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January 13, 2023

## RE: Invalid 5<sup>th</sup> Amendment to CC&Rs

Dear Lot Owner,

Please be advised that this firm has been retained to represent the Dixie Springs Architectural Control Committee (hereinafter referred to as the "ACC"). The ACC has retained our firm to investigate the recently filed Fifth Amendment to Declaration of Covenants, Conditions, and Restrictions of Dixie Springs Subdivision (the "Fifth Amendment"). The Fifth Amendment was recorded with the Washington County Recorder's Office on November 1, 2022 at 11:31 AM as Document Number 20220048624. It appears that the Fifth Amendment has been recorded against each of the properties in the Dixie Springs subdivision.

### **PLEASE BE ADVISED THAT THE RECENTLY FILED FIFTH AMENDMENT DOES NOT COMPLY WITH LEGAL REQUIREMENTS FOR AMENDING THE CC&RS.**

The properties within the Dixie Springs Subdivision are subject to the restrictive covenants set forth in the original Declaration of Covenants, Conditions, and Restrictions of Dixie Springs A Residential Subdivision (the "CC&Rs") and its subsequent *valid* amendments. The CC&Rs were first recorded on May 1, 1998 as document number 00601292 Book 1209 page 0001 with the Washington County Recorder's Office. The CC&Rs have been amended on several occasions and each amendment has been recorded against the properties in Dixie Springs.

When you purchased your property, you should have been provided a copy of the CC&Rs and amendments thereto. If you do not recall being provided such documentation (or if it was not provided to you), by law, you were on notice of the CC&Rs and subsequent amendments because they are recorded against your property. *See* Utah Code § 57-3-102. Furthermore, pursuant to Article V Section 5 of the CC&Rs, "An owner, by acceptance of a deed or other instrument of conveyance, ... understands and accepts all the terms contained herein." *See* CC&Rs. Based on the foregoing, by acquiring your property in Dixie Springs, you accepted the restrictive covenants.

The CC&Rs were adopted "for the purpose of protecting the value and desirability" of the Dixie Springs subdivision. *See* CC&Rs at Declaration. The CC&Rs provide for the creation, operation, and procedures of the ACC. *Id.* at Article II.

The CC&Rs can be amended in two ways. First, Article VI Section 1 of the CC&Rs sets forth how the Declarant (as defined in the CC&Rs) can amend the CC&Rs. *Id.* This Section was amended by the Fourth Amendment to the CC&Rs recorded in February 2016. Please note that all previous amendments to the CC&Rs were made by Declarant pursuant to Section 1.

Second, the CC&Rs may also be amended by the Lot Owners. The recently recorded Fifth Amendment was an attempt to amend the CC&Rs under this second method. Article VI Section 2 contains several requirements that must be satisfied for Lot Owners to amend the CC&Rs. *Id.* In relevant part, the CC&Rs may be amended “by an instrument signed by not less than sixty percent (60%) of the Lot Owners, which amendment shall be effective upon recordation in the Office of the Recorder of Washington County, State of Utah.” *Id.* The Section also requires, “Prior to any material amendment to this Declaration, written notice shall be sent to all holders of first mortgage liens, setting forth said amendment and advising them of the date that the Owners will vote on said amendment.” *Id.*

***The recently recorded Fifth Amendment fails to satisfy all these requirements.***

First, there is no indication that written notice of the Fifth Amendment was provided to the holders of first mortgage liens. Second, if notice was provided to the holders of first mortgage liens, there is no indication that such written notice satisfied the content requirements set forth in Article VI Section 2. Third, there is no indication that a vote occurred, that notice of the vote was provided to the Lot Owners, or that other requirements typically required for such a vote were met.

Fourth, the recorded Fifth Amendment has not been signed by “not less than 60% of the Lot Owners.” Rather, the Fifth Amendment asserts that a sole individual served as the agent of the Lot Owners. The Fifth Amendment contains no mention of the names of the Lot Owners allegedly represented by such agent. Furthermore, there is no documentation that the individual Lot Owners consented to the use of the individual as an agent. These failures amount to a violation of the statute of frauds and render the Fifth Amendment unenforceable and void. *See* Utah Code § 25-5-1 (requiring an agent to be authorized by writing).

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For the foregoing reasons, the recorded Fifth Amendment has fatal flaws that render it void, unenforceable, and wrongful. As such, the ACC will continue to operate under the CC&Rs and the subsequent *valid* amendments. Please be advised that the ACC has issued a letter to the individual allegedly responsible demanding that the Fifth Amendment be removed from the county records. The ACC appreciates your attention to this matter and will provide further updates as necessary.

The ACC looks forward to working with each of you to address matters as they arise.

Respectfully,

SNOW JENSEN & REECE, P.C.

*/s/ J. Tyler King*

Jeff R. Miles  
J. Tyler King

cc: Dixie Springs ACC