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Lot Owners  
Dixie Springs Subdivision  
Hurricane, Utah 84737

Re: *The letter and proposed amendment to the CC&Rs from the group calling themselves the "Dixie Springs Neighbors"*

Dear Lot Owners:

Our law firm represents the Dixie Springs Architectural Control Committee, Inc. (the ACC). The ACC has asked us to respond to the letter a group of anonymous individuals calling themselves the "Dixie Springs Neighbors" recently sent some of the Lot Owners in the Dixie Springs Subdivision (Dixie Springs) proposing to amend the Declaration of Covenants, Conditions, and Restrictions for Dixie Springs (the CC&Rs).

The original CC&Rs were recorded with the Washington County Recorder's office in 1998 and were amended four times by the developer, Dixie Springs, Inc., in 2010, 2013, 2014, and 2016. You can view the original CC&Rs and the four amendments at <http://www.dixiespringsacc.org/information.htm>.

In deciding whether to support the anonymous group's attempt to amend the CC&Rs, please consider their claims, what they're trying to achieve, and the harmful consequences if they succeed.

Their letter makes clear that the central focus of the proposed amendment to the CC&Rs is to eliminate the ACC. But eliminating the ACC would hurt Dixie Springs. The purpose of an architectural control committee is to protect and enhance property values in a subdivision. It is well-settled "that the approval of plans by an architectural control committee is one method by which guarantees of value and general plan of construction can be accomplished and maintained." *Christopher Properties, Inc. v. Postell*, 106 N.C. App. 180, 185, 415 S.E.2d 786, 789 (1992); *Rhue v. Cheyenne Homes, Inc.*, 168 Colo. 6, 8, 449 P.2d 361, 362 (1969).

Thus, the CC&Rs for Dixie Springs charge the ACC with ensuring “that all exteriors of homes and landscaping within the property harmonize with existing surroundings and structures.” (Art. II, Sect. 1.) To that end, Article II of the CC&Rs tasks the ACC with reviewing and approving or disapproving plans and specifications before homes are built or changes to existing homes are made. Without the ACC, someone could, for example, easily paint his or her home yellow with red shutters.

While the letter from the “Dixie Springs Neighbors” recognizes the ACC’s important responsibility, the letter claims that the ACC has abandoned its responsibility. This is not true. The ACC has and continues to make every effort to fulfill this responsibility.

Next, the letter implies that the ACC has overstepped its authority by enforcing the CC&Rs against existing homes. This is intentionally misleading. What the letter conveniently neglects to mention is that the CC&Rs explicitly give the ACC the “*right and authority to enforce the CC&Rs.*” (Art. VI, Sect. 2 (emphasis added).) If the ACC were abolished, the only way any Lot Owner could enforce the CC&Rs would be by suing another Lot Owner. There is therefore no merit to the letter’s claim that by enforcing the CC&Rs the ACC “could bring down property value.”

Next, the letter attempts to scare you into believing that the ACC is a homeowners association (an HOA). It’s not. The Utah Community Association Act, which governs HOAs in Utah, defines an HOA as “a corporation or other legal entity” in which its members, by virtue of owning a residential lot, are obligated to pay the HOA: “(A) real property taxes; (B) insurance premiums; (C) maintenance costs; or (D) improvement of real property not owned by the member.” Utah Code § 57-8a-102(2)(a). None of the Lot Owners have any obligation to pay the ACC any of these expenses.

An HOA is a tool a land developer uses to develop land into a residential subdivision that has common areas. The Utah Community Association Act defines “common areas” as property that an HOA: “(a) owns; (b) maintains; (c) repairs; or (d) administers.” Utah Code § 57-8a-102(5). A prime example of common areas is a community clubhouse and pool. An HOA oversees, maintains, and pays the taxes and liability insurance for the clubhouse and pool.

To create an HOA, a developer must, before it sells the individual lots in a subdivision, make all the lots subject to covenants, conditions, and restrictions. This is done by recording a declaration of covenants, conditions, and restrictions with the county recorder where the subdivision is located. The declaration must explicitly provide for an HOA and require anyone who buys a lot in the subdivision to be a member of the HOA and pay the HOA assessments (sometimes called dues). The HOA uses these assessments to pay the taxes, insurance, and maintenance costs for the common areas.

The ACC is not an HOA because the Dixie Springs CC&Rs do not require Lot Owners to pay assessments. There are no common areas, so there is no reason for assessments. While the ACC's accountant did state in the ACC's tax returns that the ACC "function[s] as an association," this did not and could not morph the ACC into an HOA. The only way an HOA could exist in Dixie Springs is if every one of the Owners of the 1,390 Lots in Dixie Springs agreed to amend the CC&Rs to force themselves to pay assessments to an HOA. This will never happen.

All in all, the false and misleading statements in the letter from the "Dixie Springs Neighbors" show that in reality the letter is an attempt by an anonymous group of Lot Owners trying to absolve themselves of their violations or their friends' violations of the CC&Rs. The sentiments in the letter echo those expressed by a miniscule faction of Lot Owners on Facebook. Members of this faction have been persistently posting falsehoods about the ACC and horrible accusations aimed at the ACC's directors and officers.

There is also reason to believe that this faction, or at least some of its members, sent several Lot Owners fraudulent letters masquerading as violation letters from the ACC. This raises the concern that the "Dixie Springs Neighbors" may try to falsify signatures to make it appear as though their proposed amendment to the CC&Rs has passed when it really hasn't.

What's more, the "Dixie Springs Neighbors" aren't being up front. Their letter doesn't reveal some of the other impactful changes they've want to make to the CC&Rs – changes that would only harm Dixie Springs. For instance:

1. Article V, Section 3 would be changed to say that CC&Rs will only be effective "for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants may be extended for successive periods of ten (10) years with the approval of 60% of Lot Owners." This would mean that the CC&Rs would expire in 30 years unless the Owners of at least 864 Lots approved the CC&Rs for another 10 years. It's highly unlikely this would happen. And the CC&Rs would expire every 10 years after that without the same approval.
2. Article V, Section 7 would be changed to grandfather in every existing violation of the CC&Rs.
3. Article VI, Section 2, would be changed to say, "This Declaration may be amended by an instrument signed by not less than eighty percent (80%) of the Lot Owners." Thus, the "Dixie Springs Neighbors" are trying to make it

practically impossible to amend the CC&Rs after this. The Owners of at least 1,112 Lots would have to band together to ever amend the CC&Rs ever again.

In sum, if you've received the letter from the "Dixie Springs Neighbors" asking for your support to amend the CC&Rs, please carefully consider the source, circumstances, and consequences of their proposed amendment.

If you have any questions, please contact the ACC.

Sincerely,  
**JENKINS BAGLEY, PLLC**

A handwritten signature in blue ink, appearing to read "Kimball A. Forbes".

Kimball A. Forbes

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