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Lot Owners
Dixie Springs Subdivision
Hurricane, Utah 84737

Re: *Response to incorrect claims about the ACC*

Dear Lot Owners:

Our law firm represents the Dixie Springs Architectural Control Committee, Inc. (the ACC). As you may know, a group calling themselves the “Dixie Springs Neighbors” is trying to gather support to amend the Declaration of Covenants, Conditions, and Restrictions (the CC&Rs) for the Dixie Springs Subdivision (Dixie Springs). The proposed amendment seeks, among other things, to eliminate the ACC.

As you also may know, on October 2, 2020, our firm wrote a letter on behalf of the ACC to all Lot Owners in Dixie Springs. The letter was a response to the Dixie Springs Neighbors’ unfounded accusations about the ACC. The letter also explained the full extent of the proposed amendment and its potential impacts. The letter is available on ACC’s website at: <http://www.dixiespringsacc.org/Newsletter/20201002ACCAttorneyCCRChange.pdf>.¹

A few Lot Owners and an attorney who represents the Dixie Springs Neighbors provided the ACC with written responses to our letter, which included several incorrect claims. Some or all of those claims echo claims still being used to attempt to garner support for the proposed amendment. The ACC has asked our firm to respond to those claims.

The Background of the Dixie Springs Subdivision

Before we address the claims, it may be helpful for you to know something of Dixie Springs’ background. Under Utah statute, a subdivision is created when a land developer

¹ When we wrote the letter, the proposed amendment to the CC&Rs included changing Article IV, Section 2 to require approval by 80% of the Lot Owners to amend the CC&Rs in the future. In response, the Dixie Springs Neighbors removed that change.

records plats of the subdivision with the county recorder.² A plat is a map of the individual lots in a subdivision.³ Dixie Springs was established when Dixie Springs, Inc. (the Developer), recorded plats with the county recorder on May 1, 1998. The same day, the Developer recorded the CC&Rs, making all Lots in Dixie Springs subject to those CC&Rs.

The CC&Rs provide for and established the ACC to ensure “that all exteriors of homes and landscaping within the property harmonize with existing surroundings and structures.”⁴ Under the CC&Rs, the Developer (called the Declarant in the CC&Rs) was required to perform the ACC’s duties until the ACC was appointed by the Developer or elected by the Lot Owners. The CC&Rs explicitly gave the Developer the right to enforce the CC&Rs.

The CC&Rs also gave the Developer the unilateral right to amend the CC&Rs, which it did in 2010, 2013, 2014, and 2016.⁵ In the 2014 amendment, the Developer explicitly gave the ACC “the right and authority to enforce the CC&Rs.”⁶ By 2015, the Developer had appointed members to the ACC, and those members incorporated the ACC as a Utah nonprofit corporation on May 1, 2015, by filing Articles of Incorporation with Utah Department of Commerce Division of Corporations and Commercial Code. By the end of 2015, the Developer had sold most of its Lots in Dixie Springs. And so in 2016, the Lot Owners held their first election to vote in new ACC members.

The Claims About the ACC

With that brief background in mind, we now respond to the claims of a few Lot Owners and the Dixie Springs Neighbors:

1. Those who claim that the ACC is an HOA are not correct.

Every homeowners association (HOA) – sometimes called a “community association” or simply an “association” – is governed in Utah by the Utah Community Association Act. There is a claim circulating that the ACC is an HOA. That claim is mistaken. The Community Association Act defines what an “association” is, and the ACC does not fall within that definition.

The Community Association Act’s definition of “association” sets out two elements, both of which must be satisfied for a “corporation or other legal entity” to be considered an

² See Utah Code § 10-9a-603(1).

³ *Id.* § 10-9a-103(49).

⁴ CC&Rs, Art. II, Sect. 1.

⁵ The original CC&Rs and the four amendments are available at <http://www.dixiespringsacc.org/information.htm>. The Developer signed the fourth amendment in November 2015, but the amendment was not recorded until February 2016.

⁶ CC&Rs, Art. V, Sect. 6.

“association.”⁷ The first element is that each of the corporation’s members must be “an owner of a residential lot located within the jurisdiction of the association, as described in the governing documents.”⁸ The Community Association Act defines “governing documents” to include “a declaration of covenants, conditions, and restrictions.”⁹ The ACC arguably meets this first element because the CC&Rs make Lot Owners subject to the jurisdiction of the ACC. Regardless, the ACC still is not an association because the facts do not satisfy the second element of what an “association” is.

The second element requires that for a corporation to be an association, each of its members, “*by virtue of membership or ownership of a residential lot* is obligated to pay: (A) real property taxes; (B) insurance premiums; (C) maintenance costs; or (D) improvement of real property not owned by the member.”¹⁰ In other words, a corporation is considered an association if owners of residential lots in the corporation’s jurisdiction are obligated, *by virtue of owning a residential lot in the corporation’s jurisdiction*, to pay any of the expenses identified in (A)-(D). The ACC is not an association because no Lot Owner in Dixie Springs is obligated to pay any of the expenses in (A)-(D), simply by virtue of owning property in Dixie Springs.

Those who claim the ACC is an association advance an alternative interpretation. They mistakenly contend the ACC is an association because Lot Owners “pay their individual property taxes, insurance [premiums] or maintenance [costs].” But this interpretation does not make sense.

Owners of residential lots already pay *their own* property taxes, insurance premiums, and maintenance costs. The Utah Property Tax Act requires paying property taxes on real property.¹¹ And if a property owner fails to pay those taxes to the county, the county takes the property. The same goes for homeowners insurance premiums. Residential-lot owners already have – and if their lot is mortgaged, must have – homeowners insurance. Similarly, all residential-lot owners will, at some point, have to pay costs to maintain their home; otherwise their home will eventually fall apart.

In short, this interpretation makes the status quo for every residential-lot owner a part of the statutory definition of “association.” To interpret the statute this way would make the second element of the statutory definition of “association” meaningless. It is axiomatic, however, that a statute must be interpreted “to give meaning to all parts, and avoid rendering portion of the statute superfluous.”¹²

⁷ Utah Code § 57-8a-102(2).

⁸ *Id.* § 57-8a-102(2)(a)(i).

⁹ *Id.* § 57-8a-102(10)(b)(iv).

¹⁰ *Id.* § 57-8a-102(2)(a)(ii) (emphasis added).

¹¹ *See, e.g., id.* § 59-2-1302.

¹² *Summit Operating, LLC v. Utah State Tax Comm’n*, 2012 UT 91, ¶ 11, 293 P.3d 369.

Nevertheless, those who claim the ACC is an HOA, point to certain documents to support their argument. For instance, the ACC's Articles of Incorporation say that the purpose of the ACC is to "function as the Association for the Dixie Springs Subdivision. But what someone wrote in a document does not change the statutory definition of "association" or that the ACC does not fall within that definition.

2. State agencies do not offer opinions on whether a nonprofit corporation (like the ACC) is an HOA.

A few Lot Owners claim that their interpretation of the definition of "association" is supported by the State of Utah, and they urge the ACC and other Lot Owners to call the Utah Department of Commerce to find out for themselves. However, no division of the Department of Commerce will tell opine on whether a corporation is an HOA under the Utah Community Association Act.

Nevertheless, I called the phone number these supporters provided the ACC. The number connected me to the Utah Department of Commerce Division of Corporations and Commercial Code. When I asked the representative if the Division of Corporations got involved with helping people determine whether a corporation is an HOA or not, the representative answered no. She told me that the Division of Corporations is "just a receptacle" for people to register business names and entities.

I also called the Office of the Utah Property Rights Ombudsman (the Office) even though the Office's website states, "The Office's mandate is to help resolve disputes between private citizens and state or local government entities. Therefore, the Office typically is not involved in disputes between private property owners except in very limited circumstances. (e.g., when a private party has condemnation rights under state law)."¹³ I spoke with the Office's lead attorney, and he to me that the Office does not have jurisdiction over HOAs and does not resolve HOA disputes. He added that the Office will not give an opinion if anyone calls asking whether a corporation is an HOA or not.

Then I called the Utah Department of Commerce Division of Real Estate, but I got their voicemail. Regardless, the Division of Real Estate's statutory charter only authorizes the Division to administer and enforce the portions of the Utah Code dealing with land sales, timeshares and camp resorts, real estate marketing, mortgage practices and licensing, real estate appraiser licensing, and licensing real estate brokers and agents.¹⁴ The statute does not mention the Community Association Act.¹⁵ Thus, the Division of Real Estate will not opine on whether a corporation is an HOA under the Community Association Act. And if you visit the Division of Real Estate's website

¹³ *About the Ombudsman*, UTAH DEP'T OF COMMERCE OFFICE OF THE PROPERTY RIGHTS OMBUDSMAN, <https://propertyrights.utah.gov/about/>.

¹⁴ Utah Code § 61-2-201(1).

¹⁵ *Id.*

(<https://realestate.utah.gov/consumers/index.html>), you will see there are no resources or information about HOAs.¹⁶

A few of those claiming the ACC is a HOA, encouraged the ACC to read information on the website of the Utah Department of Commerce Homeowners Association Registry (“HOA Registry”). But nothing in that information – titled *An Overview of Homeowners Association in Utah* (the Overview) – supports the notion that the ACC is an HOA. If you read the Overview, at <https://secure.utah.gov/hoa/overview/index.html>, note that the Overview states that “[t]he information provided herein is not to be construed as legal advice or taken as such.”¹⁷

Regardless, the Overview only reinforces what we have stated in this letter. For instance, the Overview recognizes that the Community Association Act applies to homeowners association but that the Utah Department of Commerce does not enforce the Community Association Act.¹⁸ The Overview also states that “[o]wners in an HOA are required to pay monthly and other assessments from the association.”¹⁹

All in all, the notion that the ACC is an HOA lacks merit. Those advocating this notion are mistaken and have either misread or failed to read the applicable parts of the Community Association Act.

3. The ACC is not required to register with the Homeowners Association Registry.

A few of those who advocate the mistaken belief that the ACC is an HOA claim that the ACC must register with the HOA Registry. But once again, these advocates have either misread or failed to read the applicable statutes. The Community Association Act requires HOAs in Utah to register with the HOA Registry.

²⁰ If the ACC were an “association,” as defined in the Community Association Act, it would have to register. But because the ACC is not, the ACC is not required to register. Nor is the ACC bound by Section 109 of the Act, which limits the amount an association may charge for reviewing plans to the “actual cost of reviewing and approving” the plans.²¹

¹⁶ See *Consumer Resources*, UTAH DEP’T OF COMMERCE DIVISION OF REAL ESTATE, <https://realestate.utah.gov/consumers/index.html>.

¹⁷ *An Overview of Homeowners Association in Utah*, UTAH DEP’T OF COMMERCE HOMEOWNERS ASSOCIATION REGISTRY, <https://secure.utah.gov/hoa/overview/index.html>.

¹⁸ *Id.*

¹⁹ *Unit Owner Responsibilities under an HOA*, UTAH DEP’T OF COMMERCE HOMEOWNERS ASSOCIATION REGISTRY, <https://secure.utah.gov/hoa/overview/ownerResponsibilities.html>.

²⁰ Utah Code § 57-8a-105.

²¹ Utah Code § 57-8a-109.

4. Those who claim the ACC is not in “good standing” with the State of Utah are mistaken.

Claims have been made that the ACC must register with the HOA Registry and that the “ACC” is not in good standing” until it does. But the HOA Registry does not determine whether a business is in good standing or not. That determination is the responsibility of the Division of Corporations. Indeed, the HOA Registry acknowledges that registering with the HOA Registry “is not the same registration that is required to register a business with the Division of Corporations and Commercial Code.”²²

When the ACC incorporated in 2015, it registered with the Division of Corporations. And the ACC is in good standing. If you visit <https://secure.utah.gov/bes/> and search for “Dixie Springs Architectural Control Committee” in the “Business Name” search box, and click on the result, you will see the status of the ACC is “Active,” which means it is good standing. Additionally, the ACC’s Certificate of Existence, issued by the Division of Corporations, will be accessible, along with this letter, at <http://www.dixiespringsacc.org/newsletter.htm>.

In sum, the ACC wants you to have accurate information about the ACC in considering whether to support the proposed amendment to the CC&Rs. If you have any questions or concerns, please visit <http://www.dixiespringsacc.org/> or contact the ACC at acc@dixiespringsacc.org.

Sincerely,
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²² See *supra* note 16.