 feet; thence South 84°48'13" East 100.00 feet; thence South 05°11'47" West 380.49 feet; thence along the arc of a curve to the left 365.21 feet with a radius of 529.50 feet through a central angle of 39°31'08", chord: South 14°33'47" East 358.02 feet to a point of reverse curve; thence along the arc of a curve to the right 690.22 feet with a radius of 920.50 feet through a central angle of 42°57'44", chord: South 12°50'29" East 674.17 feet to a point of reverse curve; thence along the arc of a curve to the left 48.21 feet with a radius of 279.50 feet through a central angle of 09°52'59", chord: South 03°41'54" West 48.15 feet; thence South 01°14'35" East 59.01 feet; thence along the arc of a curve to the left 192.40 feet with a radius of 229.50 feet through a central angle of 48°02'00", chord: South 25°15'36" East 186.81 feet to the Westerly right-of-way line of the Mountain View Corridor; thence along said Westerly right-of-way line the following three (3) courses: the arc of a non-tangent curve to the right 65.78 feet with a radius of 1085.00 feet through a central angle of 03°28'26", chord: South 28°19'07" West 65.77 feet; thence South 30°03'20" West 320.30 feet; thence along the arc of a curve to the left 833.78 feet with a radius of 3993.75 feet through a central angle of 11°57'42", chord: South 24°05'03" West 832.27 feet; thence along the arc of a non-tangent curve to the left 56.07 feet with a radius of 1029.50 feet through a central angle of 03°07'13", chord: North 74°09'26" West 56.06 feet; thence along the arc of a curve to the left 198.97 feet with a radius of 129.50 feet through a central angle of 88°01'47", chord: South 60°16'03" West 179.97 feet; thence along the arc of a curve to the left 20.50 feet with a radius of 4179.00 feet through a central angle of 00°16'52", chord: South 16°06'44" West 20.50 feet; thence North 34°41'14" West 250.52 feet; thence North 55°18'46" East 29.86 feet; thence North 34°41'14" West 197.57 feet to the point of beginning.