



DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS

For

Heritage Place Townhomes
(A Neighborhood Sub-association
within Heritage Place Master Community)
In Washington County, Utah

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR Heritage Place Townhomes, A Neighborhood Sub-association within Heritage Place Master Community (this "Townhome Declaration") is hereby adopted by Nisson Field, LLC, a Utah limited liability company, the Declarant, in accordance with that certain Amended & Restated Master Declaration of Covenants, Conditions & Restrictions of Heritage Place, a Master Community, recorded in Washington County Recorder's Office ("Master Declaration") and made effective as of the date recorded in the Washington County Recorder's Office.

In the event of conflict between this Townhome Declaration and the Master Declaration, the Master Declaration shall control, provided that, this Townhome Declaration may add further detail, specific and/or additional restrictions applicable to Owners within the Townhome Association. Notwithstanding for any amendment to the Townhome Declaration or required architectural approval, an Owner must receive written approval for Improvements from the Master Board or its established Master Architectural Control Committee.

The Master Association has approved the recording of this Townhome Declaration.

RECITALS:

(A) On or about February 23, 2022, a Plat Map depicting Phase I of the Master Community was recorded in the Washington County Recorder's Office, as Entry No. 20220010830, which will be added to on a phase-by-phase basis, with all phases collectively being the "Property", "Project" or "Master Community".

(B) On or about February 23, 2022, a Declaration of Easements, Covenants, Conditions, and Restrictions of Heritage Place ("Enabling Declaration") was recorded in the Washington County Recorder's Office, as Entry No. 20220010831.

(C) In conjunction with preparation of this Townhome Declaration, an Amended & Restated Master Declaration of Covenants, Conditions, and Restrictions of Heritage Place, a Master Community as amended ("Master Declaration") was recorded in the Washington County Recorder's Office.

(D) This Townhome Declaration affects and concerns certain Lots within the Master

Community located in Washington County, Utah, that are identified in the preliminary plat as townhouses within the real property more particularly described in **Exhibit "A"** and/or subsequently recorded or amended plats for the Project that identify townhouse style housing product within the Project ("Townhome" or "Subdivision").

(E) Declarant desires to subject the Townhome to the terms of this Townhome Declaration. Declarant intends to develop residential properties at the Townhome. Declarant will develop and convey all of the Lots within the Subdivision subject to a general plan of development, and subject to certain protective covenants, conditions, restrictions and easements, as set forth in this Townhome Declaration, as amended from time to time, which are deemed to be covenants running with the land mutually burdening and benefiting each of the Lots within the Subdivision. Common Areas and Limited Common Areas are those areas that are depicted in the recorded Plat(s), as amended, and as described in this Townhome Declaration. The Subdivision does not constitute a cooperative.

(F) Declarant have deemed it desirable, for the efficient preservation of the values and amenities of the Townhome, to create an entity which possesses the powers to maintain and administer the Common Areas and Limited Common Areas (where applicable) and otherwise administer and enforce the provisions of this Townhome Declaration. For such purposes, Declarant will cause to be registered with the Utah Department of Commerce the Heritage Place Townhome Owners Association, Inc. ("Townhome Association").

(G) The Townhome Association is governed by the terms of this Townhome Declaration, the Townhome Articles, and the Townhome Bylaws, which Townhome Bylaws are attached hereto as **Exhibit "B"** and shall be recorded in Washington County Recorder's Office contemporaneously with the recording of this Townhome Declaration.

(H) No provision of this Townhome Declaration shall prevent the Declarant from doing any of the following, which shall be deemed to be among Declarant' reserved rights in addition to such rights as may be described elsewhere in this Townhome Declaration: (1) installation and completion of the Subdivision Improvements; (2) use of any Lot owned by the Declarant as a temporary sales office or model; (3) installation and maintenance of signs incidental to sales or construction which are in compliance with applicable City or County ordinances; (4) assignment of Declarant' rights under this Townhome Declaration in whole or part; and (5) retention of Declarant's rights with respect to subsequent phases. A supplemental declaration, with such modifications or supplemental provisions as may be deemed appropriate by Declarant on a phase-by-phase basis, may be recorded to address differences in the circumstances affecting any Lots to be constructed after the initial phase.

(I) These Recitals are made a part of this Townhome Declaration.

COVENANTS, CONDITIONS AND RESTRICTIONS

ARTICLE I DEFINITIONS

1.0 Unless the context clearly requires the application of a more general meaning, the following terms, when used in the Townhome Declaration, shall have the following meanings:

(A) "Act" means the Community Association Act, Utah Code Ann. Sections 57-8a-101 *et. seq.*

(B) "Architectural Control Committee" or "ACC" shall mean the Master Architectural Control Committee created by the Master Declaration, the Master Bylaws, and/or Master Articles. If no ACC is established, the Master Board shall fulfill the duties of the ACC. The Master Association may adopt policies and procedures governing cooperation between the Master Association and the Townhome Association with regard to architectural review and approval.

(C) "Assessment" shall mean any monetary charge, fine or fee imposed or levied against an Owner by the Association, as provided in the Governing Documents, regardless of whether said assessment is identified as an assessment, master assessments, Townhome assessment, special assessment, individual assessment, reserve assessment, capital improvement assessment, fine, late fee or other charge.

(D) "Bulk Service Contract" or "Bulk Service Provider" shall mean a service provider for items such as; internet, television, cable, satellite, telephone, data, solar power and similar utilities and services.

(E) "City" shall mean Washington, Utah and its appropriate departments, officials and boards.

(F) "County" shall mean Washington County, Utah and its appropriate departments, officials and boards.

(G) "Common Area(s)" or "Townhome Common Areas" shall mean all property designated on the recorded Plat(s) for the Townhome or described in the Plat or this Townhome Declaration as Common Area, being intended ultimately to be owned by the Townhome Association for the common use and enjoyment of all Owners, together with all improvements thereon and all of the easements appurtenant thereto. The Master Association may coordinate with the Townhome Association with regard to any maintenance of any Master Association Common Areas that may be under the responsibility of the Master Association or other areas where coordination of Common Area maintenance is in the best interest of the Owners. Further, certain areas identified on Plat(s) may be designated as Common Areas owned by the Master Association.

1. Common Areas may include open space and landscaping outside of the footprint of the Dwelling. Sub-association visitor parking, if any, and other areas for common use by the

Owners of Sub-association.

2. Certain pathways or open space within the Townhome Plats may be designated as Master Common Area or may be controlled or maintained by the Master Association for the benefit of all Members of the Master Association.

(H) "Common Expenses" means any and all costs, expenses and liabilities incurred by or on behalf of the Association, including, without limitation, costs, expenses and liabilities for (A) managing, operating, insuring, improving, repairing, replacing and maintaining the Common Areas; (B) providing facilities, services and other benefits to Owners as set forth in this Townhome Declaration; (C) administering and enforcing the covenants, conditions, restrictions, reservations and easements created hereby; (D) levying, collecting and enforcing the assessments, charges, fines, penalties and liens imposed pursuant hereto; (E) operating the Association; and (F) creating reserves for any such costs, expenses and liability as required by this Townhome Declaration or the Act.

(I) "Declarant" shall mean and refer to Nisson Field, LLC, and its successors and assigns.

1. "Declarant Related Entity or Entities" shall mean Declarant, parent companies, subsidiaries, assigns, successors, related or designated construction entities, or other entities established by Declarant or Declarant's members for the purpose of owning, developing, constructing and/or selling Lots or Units in the Subdivision. Declarant Related Entities shall include but are not limited to: Sullivan Homes.

(J) "Dwelling", "Unit" or "Townhouse" shall refer to any residential structure as the context requires, together with Improvements used in conjunction with such Unit, such as appliances, electrical receptacles and outlets, air conditioning compressors and other air conditioning apparatus, furnaces, stoves, fixtures and the like, shall be considered part of the Unit, whether located within or without said Unit. All pipes, wires, conduits, or other public utility installations serving only that Unit shall be considered part of the Unit. Exterior Improvements such as: steps, porches, driveways shall be considered part of the Unit.

(K) "Governing Documents" shall mean the Master Declaration, Townhome Declaration, Master Bylaws, Townhome Bylaws, Master Articles, Townhome Articles, Rules, and any other documents or agreements binding upon an Owner.

(L) "Improvement" shall mean all structures and appurtenances of every type and kind, including but not limited to Dwellings, parking facilities, walkways, retaining walls, driveways, fences, landscaping, decks, stairs, poles, lighting, signs, satellite dishes or other antennas, and any mechanical equipment located on the exterior of any building.

(M) "Limited Common Area" shall mean all property designated on the recorded Plat Map(s), or as described in sub-association documents as Limited Common Areas, which may be owned by individual sub-association but for the exclusive use and enjoyment of one or more appurtenant Lots/Units but fewer than all of the Lots/Units including, but not limited to: the private

area immediately behind certain Unit, as depicted on the Plat(s) and may include rear patio areas, block walls with wings in a charcoal color on the border of the rear patio area, and other Improvements, as approved by Declarant or the ACC.

(N) "Lot" shall mean any numbered lot shown on any official and recorded Plats, including all Improvement located thereon. Lot may also refer to the individual Dwelling/Unit. Lot may also be interchangeable with Dwelling/Unit in the context of townhomes.

(O) "Master Declaration" shall mean the Amended & Restated Declaration of Covenants, Conditions and Restrictions for Heritage Place, a Master Community together with any subsequent amendments or additions through subsequent recording amendments or supplements.

(P) "Master Association" shall mean Heritage Place Master Homeowners Association, Inc. and, as the context requires, the duly elected and authorized Board of Directors through its officers, directors and managers.

(Q) "Master Board" means the Board of Directors of the Master Association elected pursuant to the Master Bylaws and serving as the management body of the Master Association.

(R) "Manager" shall mean any entity or person engaged by the Board of Directors to manage the Project.

(S) "Member" shall mean and refer to every person who holds membership in the Association, including an Owner and the Declarant as set forth herein.

(T) "Owner" shall mean and refer to the person who is the Owner of record (in the office of the County Recorder of Washington County, Utah) of a fee simple or an undivided interest in any Lot. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term "Owner" shall not mean or include a mortgagee or a beneficiary of trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof. Owner may include a non-natural, but legally recognized entity, such as a limited liability company, corporation, partnership, limited partnership, trust, and/or other legally entity recognized by Utah State law. Accordingly, such an Owner may designate a natural person of its selection as Owner's agent to serve and act in the Owner's place. Notwithstanding the foregoing, an Owner may designate only one natural person to serve as its agent at any one time.

(U) "Person" shall mean a natural person or any legal entity with a right to hold title to real property in its own name in the State of Utah, including the authorized representative of such legal entity.

(V) "Plat(s)" shall mean an official and recorded plat of the Heritage Place Master Community, including all subsequent phases, if any, when recorded, as approved by the City and recorded in the office of the Washington Recorder, as it may be amended from time to time,

including the Plat specific to the Townhomes.

(W) "Rules" mean any instrument adopted by the Board, as approved by the Master Association, for the regulation and management of the Townhome Association, as provided in the Governing Documents.

(X) "Subdivision Improvements" shall mean all improvements to be installed outside the boundaries of Lots or within easements as identified on the Plats that are necessary to provide public road access and/or private road access and utility service to the Lots and including other construction work required to comply with any conditions of City or County or other governmental agencies to the approval of the Subdivision or any Plat(s) thereof.

(Y) "Townhome Articles" shall mean the articles of the Townhome Association, as amended from time to time.

(Z) "Townhome Association" shall mean Heritage Place Townhome Owners Association, Inc., and as the context requires, the officers or directors of that Townhome Association. The Townhome Association is one of three, separate sub-associations within the Master Community.

(AA) "Townhome Board" or "Board" shall mean the duly elected and acting Board of Directors of the Townhome Association.

(BB) "Townhome Bylaws" shall mean the Bylaws of the Townhome Association, as amended from time to time, a copy of which is attached hereto as **Exhibit "B."**

(CC) "Townhome Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions for Heritage Place Townhomes, together with any subsequent amendments or additions through supplemental declarations.

(DD) "Yard" shall, for the purposes of this landscaping maintenance, be divided as follows: "front yard" shall mean the area from the front corners of a Dwelling moving forward to the public street. "Backyard" shall mean from the front corners of a Dwelling moving to the rear property line of the Lot. The purpose and intent is to keep a clean and more uniform appearance for front yards in the Subdivision and providing Owners with more freedom of design in the backyards, consistent with this Declaration and local ordinances. Backyards are maintained by the Owners. Setbacks may be established by the Master Association that are more restrictive than local ordinances.

ARTICLE II EASEMENTS

2.1 Easements & Rights Concerning Common Area. Each Owner shall have a nonexclusive right and easement of use and enjoyment in and to the Townhomes Common Area. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no

event shall be separated therefrom, or encumbered, pledged, assigned or otherwise alienated by an Owner. Any Owner may temporarily delegate the right and easement of use and enjoyment described herein to any invitee on such Owner's Lot. Notwithstanding the foregoing, no Owner shall have any right or interest in any easements forming a portion of the Common Area except for the necessary parking, access, and utility easements for use in common with others.

- (a) The Townhomes Association shall be the trustee for all Owners with respect to easements, licenses, agreements, and conveyances of Common Areas, consistent with the Declaration and Utah law.

2.2 Easements & Rights Concerning Limited Common Area. The Master Association and Townhomes Association (collectively "Associations") shall have a non-exclusive easement for any utility or any required maintenance in and through the Limited Common Area.

- (a) The Townhomes Association shall be the trustee for all Owners with respect to easements, licenses, agreements, and conveyances of Limited Common Areas, consistent with the Declaration and Utah law.

2.3 Limitation on Easement. An Owner's right and easement of use and enjoyment concerning the Common Area shall be subject to the following.

- (a) The right of the Master Association & Townhome Association to govern by Rules the use of the Common Area for the Owners so as to provide for the enjoyment of said Common Areas by every Owner in a manner consistent with the preservation of the residential purposes of the Lots by every Owner, including the right of the Associations to impose reasonable limitations on the number of guests per Owner who at any given time are permitted to use the Common Area;
- (b) The right of the Associations to suspend an Owner's right to the use of the Townhome Common Areas, or any amenities included therein, for any period during which an Owner is in violation of the terms and conditions of the Governing Documents or delinquent in the payment of a levied assessment or fee.
- (c) The right of the City, County, and any other governmental or quasi-governmental body having jurisdiction over the Townhome, to enjoy access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Common Areas and Townhome Common Areas for the purpose of providing police and fire protection, utility access/installation, and providing any other governmental or municipal service.

2.4 Reservation of Access and Utility Easements. Declarant hereby reserve an easement for access and utilities (including but not limited to electrical, gas, communication, phone, internet, cable, sewer, drainage and water facilities) over, under, along, across and through the Property, together with the right to grant to a City and County, or any other appropriate governmental agency, public utility or other utility corporation or association, easements for such purposes over, under, across, along and through the Townhome upon the usual terms and conditions required by the grantee thereof for such easement rights, provided, however, that such easement rights must be exercised in such manner as not to interfere unreasonably with the use of

the Property by the Owners and the Associations and those claiming by, through or under the Owners or the Associations; and in connection with the installation, maintenance or repair of any facilities as provided for in any of such easements, the Property shall be promptly restored by and at the expense of the person owning and exercising such easement rights to the approximate condition of the Property immediately prior to the exercise thereof. Each Owner in accepting the deed to a Lot expressly consents to such easements and rights-of-way and authorizes and appoints the Associations as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way.

2.5 Easements for Encroachments. If any part of the Townhome Common Areas as improved by Declarant now or hereafter encroaches upon any Lot or if any structure constructed by Declarant on any Lot now or hereafter encroaches upon any other Lot or upon any portion of the Common Area or Townhome Common Area, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. If any structure on any Lot shall be partially or totally destroyed and then rebuilt in a manner intended to duplicate the structure so destroyed, minor encroachments of such structure upon any other Lot or upon any portion of the Common Area or Townhome Common Area due to such reconstruction shall be permitted; and valid easements for such encroachments and the maintenance thereof, so long as they continue, shall exist.

2.6 Easements for Construction and Development Activities. Declarant reserve easements and rights of ingress and egress over, under, along, across and through the Townhome and the right to make such noise, dust and other disturbance as may be reasonably incident to or necessary for the (a) construction of Dwellings on Lots, (b) to maintain sales or leasing offices, management offices and models throughout the Project and to maintain one or more advertising signs on the Common Area with respect to the sales of Lots, or other property in the Project, (c) improvement of the Common Area, and construction, installation and maintenance thereon of roadways, walkways, buildings, structures, landscaping, and other facilities designed for the use and enjoyment of some or all of the Owners, and (d) construction, installation and maintenance on lands within, adjacent to, or serving the Property of roadways, walkways, and other facilities, planned for dedication to appropriate governmental authorities.

2.7 Easement, in Favor of Master Association & Townhome Association. The Lots, Townhome Common Areas and Limited Common Area are hereby made subject to the following easements in favor of the Master Association and its directors, officers, agents, employees and independent contractors:

- (a) For inspection during reasonable hours in order to verify the performance by Owners or other persons of all items of maintenance and repair for which they are responsible;
- (b) For inspection, maintenance, repair and replacement of portions of the Common Areas and Townhome Common Areas;
- (c) For correction of emergency conditions;
- (d) For the purpose of enabling the Associations, ACC or any other committees to exercise and discharge during reasonable hours their respective rights, powers and

duties;

2.8 Landscaping Easement. The Townhomes Association shall have an easement and related access rights in order to maintain the Common Area landscaping or any other landscaping that is the Townhomes Association's responsibility.

- (a) Unless changed by the Declarant in its sole discretion, the Declarant or initial builder shall design and install all front yard landscaping for the Lots in order to maintain a consistent appearance and comply with any local requirements.
- (b) The applicable association or sub-association shall perform general landscaping maintenance of the respective Common Areas, as determined between the Master Association and sub-association, and the front yards of the Lots.
 - i. The purpose and intent is to keep a clean and consistent appearance for front yards in the Subdivision and providing Owners with more freedom of design in the backyards, consistent with this Declaration and local ordinances. Backyards are maintained by the Owners. Setbacks may be established by the Master Association that are more restrictive than local ordinances.
 - ii. Play Structures. Play structures, trampolines, and other similar equipment may only be placed in backyards consistent with other rules and requirements of the associations.

2.9 Income Generated from Service Providers. Declarant and/or Declarant Related Entities invest time, experience, infrastructure and/or capital in the negotiation, provision or installation of certain utilities and amenities (e.g., internet, cable, fiber, phone, solar power, etc.) that provide services and benefits to owner in the Subdivision that would not otherwise be available or at a reduced cost. Any income gained by these parties from these efforts may be retained by the Declarant, Declarant Related Entities, or their assigns, even after the Declarant Control Period. The Association may enter into contracts with third parties related to the provisions of such utilities and amenities for the benefit of Owners in the Subdivision, which utilities and amenities may be paid for through Assessments. Owners contracting separately with individual third-party providers will still be required to pay any normal and customary access fee for applicable bulk rate contract services entered into by the Master or Townhome Associations.

2.10 Delegation of Use. Any Owner may delegate, in accordance with the Governing Documents, their right of enjoyment to the Townhome Common Area and any Common Facilities located thereon to the Owner's invitees.

2.11 Easement for Completion of Project. Declarant shall have a transferable easement over and, on the Townhome, Common Area for the purpose of completing construction of the Project and improvements therein as shown on the Plat and for the purpose of doing all things reasonably necessary or appropriate in connection therewith. To the extent that damage is inflicted on any part of the Project by any person utilizing such easement, Declarant and the person causing the damage shall be liable to the Master Association for the prompt repair of such damage.

2.12 Easements Deemed Created. All conveyances of a Lot within the Project hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve such reciprocal easements as are provided for herein even though no specific reference to such easements appears in any such conveyance.

2.13 Impact Fees. The Master Association shall have authority to impose Impact Fees for the cost of infrastructure and improvements benefiting the Lots, Common Areas, and Members of the Master Community. Impact Fees should be uniform for similar situated Lots and Units and their resulting benefit. Impact Fees are intended to offset the effect of development and occupancy of each Lot will have on the infrastructure, benefits and amenities within the Master Community. In the event Impact Fees collected are in excess of the cost of the infrastructure, amenity or facility for which the Impact Fee was levied, the Association may reimburse such amounts proportionate to the amount levied or may hold such funds for the future benefit of the Lots served by the Impact Fee. Impact Fees shall be treated as Special Assessments.

2.14 SWPPP Compliance. Owners shall be responsible for construction activities on their Lots and their contractors with respect to SWPPP compliance. Owners shall indemnify Declarant and Declarant Related Entities for any fines, costs, fees or enforcement action against Declarant for activities with regard to construction activities on an Owner's Lot or work provided by an Owners' contractors.

2.15 Amenity Access. Members of a particular association or sub-association shall have access to that entity's amenities. Notwithstanding, a particular association or sub-association can restrict access to only members of that specific association or sub-association that owns and maintains such amenity.

2.16 Amenity Creation & Trail Connections. The Declarant and Master Association have authority to develop and maintain trails and open space in the Property. Further, they may work with relevant government authorities or property owners for necessary or desired trail connections in or out of the Master Community.

2.17 Nisson Hill. Declarant reserves the right to sell/convey Nisson Hill and other opens space areas to the City.

2.18 Trespass. Whenever the Master Association, Townhome Association, or Declarant is permitted by these covenants to correct, repair, clean, preserve, clean out or do any action on any portion of Subdivision, including Lots or Units, entering such areas, and taking such action shall not be deemed a trespass on the part of the associations, Declarant or their agents.

ARTICLE III
TOWNHOME ASSOCIATION COMMON AREAS, LIMITED COMMON AREAS,
DWELLING & PARTY WALL MAINTENANCE

3.1 **Common Areas.** Except as otherwise provided in this Declaration, the Association, or its duly designated agent, shall maintain, repair and replace all Common Areas, including, without limitation, the Improvements and landscaping located thereon in good order and repair and shall otherwise manage and operate all Common Areas as it deems necessary and appropriate.

- (a) The Townhomes Association, or its duly designated agent, shall maintain all Common Areas including, without limitation, the landscaping located outside of the Dwelling footprint and on the Common Area in good order and repair and shall otherwise manage and operate all Common Areas as it deems necessary and appropriate. The Townhomes Association shall have the authority to assess its members for the costs of said maintenance in accordance with the terms of this Townhomes Declaration. The Townhomes Association may adopt Rules to add further detail with regard specific landscape maintenance services provided by the Townhomes Association. Notwithstanding, it is the intent that the Townhomes Association shall generally provide for all landscaping within the Townhomes Association.
- (b) **Snow Removal.** The Townhomes Association may coordinate with the Master Association with respect to snow removal in the sub-association. The Townhomes Association may adopt Rules to add further detail with regard specific snow removal services provided by the Townhomes Association. Notwithstanding, it is the intent that the Master Association and/or Townhomes Association shall generally provide for all snow removal on the Common Areas. The Townhomes Association and/or Master Association may make reasonable and prudent efforts to contract with a third party for the removal of snow from Common Areas within the Subdivision. Unless the Board elects to provide snow removal for Limited Common Areas, Owners shall be responsible for such areas and other applicable areas on their Lot, including, but not limited to sidewalks immediately adjacent to or primarily serving an Owner's Lot and parking facilities within their Lot. Owners shall be responsible and take reasonable precautions with respect to ice and ice accumulation. The work of removing snow may be delegated to a third party, who will utilize its discretion in the frequency of the snow removal and the amount of accumulation meriting removal. To the extent allowed by law, the Townhomes Association shall not be responsible or liable for said third party's discretion and removal of snow.

3.2 **Limited Common Areas.** Owners shall maintain, repair and replace all Limited Common Areas following necessary approvals from the Association.

3.3 **General Rules of Law to Apply to Party Walls.** Each wall which is built as a part of the original construction of a Dwelling within the Project and placed on the dividing line between two Dwellings shall constitute a Party Wall, and, to the extent not inconsistent with the

provisions of the Act, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

3.4 Party Wall Maintenance. Each Dwelling that share one or more Party Wall(s), will also share elements of a common roof, a common exterior wall, or other common exterior elements with adjacent Dwelling(s). The Owners acknowledge that certain repairs or maintenance to Dwellings with a Party Wall(s) may become necessary, which repairs, or maintenance may not be able to be performed on one Dwelling only.

3.5 Destruction of Party Wall; Common Roof or Exterior. If a party wall or common improvement is damaged or destroyed by the fault of negligence of one of the Owners, such damage shall be repaired by the Association to the condition equal to or better than immediately prior to the damage and the negligent Owner or Owner at fault shall reimburse the Association for any and all costs incurred by the Association to cure the damage. Should a party wall be damaged or destroyed by any cause other than by default or by an act of negligence of an Owner of the adjacent Dwelling, the damage shall be rebuilt or repaired to a condition equal to or better than immediately prior to the damage, at the joint expense of the owners of the two affected Dwellings, provided that any amount received from insurance companies for such damage shall first be applied to the restoration of the affected Dwellings. Should a common roof or any part of the exterior wall(s) be damaged or destroyed by any cause other than by fault or by an act of negligence of an Owner of the adjacent Dwelling, the damage shall be rebuilt or repaired by the Association to a condition equal to or better than immediately prior to the damage, at the expense of the Association, provided that any amount received from insurance companies for such damage shall first be applied to the restoration of the affected Dwellings.

3.6 Party Wall Insurance. The existence of Party Walls within the Project will require blanket property insurance coverage as required by the Governing Documents and/or Act on all attached Dwellings.

3.7 Association Maintenance of Dwellings. The Association shall maintain, repair, and replace the roofs, shingles, rain gutters and downspouts for all buildings (which include the Dwellings), and the normal wear and tear on exterior wall finishes of the buildings (which include the Dwellings). All necessary structural repairs of roofs and exterior walls will remain the financial responsibility of the affected Owners but may be organized and/or carried out by the Association, as determined by the Association. Exterior wall maintenance by the Association does not include: doors, doorframes, garage doors, windows, window frames, window wells, skylights, patio doors, or glass of any kind. All other components or Improvements within the Lot, including the Dwelling, that are not specifically assigned to the Association herein shall be maintained by Owners. It is the obligation of each Owner to maintain their Lot and Improvements located thereon in a clean and sanitary condition and uncluttered in order to preserve and enhance the enjoyment of the Project.

3.8 Repairs by Association. In the event that an Owner permits his Lot or Improvements to fall into a state of disrepair that is dangerous, unsafe, unsanitary, or unsightly condition or fails to comply with any other covenant or restriction in violation of this Declaration,

the Association may give written notice to the Owner describing the condition complained of and demand that the Owner correct the condition within 15 days. If the Owner fails to take corrective action, the Association shall have the right, but not the obligation, to enter upon the offending Owner's Lot and take corrective action to abate the condition. All costs of abatement shall be charged to the Owner, who agrees to promptly pay the reasonable costs of any work performed under this provision, plus 15%. In addition, each Owner hereby grants to the Association a lien on the Lot and any improvements to secure repayment of any sums advanced pursuant to this section, which lien may be foreclosed at any time by the Association in the manner prescribed in Utah for the foreclosure of mortgages. Alternatively, without requiring foreclosure, the Association may seek collection of sums advanced directly from the Owner of the Lot in question. Unpaid amounts will bear interest from the date advanced at the lawful judgment rate under applicable state law.

3.9 Alterations of Exterior Appearance. The Owners will maintain their Lots and Improvements in substantially the same condition and appearance as that approved by the Board. No subsequent exterior alterations, improvements, or remodeling, whether structural or changes in landscaping, paint color or materials will be made without the advance consent of the Board. Declarant shall be exempt from this provision.

3.10 Repair Following Damage. In the event of casualty loss or damage to the improvements, the Improvements may be constructed as they existed prior to the damage or loss without review by the Board, provided however that alterations or deviations from the original approved plans will require review. Nothing in this Declaration is intended to prevent an Owner who has suffered property damage or loss from taking temporary measures to secure the property and prevent injury or dangerous conditions following loss or damage before re-construction begins. Such temporary measures may be taken without the consent or approval of the Board, provided that any such measure must be of a temporary nature, and repair or reconstruction must begin as soon as circumstances will permit. Unless delayed by City/County approval or insurance carrier approval, no damaged structure will be permitted to remain on any Lot for more than 90 days without repairs commencing and any damaged structure which does remain unrepaired after 90 days following the occurrence of damage is deemed a nuisance which may be abated by the Association.

3.11 Maintenance Chart. For the convenience of Owners, a Maintenance Chart is included as **Exhibit C**. In the event of a conflict between the Maintenance Chart and this Article, this Article shall control.

ARTICLE IV MEMBERSHIP, VOTING & CONTROL PERIOD

4.1 Membership in the Townhome Association shall at all times consist exclusively of the Owners. Each Owner shall be a member of the Townhome Association and Master Association, so long as such Owner has an ownership interest in a Lot and such membership shall automatically terminate when the Owner ceases to have an ownership interest in the Lot. Upon the transfer of an ownership interest in a Lot the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Master Association and Townhome Association.

If titled ownership to a Lot is held by more than one Person, the membership appurtenant to that Lot shall be shared by all such Person in the same proportional interest and by the same type of tenancy in which title to the Lot is held. Notwithstanding the foregoing, the Declarant shall also be granted voting rights as a Class "B" Member, as defined below.

4.2 The Townhome Association shall have two (2) classes of voting membership, Class "A" and Class "B", as follows:

(a) Class "A". Class "A" Members shall be all Owners with the exception of Class "B" membership, if any. Class "A" membership shall be entitled to one (1) equal vote for each Lot in which they are an Owner. Only an Owner that is current on all Assessments and/or other fees thirty days in advance of the meeting or vote shall be deemed in good standing and entitled to vote. With regard to any approval that requires a specified percentage of total membership, the total membership shall be calculated from the total number of Owners eligible to vote at the time such approval is sought. Since an Owner may be more than one Person, if only one of such Person(s) is present at the meeting of the Townhome Association that Person shall be entitled to cast the vote appertaining to that Lot. But if more than one of such Person(s) is present, the vote appertaining to that Lot shall be cast only in accordance with the agreement of a majority of them, and such consent shall be conclusively presumed if any one of them purports to cast the vote appertaining to that Lot without protest being made forthwith by any of the others to the person presiding over the meeting. The vote appurtenant to any one Lot may not be divided between Owners. If the vote of a majority of the owners of a Lot cannot be determined, no vote shall be cast in relation to such Lot.

(b) Class "B". The Class "B" Member shall be Declarant. In all matters requiring a vote, the Class "B" membership shall receive one hundred (100) votes for each recorded Lot or acre of property in the Undeveloped Land owned by Declarant. The Class "B" membership shall also be entitled to appoint the members of the Townhome Board and Townhome Association during the Class "B" Control Period.

4.3 The Class "B" Control Period runs until ninety (90) days after the first to occur of the following:

- (a) Declarant no longer owns any Lots or Undeveloped Land; or
- (b) When, at its discretion, the Class B Member so determines.

4.4 Notwithstanding anything to the contrary in this Townhome Declaration, Declarant may exercise its discretionary termination of control in whole or in part as to any portion of the Subdivision at its sole election and determination. In doing so as to a portion of the Subdivision, it does not waive any reversionary or remaining control as to all other portions of the Subdivision, the control of which is not expressly terminated by Declarant.

ARTICLE V
TOWNHOME ASSOCIATION

5.1 **Organization.** The Townhome Association has been created to effectively enforce the Governing Documents and shall operate as a non-profit corporation. The Townhome Association shall be comprised of the Owners within the Townhome and is established for the benefit of the Owners and the enforcement of the Governing Documents. Membership in the Townhome Association is deemed an appurtenance to the Lot and is transferable only in conjunction with the transfer of the title to a Lot. The Association shall serve as the organizational body for all Owners.

5.2 **Master Declaration Controls.** The Master Declaration and portions of this Townhome Declaration use the term "Neighborhood Sub-associations" when referring to sub-association within the Project that are subject to the Master Declaration and certain oversight and control by the Master Association. Neighborhood Sub-association governing documents shall not be inconsistent with the terms and provisions of the Master Declaration and any inconsistency shall be governed by the Master Declaration. Neighborhood Sub-associations may be formed with the approval of the Master Board and by satisfying all necessary legal requirements including, but not limited to, the preparation, execution and recording of Sub-association governing documents.

5.3 **Relationship between Master Association and Neighborhood Sub-associations.** It is the purpose and intent of the provisions of the Master Declaration and this Townhome Declaration that the Master Association shall be charged with and responsible for the management of all activities in the Project including, in addition to all other duties and responsibilities set forth herein, the following:

- (a) The approval of all rules and regulations of each Neighborhood Sub-association and providing of assistance, where deemed appropriate by the Master Association, to a Neighborhood Sub-association in the enforcement thereof;
- (b) Approval of responsibilities among the Master and Neighborhood Sub-associations; and
- (c) Collection of Assessments from each Neighborhood Sub-association in amounts required by the Master Declaration.

Nothing herein contained shall restrict or prohibit a Neighborhood Sub-association from owning, in its own name, Common Area or other property related thereto, the use of which shall be restricted to Members of that Neighborhood Sub-association. However, it is the intent of the Master Declaration that any such Common Area owned by a Neighborhood Sub-association, the use and maintenance thereof and the activities of the Neighborhood Association, shall be consistent with and in furtherance of the Project objectives and the terms and provisions of this Master Declaration to assure that the whole of the Project is developed and approved as a quality community.

5.4 **Enforcement Powers.** The Townhome Association shall have all powers granted to it by the Governing Documents to enforce these covenants and restrictions by actions in law or

equity brought in the name of the Townhome Association, and the power to retain professional services needed to the enforcement of the Governing Documents and to incur expenses for that purpose, including but not limited to: (1) record, lien, foreclose and other enforcement and collection actions against an Owner and their Lot; (2) initiate legal or similar proceedings; (3) impose fines; (4) collect any rents directly from tenant for past due assessments; (5) terminate an Owners' right to receive utility service paid as a common expense; (6) terminate an Owner's right to utilize Common Area and/or amenities; and (7) any other action or remedy allowed by the Governing Documents or Utah law. In the event the Townhome Association fails to exercise any power granted in this Article, the Master Association shall have the right to exercise enforcement powers.

(a) The Townhome Association shall have the exclusive right to initiate enforcement actions in the name of the Association. The Association may appear and represent the interest of the Project at all public meetings concerning zoning, variances, or other matters of general application and interest to the Owners.

(b) The Townhome Association shall have the authority to initiate and compromise claims and litigation on behalf of the Townhome Association resulting from the enforcement of the Governing Documents. In the event that the Townhome Association initiates legal action against a specific Owner or Owners to enforce these Governing Documents, whether or not such action results in the commencement of a formal legal proceeding, the Townhome Association shall have the right to assess the costs of such litigation, dispute, or enforcement action, including reasonable attorney fees, against the Owner(s) or Lot(s) in question and collect those assessment in any manner authorized in the Governing Documents or Utah law.

(c) The Board shall be afforded discretion to utilize its reasonable judgment to determine whether and how to: impose fines, record liens, pursue legal action; otherwise enforce the Governing Documents; or when and how to settle or compromise claims.

5.5 Assessments. Assessments will be made to meet the anticipated and recurring costs, expenses and Common Expenses of the Townhome Association. The Townhome Association has the power to levy assessments against each Lot as necessary to carry out its functions. Assessments shall be levied against all Lots in the Property, whether vacant or improved. Each Owner shall by acquiring or in any way becoming vested with their interest in a Lot, be deemed to covenant and agree to pay to the Townhome Association the assessments described in these covenants, together with late payment fees, interest and costs of collection (including reasonable attorney fees), if and when applicable.

(a) All such amounts shall be, constitute and remain: (a) a charge and continuing lien upon the Lot with respect to which such assessment is made until fully paid, and (b) the personal, joint and several obligations of the Owner or Owners of such Lot at the time the assessment fails due. No Owner may exempt themselves or their Lot from liability for payment of assessments by waiver of their rights in the Common Areas or by abandonment of their Lot. In a voluntary conveyance of a Lot, the

grantee shall be jointly and severally liable with the grantor for all unpaid assessments, late payment fees, interest and costs of collection (including reasonable attorney fees) which shall be a charge on the Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

(b) **Special Assessment.** The Townhome Association may levy special assessments for the purpose of defraying, in whole or in part, (a) any expense or expenses not reasonably capable of being fully paid with funds generated by monthly assessments; or (b) the cost of any construction, reconstruction, or unexpectedly required repairs or replacement of the Common Areas.

(c) **Individual Assessment.** The Townhome Association may levy individual assessments on every Lot, Owner or occupant that shall cause any damage to the Project or otherwise causes the Townhome Association to incur any individual expense for maintenance, repairs, or enforcement action taken under the provisions of the Governing Documents. The amount of any such individual assessments shall be determined by the cost of such repairs, maintenance or enforcement action, including all overhead and administrative costs (including reasonable attorney fees), and shall be allocated among the affected Owner(s) or Lot(s) according to the cause of damage, maintenance, repair work or enforcement action, as the case may be, which individual assessment may be levied in advance of the performance of work.

(d) **Neighborhood Assessments.** Neighborhood Assessments will be made to meet the anticipated and recurring costs, expenses and Common Expenses of the Neighborhood Sub-associations. The Neighborhood Association has the power to levy assessments against each Lot as necessary to carry out its functions, together with late payment fees, interest and costs of collection (including reasonable attorney fees), if and when applicable. If the Neighborhood Sub-Association fails to levy and collect neighborhood assessments, the Master Association may elect to carry out those functions. Further, the Master Association may levy a Neighborhood Assessment to Owners in a specific Neighborhood for costs, special services or amenities available for Owners within that Neighborhood that are provided by the Master Association.

(e) **Reserve Fund.** The Townhome Association may levy a reserve fund assessment, as set forth in this article.

(f) The Townhome Association may levy other assessments or fees, as authorized by the Governing Documents.

5.6 **Budget.** The Townhome Board is authorized and required to adopt a budget annually, which shall be presented to the Owners at a meeting of members.

- (a) The Townhome Board may revise the approved budget from time to time as necessary to accurately reflect actual and/or anticipated expenses that are materially greater than previously budget.
- (b) The budget shall estimate and include the total amount for the Common Expenses, shall contain an appropriate amount for reserves, and may include an amount for other contingencies. The budget shall also be broken down into reasonably detailed expense and income categories.

5.7 Reserve Fund Analysis. Following the Class B Period, the Townhome Board shall cause a reserve analysis to be conducted no less frequently than every six (6) years to analyze the cost of repairing, replacing or restoring Common Area that have a useful life of three years or more and a remaining useful life of less than 30 years. This reserve analysis should be reviewed no less frequently than every three (3) years and updated if necessary. The Townhome Board may conduct a reserve analysis itself or may engage a reliable person or organization, as determined by the Townhome Board, to conduct the reserve analysis.

5.8 Reserve Fund Account Creation. The Townhome Association shall create a reserve fund account that is separate and distinct from the Townhome Association's general account, which account shall be funded from the reserve fund assessments. The amount of the reserve fund assessment shall be a separate line item in the approved budget. The Townhome Board shall cause an assessment to be made against all Owners in an amount sufficient, within the Townhome Board's discretion, to fund the reserve account.

5.9 Reinvestment Fee. With the exception of those Lots conveyed by Declarant or Declarant Related Entities, which shall be exempt from the Reinvestment Fee, the Townhome Association, in coordination with the Master Association, may levy or participate in reinvestment fees when a change in ownership of a Lot occurs in the amount set by the Master Board from time to time, not to exceed one-half of one percent (.005) of the sale price of the Lot.

5.10 One-time Initial Start-Up Development Assessment. With the exception of the Declarant, the initial Owner of record (following the Declarant and initial builder) of a Lot shall pay to the Townhomes Association at closing an initial, start-up fee in an amount set by the Board from time to time not to exceed one-half of one percent (.005) of the sale price of the Lot. This fee shall be a one-time, initial start-up fee, shall not be prorated for any time left in the calendar year following closing, and is in addition to the prorated regular Assessment. The Association shall utilize this fee to assist in the administration, legal, operations, maintenance, and other expenses and costs related to Townhomes Association Townhomes for the management of the affairs of the Association and the Common Areas for the benefit of the Association and its Members.

5.11 Date of Commencement of Assessments. Assessments shall commence upon acquisition of a Lot. Notwithstanding, in the beginning phases of the Project, Declarant may elect to phase in certain assessments based upon the availability and construction schedule of certain amenities. Assessments shall be due and payable in a manner and on a schedule, as the Townhome Board may provide. Notwithstanding, Assessments for those Lots owned by Declarant or

Declarant' Related Entities shall not commence until the completed Dwelling is conveyed to an Owner that is not the Declarant or a Declarant' Related Entity. No amendment of this Townhome Declaration changing the allocation assessments with regard to Declarant or Declarant Related Entities shall be valid without the consent of the Declarant.

5.12 Fines. The Townhome Association shall have the power to assess a fine against an Owner (or their Lot) for a violation of the terms and conditions of the Governing Documents in an amount and schedule established by the Townhome Board

5.13 Hearing Process. The Townhome Board shall have authority to create a reasonable hearing process, consistent with the Act, applicable when the Townhome Association takes an adverse action related to any particular Owner(s).

5.14 Townhome Association Rules. The Townhome Board from time to time and subject to the provisions of the Governing Documents, may adopt, amend, repeal and enforce Rules governing the community.

(a) During the Class B Period, Declarant shall be exempt from the rule making procedure required by Utah Code § 57-8a- 217.

5.15 Statement of Account & Payoff Information. Upon a written request from an Owner that the Association provide the Owner with a statement of their account, the Association may charge a fee, not to exceed \$10.00, for providing such statements. In addition, when a request is made to the Association to provide payoff information needed in connection with the financing, refinancing, or closing of a Lot Owner's sale of their Lot, the Association may charge a fee not to exceed \$50.00.

ARTICLE VI

NONPAYMENT OF ASSESSMENTS & THE APPOINTMENT OF TRUSTEE

6.1 Delinquent Assessment. Any assessment not timely paid shall be delinquent, and the Townhome Homes Association may invoke any and all remedies to recover said delinquent assessments including by: suit, judgment, lien, foreclosure, or other remedy authorized by the Governing Documents or the Act.

6.2 Due Date, Charges & Interest. Unless otherwise established by the Board, monthly assessments shall be due and payable on the first of each month and late if not received by the 10th of each month. The Board may charge late fees in an amount set by the Board. In addition to late fees, interest shall accrue on all unpaid balances, including prior unpaid interest and attorney fees (resulting in compounding interest), late fees, and assessments at 18% per annum or 1.5% per month. The Board may also impose other reasonable charges imposed by a Manager related to collections.

6.3 Lien. Upon recording of a notice of lien on any Lot, there shall exist a perfected lien for unpaid assessments prior to all other liens, except: (1) all taxes, bonds, assessments, and

other levies which by law would be superior thereto; and (2) the lien or charge of any first or second mortgage of record made in good faith and for value recorded prior to a recorded notice of lien by the Townhome Homes Association.

6.4 Foreclosure Sale. The Townhome Homes Association shall have all rights and power of foreclosure granted by the Act, both judicially and non-judicially. The Townhome Homes Association may also bid for the Lot at foreclosure sale, acquire, hold, lease, mortgage, and convey the same. During the period in which a Lot is owned by the Townhome Homes Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be charged or levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its equal pro rata share of any Special Assessment that would have been charged had such Lot not been acquired by the Townhome Homes Association as a result of foreclosure. Suit to recover a money judgment for unpaid assessments and attorney fees shall be maintainable without foreclosing or waiving the lien securing the same.

6.5 Other Remedies. All rights and remedies of the Townhome Homes Association shall be cumulative, and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy. The "One Action Rule" shall not be a defense to the enforcement of all rights and remedies of the Townhome Homes Association. The Townhome Homes Association may elect to bring an action to recover for a delinquent Assessment against the Owner or other obligee personally. Any attorney fees or costs incurred in these efforts shall also be assessed against the Owner(s), their Lot(s), and/or other obligees jointly and severally.

6.6 Payment by Tenant. The Townhome Homes Association shall be entitled to demand and collect from a tenant of any Lot, the amount of any assessment that is more than sixty (60) days past due.

6.7 Attorney Fees. In addition to the recovery of costs and attorney fees as provided herein, the Townhome Homes Association shall be entitled to recover all reasonable attorney fees and costs incurred as a result of an Owner breach of the Governing Documents, including meetings, research, memoranda, monitoring and other legal work incurred in response to an Owner breach or violation of the Governing Documents. These fees may be collected by special or individual assessment against the subject Owner's Lot.

6.8 Appointment of Trustee. The Declarant hereby convey and warrant pursuant to U.C.A. Sections 57-1-20 and 57-8a-2(2) to Burt R. Willie, Esq., a licensed member of the Utah State Bar, and assigns, with power of sale, the Lot and all Improvements to the Lot for the purpose of securing payment of assessments under the terms of this Townhome Homes Declaration.

6.9 Powers Extended to Master Association. In the event the Townhome Homes Association fails to exercise any power granted in this Article IX, the Master Association shall have the right to exercise enforcement powers.

ARTICLE VII
ARCHITECTURAL RESTRICTIONS & ARCHITECTURAL CONTROL COMMITTEE

7.1 **Design Guidelines.** As approved by the Master Association, the Townhome Association may adopt Design Guidelines specific to the Townhomes.

7.2 **Application & Review.** Submission and construction of Improvements shall be pursuant to the procedures set forth in the Master Declaration.

7.3 **Soils Tests.** The ACC may require that the single family detached house owner obtain a soils test approval following the recommendations set forth in the soils test document. NOT WITHSTANDING ANY OTHER LANGUAGE CONTAINED HEREIN, BY ACCEPTING A DEED TO, OR CONVEYANCE OF, ANY LOT OR OTHER PART OR PORTION OF THE PROPERTY BY THE GRANTEES THEREIN NAMED OR BY THEIR LEGAL REPRESENTATIVES, HEIRS, EXECUTORS, ADMINISTRATORS, SUCCESSORS OR ASSIGNS, ANY LOT OWNERS ARE THEREBY WAIVING ANY CLAIMS AGAINST THE DEVELOPER OR ANY OF THE DEVELOPER'S OWNERS, AGENTS, EMPLOYEES, OR REPRESENTATIVES IN ANY WAY RELATED TO THE SOIL CONDITIONS OF ANY LOT AND ANY EXCAVATION OR COMPACTION OF THE SOIL OF ANY LOT. EACH LOT OWNER OR POTENTIAL LOT OWNER IS HEREBY ADVISED TO OBTAIN A SOILS TEST AND RECOMMENDATION ON FOUNDATION PRIOR TO PURCHASING A LOT AND PRIOR TO COMMENCING CONSTRUCTION OF ANY STRUCTURE ON ANY LOT.

7.4 **Declarant Exemption.** Any and all Improvements constructed by Declarant and Declarant Related Entities on the Property are not subject to review and approval by the ACC and shall be exempt from the provisions of this Article.

ARTICLE VIII
USE LIMITATIONS & RESTRICTIONS

8.1 **Master Declaration.** The Townhomes are subject to the Use Limitation & Restrictions set forth in the Master Declaration. The Townhomes Association may amend, with consent of the Master Association, to adopt additional or modify use restrictions applicable to the Townhomes Lots.

ARTICLE IX
INSURANCE

9.1 **Insurance Requirement.** The Association shall obtain insurance as required in this Declaration and as required by the Act. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers and stand alone policies may be purchased instead of or in addition to embedded, included coverage, or endorsements to other policies.

As used in this Article:

- (1) "Covered Loss" means a loss, resulting from a single event or occurrence that is covered by the Association's property insurance policy.
- (2) "Dwelling Damage" means damage to a Dwelling.
- (3) "Dwelling Damage Percentage" means the percentage of total damage resulting in covered loss that is attributable to Dwelling Damage.

9.2 Property Insurance

(a) Hazard Insurance.

(i) Blanket Policy of Property Insurance. The Association shall maintain a blanket policy of property insurance covering all Common Areas, Limited Common Areas, Buildings and Dwellings. Any blanket policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all property covered by such policy at the time the insurance is purchased and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry.

(b) Flood Insurance. If the property insured by the Association is not situated in a Special Flood Hazard Area, the Association may nonetheless, if approved by a majority of Owners, purchase flood insurance to cover water and flooding perils not otherwise covered by blanket property insurance.

(c) Earthquake Insurance. The Association may, if approved by a majority of Owners, purchase earthquake insurance to cover earthquakes not otherwise covered by blanket property insurance.

(d) Associations Obligation to Segregate Property Insurance Deductible. The Association shall keep an amount equal to the Association's property insurance policy deductible or \$10,000, whichever is less. This requirement shall not apply to any earthquake or flood insurance deductible.

(e) Association's Right to Not Tender Claims that are Under the Deductible. If, in the exercise of its business judgment, the Board of Directors determines that a claim is likely not to exceed the Association's property insurance policy deductible the Association need not tender the claim to the Association's insurer.

9.3 Comprehensive General Liability (CGL) Insurance. The Association shall obtain CGL insurance insuring the Association, the agents and employees of the Association, and the Owner, against liability incident to the use, ownership or maintenance of the Common Area or membership in the Association. The coverage limits under such policy shall not be less than One Million Dollars (\$1,000,000) covering all claims for death of or injury to any one person or property damage in any single occurrence.

9.4 Director's and Officer's Insurance. The Association shall obtain Directors' and Officers' liability insurance protecting the Board of Directors, the officers, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to

maintain books and records, failure to enforce the Governing Documents, and breach of contract (if available). The policy shall:

- (a) Include coverage for volunteers and employees;
- (b) Include coverage for monetary and non-monetary claims;
- (c) Provide for the coverage of claims made under any fair housing act or similar statute or that are based on any form of discrimination or civil rights claims; and
- (d) Provide coverage for defamation. In the discretion of the Board of Directors, the policy may also include coverage for any manager and any employees of the manager and may provide that such coverage is secondary to any other policy that covers the manager or any employees of the manager.

9.5 Insurance Coverage for Theft and Embezzlement of Association Funds. The Association may obtain insurance covering the theft or embezzlement of funds.

9.6 Association's Right to Negotiate All Claims and Losses and Receive Proceeds. Insurance proceeds for a loss under the Association's property insurance policy shall be payable to the Association; and shall not be payable to a holder of a security interest. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property if the property is to be repaired and restored as provided for in this Declaration. After any repair or restoration is complete and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any proceeds remaining after such action as is necessary related to the property has been paid for, shall be distributed to the Owners and lien holders, as their interests remain with regard to the Dwellings. Each Owner hereby appoints the Association, as attorney-in-fact for the purpose of negotiating all losses related thereto, including: the collection, receipt of, and the execution of releases of liability, and the execution of all documents and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representative, successors or assigns of an Owner.

9.7 Owner Act Cannot Void Coverage under Any Policy. An Owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.

9.8 Owners' Individual Coverage. **EACH OWNER SHOULD PURCHASE INDIVIDUAL INSURANCE COVERAGE IN THE AMOUNT RECOMMENDED BY THE OWNER'S INSURANCE AGENT.**

9.9 Special Assessment. If the damage or destruction to the Common Areas for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the members, levy a special assessment against all Owners as provided in the Governing Documents.

ARTICLE X
ANNEXATION & DE-ANNEXATION

10.1 **Annexation.** Additional phases of may be added to the Townhomes pursuant to the procedures set forth in the Master Declaration.

ARTICLE XI
MISCELLANEOUS PROVISIONS

11.1 **Condemnation.** Whenever all of any part of the Common Areas shall be taken (or conveyed in lieu of and under threat of condemnation), the Board may act on behalf of the Association in negotiating and completing such transaction.

11.2 **Damage & Destruction.** Immediately after damage or destruction by fire or other casualty to all or any part of the Common Areas covered by insurance written in the name of the Association, the Board, or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Common Areas. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Common Areas to substantially the same condition in which they existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

- (a) Any damage or destruction to the Common Areas shall be repaired or reconstructed unless Owners representing at least seventy-five (75%) percent of the total vote of the Association, shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the costs of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) additional days. No mortgagee shall have the right to participate in the determination of whether the damage or destruction to Common Areas shall be repaired or reconstructed; provided, however, this provision shall not apply to construction mortgagees providing construction financing for such damaged property.
- (b) In the event, that it should be determined in the manner described above that the damage or destruction to the Common Areas shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the affected portion of the Common Areas shall be restored to their natural state and maintained by the Association, in a neat and attractive condition.
- (c) If the damage or destruction to the Common Areas for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the

necessity of a vote of the members, levy a special assessment against all Owners as provided in the Governing Documents.

11.3 Severability. Each of the covenants contained in this Declaration shall be independent of the others, and in the event that any one is found to be invalid, unenforceable, or illegal by a court of competent jurisdiction, the remaining covenants shall remain in full force and effect.

11.4 Consent, Power of Attorney, Waiver. By acceptance of a deed, lease, or other conveyance of an interest in Lot, each Owner or Occupant consents to the rights reserved to the Association in this Declaration, including but not limited to, the right to prepare, execute, file, process, and record necessary and appropriated documents and other items to establish and grant easements and to make necessary and appropriate amendments of this Declaration, the Plat and Bylaws. By such acceptance, each Owner or Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same; and such acceptance shall be deemed an appointment of the Association, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on Owner's or Occupant's behalf; and such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Association's reserved rights as set forth in this Declaration and shall not be affected by the disability of any such Owner or Occupant.

11.5 No Representations and Warranties. Each Owner and occupant understand, agrees, and acknowledges through taking title or residing in the Project that the Declarant, Association, and the Board have not made any representations or warranties of any kind related to the Project and that each Owner or occupant has not relied upon any reorientations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose relative to the Project.

11.6 Amendment. At any time while this Townhome Declaration is in effect, the covenants herein contained can be modified by the Declarant or Declarant's successors and assigns during the Class B Control Period at the sole discretion of the Declarant. Thereafter, the covenants herein contained can only be modified by the affirmative vote of the Owners representing not less than sixty-seven (67%) percent of the total votes of the Townhome Association. No meeting or voting shall be required for an amendment, if the required, written consent is obtained from the requisite number of Owners. The Townhome Association must receive written permission from the Master Board approving any amendment of the Townhome Declaration.

11.7 Constructive Notice. Every person who owns, occupies, or acquires any right, title or interest in any Lot in the Project is conclusively deemed to have notice of this Declaration and its contents, and to have consented to the application and enforcement of each of the provision of this Declaration against their Lot, whether or not there is any reference to this Declaration in the instrument by which they acquire interest in any Lot.

11.8 Liberal Interpretation. The provisions of this Declaration shall be interpreted liberally to further the goal of creating a uniform plan for the development of the Project. Headings

are inserted for convenience only and shall not be considered in interpretation of the provisions. Singular will include plural, and gender is intended to include masculine, feminine and neuter as well.

11.9 Right to Modify Lot Boundaries and Interior Boundary Lines. Declarant reserves the unilateral right to modify Lot boundaries and interior boundary lines and/or combine Lots so long as it owns the Lots; provided, however, such changes may not extensively alter the boundaries of the Common Area and facilities nor change the percentages of ownership interest.

11.10 Violation Deemed a Nuisance. Any violation of these covenants that is permitted to remain on the Property is deemed a nuisance and is subject to abatement by the Association.

(a) Any single or continuing violation of the covenants contained in this Declaration may be enjoined in an action brought by the Association. In any action brought to enforce these covenants, the prevailing party shall be entitled to recover as part of its judgment the reasonable costs of enforcement, including reasonable attorney fees and court costs.

(b) Nothing in this Declaration shall be construed as limiting the rights and remedies that may exist at common law or under applicable federal, state or local laws and ordinances for the abatement of nuisances, health and safety, or other matters. This Declaration is to be construed as being in addition to those remedies available at law.

(c) The remedies available under this Declaration and at law or equity generally are not to be considered as exclusive, but rather as cumulative.

(d) The failure to take enforcement action shall not be construed as a waiver of the contents contained in this Declaration in the future or against other similar violations.

11.11 Association Litigation. Any association litigation shall be subject to procedures and requirements set forth in the Master Declaration.

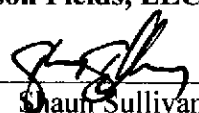
11.12 Repurchase Option for Construction Defect Claims. Declarant retains a repurchase option as set forth in the Master Declaration.

11.13 Amendment Requires Consent of Declarant. Notwithstanding any other provision of this Townhome Declaration, during the Class B Period, this Townhome Declaration and its subsections may not be amended except with the prior written consent of the Declarant.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Townhome Declaration the day and year first above written.

Declarant

Nisson Fields, LLC


By: Shaun Sullivan
Its: Co-Manager

STATE OF UTAH)
 : ss
COUNTY OF WASHINGTON)

On this 10 day of August, 2022, personally appeared before me Shaun Sullivan, who being by me duly sworn, did say that he is an authorized co-manager of Nisson Fields, LLC, and that the within and foregoing instrument was signed on behalf of said limited liability company by authority and said member duly acknowledged to me that said limited liability company approved the same.

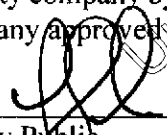

Notary Public
Residing at: _____
My Commission Expires: _____



Exhibit "A"
Legal Description

HERITAGE PLACE LEGAL DESCRIPTION:

BEGINNING AT A POINT THAT LIES NORTH 88°47'50" WEST ALONG THE SECTION LINE 1338.24 FEET AND SOUTH 00°54'46" WEST 516.96 FEET AND NORTH 88°37'36" WEST ALONG THE CENTER LINE OF 1575 SOUTH STREET 17.87 FEET TO THE EAST LINE OF HERITAGE COVE SUBDIVISION AS FILED IN THE WASHINGTON COUNTY RECORDERS OFFICE, WASHINGTON COUNTY, UTAH. THENCE ALONG SAID HERITAGE COVE THE FOLLOWING THREE (3) COURSES: 1) SOUTH 03°31'54" WEST 161.14 FEET, 2) SOUTH 86°56'09" WEST 113.08 FEET, AND 3) NORTH 68°47'46" WEST 14.97 FEET, FROM THE NORTHEAST CORNER OF SECTION 26, TOWNSHIP 42 SOUTH, RANGE 15 WEST, SALT LAKE BASE AND MERIDIAN, THE TRUE POINT OF BEGINNING, AND RUNNING THENCE SOUTH 01°12'16" WEST 194.08 FEET; THENCE SOUTH 00°54'46" WEST 327.59 FEET; THENCE SOUTH 89°28'19" EAST 132.43 FEET MORE OR LESS TO THE WEST LINE OF WASHINGTON FIELDS ROAD, THENCE ALONG SAID LINE THE FOLLOWING TWO (2) COURSES: 1) SOUTH 00°21'48" WEST 842.29 FEET, AND 2) SOUTHERLY ALONG A 862.80 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT, (LONG CHORD BEARS SOUTH 11°14'30" EAST A DISTANCE OF 364.03 FEET, CENTER POINT LIES SOUTH 89°03'37" EAST); THROUGH A CENTRAL ANGLE OF 24°21'47" A DISTANCE OF 366.79 FEET; THENCE NORTH 00°21'56" EAST 6.25 FEET MORE OR LESS TO THAT CERTAIN WESTERLY LINE OF SAID ROAD ESTABLISHED BY DOC. NO. 20070060832 OFFICIAL RECORDS WASHINGTON COUNTY, UTAH. THENCE ALONG SAID LINE THE FOLLOWING TWO (2) COURSES: 1) SOUTHEASTERLY ALONG A 860.10 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT, (LONG CHORD BEARS SOUTH 28°10'44" EAST A DISTANCE OF 154.21 FEET, CENTER POINT LIES NORTH 66°57'52" EAST); THROUGH A CENTRAL ANGLE OF 16°17'11" A DISTANCE OF 154.42 FEET, AND 2) SOUTHERLY ALONG A 25.00 FOOT RADIUS REVERSE CURVE TO THE RIGHT, (LONG CHORD BEARS SOUTH 09°34'24" WEST A DISTANCE OF 34.03 FEET, CENTER POINT LIES SOUTH 56°40'41" WEST); THROUGH A CENTRAL ANGLE OF 85°47'27" A DISTANCE OF 37.43 FEET TO THE NORTH LINE OF 2000 SOUTH STREET, THENCE ALONG SAID LINE THE FOLLOWING FIVE (5) COURSES: 1) SOUTH 52°28'04" WEST 22.66 FEET, 2) SOUTHWESTERLY ALONG A 220.00 FOOT RADIUS CURVE TO THE RIGHT, (LONG CHORD BEARS SOUTH 68°53'34" WEST A DISTANCE OF 124.35 FEET, CENTER POINT LIES NORTH 37°31'53" WEST); THROUGH A CENTRAL ANGLE OF 32°49'54" A DISTANCE OF 126.03 FEET, 3) SOUTH 00°54'46" WEST 14.51 FEET AND 4) NORTH 89°02'31" WEST 1256.28 FEET MORE OR LESS TO THE EAST LINE OF 300 EAST STREET, THENCE ALONG SAID LINE NORTH 00°30'22" EAST 1129.37 FEET; THENCE NORTH 87°20'34" WEST 16.51 FEET TO THE CENTERLINE OF SAID 300 EAST STREET, THENCE NORTH 00°30'22" EAST ALONG SAID LINE 151.78 FEET; THENCE LEAVING SAID ROAD AND RUNNING SOUTH 85°32'38" EAST 263.87 FEET; THENCE NORTH 23°58'24" EAST 198.45 FEET; THENCE NORTH 06°15'34" EAST 92.12 FEET TO THE SOUTH LINE SAID HERITAGE COVE, THENCE ALONG SAID LINE THE FOLLOWING EIGHT (8) COURSES: 1) SOUTH 38°59'31" EAST 59.91 FEET, 2) SOUTH 39°32'06" EAST 180.57 FEET, 3) SOUTH 80°17'20" EAST 76.66 FEET, 4) NORTH 31°49'57" EAST 437.65 FEET, 5) NORTH 39°02'40" WEST 105.55 FEET, 6) NORTH 46°59'39" EAST 34.96 FEET, 7) SOUTH 74°08'02" EAST 248.45 FEET AND 8) NORTH 30°16'37" EAST 184.62 FEET TO THE POINT OF BEGINNING.

CONTAINING 1,931,949 SQUARE FEET OR 44.35 ACRES.

- Tax I.D. W-S-2-26-14041
- W-S-2-26-14141
- W-S-2-26-1303
- W-S-2-26-1304
- W-S-2-26-1415
- W-S-2-26-131
- W-S-2-26-132
- W-S-2-26-133
- W-S-2-26-142
- W-S-2-26-135
- W-S-2-26-136

Exhibit "C"
HERITAGE PLACE TOWNHOMES
Maintenance Chart

The following Maintenance Chart is intended to be a quick reference guide for the division of responsibility for maintenance, repair and replacement of Common Areas, Limited Common Areas, and Dwellings between the Heritage Place Townhome Owners Association, Inc ("Association") and Owners. In the event of conflict, the terms of the Declaration of Covenants, Conditions, and Restrictions of Heritage Place Townhomes ("Declaration") will control over this Maintenance Chart. Unless otherwise expressly stated, the respective responsibilities identified below include the obligation to clean, maintain, repair, and replace, as necessary.

Dwellings	Association	Owner
All interior and exterior doors, including thresholds, door jambs, hinges, doorbells, chimes, handles and locks		X
All interior paneling, tile, wallpaper, paint, carpet, finished interior flooring, fireplaces, and any other materials constituting the finished interior surfaces of floors, ceilings, or walls		X
All drywall, wallboard, or similarly functioning materials within the Dwelling		X
All framing, insulation and other materials associated with interior nonbearing walls		X
All windows, windowsills (including the regular cleaning and clearing of clogged weep holes), window screens, window frames and skylights, including the interior and exterior cleaning of such windows and any door glass (If the Association elects to arrange for exterior cleaning, Owners will be assessed as a common expense)		X
The paint and any other decorative finish inside the opening to any skylight		X
All sewer and drainage pipes, water, power and other utility lines and any wiring related to the provisions of television, telephone, or internet services, to the extent serve a single Dwelling.		X
All plywood decking and similar materials on interior floors		X
Any of the following located wherever they might be located (inside or outside of the Dwelling) that serve an Owners' Dwelling exclusively: lighting fixtures (including lighting particular to a porch or patio but not		X

including exterior lighting attached to a Dwelling for the purpose of lighting Common Area outside of those areas), fans, plumbing fixtures, including plumbing pipes and lines, stoves, refrigerators, hot water heaters, air conditioning Dwellings (including compressors, wiring to such Dwellings, condensers, ducting and forced air Dwellings), intercoms, security systems and such other appliances, fixtures and decorations.		
Driveways serving the Dwelling, sidewalks serving just the Dwelling, and concrete pads within garages and Dwellings (not including foundations)		X
Garage doors and garage door openers		X
Fences surrounding a Dwelling's Limited Common Area. If a fence forms the boundary of Limited Common Areas to two Dwellings, the Owners of such Dwellings shall equally share the cost		X
Community perimeter or other wing style fencing as part of the original construction	X	
Any modification or repair to the Dwelling necessary to mitigate any radon gas or other naturally occurring environmental contaminate.		X
Exterior of Dwelling, porches, patios and similar areas should be kept clean and sanitary (repair and replacement of these elements is addressed below)		X
All foundations (excluding concrete pads within a Dwelling)		X
All framing and structural components in ceilings and floors		X
All framing, structural components, and insulation in exterior and bearing walls		X
All framing, structural and all components that are a part of the outside surface of all exterior walls and outside surfaces of the Dwellings		X
Exterior surfaces of the Dwelling structures and all components that are a part of the outside surface of all exterior walls, outside surfaces of the Dwellings	X	
Framing, structural components and insulation in any walls common to two (2) Dwellings.		X
Any patios, porches, decks, and stairways on the exterior of any Dwelling and any railings associated therewith		X

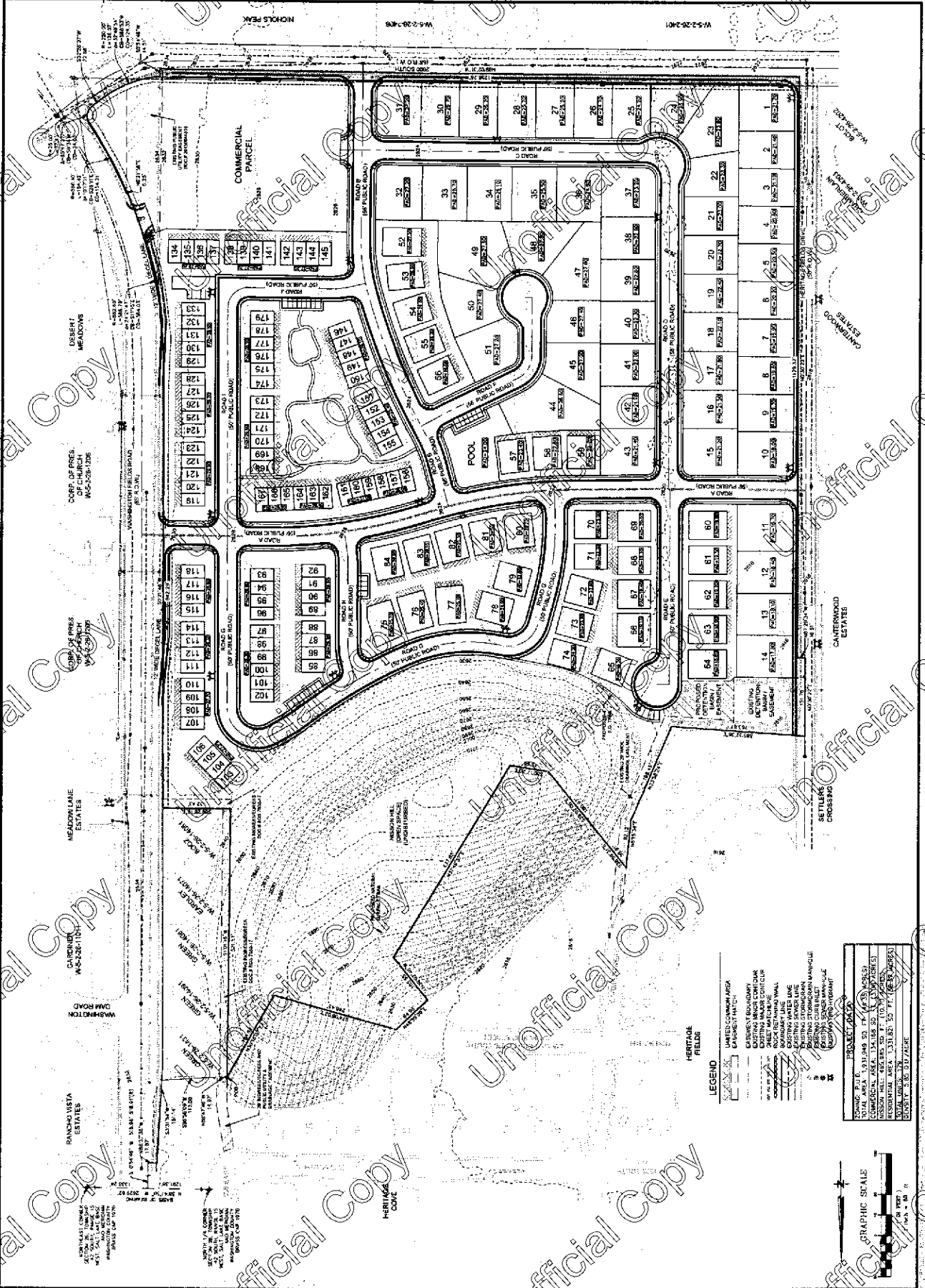
Roofs (including shingles underlayment but excluding other structural elements), rain gutters, downspouts, and window wells	X	
Vents that serve a single Dwelling or piece of equipment serving only that Dwelling		X
Sidewalks in the Common Area, and sidewalks serving two or more Dwellings	X	
Sidewalks serving only one Dwelling		X
Private roadways, private alleys, and parking stalls located within the Project and not otherwise maintained by a municipal entity	X	
Equipment, fixtures, attachments, HVAC, utilities serving only an individual Dwelling		X
Utilities serving more than one Dwelling and not maintained by the City	X	


Lot & Grounds	Association	Owner
Common Areas, open space, private road, and parks	X	
Maintenance, repair, and replacement of visitor parking	X	
Driveways, sidewalks serving one Dwelling, porches, steps, rear yards		X
Landscaping in the Subdivision, including Lots and Common Areas. (Owners must provide access to any fenced portions of their Lot and cooperate with the Association and its landscaper to maintain Lot to be conducive to necessary landscape maintenance.)	X	
Replacement of landscaping, trees, and bushes in the Common Areas.	X	
Replacement of landscaping, trees and bushes on a Lot or Limited Common Areas (Association may perform the work but Owner is responsible for the cost)		X
Pressurized irrigation system in the entire community (both Common Areas and Lots)	X	
Maintenance, repair, and replacement of existing, freestanding light posts adjacent to Common Areas	X	
Snow removal on the Limited Common Areas driveway, sidewalks serving the Owner's Dwelling and any Common Area sidewalks adjacent to the Owner's Dwelling and any porches or patios (may be modified by Association rules)		X
Snow removal from the Common Area	X	
Fencing: perimeter fencing for the entire subdivision	X	
Driveways (unless modified by Association Rule)		X

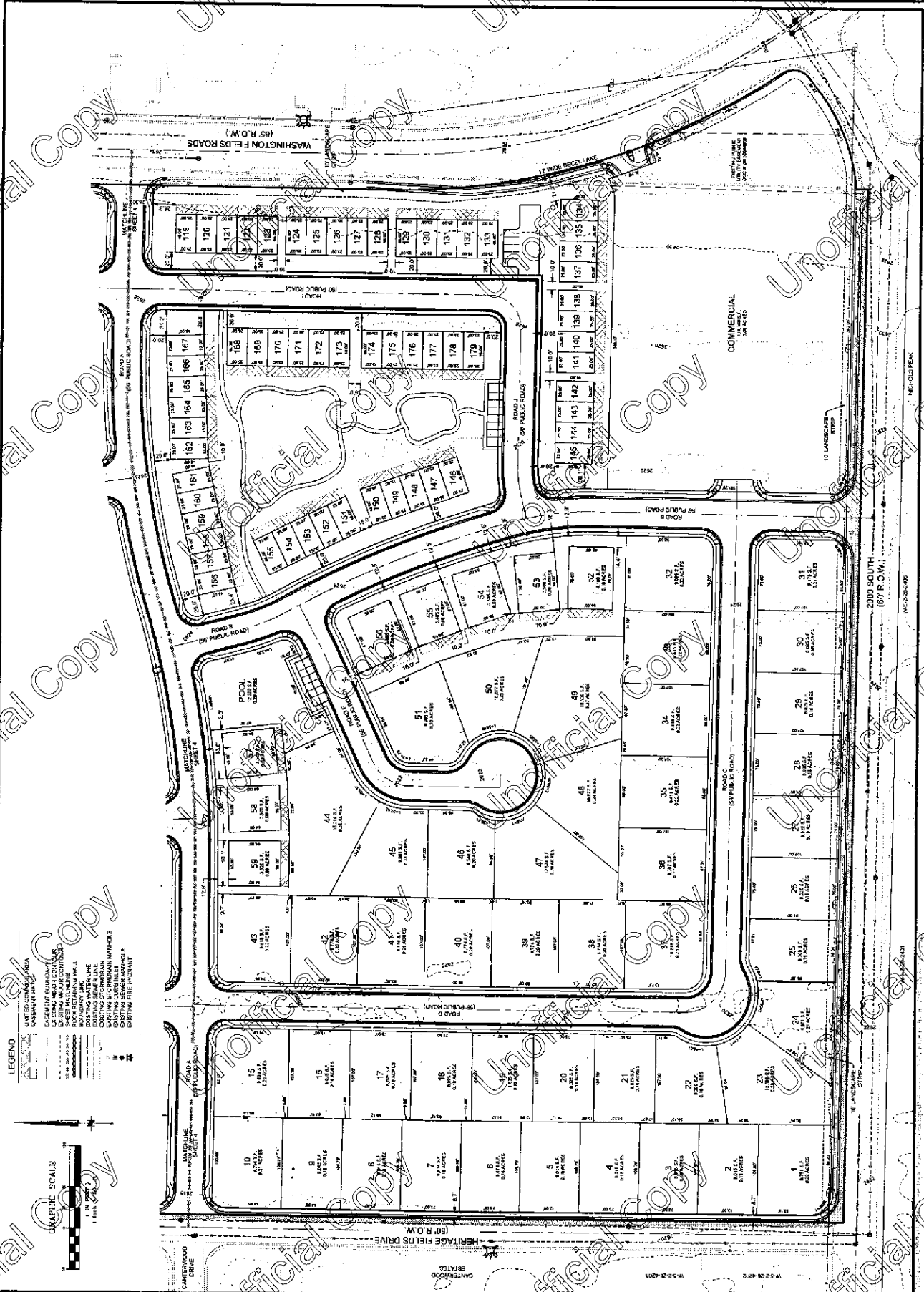
Any other elements not expressly maintained by the Association		X
Community Mailboxes	X	

MISCELLANEOUS	Association	Owner
Any damage to a Dwelling or Common Area caused by an Owner, resident, tenant, guest, invitee, or contractor hired by an Owner.		X
The Association's deductible for any covered loss that is applicable to coverage under an Association's insurance policy		X

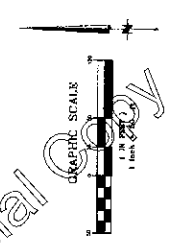
BUSH & GUDGELL, INC. Engineers - Planners - Surveyors 205 East Talmadge Suite 88 St. George, UT 84770 Phone (435) 673-2287 / Fax (435) 673-3161 www.bushandgudgell.com		DATE: 08/17/2022 DRAWN: JTB CHECKED: JTB SCALE: AS SHOWN JOB NO.: 20220039570	SHEET 34 OF 37 PROJECT: PRELIMINARY PLAT HERITAGE PLACE WASHINGTON CITY, UTAH
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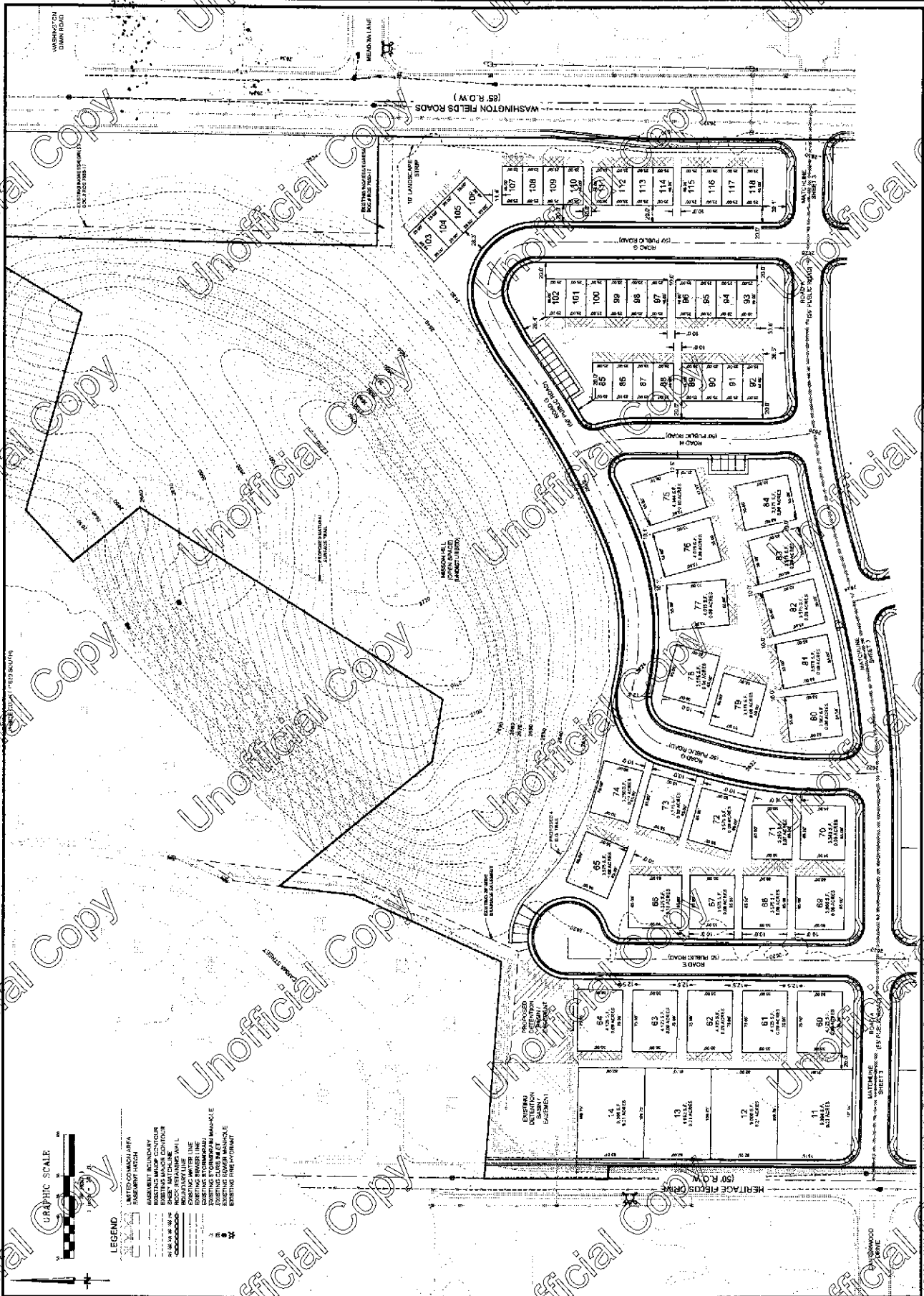
BUSH & GUDGELL, INC. Engineers - Planners - Surveyors 205 East Tenth Street Suite #3 St. George, Utah 84770 Phone (435) 232-7777 / Fax (435) 872-3161 www.bushandgudgell.com		DATE: 08/17/2022 DRAWN: J.E. APPROVED: [Signature] SCALE: AS SHOWN JOB NO.: 20220039570	SOUTH DETAIL HELMERY PLAT HERITAGE PLACE WASHINGTON CITY, UTAH
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- LEGEND**
- UNITS: 1" = 20' (VERTICAL)
 - UNITS: 1" = 40' (HORIZONTAL)
 - EXISTING BOUNDARIES
 - EXISTING NEIGHBORHOOD
 - EXISTING LOT LINES
 - SHEET MAILING
 - EXISTING DRIVE
 - EXISTING SIDEWALK
 - EXISTING WATER LINE
 - EXISTING SEWER LINE
 - EXISTING GAS LINE
 - EXISTING EASEMENTS
 - EXISTING SETBACKS
 - EXISTING DRIVE
 - EXISTING SIDEWALK
 - EXISTING DRIVE
 - EXISTING SIDEWALK



	BUSH & GUGGELL, INC. Engineers - Planners - Surveyors 205 East Tallman Suite #4 21 Canyon Loop #275 Phone (408) 573-2037 / Fax (408) 573-1611 www.bushguggell.com	DATE: 08/17/22 SCALE: 1/8" = 1'-0" APPROVED: _____ DRAWN: J.L.	NORTH DETAIL PRELIMINARY PLAT HERITAGE PLACE WASHINGTON CITY, UTAH
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Unofficial Copy

DATE: MAR 2015 DRAWN BY: [illegible] CHECKED BY: [illegible] SCALE: [illegible]		BUSH & GUDGELL, INC. Engineers - Planners - Surveyors 205 East Fairbanks Blvd #1 St George, UT 84770 Phone (435) 673-2337 / FAX (435) 673-3161 www.bushandgudgel.com	NO. DATE BY

PHASING PLAN
HERITAGE PLACE
WASHINGTON CITY, UT/AH

