

DOC # 20210044583

Restrictive Page 1 of 11
Gary Christensen Washington County Recorder
06/29/2021 02:10:15 PM Fee \$ 40.00
By EAGLE GATE TITLE



When recorded, mail to:

Shawn T. Farris
Farris & Utey, PC
2107 W. Sunset Blvd, 2nd Floor
St. George, UT 84770

Parcel No. 1-6-2-8-43101

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
RED MOUNTAIN TERRACE SUBDIVISION**

THIS DECLARATION of covenants, conditions and restrictions (hereinafter "Declaration") is made as of this ____ day of May, 2021 ("Effective Date") by B&V Investments, LLC, a Utah limited liability company (hereinafter referred to as "Declarant").

RECITALS

- A. Declarant is the owner of certain real property (hereinafter described with more particularity and referred to as the "Property") located in Washington County, Utah;
- B. The Property is more particularly described as:

BEGINNING AT A POINT BEING S 89°17'14" E 1314.54 FEET ALONG THE NORTH LINE OF SECTION 8, TOWNSHIP 42 SOUTH, RANGE 16 WEST, SALT LAKE BASE AND MERIDIAN, AND S 0°42'49" W 1331.08 FEET FROM THE NORTHWEST CORNER OF SAID SECTION, POINT BEING ON THE WEST RIGHT OF WAY OF 200 EAST STREET, AND RUNNING THENCE S 0°42'49" W 320.69 FEET ALONG SAID LINE; THENCE N 82°49'33" W 244.80 FEET; THENCE N 22°16'47" W 45.54 FEET; THENCE N 89°33'17" W 85.00 FEET; THENCE N 0°42'49" E 100.00 FEET; THENCE N 89°33'17" W 134.09 FEET, TO THE POINT OF A 25.00 FOOT RADIUS CURVE TO THE LEFT; THENCE ALONG THE ARC OF SAID CURVE 29.25 FEET THROUGH A CENTRAL ANGLE OF 67°01'53"; THENCE S 68°03'18" W 63.26 FEET, TO A POINT ON A 20.00 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT, WITH A RADIUS WHICH BEARS S 33°01'30" W; THENCE ALONG THE ARC OF SAID CURVE 10.77 FEET THROUGH A CENTRAL ANGLE OF 30°50'27", TO THE POINT OF A 53.00 FOOT RADIUS REVERSE CURVE TO THE RIGHT; THENCE ALONG THE ARC OF SAID CURVE 129.11 FEET THROUGH A CENTRAL ANGLE OF 139°34'11"; THENCE N 38°14'46" W 117.69 FEET, TO A POINT ON THE NORTH 1/16TH LINE OF SAID SECTION 8; THENCE S 89°33'17" E 677.59 FEET ALONG SAID LINE, TO THE POINT OF BEGINNING.

CONTAINS 146,850 SQ FT OR 3.37 ACRES MORE OR LESS

- C. Any conveyance of the Property is conveyed subject to the covenants, conditions, restrictions, reservations, liens, charges, and assessments as provided in this Declaration, as may be amended from time to time; and

D. The Declarant possesses the right and power to amend this Declaration from time to time as provided and in the manner provided by this Declaration.

NOW THEREFORE, Declarant hereby states and declares as follows:

DECLARATION

Declarant hereby incorporates the Recitals set forth above by reference as though fully set forth herein. Declarant declares the Property shall be held, sold, transferred and conveyed subject to the following covenants, conditions, restrictions, easements, liens, reservations, assessments and to the final plat of the Property recorded in the county recorder's office. All of the covenants, conditions, restrictions, easements, liens, reservations, assessments and the final plat shall be construed so as to run with the Property and shall be binding upon all parties having any right, title or interest in the Property, or any portion of the Property, shall inure to the benefit of each said parties and the same shall be binding upon their heirs, assignees, successors and the like.

ARTICLE I DEFINITIONS

The terms and definitions shall apply to this Declaration. Any words and phrases which are not defined in this Declaration shall be given their ordinary and plain meanings.

Section 1. The term "Common Area" shall mean all portions of the Property, including the improvements thereto, designated on the final, recorded plat, and any amendments thereto, of the Property for the common use and enjoyment of the parties owning portions of the Property and not dedicated for use by the general public. However, any dedicated public streets which are identified on the final, recorded plat, as amended, are specifically exempted from the designation and definition of the Common Area.

Section 2. The term "Conveyance" shall mean an actual conveyance of fee title to a Lot as it appears upon the final, recorded plat, as amended, to any owner by a warranty deed, special warranty deed, quit-claim deed, installment sales contract or other document which conveys legal title.

Section 3. The term "Declarant" shall mean B&V Investments, LLC, a Utah limited liability company, its successors in interest and assignee, if such successors in interest or assignee are evidenced by written agreement by which the rights and interests of the Declarant are acquired by the successor or assignee.

Section 4. The term "Expandable Property" shall mean and refer to parcels of real property which are contiguous to the Property and which may expand and incorporate the Property to one or more phases of this development.

Section 6. The term “Home” shall mean and refer to any single-family residential dwelling constructed on a portion of the Property. Multiple-family dwellings are specifically not included in this definition and multiple-family dwellings may not be constructed on the Property or any portion thereof.

Section 7. The terms “Lot” and “Lots” shall mean and refer to any plot of land shown upon the final, recorded plat of the Property but, specifically excepting Common Area and any dedicated public streets.

Section 8. The term “Mortgagee” shall mean and refer to any person or entity named as a mortgagee or beneficiary of a deed of trust which is recorded with the county recorder’s office of Washington County, Utah against a Lot, multiple Lots or other portion of the Property.

Section 9. The term “Owner” shall mean and refer to the record owner of any Lot. The term “Owner” shall include all individuals, entities, trusts or others whose name appears on the title and/or who holds any interest, whether as a record title holder or otherwise in the Lot. The term “Owner” also includes, but is not limited to, contract buyers, but excludes those having an interest merely as a security interest or beneficial interest for the performance of an obligation secured by the Lot or any portion thereof. The duties, rights, restrictions, covenants, conditions, etc imposed and/or arising from this Declaration are imposed upon each Owner and upon any tenant who holds any interest, whether possessory, equitable, title or otherwise, in a Lot.

Section 10. The terms “Plat” and “Plat Map” shall mean and refer to the final plat, as amended, of the Property which is recorded with the Washington County Recorder’s Office.

Section 11. The term “Property” shall mean and refer to that certain real property hereinbefore described and such additions thereto as may hereafter be subject to this Declaration.

Section 12. The term “Supplementary Declaration” shall mean and refer to any supplementary declaration of covenants, conditions and restrictions, or similar instrument, which extends, modifies or amends the provisions of this Declaration to all or any portion of the Property, including any Expandable Property.

Section 13. The term “Utilities” shall mean public utilities, including, but not limited to, sewer, water, drainage, natural gas, telephone, electricity and cable television.

ARTICLE II PROPERTY RIGHTS

Section 1. Owners’ Easements of Enjoyment. Every Owner of a Lot shall have a right and easement of use and enjoyment in and to the Common Area so long as that use does not unreasonably interfere with the use and enjoyment of the Commons Area by others with right to use and enjoy the same. This Easement is appurtenant to and passes with title to every Lot, subject to the following provisions:

- (a) The granting of easements for public utilities and/or for other public purposes consistent with the intended use of Lot, Property and Common Area;
- (b) The right of the Declarant to seek to abandon, petition, subdivide, encumber, sale or transfer any or part of the Common Area for the benefit of the Lots without any compensation or damage of any kind payable to any Owner;
- (c) The right of the Declarant to take such steps as are reasonably necessary or desirable to protect the Common Area;
- (d) The right of the Declarant to grant and reserve easements, rights-of-way through, under, over and across the Common Area for the installation, maintenance and inspection of lines and appurtenances for public or private utilities; and,
- (e) The right of the county or any other governmental entity or quasi-governmental body having jurisdiction over the Property to access and to have the right of ingress and egress over open spaces and/or Common Area for purposes of providing police and fire protection and providing any other governmental or municipal service.

Section 2. Title to the Common Area. The Declarant retains the right to retain or to convey title to the Common Area subject to any easements, licenses, rights-of-way, liens, encumbrances or the like, enforceable in law or equity.

ARTICLE III SEPARATION WALLS AND/OR FENCES

Section 1. Walls and/or Fences. Declarant may, but without any obligation to do so, construct retaining, landscaping, border and/or other walls and/or fences (collectively "wall or fence") on the Property, Lots and/or Common Area. In the event that any such a wall or fence were constructed by Declarant, Declarant shall thereafter neither have any liability nor obligation to maintain, repair or replace any such walls or fences.

Section 2. Repair and Maintenance. The repair and maintenance of any wall or fence constructed by Declarant or constructed by any Owner of a Lot shall be the responsibility and liability of the Owner(s) of the Lot(s) whose land affects and/or touches any such wall and/or fence.

Section 3. Weatherproofing and Structural Integrity. Any Owner of a Lot, excluding the Declarant, who constructs any such wall or fence shall bear the sole cost of furnishing the necessary protection against weather and structural integrity.

ARTICLE IV LAND RESTRICTIONS

Section 1. Construction Phase. Any and all construction, alterations, remodeling and the

like (hereinafter sometimes collectively and severally referred to as "Construction") shall timely and diligently pursued to completion. All Construction shall conform strictly with all applicable permits, zoning, ordinances and building codes. The Owner(s) of a Lot is responsible for contractors and/or subcontractors employed for any and all Construction. The Owner(s) of a Lot must provide on-site dumpsters during construction and are required to clean up the site daily to maintain a clean worksite during construction. Any debris, trash, discarded construction materials, dirt and/or mud from the construction site or elsewhere, dispersed, directly or indirectly, on the public streets within the Property must be cleaned up within twenty-four (24) hours by the Owner(s) of the Lot. Any concrete damaged or cracked as a result of Construction activities shall be timely repaired and/or replaced within seven (7) calendar days by the Owner(s) of the Lot. The Owner(s) of the Lot on which Construction has affected the lateral or subjacent support, or both, of adjacent Lot shall be responsible for damages proximately caused by such Construction activities. The Owner(s) of Lots shall be responsible for all damage proximately caused by drainage from their Lot to adjacent landowners.

Section 3. Land Use and Restrictions. All Construction on Lots shall be used only for single-family residential purposes. There shall not be any multi-family dwellings constructed on any Lot. There shall not be permitted any commercial use upon any portion thereof except for a home office which complies with all applicable licensing, ordinances and laws. All Construction shall be conducted to avoid endangering the health of the other Owners of the Lots or unreasonably disturbing the quiet enjoyment of any Lot by its Owner(s). Each Owner of a Lot is encouraged to obtain soils tests and recommendations from properly-licensed soils engineers, and to assure that said recommendations are followed in Construction.

Section 4. Prohibited Types of Construction. The following types of construction are prohibited and shall not be erected, situated or otherwise placed on any Lot: A-frame, Geodesic-dome structures, mobile homes or manufactured homes.

Section 5. Landscaping: Within three (3) months after the completion of the Construction (which may be evidenced by the date on which the certificate of occupancy is issued) of any Home upon a Lot, the Owner(s) must have substantially completed the landscaping of the Lot, including erecting retaining walls, fences and landscaping of slopes and terraces. The Lot shall be landscaped appropriately with lawn, trees, shrubs, etc., and all landscaping shall be maintained at a reasonable standard compatible with other homes on the other Lots of the Property. Shrub and tree planting on corner lots shall be located so as not to create a hazard, including visual impairment, for the movement of vehicles along streets. No trees or shrubs shall be planted on any corner.

Section 6. Driveways: Driveways shall be constructed out of concrete, paving stone or brick. No driveway may be constructed or maintained on any Lot which consists of sand, gravel, asphalt, or dirt. All driveways shall be constructed so that there shall be sufficient driveway parking of not less than two (2) motor vehicles on each Lot.

Section 7. Setback and Sideyard Requirements. All buildings and structures shall comply fully with all set back and sideyard requirements prescribed by applicable zoning ordinances.

Unless otherwise mandated by a conflicting applicable building ordinance, for the purpose on this covenant, eaves, steps, and open porches shall not be considered as part of building of the purpose of determining such distances, provided, however, that this shall not be construed to permit any portion of a building, including such eaves, steps of open porches, to encroach upon another lot.

Section 8. Easements: Easements for the installation and maintenance of utilities, drainage facilities and ingress and egress are reserved as shown upon the recorded, final plat, as amended. Within these easements no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow or drainage channels in the easements or which may impede ingress and egress. The easement area of each lot and all improvements in it shall be maintained continuously by the Owner(s) of the lot, except for those improvements for which a public authority or utility company is responsible.

Section 9. Yard Walls and Fences: All yard, boundary and other walls and fences shall be constructed of brick or stone and each of them shall substantially conform in style, color and construction to the entrance walls of the Property. All such fences or walls shall not exceed six (6) feet in height and shall extend beyond the front and/or rear yard setbacks. Where a fence or wall is located along an interior property line separating two lots and there is a difference in grade of the two lots, the fence or wall may be erected or allowed only to maximum height permitted from the grade of the lowest lot. There shall be no chain link, wire, or wood fences erected or maintained upon any Lot. No such fences or walls shall unreasonably interfere with the view from any neighboring Lot. General rules of law and written agreements between owners of Lots shall apply to all such walls and/or fences in relation to construction, repair, maintenance and liability.

Section 10. Lot Maintenance and Cleanliness. Each and every Lot shall be kept at all times and maintained in a clean and attractive manner and condition so as to not detract from the Property and/or other Lots. There shall not be any debris, junk, garbage, inoperable vehicles, chemicals, storage barrels or the like brought, kept or stored upon any Lot. Each Lot, including any vacant Lot, shall be kept and maintained free from refuse, debris, weeds and anything which may be considered a potential fire hazard.

ARTICLE V EASEMENTS

Section 1. Minor Encroachments. Each Lot and the Common Area shall be subject to an easement for encroachment created by construction, repair, shifting, settling or movement, and overhangs as designed or constructed by the Declarant. A valid easement for said encroachment and for the maintenance of same, so long as it stands, shall and does exist.

Section 2. Utilities Easement. There is hereby granted and conveyed to the County, City or other governmental or utility-service provider in which the Property is situated, cable television companies, data communication, water, sewer, satellite companies, telephone

companies, utility companies, and other governmental or quasi-governmental entities, their successors and assigns (hereinafter sometimes collectively referred to as "Utility Providers"), a blanket easement upon, across, over and under all of the Common Area for ingress, egress, installation, replacing, repairing and maintaining all utilities at such location or locations as deemed appropriate by the provider of the utility. It shall be expressly permissible for the Utility Providers to construct and maintain the necessary equipment on the Property and to affix and maintain electrical, cable television, data transmission and/or telephone wires, circuits and conduits on, across and under the Common Area. An easement is further granted to all law enforcement, fire protection, ambulance, trash collection and all similar persons to enter upon Common Area in the performance of their duties. Should any company furnishing a service conveyed by the general easement herein provided request a specific easement by separate recordable document, Declarant shall have the right to grant such easement on said property without conflicting with the terms hereof.

Section 3. Easement for Ingress and Egress. An easement is hereby granted to the Declarant to enter in or to cross over the Common Area and any Lot to perform any duties of maintenance and repairs. The Declarant expressly reserves to itself a perpetual easement and right to cross the Common Area established or hereafter established on the Property by the Declarant, for the purpose of having access for ingress and egress to such other adjacent property upon which Declarant has or may create additional phases or subdivisions.

Section 4. Water and Sewer Easement Agreement. Each Owner shall be subject to a non-exclusive easement agreement to be executed by and between the supplier, its successor in interest, designated by the Declarant for the purpose of supplying water and/or sewer services. An easement shall be granted for the purpose of establishing and maintaining as Common Area a walkway and intermittent stream, including reasonable accessory uses related thereto. It is expressly understood that any supplier of water or sewer shall have any duty to supply water, sewer or services to the intermittent stream. The supplier of water or sewer shall have the right of ingress and egress upon the easement granted for the purpose of maintaining its pipeline located under the easement. If, through no fault of Declarant, the right to maintain an intermittent stream and/or walkway is lost, including reasonable accessory uses related thereto, no person or entity may seek compensation or contribution for the loss from Declarant.

ARTICLE VI INSURANCE

Section 1. No Duty to Insure. The Declarant, its successors or assignees, shall have not have any duty or obligation to procure or maintain any insurance coverage, whether fire, negligence, liability, flood, earthquake or the like, for the Property, any portion thereof or for the benefit to any owner of any structures, dwellings or other improvements thereof or constructed thereupon. Notwithstanding, the foregoing, in the event that the Declarant procures and/or maintains insurance on the Property, or any portion thereof, this procurement or maintenance of insurance shall not obligate or impose upon the Declarant a duty to insure the Property, any portion thereof or for the benefit to any owner of any structures, dwelling or other improvements thereof or constructed thereupon.

Section 2. Rebuilding After Damage or Destruction. In the event of damage or destruction by fire or other casualty to any portion of the Property, the Declarant shall not have any obligation or duty to apply any of the insurance proceeds to the Property, including any repairs of damaged or destroyed portions of the Property.

ARTICLE VII
ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation by Declarant. Declarant reserves the right, as its sole discretion and without the consent of any Owner(s) of the Lots of the Property, to expand the Property to include additional real property as Expandable Property. In the event the Declarant files any additional plats creating additional subdivisions in the Property and/or contiguous to the Property under the same name and style of "Red Mountain Terrace Subdivision" and states on such plats the intention to have the real property described on such plat subject to the terms, covenants and conditions of this Declaration, then, upon recording of said plat, the property described therein shall be subject to this Declaration. The covenants, conditions, restrictions, terms and provisions contained herein run not only to, with and from the property described herein, but by this reference to said plat or plats, also to, with and from all adjoining additions thereto made pursuant to this Article.

Section 2. Limitations on Annexation. Any additional subdivision annexed hereto by the Declarant shall be comprised exclusively of lots for detached residential single-family dwellings. The Declarant shall have the sole discretion to develop the Common Area in said Expandable Property and to include any facilities or amenities thereon that Declarant deems necessary.

ARTICLE VIII
USE RESTRICTIONS

Section 1. Residential Use. No owner shall occupy or use the Owner's home, or permit the same or any part thereof to be occupied or used for any purpose other than as a private residence for the owner and the family of the Owner(s) or the lessees and/or guests of the Owner(s).

Section 2. Fee Conveyed. Each Lot shall be conveyed as a separately designated and legally described freehold estate, the owner taking title in fee simple, subject to the terms, conditions, and provisions hereof.

Section 3. Uses Permitted by Declarant During Construction. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for Declarant on the building of said single-family homes to maintain during the period of construction and sale of said homes, upon such portion of the premises as Declarant deems necessary, such facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of said homes, including, but without limitation, a business office, storage area, construction yard, signs, model homes and sales office.

Section 4. Household Pets Permitted. No animals, livestock or poultry of any kind may be raised, bred, or kept on any Lot or in the Common Area, except that dogs, cats or other household pets may be kept in homes constructed upon the Lots. All dogs and cats, while not on the Lot of the owner of the dog or cat, shall be on a leash.

Section 5. Obstruction of the Common Area. There shall be no obstruction of the Common Area.

Section 6. Oil and Mining Operations. No drilling, quarrying or mining operations or any kind shall be permitted upon or in any Lot or upon the Common Area.

Section 7. Alteration of Common Area. Nothing shall be altered or constructed, or removed from the Common Area, except with the consent of the Declarant, or after all of the Lots are sold to third parties by the percentage of Lot owners specified Article X of this Declaration.

Section 8. Leases. Any lease agreement between an Owner of a Lot and a lessee shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, and that any failure by lessee to comply with this Declaration shall be a default under the lease.

Section 9. Recreational Vehicles. No recreational vehicles may be parked within the Common Area, public road in front of any Lot or upon the driveways of any Lot for longer than a forty-eight (48) hour period. In no event shall any recreational vehicle, camper, trailer, tent trailer, or mobile home be used for camping, living quarters or for overnight accommodations on a Lot, public road or part of the Common Area.

Section 10. Nuisances. No noxious or offensive activities shall be carried on or upon any Lot, nor shall anything be done thereon which may become an annoyance or nuisance to the Property. There shall not be any unlicensed motor vehicles brought, kept or stored upon any Lot or any part of the Property, including, but not limited to, any roadway or street. There shall not be any inoperable motor vehicles brought, kept or stored upon any Lot or any part of the Property, including, but not limited to, any roadway or street.

Section 11. Violation Constitutes a Nuisance. Any act or omission, whereby any restriction, condition, or covenant as set forth in this Declaration, if violated in whole or in part is declared to be and shall constitute a nuisance, and may be abated by the Declarant or affected owner of a Lot and such remedy shall be deemed to be cumulative and not exclusive.

ARTICLE IX GENERAL PROVISIONS

Section 1. Enforcement. The Declarant or any Owner of a Lot shall have the right to sue for damages, or to enforce by any proceeding injunctive or otherwise, at law or in equity, all

restrictions, conditions, covenants, reservations, liens and charge now or hereafter imposed by the provisions of this Declaration. Specifically, the aggrieved party may seek to recover damages and for injunctive relief. Failure by the Declarant or an Owner of a Lot to enforce any covenant or restriction therein contained shall in no event be deemed a waiver of the right to do so thereafter. In the event any Covenant, Conditions or Restriction included herein is consistent or in conflict with restrictions set forth in the subdivision building, zoning or other city ordinances, the ordinances shall govern so long as the restrictions contained in the ordinances are more restrictive than the terms of this Declaration. However, where the terms of this Declaration are more restrictive than those contained in the city ordinances, owners of the Lots shall be subject to the enforcement of the terms of this Declaration.

Section 2. Severability, Construction and Validity of Restrictions. All of the covenants, conditions, restrictions, terms and provisions set forth in this Declaration shall be construed together. However, in the event that at any time any portion of this Declaration is declared invalid, or for any reason becomes unenforceable, all of the remaining covenants, conditions, restrictions, terms and provisions set forth in this Declaration shall remain enforceable and valid.

Section 3. Duration. This Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable. This Declaration, as amended, shall continue in duration and be enforceable for an original term not less than ten (10) years and unless revoked, this Declaration and all recorded amendments thereto shall be automatically extended for successive and consecutive periods of ten (10) years each.

Section 4. Gender and Grammar. The singular wherever used in this Declaration shall be construed to mean the plural when applicable and the necessary grammatical changes required to make the provisions hereof apply either to business entities or individuals shall in all cases be assumed as though in each case fully expressed.

ARTICLE X AMENDMENT

Section 1. Right to Amend of Declarant. Until all Lots consisting of the Property are sold to third-parties, Declarant shall have, and is hereby vested with the right to unilaterally amend this Declaration and/or the recorded Plat(s) as may be reasonably necessary or desirable: (i) to adjust the boundaries of the Lots; (ii) to more accurately express the intent of any provisions of this Declaration, as amended, in the light of then existing circumstances or information; (iii) to better insure, in light of the existing circumstances or information, workability of the arrangement which is contemplated by this Declaration; (iv) to facilitate the practical, technical, aesthetic, legal and administrative of functional integration of any changes to the Property and/or Expandable Property.

Section 2. Lot Owners Right to Amend. Subject to Section 1 of this Article, this Declaration may be amended during the first ten (10) year period by any instrument signed by not less than seventy percent (70%) of the Owners of the Lots, and after the initial ten (10) year period, by an instrument signed by not less than sixty percent (60%) of the Owners of the Lots, which amendment shall be effective upon recordation in the Office of the County Recorder.

