

**WHITING COVE PHASE E
MAPLETON, UTAH**

ENT41898:2022 PG 1 of 17
Andrea Allen
Utah County Recorder
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**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, & RESTRICTIONS
FOR
WHITING COVE PHASE E**

This Declaration of Protective Covenants, Conditions, & Restrictions (“Declaration”) is made as of the date of its recording in the Utah County Recorder’s Office by Whiting Cove Phase E LLC (“Declarant”).

RECITALS

1. Declarant is the owner of fee simple title to that certain real property situated in the city of Mapleton, Utah County, and more particularly described on Exhibit “A” attached hereto and by this reference made a part hereof.
2. Declarant will create within and upon the Property (as defined below) a strictly residential complex to be known as Whiting Cove Phase E. In order to enhance and protect the value, desirability, and attractiveness of the Property, Declarant desires to establish protective covenants, conditions, and restrictions thereon. Hereafter, conveyance of title to the Property or any portion thereof will be subject to the protective covenants, conditions, and restrictions hereinafter set forth.
3. Declarant and/or its Nominee(s) (as defined below) shall develop and improve the Property.
4. Notwithstanding anything to the contrary herein, no provision of this Declaration shall prevent the Declarant, or the Nominee, or their successors or assigns, from doing any of the following: (1) installation and completion of Improvements; (2) using any Building or Residence owned by the Declarant or the Nominee as a model home and/or a temporary construction or sales office; and (3) installation and maintenance of signs incidental to sales or construction which are in compliance with applicable City (as defined below) or Utah County ordinances. Notwithstanding anything to the contrary herein, no provision of this Declaration shall prevent the Declarant, or its successors or assigns, from doing any of the following: (4) assignments of rights under this Declaration in whole or part; and (5) retentions of rights with respect to subsequent phases of the Project.
5. This Declaration does not, and is not intended to, create or relate to a community association. The Property is NOT submitted or otherwise subject to the Utah Community Association Act or the Utah Condominium Ownership Act.

COVENANTS, CONDITIONS, AND RESTRICTIONS GENERALLY

NOW THEREFORE, in consideration of the Recitals above, the Declarant, in order to further preserve and maintain the integrity and of the Project, hereby covenants, agrees and declares that all of its interest as the same may from time to time appear in the Property shall be held and conveyed subject to the following covenants, conditions, restrictions which are hereby declared to be for the benefit of said interests in the Property, and the owners of said interests, their successors and assigns.

ARTICLE 1 DEFINITIONS

When used in this Declaration (including the “Recitals” and “Submission”), the following terms have the meaning indicated:

1.1 “Building” shall mean any structure which is permanently affixed to land and has one or more floors and a roof.

1.2 “City” shall mean the City of Mapleton, Utah, a municipal corporation of the State of Utah.

1.3 “Declarant” shall mean Whiting Cove Phase E LLC and its successors and assigns.

1.4 “Design Guidelines” shall mean the design and development guidelines and application and review procedures adopted from time to time by the Architectural Review Committee (“ARC”) in its sole discretion, setting forth certain architectural standards and specifications regarding the location and design of the improvements, construction materials, lighting, landscaping, signage and other matters applicable to the Lots or any portion thereof and relating to Improvements on the Property. The Design Guidelines are incorporated in this Declaration by reference.

1.5 “Expansion Property” shall mean any real property that may be added to the Project by Declarant by recording additional Plats.

1.6 “Improvements” shall mean any object, thing or activity of any kind installed, located or occurring on the Property which changes the external appearance of any portion of the Property or any Lot or of any structure or thing affixed on the Property or any Lot, from its external appearance as it existed immediately prior to the installation, location or occurrence of the object, thing or activity. Improvements include, but are not limited to, all Buildings, structures, landscaping and lawns, exterior walkways, parking areas, drives and truck loading areas, signs, fences, poles, walls, utility lines, lighting, excavations, grading, berms, drainage facilities, repairs, alterations, painting and all other structures or objects of any type or kind installed or constructed on the Property.

1.7 “Lot” shall mean each or any individual lot as more particularly described in this Declaration, and any other lot or parcel shown on any Plat to the extent such lots or parcels are part of the Property. References in the Declaration to a specific Lot shall refer to the particular Lot as set forth in, this Declaration and, as applicable, on the Plat for such Lot.

1.8 “Nominee” shall mean any person or entity appointed by Declarant, in writing, to manage or supervise all or any portion of the development and improvement of the Property. Declarant may appoint, replace or terminate any Nominee at any time, in Declarant’s sole and

absolute discretion. Declarant hereby appoints Arive Homes, LLC, a Utah limited liability company, as the initial Nominee.

1.9 “Occupant” shall mean and include the Owners, their respective heirs, successors and assigns (including mortgagees) and any person who shall be from time to time entitled to the use and occupancy of space located within the Project under any lease, sublease, license or concession agreement, or other instrument or arrangement under which such rights are acquired.

1.10 “Owner” shall mean one or more persons or entities who are alone or collectively the record owner of fee simple title to a Lot, including any purchaser under an installment land sales contract, but excluding those having such interest merely as security for the performance of an obligation.

1.11 “Permittees” shall mean all Occupants and all other invitees of Occupants.

1.12 “Plat” shall mean any subdivision plat, any plat of a planned unit development, or any plat or map similar to any of the foregoing: (a) which covers the Property; (b) which describes or creates one or more Lots, Buildings, Improvements, or Residences; (c) on which or in an instrument recorded in conjunction therewith there is expressed the intent that the Buildings, Improvements, or Residences created by the Plat shall comprise the Project; and (d) which is filed for record in the office of the Utah County Recorder.

1.13 “Project” shall mean all of the Property, together with all of the Residences, Buildings and other Improvements constructed thereon.

1.14 “Property” shall mean the real property described on Exhibit “A” attached hereto and incorporated herein by this reference and, subsequent to an annexation thereof pursuant to this Declaration, any other real property which shall become subject to this Declaration.

1.15 “Residence” shall mean and refer to any Building situated upon a Lot which has its own principal access to the outside, is not located over or under another Residence, and is designed and intended for separate, independent residential use and occupancy. All pipes, wires, conduits, HVAC equipment, or other similar equipment or public utility lines or installation constituting part of a particular Residence or serving only that Residence shall be considered part of that Residence.

1.16 “Supplementary Declaration” shall mean each of those certain supplementary declarations of protective covenants, conditions and restrictions or similar instruments, if any, recorded subsequent to this Declaration, which annex any Expansion Property and thereby extend the plan of this Declaration to such additional property as provided herein.

ARTICLE 2 COVENANTS, CONDITIONS, AND RESTRICTIONS

2.1 Permitted Use. All Lots shall be used only for single-family residential purposes, and no more than one Residence shall be constructed on any Lot. “Single Family” shall be defined

in the same manner as that term (or the comparable term) is defined in the City ordinances. No mining, drilling, prospecting, mineral exploration or quarrying activity will be permitted.

2.2 Zoning Regulations. The lawfully enacted zoning regulations of the City and all applicable building, fire, and health codes are in full force and effect in the Project. No Lot may be occupied and no improvements may proceed in a manner that is in violation of any statute, law or ordinance.

2.3 Completion Required Before Occupancy. No Residence may be occupied prior to its completion and the issuance of a certificate of occupancy by the City.

2.4 Underground Utilities. All gas, electrical, telephone, television, and any other utility lines in the Project are to be underground, including lines within any Lot which service installations entirely within that Lot. No above-ground propane tanks may be installed on any Lot with the exception of average sized barbeque grills.

2.5 Sewer Connection Required. All Lots are served by sanitary sewer service, and no cesspools, septic tanks, or other types of waste disposal systems are permitted on any Lot. All Residences must be connected to the sanitary sewer system.

2.6 Waste Disposal. No trash, garbage or waste material, including, but not limited to, scraps, grass, shrub or tree clippings, lumber, metals and plant waste, shall be kept, stored or allowed to accumulate on any portion of the Property except in an approved bin or contained within an enclosed structure appropriately screened from view. All trash, garbage and other waste materials shall be regularly removed from each Lot and the Property. Incineration of trash, garbage, or waste materials on the Property is prohibited.

2.7 Exterior Antennas and Satellite Dishes. Prior, written approval from the ARC as to the location of any new satellite dishes, antennas, cables and related hardware is required. The ARC shall have authority to create and enforce additional regulations in the Design Guidelines regarding the placement of satellite dishes, outdoor antennas, and other similar appliances for the purpose of addressing legitimate safety concerns in a manner that is no more burdensome to the Owner than necessary. No satellite dishes, outdoor antennas, or other similar appliances shall be larger than one meter in width or shall extend higher than twelve (12) feet above the Owner's roofline unless expressly permitted by the ARC in writing.

2.8 Subdivision and Combination of Lots. After recording of the applicable Plat, a Lot may neither be subdivided nor combined with another Lot without the consent of the ARC. Each Owner waives the right of partition as may be permitted under applicable law.

2.9 Temporary Structures. No Owner or resident shall place upon any part of the Project any temporary structures including, but not limited to tents and trailers without the prior written consent of the ARC.

2.10 Energy Conservation Equipment. No solar energy device, solar energy collector panels, other energy conservation equipment or attendant hardware shall be constructed or installed within the Project without the prior written consent of the ARC.

ARTICLE 3 GENERAL CONSTRUCTION REQUIREMENTS

3.1 Construction of Improvements on Each Lot. All work performed in the construction, maintenance, repair replacement, alteration or expansion of any Improvement on a Lot shall be effected as expeditiously as possible and in such a manner as not to unreasonably interfere, obstruct or delay (a) access to or from any other Lot, or part thereof; (b) construction work being performed on any other Lot; or (c) the use, enjoyment or occupancy of any other Lot. Any replacement, alteration or expansion of any Improvement on a Lot shall be in compliance with all applicable laws, rules, regulations, orders and ordinances of the city, county, state and federal government, or any department or agency thereof and no such work shall cause any Improvement located on any other Lot to be in violation of any such laws, rules, regulations, orders or ordinances. All work performed in the construction, maintenance, repair, replacement, alteration or expansion of any Improvement on a Lot shall be done in a good and workmanlike manner and in accordance with engineering standards.

3.2 Staging of Construction of Improvements. Staging for the construction, maintenance, repair, replacement, alteration or expansion of any Improvement on a Lot, including, without limitation, the location of any temporary buildings or construction sheds, the storage of building materials, and the parking of construction vehicles and equipment, shall be limited to such Lot.

3.3 Licensed Contractor. Unless the ARC gives a written waiver of approval to an Owner, no Improvement may be constructed, remodeled or altered on any Lot except by a licensed contractor, duly qualified and licensed by the appropriate governmental authorities.

3.4 Approved Builder. Only contractors approved in advance by the ARC, in its sole discretion, may construct Improvement(s) upon the Lots.

3.5 Residence to be Constructed First. No garage, out building or other Improvement may be constructed prior to the construction of the Residence on that Lot.

3.6 Landscaping. All areas of a Lot that are visible from the street shall be landscaped within one (1) year from the day construction of the Residence on such Lot is substantially complete. Landscaping shall comply with all City standards. In the absence of a City standard and unless otherwise approved in writing by the ARC, landscaping, at minimum, shall include installation of sprinklers, sod, one (1) one-inch caliper tree, and three (3) five-gallon shrubs.

3.7 Declarant Exemption. The Declarant and the Nominee are exempt from the provisions of this Article.

ARTICLE 4 ARCHITECTURAL REVIEW COMMITTEE AND DESIGN GUIDELINES

4.1 The ARC shall prepare or adopt and promulgate the Design Guidelines. The ARC shall have the sole and full authority to prepare and to amend the Design Guidelines, subject to approval of the City (if applicable). The ARC shall make copies of the Design Guidelines available, upon request, to Owners, builders and developers who seek to engage in development of or construction upon any portion of the Project, and such Owners, builders and developers shall conduct their operations strictly in accordance therewith.

4.2 Any material construction, alteration, modification, removal or destruction, within the Project, including the location of all improvements but excluding improvements confined to the interior of a Residence and only visible therein, must be approved in writing by the ARC prior to the commencement of the same. No person commencing such construction, alteration, modification, removal or destruction prior to receipt of such written approval shall acquire any vested rights in any such improvement. A majority of the members of the ARC shall have the power to act on behalf of the ARC, without the necessity of a meeting and without the necessity of consulting the remaining member or members of the ARC. All decisions rendered by the ARC must be by written instrument setting forth the action taken by the members consenting thereto.

4.3 The ARC may, at its sole discretion, deny any proposal (including design options chosen in a design center) if the ARC finds the proposal would be inappropriate for the particular Lot or Residence or incompatible with the Design Guidelines. Considerations such as siding, shape, size, color, design, height, solar access or other effects on the enjoyment of other Lots, Residences, or common area, and any other factors which the ARC reasonably believes to be relevant, may be taken into consideration by the ARC in determining whether or not to approve any proposal.

4.4 Approval or disapproval by the ARC of any matter proposed to it or within its jurisdiction shall not be deemed to constitute precedent, waiver or estoppel impairing its right to withhold approval or grant approval as to any similar matter thereafter proposed or submitted to it.

4.5 The ARC's approval of any proposal shall automatically be revoked within three (3) months after issuance unless construction or other work relating to the proposal has been commenced or the Owner has applied for and received an extension of time from the ARC.

4.6 The ARC may inspect from time to time, all work performed and determine whether it is in substantial compliance with the approval granted. If the ARC finds that the work was not performed in substantial conformation with the approval granted, or if the ARC finds that the approval required was not obtained, the ARC shall notify the Owner in writing of the noncompliance. The notice of noncompliance shall specify the particulars of noncompliance and shall require the Owner to remedy the noncompliance by a specific date. The ARC shall have authority to record a document giving notice of the noncompliance with recorder's office in the county where the Lot is located.

4.7 The ARC shall not be liable to any Owner, occupant, builder or other person for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the ARC or a member thereof, provided only that the member has in accordance with the actual

knowledge possessed by him or her, acted in good faith. The ARC is not responsible for determining compliance with structural and building codes, solar ordinances, zoning codes or other governmental regulations, all of which are the responsibility of the Owner.

4.8 The ARC shall consist of no fewer than three (3) persons. All members of the ARC shall be appointed or removed, from time to time, by the Nominee until the earlier of the following occurs: (i) neither the Declarant nor the Nominee owns any Lot in the Project; (ii) in a written instrument delivered to the Nominee, Declarant grants itself authority to appoint or remove some or all members of the ARC; or (iii) in a written and recorded instrument, Declarant terminates the Nominee and surrenders its right to appoint and remove the members of the ARC. Upon expiration of the Nominee's right and the Declarant's right to appoint and remove the members of the ARC, the members of the ARC shall be appointed or removed by the affirmative vote of the majority of the Owners.

4.9 Notwithstanding anything to the contrary herein, neither Declarant nor the Nominee shall need to submit or receive any approval from the ARC for any purpose.

4.10 As long as either the Declarant or the Nominee owns a Lot in the Project, this Article shall not be amended without the written consent of both the Declarant and such Nominee.

ARTICLE 5 REPAIR AND MAINTENANCE

5.1 Owner Duties. Every Owner shall, subject to Section 5.2, repair, replace, maintain, paint, and re-finish all portions of such Owner's Lot, Residence, and Improvements thereto in a clean, safe, and attractive condition at all times, and in compliance with this Declaration and the Design Guidelines;

5.2 ARC Approval Required for Certain Modifications and Alterations. Notwithstanding anything to the contrary herein, an Owner shall not do any of the following without prior written consent from the ARC:

- a. undertake any structural modification, structural alterations, or structural installations to his or her Residence;
- b. replace exterior building surfaces or any part thereof including roofs; or
- c. cause any outbuildings to be placed or erected on his or her Lot.

5.3 Standards for Maintenance and Construction.

- a. Maintenance of the exterior of Residences and Improvements shall be accomplished in accordance with the Design Guidelines.
- b. Throughout any period of construction upon a Lot, the Owner of such Lot shall

keep the Lot and all streets used by construction equipment or trucks in clean and safe condition, shall remove daily all trash, rubbish, debris, mud and dirt therefrom, shall take all measures necessary or appropriate to control dust, blowing sand and erosion, whether by wind or water, on the Lot and shall so conduct all such construction so as not to interfere with free and ready access to existing Buildings and neighboring Lots.

5.4 Declarant Exemption. The Declarant and its Nominee are exempt from the provisions of this Article.

ARTICLE 6 EASEMENTS AND LICENSES

6.1 Owners' Rights and Duties: Utilities and Communication Lines. The rights and duties of the Owners with respect to water, sewer, electricity, gas, telephone, cable television lines and drainage facilities shall be governed by the following:

a. Wherever sanitary sewer, water, electricity, gas, telephone and communication lines or drainage facilities are installed within the Property, there is hereby reserved and established for the benefit of the Owners of any Lot served by said lines or facilities a nonexclusive easement for the full extent necessary therefore, to enter upon the Lots owned by others, in or upon said lines or facilities, or any portion thereof, to repair, replace and generally maintain said lines and facilities as and when the same may be necessary as set forth below, provided that such Owner or utility company shall promptly repair any damage to a Lot caused by such entry as promptly as possible after completion of work thereon;

b. Wherever sanitary sewer, water, electricity, gas, telephone or communication lines or drainage facilities are installed within the Property, which lines or facilities serve more than one (1) Lot, the Owner of each Lot served by said lines or facilities shall be entitled to the full use and enjoyment of such portions of said lines or facilities which service such Owner's Lot; and

c. The foregoing provisions of this Section shall not be deemed to give any Owner the right to connect to any utility line or facility without first complying with all the requirements of the utility company providing the service in question, including without limitation, the payment of all required connection fees and related charges.

6.2 Reservation of Access and Utilities. Easements over the Property for the installations and maintenance of electric, telephone, communication lines, water, gas, sanitary sewer lines and drainage facilities as shown on the recorded subdivision maps of the Property are hereby reserved and established for the benefit of each Owner and their respective successors and assigns. Declarant, for the benefit of Declarant and its Nominee, hereby reserves 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, 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 Property 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 those claiming by, through or under the Owners; 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 Declarant as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way.

6.3 Pedestrian Walkway Easements. Nonexclusive easements over, upon, across and between each Lot are hereby reserved and established for the benefit of each Owner, their respective successors and assigns, and the Occupants and Permittees of each Owner for the purpose of pedestrian traffic, limited, however, to those portions of each Lot which are improved by the Owner thereof from time to time for pedestrian walkways and made available by such Owner for general use, as such portions may be reduced, increased or relocated from time to time by each such Owner.

6.4 Easements for Encroachments. If any structure constructed by Declarant on any Lot or Residence now or hereafter encroaches upon any other Lot or Residence, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. If any structure on any Lot or Residence 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 Residence or upon any portion of any 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.

6.5 Easements for Construction and Development Activities. Declarant, for the benefit of Declarant and its Nominee, reserves easements and rights of ingress and egress over, under, along, across and through the Property and the right to make such noise, dust and other disturbance as may be reasonably incident to or necessary for the (a) construction of Residences and Improvements; (b) to maintain sales or leasing offices, management offices and models throughout the Project and to maintain one or more advertising signs with respect to the sales of Residences, or other property in the Project or within any undeveloped land; (c) construction, installation and maintenance of roadways, walkways, structures, 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.

6.6 Income Generated from Service Providers. Declarant, as the owner of the real property at the time it is annexed into the Project through recordation of a Plat which includes the dedication of certain utility easements to the City or Utah County, may negotiate terms with service providers that desire to install infrastructure to provide services to Owners in the Project. Any income gained from these Bulk Service Agreement with Bulk Providers by Declarant may be retained by the Declarant. "Bulk Provider" shall mean any private, public, or quasi-public utility or other company which provides, or proposes to provide, cable television, satellite television, high speed internet, security monitoring, or other electronic entertainment, information, communication, or security services, or concierge or other personal services to the

Owners, Occupants, or Residences within the Project pursuant to a Bulk Service Agreement. “Bulk Service Agreement” shall mean any agreement between the Declarant and a Bulk Provider pursuant to which the Bulk Provider would provide cable television, satellite television, high speed internet, security monitoring, or other electronic entertainment, information, communication, or security services, or concierge or other personal services, to Owners, Occupants, or Residences within the Project.

ARTICLE 7 NATURE OF EASEMENTS, LICENSES, AND RIGHTS GRANTED

7.1 Easements Appurtenant. Each and all of the easements, licenses, and rights granted or created herein are appurtenances to the affected portions of the Property and none of the easements and rights may be transferred, assigned or encumbered except as an appurtenance to such portions. For the purposes of such easements, licenses, and rights, the particular areas of the Property which are benefitted by such easements shall constitute the dominant estate, and the particular areas of the Property which are burdened by such easements and rights shall constitute the servient estate.

7.2 Nature and Effect of Easements. Each and all of the easements, covenants, restrictions and provisions contained in this Declaration:

- a. are made for the direct, mutual and reciprocal benefit of the Owners, Occupants and Permittees of the respective Lots;
- b. create mutual equitable servitudes upon each Lot in favor of the other Lots;
- c. constitute covenants running with the land; and
- d. shall bind every person or entity having any fee, leasehold or other interest in any portion of the Property at any time or from time to time to the extent that such portion is affected or bound by the easement, covenant, restriction or provision is to be performed on such portion.

ARTICLE 8 EXPANSION RIGHTS AND SUBMISSION

8.1 Right to Expand. There is hereby granted unto Declarant, and Declarant hereby reserves, the absolute right and option to expand the Project at any time (within the limits herein prescribed) and from time to time by adding to the Project all or a portion of the Expansion Property. The Buildings on the Expansion Property are required to be substantially similar to those constructed upon the Property.

8.2 Annexation without Approval and Pursuant to General Plan. All or any part of the Expansion Property may be annexed to and become subject to this Declaration without the approval, consent or vote of the Owners or any other persons or parties, provided that a Supplementary Declaration covering the portion of said Expansion Property sought to be annexed, shall be executed by the then Owner or Owners thereof, consented to by Declarant, and recorded.

The recordation of said Supplementary Declaration shall constitute and effectuate the annexation of the said real property described therein, making said real property subject to this Declaration and thereafter said annexed real property shall be part of the Property.

8.3 Supplementary Declaration. The annexations authorized under this Article may be made by recording a Supplementary Declaration of Protective Covenants, Conditions and Restrictions, or similar instrument, with respect to the Expansion Property which shall extend the plan of this Declaration to such property. Such Supplementary Declaration contemplated above may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the annexed property and as are not inconsistent with the plan of this Declaration. In no event, however, shall any such Supplementary Declaration revoke, modify or add to the covenants established by this Declaration within the existing property unless such Supplementary Declaration is approved in the manner required herein for an amendment to this Declaration.

8.4 No Obligation to Expand. This Declaration is not intended, and shall not be construed so as, to impose upon Declarant an obligation respecting, or to restrict Declarant in any way with regard to the addition to the Project of any of the Expansion Property.

8.5 Owners' Obligations Concerning Expansion of Project. Each Owner, by acquiring his or her interest in the Project, agrees not to inhibit or oppose Declarant's future development of the Expansion Property (whether or not added to the Project) and the obtaining of necessary approvals therefore. Without limiting the scope of the immediately foregoing sentence, no Owner, directly or indirectly, shall oppose such development in public meetings, by petition, or by legal actions.

ARTICLE 9 AMENDMENTS

9.1 Manner of Amending. This Declaration may be amended as follows:

a. As long as the Declarant or its Nominee owns any Lot or Lots in the Project, this Declaration may only be amended, altered or modified by an amending document approved and signed by the Declarant and no other Owners will be required to approve such amendment, alteration or modification; and

b. Subject to Section 10.5, after the Declarant and its Nominee no longer own any Lot in the Project, this Declaration may be extended or amended by the affirmative vote or written consent, or any combination thereof, of no less than sixty-seven percent (67%) of the Owners.

c. Notwithstanding anything to the contrary herein, if an Article of this Declaration contains a more restrictive amendment provision relating to that Article, the more restrictive provision shall control.

9.2 Consent to Amend. If an Owner consents to an extension, amendment or modification of, or to, this Declaration, it will be conclusively presumed that such Owner has the authority so to consent and no contrary provision in any mortgage or contract between the Owner

and a third party will affect the validity of such amendment.

9.3 Acceptance of Deed. By acceptance of a deed of conveyance to a Lot or Residence each Owner thereby gives its full, irrevocable and unqualified consent on behalf of itself, its mortgagees, and its successors-in-title to the amendment of this Declaration in the manner provided in this Article.

ARTICLE 10 LITIGATION ALLEGING DEFECTS

10.1 Actions Arising Out of an Alleged Defect. No Owner shall institute an action against any person which arises out of an alleged defect in the development of the Project until: (i) Declarant, the Nominee, and the person(s) who physically constructed the portion of the Project in which the alleged defect exists have been notified and given a reasonable time and opportunity in which to inspect, assess, correct, or redesign any alleged defect or other portions of the Project (provided, however, that the terms of this Article shall not create an obligation of any person to effect a repair of an alleged defect); (ii) the Owner(s) have pursued their remedies under any express warranty covering all or any portion of the alleged defect; (iii) the Declarant, the Nominee, and the affected contractor(s) have been given the opportunity to meet with the Owner(s) regarding the alleged defect; and (iv) all proposed parties to the action have been given a reasonable opportunity to mediate any dispute or disagreement relating to the alleged defect, and have either participated or refused to participate in such mediation.

10.2 Compensation of Legal Counsel. No action affected by this Article shall be conducted utilizing legal counsel who are compensated on a contingency fee or similar means of compensation in which litigation costs and attorneys' fees are not paid on a current basis or are paid out of the settlement or judgment amount recovered by the Owner(s) in such action.

10.3 Application and Amendment of this Article. This Article shall not apply to: (i) any action brought by the ARC, Declarant, or the Nominee to enforce the provisions of this Declaration; (ii) any action brought by an Owner against another Owner to enforce the provisions of this Declaration; or (iii) counterclaims brought by the ARC, Declarant, or the Nominee in proceedings instituted against them collectively or individually.

10.4 Repurchase Option for Construction Defect Claims. In the event any Owner shall commence action against Declarant, the Nominee, or their assigns, successors, subsidiaries, related construction entities, or other entities established by Declarant or the Nominee, or any members of Declarant or the Nominee, in relation to the construction of any Residence, or in relation to any alleged construction defects, Declarant and such Nominee shall each have the option, but not the obligation, to purchase the related Residence and Lot on the following terms and conditions:

- (a) The purchase price shall be an amount equal to the sum of the following, less any sums paid to such Owner under any homeowner's warranty, in connection with any alleged defect:

- (i) the purchase price paid by the original Owner of the Residence and Lot when originally purchased from Declarant or any Nominee; plus
- (ii) the agreed upon reasonable value of any improvements made to the Residence by anyone other than Declarant or any Nominee; plus
- (iii) the Owner's reasonable moving costs; plus
- (iv) any reasonable closing costs incurred by the Owner in connection with the purchase of a replacement primary residence within ninety (90) days after closing of repurchase provided for herein;

(b) Close of escrow shall occur not later than forty-five (45) days after written notice from Declarant to the Owner of Declarant's intent to exercise the option herein;

(c) Title shall be conveyed to Declarant, or its assignee, free and clear of all monetary liens and other encumbrances other than non-delinquent real estate taxes;

(d) Exercise of the repurchase option as provided for herein above shall constitute full and final satisfaction of all claims relating to the subject Residence and Lot, and the Owner shall promptly execute and deliver any notice of dismissal or other document necessary or appropriate to evidence such satisfaction;

(e) Declarant may freely assign its option and purchase rights set forth in this Article; and

(f) If any provisions of this subsection conflict with any enforceable provisions of a real estate purchase contract between Declarant or the Nominee and the current Owner of a Lot or Residence, the enforceable provisions of such real estate purchase contract shall prevail as to such Owner.

10.5 This Article shall not be amended without the written consent of both the Declarant and any Nominee.

ARTICLE 11 GENERAL PROVISIONS

11.1 Enforcement. The ARC, Declarant, the Nominee, or any Owner shall each have the right to enforce by proceedings at law or in equity, all restrictions, conditions, and covenants now or hereafter imposed by the provisions of this Declaration and the Design Guidelines or any amendment thereof, including the right to prevent the violation of any such restrictions, conditions, or covenants and the right to recover damages for such violation. Failure by the ARC, Declarant, any Nominee, or any Owner to enforce any covenant, condition, or restriction contained herein or in the Design Guidelines shall not be deemed a waiver of such right on any such future breach of the same covenant, condition or restriction.

11.2 Severability. Notwithstanding invalidation of any one of these covenants, conditions or restrictions by judgment or court order, all other provisions hereof shall remain in full force and effect.

11.3 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of Residences on the Property and for the maintenance of the Property. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

11.4 Singular Includes Plural. Whenever the context of this Declaration requires, the singular shall include the plural, the plural shall include the singular, and the masculine shall include the feminine and neuter.

11.5 Nuisance. The result of every act or omission, whereby any provision, condition, restriction, covenants, easement, or reservation contained in this Declaration is violated in whole or in part, is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result, and may be exercised by the ARC, Declarant, the Nominee, or any Owner. Such remedy shall be deemed cumulative and not exclusive.

11.6 No Representations and Warranties. EACH OWNER AND OCCUPANT UNDERSTANDS, AGREES, AND ACKNOWLEDGES THAT: (A) NEITHER THE ARC, NOR DECLARANT, NOR THE NOMINEE HAS MADE ANY REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, RELATED TO THE PROJECT; AND (B) SUCH OWNER OR OCCUPANT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED, RELATIVE TO THE PROJECT INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

11.7 Attorneys' Fees. Declarant, the ARC, and the Nominee shall be entitled to recover all reasonable attorney fees and costs incurred as a result of any Owner's or Occupant's breach or violation of this Declaration or the Design Guidelines and/or incurred in enforcing this Declaration and/or the Design Guidelines.

11.8 Effect of Declaration. This Declaration is made with the intent to establish a general scheme for the use, occupancy and enjoyment of the Property and each and every Lot and portion thereof. Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portions of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances and regulations applicable thereto.

11.9 Non-liability of Officials. To the fullest extent permitted by law, neither the Declarant, the ARC, nor the Nominee shall be liable to any Owner for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, omission, error, negligence or the like made in good faith within which such entity or persons reasonably believed to be the scope of their duties.

11.10 Term. Subject to Article 9, the covenants, conditions and restrictions of this Declaration shall run with and bind the Property and shall remain enforceable for an initial term that shall expire upon the earlier of: (a) twenty (20) years from the date this Declaration is recorded; or (b) one (1) year after neither Declarant nor the Nominee owns any Lot in the Project. After twenty (20) years, as long as Declarant or the Nominee still owns any Lot in the Project, said covenants, conditions and restrictions shall be automatically extended for successive terms each lasting ten (10) years or until one (1) year after neither Declarant nor the Nominee owns any Lot in the Project, whichever is earlier. Within one (1) year from the time that neither Declarant nor the Nominee owns any Lot in the Project, the Owners may further extend the term of this Declaration or otherwise amend this Declaration as provided in Article 9.

IN WITNESS WHEREOF, the Declarant has adopted this Declaration of Protective Covenants, Conditions, & Restrictions for Whiting Cove Phase E on the 26 day of January, 2022.

DECLARANT:
Whiting Cove Phase E LLC

BY: [Signature]
Name: Dave Froville
Title: manager

STATE OF UTAH)
) SS:
COUNTY OF Utah)

Subscribed and sworn to before me on this 26 day of January, 2022

[Signature]
Notary Public

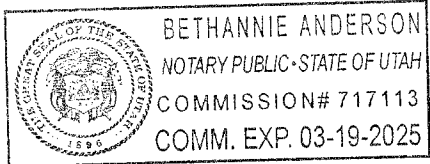


EXHIBIT A
LEGAL DESCRIPTION

BEGINNING AT A POINT WHICH LIES S00°17'02"E 632.10 FEET AND EAST 33.83 FEET FROM THE WEST QUARTER CORNER OF SECTION 15, TOWNSHIP 8 SOUTH, RANGE 3 EAST, SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE N88°48'23"E 539.99 FEET PARTIALLY ALONG THE BOUNDARY OF PLAT C, PHEASANT VIEW SUBDIVISION AND EXTENSION THEREOF, TO A POINT ON THE WESTERLY BOUNDARY OF PLAT "A", PHEASANT VIEW SUBDIVISION; THENCE ALONG SAID BOUNDARY OF PLAT "A", PHEASANT VIEW SUBDIVISION S00°20'18"E 404.17 FEET TO THE BOUNDARY OF PLAT D, WHITING COVE SUBDIVISION; THENCE ALONG SAID BOUNDARY OF PLAT D, WHITING COVE SUBDIVISION THE FOLLOWING TWO (2) COURSES: S88°47'43"W 214.28 FEET AND S01°07'42"E 206.12 FEET; THENCE S88°42'36"W 145.47 FEET; THENCE S00°24'00"E 10.00 FEET; THENCE S88°42'36"W 182.27 FEET; THENCE N00°24'00"W 217.50 FEET; THENCE S88°48'23"W 0.60 FEET; THENCE N00°20'18"W 403.40 FEET TO THE POINT OF BEGINNING.
CONTAINING 6.60 ACRES.