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Amended Restrictive Covenants  
Gary Christensen Washington County Recorder  
01/26/2024 12:02:51 PM Fee \$ 40.00  
By FUSION3 LLC



When recorded return to:  
Corinne Schmalz, c/o Ence Homes  
619 South Bluff St., Tower 2  
St. George, UT 84770

**SECOND AMENDMENT TO THE  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF ARANCIO POINT SUBDIVISION**

FACTION, LLC, a Utah limited liability company (hereinafter "Declarant") hereby amends the following portions of the Declaration of Covenants, Conditions and Restrictions for Arancio Point Subdivision (hereinafter "Declaration") as set forth herein, pursuant to its authority under Article 7 of said Declaration, which Declaration was recorded on the 15<sup>th</sup> day of July, 2021, as DOC No. 20210047905 in the records of the Washington County Recorder, and affecting the real property located in Washington County, Utah, more particularly described as recorded phases of Arancio Point Subdivision, as follows:

Phase 1 Lots: per the Official Plat of Arancio Point Subdivision, Phase 1, said Lots being:

SG-APD-1-10 through SG-APD-1-48, inclusive; and

Phase 2 Lots: per the Official Plat of Arancio Point Subdivision, Phase 2, said Lots being:

SG-APD-2-1 through SG-APD-2-9, inclusive; and

All future Phases, including the Lots thereof, as annexed or expanded to Arancio Point Subdivision, in accordance with the provisions of the Declaration thereof, as cited.

The Declarant, hereby amends and modifies the Declaration, as follows:

The language of Article 2, Section 3 shall be deleted, which Section language currently reads, as follows:

**"2.3. CARE AND MAINTENANCE OF LANDSCAPING AND OTHER LOT FEATURES.**

During the Development Phase, and continuing thereafter until changed by a two-thirds (2/3) vote of the Owners, the Association shall be responsible for maintenance of landscaping:

- 1) of the front yard, and
- 2) of the side-yard areas of each Lot; side-yard shall be considered to be that area extended from the front foundation line of the Home to the rear foundation line; however, in the instance that a gate or wall is placed at or near the front foundation line, preventing access to the side yard, such enclosed side yards shall NOT be maintained by the Association.
- 3) the landscape strips located in the tiered, rock retaining walls

An Owner shall be responsible for the maintenance of such side yards and all other areas of the Owner's Lot, including any walls, fences or other barriers that surround the Home and/or Lot. The Owner of each Lot shall keep the same free from rubbish, litter and noxious weeds. All structures, landscaping and improvements shall be maintained in good condition and repair at

all times. Each Lot shall be subject to an easement for access to make repairs upon adjoining Lots and structures; provided however, that:

(A) Any damage caused by such entry shall be repaired at the expense of the Owner whose property was the subject of the repair work which caused the same;

(B) Any such entry shall be made following proper notification the adjoining Lot Owner(s) and only at reasonable times and with as little inconvenience as possible to the adjoining Lot Owner; and

(C) In no event shall said easement be deemed to permit entry into the interior portion of any Home on said adjoining Lot(s).

In the event any Owner fails to perform any maintenance that is the responsibility of the Owner in a manner so as not to detract from the appearance of the Property, or affect adversely the value or use of any other Lot(s), the Board shall have the right to have maintenance performed on the Lot and the cost of said maintenance shall be added to and become part of the assessment to which such Lot is subject."

Said language, as above-quoted, shall be replaced in Article 2, Section 3 with language which shall read, as follows:

**"2.3. CARE AND MAINTENANCE OF LANDSCAPING AND OTHER LOT FEATURES.** During the Development Phase, and continuing thereafter until changed by a two-thirds (2/3) vote of the Owners, the Association shall be responsible for maintenance of landscaping:

- 1) of the front yard, excluding any artificial/synthetic turf, and
- 2) of the side-yard areas of each Lot; side-yard shall be considered to be that area extended from the front foundation line of the Home to the rear foundation line; however, in the instance that a gate or wall is placed at or near the front foundation line, preventing access to the side yard, such enclosed side yards shall NOT be maintained by the Association.
- 3) the landscape strips located in the tiered, rock retaining walls

An Owner shall be responsible for the maintenance of any such side yards and all other areas of the Owner's Lot, including any artificial/synthetic turf and any walls, fences or other barriers that surround the Home and/or Lot. The Owner of each Lot shall keep the same free from rubbish, litter and noxious weeds. All structures, landscaping and improvements shall be maintained in good condition and repair at all times. Each Lot shall be subject to an easement for access to make repairs upon adjoining Lots and structures; provided however, that:

(A) Any damage caused by such entry shall be repaired at the expense of the Owner whose property was the subject of the repair work which caused the same;

(B) Any such entry shall be made following proper notification the adjoining Lot Owner(s) and only at reasonable times and with as little inconvenience as possible to the adjoining Lot Owner; and

(C) In no event shall said easement be deemed to permit entry into the interior portion of any Home on said adjoining Lot(s).

In the event any Owner fails to perform any maintenance that is the responsibility of the Owner in a manner so as not to detract from the appearance of the Property, or affect adversely the value or use of any other Lot(s), the Board shall have the right to have maintenance performed on the Lot and the cost of said maintenance shall be added to and become part of the assessment to which such Lot is subject.”

The language of Article 3, Section 4 (aa) shall be deleted, which Section language currently reads, as follows:

(aa) Landscaping. Front and side-yard landscaping (side-yard shall extend from the front foundation line to the rear foundation line of the Home) shall be installed by Declarant, or its agent, as part of the initial construction of the Home on a Lot. Not less than 20% of the front-yard area shall be sod unless otherwise permitted by the ACC. The cost of said landscaping shall be the sole responsibility of the “to-be Owner” of the Lot/Home. Such landscaping shall be completed prior to the date of a City-issued Certificate of Occupancy (“CO”) or occupancy of a Home on a Lot, whichever first occurs.

Within six (6) months after receipt of a Certificate of Occupancy or the Settlement/Closing on a Home, the Owner must have substantially completed the landscaping of the rear portion of the Lot as approved by the ACC. All rear-yard landscaping shall be done appropriately, in keeping with standards reflected in the front and side-yard landscaping. Features of rear-yard landscaping may include, among others, xeriscaping to facilitate water conservation, lawn areas or accents, trees, shrubs, and planting beds. All rear-yard landscaping must include a clock-controlled automatic irrigation system; access to such clock shall be located on the exterior of the Home, to facilitate access by the Association during maintenance or emergencies and/or the absence of the Owner. All rear-yard landscaping shall be maintained by each Lot Owner at a reasonable standard compatible with front and side-yard maintenance by the Association, and with other Homes in the Property. Shrub and tree planting on corner Lots shall be located so as not to create a hazard for the movement of vehicles along streets, in accordance with local ordinances. All landscaping installed by any party other than Declarant must be approved by the ACC. In the event a Lot Owner delays the installation of rear-yard landscaping beyond the time the Declarant has landscaped the front and side yard areas, and in the event the Owner’s own physical labor or Owner’s contractor damages the front or side yard landscaping while completing the rear-yard landscaping, the Lot Owner, at his/her own expense, shall restore the front and/or yard landscaping to its original condition.

Failure by the Lot Owner to complete rear-yard landscaping as provided in this Section may result in the following action. The Association shall notify the Lot Owner that a violation has occurred. This notification shall be in writing and delivered to the Owner by certified mail. The Association may levy a Five Hundred Dollar (\$500.00) fine against a Lot Owner so-notified of violation of this provision. The fine shall be deemed a Single Lot Assessment and shall be a charge against the Owner and shall be a lien on the Lot as provided herein. The Lot Owner shall have 45-days from the date of receipt of Notification to complete the rear-yard landscaping of the Lot. Failure by the Lot Owner to complete the rear-yard landscaping within the allotted 45-days

shall result in an additional One Hundred Dollar (\$100.00) fine, to be levied each and every month until the landscaping is complete. Said fine or fines, as levied, shall be a charge against the Owner and shall be a continuing lien on the Owner's Lot as provided herein.

Notwithstanding the above provisions, the ACC may extend the time frame an Owner has in which to complete the rear-yard landscaping of a Lot, and any such extension will be determined on a case-by-case basis.

The Association shall maintain the front landscaping, the side-yard landscaping extending from the front foundation line of the Home to the rear foundation line, OR TO ANY WALL, BARRIER OR GATE in the side-yard, and the strips of landscape located in the rock retaining walls.."

Said language, as above-quoted, shall be replaced in Article 3, Section 4(aa) with language which shall read, as follows:

"(aa) Landscaping. Front and side-yard landscaping (side-yard shall extend from the front foundation line to the rear foundation line of the Home) shall be installed by Declarant, or its agent, as part of the initial construction of the Home on a Lot. Not less than 15% of the front-yard area shall be sod unless otherwise permitted by the ACC. Xeriscape/Desert landscape or artificial/synthetic turf may also be approved by the ACC. The cost of said landscaping shall be the sole responsibility of the "to-be Owner" of the Lot/Home. Such landscaping shall be completed prior to the date of a City-issued Certificate of Occupancy ("CO") or occupancy of a Home on a Lot, whichever first occurs.

Within six (6) months after receipt of a Certificate of Occupancy or the Settlement/Closing on a Home, the Owner must have substantially completed the landscaping of the rear portion of the Lot, as approved by the ACC. All rear-yard landscaping shall be done appropriately, in keeping with standards reflected in the front and side-yard landscaping. Features of rear-yard landscaping may include, among others, xeriscape/desert landscape or artificial/synthetic turf to facilitate water conservation, lawn areas or accents, trees, shrubs, and planting beds. All rear-yard landscaping must include a clock-controlled automatic irrigation system; access to such clock shall be located on the exterior of the Home, to facilitate access by the Association during maintenance or emergencies and/or the absence of the Owner. All rear-yard landscaping shall be maintained by each Lot Owner at a reasonable standard compatible with front and side-yard maintenance by the Association, and with other Homes in the Property with the exceptions outlined in Section 2.3 regarding the maintenance of the strip of landscape located in the rock retaining walls. Shrub and tree planting on corner Lots shall be located so as not to create a hazard for the movement of vehicles along streets, in accordance with local ordinances. All landscaping installed by any party other than Declarant must be approved by the ACC. In the event a Lot Owner delays the installation of rear-yard landscaping beyond the time the Declarant has landscaped the front and side yard areas, and in the event the Owner's own physical labor or Owner's contractor damages the front or side yard landscaping while completing the rear-yard landscaping, the Lot Owner, at his/her own expense, shall restore the front and/or yard

landscaping to its original condition.

Failure by the Lot Owner to complete rear-yard landscaping as provided in this Section may result in the following action. The Association shall notify the Lot Owner that a violation has occurred. This notification shall be in writing and delivered to the Owner by certified mail. The Association may levy a Five Hundred Dollar (\$500.00) fine against a Lot Owner so-notified of violation of this provision. The fine shall be deemed a Single Lot Assessment and shall be a charge against the Owner and shall be a lien on the Lot as provided herein. The Lot Owner shall have 45-days from the date of receipt of Notification to complete the rear-yard landscaping of the Lot. Failure by the Lot Owner to complete the rear-yard landscaping within the allotted 45-days shall result in an additional One Hundred Dollar (\$100.00) fine, to be levied each and every month until the landscaping is complete. Said fine or fines, as levied, shall be a charge against the Owner and shall be a continuing lien on the Owner's Lot as provided herein.

Notwithstanding the above provisions, the ACC may extend the time frame an Owner has in which to complete the rear-yard landscaping of a Lot, and any such extension will be determined on a case-by-case basis.

The Association shall maintain the front landscaping excluding any artificial/synthetic turf and the side-yard landscaping extending from the front foundation line of the Home to the rear foundation line, OR TO ANY WALL, BARRIER OR GATE in the side-yard."

The language of Article 5, Section 2 shall be deleted, which Section language currently reads, as follows:

"5.2. PURPOSE OF ASSESSMENTS. The assessments levied by the Association shall be used by the Association for the improvement, maintenance, repair and preservation of the landscaping in the front and side yard areas of each Lot, and any Common Area in the Property, as shown on the Plat. The assessments must provide for but are not limited to, the payment of taxes on Association property and insurance maintained by the Association; the payment of the cost of repairing, replacing and maintaining the Common Areas; the payment of cost of repairing replacing and maintaining the landscaping in the front and side-yard areas of each Lot; the payment of administrative expenses of the Association; insurance deductible amounts; the establishment of a reserve account for repair, maintenance and replacement of the Common Areas which must be replaced on a periodic basis; and other amounts required that the Directors shall determine to be necessary to meet the primary purposes of the Association."

Said language, as above-quoted, shall be replaced in Article 2, Section 2 with language which shall read, as follows:

"5.2.PURPOSE OF ASSESSMENTS. The assessments levied by the Association shall be used by the Association for the improvement, maintenance, repair and preservation of the landscaping in the front and side yard areas of each Lot, and any Common Area in the Property, as shown on the Plat. The assessments must provide for but are not limited to, the

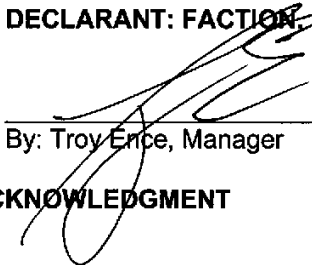


payment of taxes on Association property and insurance maintained by the Association; the payment of the cost of repairing, replacing and maintaining the Common Areas; the payment of cost of repairing replacing and maintaining the landscaping in the front and side-yard areas of each Lot; the payment of administrative expenses of the Association; insurance deductible amounts; the establishment of a reserve account for repair, maintenance and replacement of the Common Areas which must be replaced on a periodic basis; and other amounts required that the Directors shall determine to be necessary to meet the primary purposes of the Association.

Notwithstanding the above provisions, the Association shall not be required to use assessments for the improvement, maintenance, repair and preservation of any artificial/synthetic turf a Lot Owner elects to install in the front and side-yard areas of each Lot/Home. The improvement, maintenance, repair and preservation of any artificial/synthetic turf shall be the sole responsibility of the Lot Owner and no reduction in assessments levied by the Association shall be given to the Lot Owner for such maintenance."

IN WITNESS WHEREOF, Declarant does hereafter execute this 2<sup>nd</sup> Amendment as of the 26<sup>th</sup> day of January, 2024.

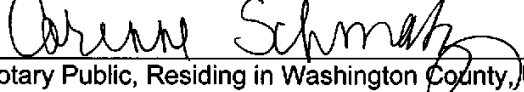
**DECLARANT: FACTION, LLC**

  
By: Troy Ence, Manager

**ACKNOWLEDGMENT**

STATE OF UTAH )  
ss. )  
COUNTY OF WASHINGTON )

On this 26<sup>th</sup> day of January, 2024, before me personally appeared Troy Ence, whose identity is personally known to me, and who, being by me duly sworn did say that he is the Manager of FACTION, LLC, a Utah limited liability company, and that the foregoing document was signed by him on behalf of said company by proper authority and he acknowledged before me that the company executed the document and the document was the act of the company for its stated purpose.

  
Notary Public, Residing in Washington County, UT

