



Memorandum

To: Town Council
From: Thomas Dansie, Director of Community Development
Date: November 7, 2025
Re: Red Hawk Development Agreement - Modification to Fifth Amendment

Background

The Town has partnered with Mountain Country Home Solutions (MCHS) to manage and administer seven residential lots in the Red Hawk subdivision as affordable housing. These are Lots 1, 2, 3, 7, 8, 14, and 15. Two of the Lots (7 and 8) are already developed with single-family residences. The other five are vacant. All will be occupied by qualified households under the community land trust model. MCHS has partnered with the Southwest Community Land Trust (CLT) for the long-term management and oversight of the lots.

The Town's partnership with MCHS is governed by the Red Hawk Moderate Income Housing Development Agreement (DA). The DA dates from 2006 and was originally an agreement between the Town and Color Country Community Housing. It has been amended five times as the conditions, circumstances, and partners involved in the Red Hawk project have changed.

The current iteration of the DA (the Fifth Amendment) is between the Town and MCHS and stipulates the following:

1. The Town will deed Lots 7 and 8 to MCHS in exchange for payment of \$800,000. (This action has been completed.)
2. MCHS will bifurcate the deed to the improvements from the land on lots 7 and 8. The land will be transferred to the CLT and the improvements will be sold to qualified households. (This action has been completed for Lot 7, but not for Lot 8.)
3. The Town will transfer the deeds to Lots 1, 2, 3, 14, and 15 to MCHS as soon as steps 1 and 2 above have been completed. (This action has not yet been completed.)
4. MCHS will develop Lots 1, 2, 3, 14, and 15 as single family residences and sell the improvements on these lots to qualified households under the community land trust model. (This action has not yet been completed.)

MCHS's progress on step #2 above has been stalled due to difficulty in getting a qualified household in a position to purchase the improvements on Lot 8. MCHS has selected two different households to purchase the improvements. For various reasons that cannot be disclosed publicly, both of these households have been unable to complete the purchase of the improvements. MCHS is now in the process of seeking a third candidate qualified household to purchase the improvements on Lot 8.

MCHS has taken preliminary steps to accomplish step #4 above (develop the unbuilt lots with single family residences). Progress on that action has also stalled due to issues associated with the Town's Geologic Hazard Ordinance. To satisfy the requirements of that ordinance MCHS will need to conduct soils and geologic hazard analysis on the lots. MCHS has secured a commitment from a geologic hazard consultant to do this work at a very reasonable price. MCHS has also secured a loan to pay for this analysis and the anticipated excavation work required to develop the lots. However, MCHS needs collateral to back the loan in the form of property ownership. As outlined in the DA summary above, the Town cannot transfer ownership of the five undeveloped lots to MCHS until Lot 8 is sold to a qualified household.

The circumstances summarized above have caused progress on the Red Hawk project to stall.

The Town has a vested interest in moving the Red Hawk project forward. The Town has invested considerable time and resources into making this project a reality. The Town's General Plan specifically directs the Town to take steps to complete the Red Hawk project (see GP Housing Sub-Goal B(1)(b)).

Proposed Path Forward

The Town's Housing Committee met with MCHS to discuss the Red Hawk project and how to move it forward. MCHS and the Housing Committee discussed the following scenario as a potential solution and path to move the project forward.

1. The Town allows MCHS to lease Lot 8 to a qualified household until April 1, 2026. The lease rate will be affordable to the qualified household. This will get a qualified household occupying the structure. It will also generate some revenue for MCHS to cover ongoing expenses (loan interest, insurance, utilities, etc.) associated with owning the lot. On or before April 1, 2026 MCHS will select a qualified household and sell the improvements on the lot to that household under the CLT.
2. Once Lot 8 is leased to a qualified household, the Town will deed two of the unbuilt lots to MCHS. MCHS will use these lots as collateral for the loan to proceed with the soils testing and geologic hazards analysis. The Town will retain ownership of the other three unbuilt lots.
3. Using the loan discussed in step #2, MCHS will conduct the required tests and analysis. Based on the hazard mitigation that might or might not be required by that analysis MCHS and the Town will discuss the feasibility of developing the five lots as affordable homes under the community land trust model, and whether or not additional changes to the DA are necessary.
4. If required by the discussion contemplated in step #3 above, the Town and MCHS will amend the DA accordingly.

This scenario will allow Lot 8 to be occupied by a qualified household immediately. It will also allow MCHS to move forward with developing Lots 1, 2, 3, 14, and 15. However, this scenario is not possible under the current DA regulations.

In order for this scenario to be allowed the following sections of the DA would need to be modified:

- Paragraph 5(b)(ii). This paragraph states that MCHS will sell the improvements on Lots 7 and 8 to qualified owners. There is no allowance for leasing the lots to qualified owners.
- Paragraph 5(c)(i). This paragraph states that the Town will deed the unbuilt lots to MCHS only after the improvements on Lots 7 and 8 have been sold to qualified households. If MCHS leases Lot 8 to a qualified household until April 1, 2026 the Town would not be able to deed two of the unbuilt lots to MCHS in the meantime.

Paragraph 20(i) of the DA allows modifications or amendments to the document, but only if such modification or amendment is in writing and signed by both parties. Staff proposes a written modification to the DA summarizing this path forward, signed by both parties. This is a quicker and more efficient process than a complete amendment to the DA, which would require significant effort to produce. The only changes to the DA are the allowance for temporary lease of Lot 8 and the altered timeline to transfer two of the unbuilt lots from the Town to MCHS. Staff feels these changes do not warrant a full amendment of the DA.

Council Action

The Council should discuss the Housing Committee's proposed modifications to the Red Hawk DA and determine whether or not such modifications will promote the Town's overall housing goals. As mentioned above, the Town's housing goals as established by the General Plan specifically direct the Town to move the Red Hawk project forward. The Council should determine if the proposed modifications to the DA are a reasonable and effective way to do so.

If the Council determines to move forward with the modifications to the DA, staff recommends the Council direct staff to develop a written modification to the DA based on the four action steps outlined in this staff report, and authorize the Mayor to sign.

**FIFTH AMENDED AND RESTATED MODERATE INCOME HOUSING
DEVELOPMENT AGREEMENT**

This Fifth Amended and Restated Moderate Income Housing Development Agreement ("Fourth Amended and Restated Agreement") is entered into as of the 11th day of DECEMBER, 2024 ("the Effective Date"), by and among the **TOWN OF SPRINGDALE**, a Utah municipal corporation (the "Town"); **MOUNTAIN COUNTRY HOME SOLUTIONS**, a Utah non-profit corporation ("Mountain Country"); and **SOUTHWEST UTAH COMMUNITY LAND TRUST**, a 501(c)(3) organization ("Southwest Land Trust"). To the extent a priority date is needed for this Fifth Amended and Restated Agreement to properly impart historical record notice, apart from the "Effective Date" hereof, the Fourth Amended and Restated Agreement will revert back to the date the Moderate Income Housing Agreement was first executed, namely, January 20, 2005. Town, Mountain Country, and Southwest Land Trust are sometimes referred to collectively as the "Parties" or individually as a "Party."

RECITALS

A. This Fifth Amended and Restated Agreement supersedes and replaces the following predecessor agreements:

1. Moderate Income Housing Development Agreement dated on or about January 20, 2005 (the "2005 Agreement");
2. Amended Moderate Income Housing Development Agreement dated on or about September 9, 2006;
3. First Addendum to Amended Moderate Income Housing Development Agreement dated on or about February 14, 2007;
4. Second Addendum to Amended Moderate Income Housing Development Agreement dated on or about November 14, 2007;
5. Third Amended and Restated Moderate Income Housing Development Agreement dated on or about October 19, 2011 (the "2011 Agreement"); and
6. Fourth Amended and Restated Moderate Income Housing Development Agreement dated on or about June 12, 2024 (the "Fourth Agreement").

B. In 2005, the Town and Color Country Community Housing, Inc. ("CCCH") entered into a handful of agreements to address the Town's desire to create affordable housing for residents working within the Town. The Redhawk at Springdale Subdivision ("the Subdivision") was created, and CCCH developed lots one to fifteen as single-family residential lots ("the Lots") in Phase 1 and four multi-family complexes in Phase 2 of the Subdivision.

C. The coordinating parcel numbers of the Lots are respectively S-RDHK-1, S-RDHK-2, S-RDHK-3, S-RDHK-4, S-RDHK-5, S-RDHK-6, S-RDHK-7, S-RDHK-8, S-RDHK-9, S-RDHK-10, S-RDHK-11, S-RDHK-12, S-RDHK-13, S-RDHK-14, and S-RDHK-15.

D. Paragraph 4(a) of the 2005 Agreement states the following:

On and after the Effective Date, and upon meeting the conditions contained in the Enacting Resolution/Ordinance, Color Country shall have the vested right to develop and operate the Property in conformance with the Site Plan, the Development Criteria and this Agreement.

E. The 2011 Agreement contained identical language to the 2005 Agreement in section 4(a), plus the following additional statements:

It is hereby acknowledged that the Redhawk Project will have seven (7) market rate homes, two (2) moderate income homes, and six (6) affordable income homes.

F. In 2015, CCCH went bankrupt and was required to sell all the remaining unimproved and/or unowned lots within Phase 1 to various third-Party buyers. Since 2015, the Town has acquired seven of the eight affordable and moderate income lots (S-RDHK-1, S-RDHK-2, S-RDHK-3, S-RDHK-7, S-RDHK-8, S-RDHK-14, S-RDHK-15), two of which, S-RDHK-7 and S-RDHK-8, are improved with residences (all eight affordable lots are collectively referred to as "Affordable Lots."). An individual, Scott Williams, acquired the eighth Affordable Lot (S-RDHK-13), and the remaining seven market rate lots are presently owned by various private individuals.

G. The Town desires to revive the affordable housing project ("Project") within the Subdivision, using a community land trust model, by (1) selling the residences on Affordable Lots S-RDHK-7 and S-RDHK-8 to qualified buyers as described in this Fifth Amended and Restated Agreement; (2) improving Affordable Lots S-RDHK-1, S-RDHK-2, S-RDHK-3, S-RDHK-14, and S-RDHK-15 with residences; and (3) selling the residences on these remaining Affordable Lots to qualified buyers as described in this Fifth Amended and Restated Agreement.

H. On or about October 20, 2023, the Town published a Request for Proposals on the Town's website and the Utah Public Notice website, "seeking a qualified and experienced affordable housing provider to (1) purchase from the Town Affordable Lots S-RDHK-7 and S-RDHK-8 and then to sell them to qualified buyers, (2) develop and construct residences on the remaining Affordable Lots (Lots S-RDHK-1, S-RDHK-2, S-RDHK-3, S-RDHK-14, and S-RDHK-15) and thereafter sell them to qualified buyers; and (3) and to thereafter professionally manage all of the Affordable Lots as an affordable housing project in Springdale, Utah."

I. On November 14, 2023, Mountain Country responded to the Town's Request for Proposals. Mountain Country represented the following:

1. Mountain Country provides two critical social services for the residents of Utah: (1) Financial Literacy and Housing Counseling and (2) the creation and retention of affordable housing for low-to-moderate income (LMI) families. Mountain Country's counseling services are performed statewide, helping many families find, afford and retain a place to live. Mountain Country's affordable housing units offer LMI families a safe, quality home whether it is a rental unit or a new first-time home purchase. Mountain

Country currently offers these services from three locations, Draper, Orem, and Saint George, Utah. Mountain Country's client base is comprised of 31% from Salt Lake County, 29% from Utah County, 18% from Washington County, 10% from Davis/Weber County, and 12% from rural Utah.

2. Mountain Country has been providing affordable housing options in Utah for the past 29 years and has been counseling and educating homeowners and prospective homeowners since 2005. To date, Mountain Country has built and sold 51 new homes and rehabbed and sold 60 existing homes. Mountain Country's current rental portfolio includes a 59-unit affordable housing complex in downtown Provo which houses 214 individuals. Mountain Country also has 35 single family units in Utah, Sevier, Kane and Garfield Counties, which house 136 individuals.

J. On or about December 13, 2023, the Town selected Mountain Country to operate, manage, and develop the Project. Southwest Land Trust is a 501(c)(3) organization established in 2022 for the sole purpose of creating and maintaining affordable homeownership opportunities in perpetuity in Washington County, Utah. On November 30, 2022, Mountain Country and Southwest Land Trust signed a contract titled Service Contract Agreement detailing Mountain Country's duties to Southwest Land Trust, detailed below in paragraph 5(a).

K. On or about January 10, 2024, the Town ratified the 2011 Agreement by signing the Ratification of the Third Amended and Restated Moderate Income Housing Development Agreement.

L. Springdale Code section 10-13D-6 states that all incentives and modifications of development standards shall be stipulated in a legally binding Moderate Income Housing Development Agreement between the Town, the property owner, and developer.

M. Mountain Country and Southwest Land Trust represent and warrant that they possess the skills, experience, time, resources, and funding needed to appropriately develop and manage the Project, and they desire to develop and manage the Project. The Town desires to engage Mountain Country and Southwest Land Trust to develop the Project in accordance with the terms, conditions, and obligations as set forth in more detail below.

N. On or about June 12, 2024, the Town, Mountain Country, and Southwest Land Trust entered into the Fourth Agreement. Several pertinent stipulations of that Fourth Agreement are summarized below.

1. The Fourth Agreement authorized the Town to sell S-RDHK-7 and S-RDHK-8, which are both developed with single-family residences, to Mountain Country for the combined sum of \$800,000. This sum was to be paid to the Town over an extended period and payment was guaranteed based on rental revenue from another housing project Mountain Country and the Town are partnering on (located on parcel S-100-C). Mountain Country was to then transfer S-RDHK-7 and S-RDHK-

8 to Southwest Land Trust, bifurcate title to the land from the improved residences on the land, and sell the improved residences on S-RDHK-7 and S-RDHK-8 to Qualified Owners under the community land trust model.

2. After S-RDHK-7 and S-RDHK-8 had been transferred to Qualified Owners, the Town was to deed S-RDHK-1, S-RDHK-2, S-RDHK-3, S-RDHK-14, and S-RDHK-15 (all of which are currently unimproved) to Mountain Country. Mountain Country and Southwest Land Trust were to then develop S-RDHK-1, S-RDHK-2, S-RDHK-3, S-RDHK-14, and S-RDHK-15 with single-family residences and then to sell the residences to Qualified Owners under the community land trust model.
3. At the time the Fourth Agreement was executed, one of the exhibits to the Fourth Agreement (the Lender Instruments to Perfect Security Interests in Affordable Improvements (Exhibit 12 of the Fourth Agreement)) was not finalized. The Fourth Agreement allowed the Town and Mountain Country 90 days to finalize that exhibit. Failure to finalize the exhibit within that time frame voided the Fourth Agreement.

O. On or about September 12, 2024 the deadline to finalize the Lender Instruments to Perfect Security Interests in Affordable Improvements (Exhibit 12 of the Fourth Agreement) passed with the exhibit still not being finalized. The Town and Mountain Country mutually decided and agreed that the Fourth Agreement was therefore void. However, the parties still desired to work together to make the Town's Red Hawk properties available to Qualified Owners.

P. On or about October 30, 2024 the Town sold S-RDHK-7 and S-RDHK-8 to Mountain Country, with a reversionary clause on the deeds that requires the improvements on these lots to be sold to Qualified Owners under the community land trust model. The deeds also require Mountain Country to acknowledge the lots are being sold subject to the regulations of this Fifth Amended and Restated Moderate Income Housing Development Agreement.

Q. NOW THEREFORE, in consideration of their mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

AGREEMENTS

1. Accuracy and Incorporation of the Recitals. The Parties hereby acknowledge the accuracy of the Recitals, which are incorporated herein by this reference.
2. Term. This Fifth Amended and Restated Agreement shall commence on the Effective Date set forth above and shall continue for so long as the dwellings contemplated hereby remain affordable as set forth herein.
3. Restrictions on Development and Operation. The development of the Project including, without limitation, the type of use, the maximum height and size of buildings, building setback requirements, parking requirements, landscaping requirements, and provisions for reservation or dedication of land for public purposes, will be governed by the following

(collectively the “Development Criteria”) as they exist on the Effective Date, or, in the case of the exhibits identified in subparagraph (b) below, as the same may be amended and/or combined together or with other documents from time to time by written agreement of the Parties:

- a) The following Town ordinances: Administration and Procedure—Title 10, Chapter 3; Affordable Housing—Title 10, Chapters 6A; Moderate Income Housing Development Overlay Zone—Title 10, Chapter 13D; and Architectural Standards and Design Guidelines—Title 10, Chapter 16; and
- b) The Exhibits to this Agreement, each of which is incorporated herein by reference, are as follows:
 - (i) Legal Description of the Affordable Lots (Exhibit 1);
 - (ii) Site Plan (Exhibit 2);
 - (iii) Description of Public Infrastructure (Exhibit 3);
 - (iv) Final Subdivision Plat (Exhibit 4);
 - (v) Covenants, Conditions, and Restrictions (CC&Rs) for Redhawk Subdivision (Exhibit 5);
 - (vi) Fee Schedule (Exhibit 6);
 - (vii) Ground Lease, Addendum, and Ground Lease Rider for Affordable Lots (collectively, the “Ground Lease”) (Exhibit 7);
 - (viii) Trust Deed Note and Trust Deed for Affordable Lots S-RDHK-7 and S-RDHK-8 respectively (Exhibit 8);
 - (ix) Resident Selection Criteria (Exhibit 9);
 - (x) Notice of Lien for Deferred Impact Fee Assessment (Exhibit 10); and
 - (xi) Lender Instruments to Perfect Security Interests in Affordable Improvements (Exhibit 11).

4. Community Land Trust Model.

- a) Background The community land trust (“CLT”) model for affordable homeownership subsidizes the cost of homeownership for low or moderate income households who could not otherwise afford to purchase homes. A CLT is a nonprofit organization governed by a board of CLT residents, community residents, and public representatives.
- b) Function In a CLT, land is treated as a common heritage, not as an individual possession. Title to multiple parcels is held by a CLT that manages these lands on behalf of a particular community, present and future. Land is removed permanently from the market, never resold by the nonprofit owner. Land is put to use, however, by leasing out individual parcels for the construction of housing, the production of food, the development of commercial enterprises, or the promotion of other activities that support individual livelihood or community life. All structural improvements are owned separately from the land, with title to these structural improvements held by individual owners. A ground lease lasting many years gives the owners of these structural improvements the exclusive use of the land beneath

their buildings, securing their individual interests while protecting the interests of the larger community.

- c) Southwest Land Trust Structure Southwest Land Trust is presently governed by a board of Washington County, Utah residents comprised of business owners, public servants, non-profit managers, low-to-moderate income residents, and elected officials. Southwest Land Trust will also select a Qualified Owner to serve on the board.

5. Development and Operation.

- a) Mountain Country and Southwest Land Trust Generally As stated above, Mountain Country has contracted with Southwest Land Trust for Mountain Country to complete certain general duties for Southwest Land Trust. They are as follows:

- (i) Identifying and applying for capital and operational funding for Southwest Land Trust to include grants, loans and property.

- (ii) Project Development. Identifying potential housing projects, funding sources and construction timelines, engineering, architecture, the bidding processes, and other Project related duties.

- (iii) Project Management. Management of housing construction/rehab projects including working with contractors, lenders, and grantors. Development of a marketing plan for each project. Calculate the resale price and a community land trust subsidy for each home.

- (iv) Client Management. Development of a buyer selection process and design of the appropriate resale formula for each project. Working with potential buyers to determine eligibility to purchase, counseling clients on financial literacy and the home buying process, explaining the community land trust concept and the resale formula, etc. Collect lease payments. Inspect properties.

- (v) Resale Management. Calculate the percentage (%) of equity due to the seller based on the resale formula. Calculate the new sales price. Market the unit for sale. Qualify the new buyer and determine the appropriate resale formula. Facilitate the sale process with the mortgage lenders and title companies.

- (vi) Financial Management. Manage the finances of the community land trust based on the financial policies and procedures approved by the board of directors.

- b) Affordable Lots S-RDHK-7 and S-RDHK-8

- (i) Within thirty (30) calendar days following the recordation of this Fifth Amended and Restated Moderate Income Housing Development Agreement, Mountain Country will convey Affordable Lots S-RDHK-7 and S-RDHK-8 to Southwest Land Trust. During this same time period, the Parties will select a

Qualified Owner for the Affordable Improvements on Affordable Lot S-RDHK-7 and Affordable Lot S-RDHK-8 respectively.

(ii) Once Southwest Land Trust receives the deeds for these two Affordable Lots, the deed to the land and the residences will be bifurcated and the residences on Affordable Lot S-RDHK-7 and Affordable Lot S-RDHK-8 (i.e., the Affordable Improvements) will be sold to two respective Qualified Owners. The land underlying both lots will be retained by Southwest Land Trust.

c) Affordable Lots S-RDHK-1, 2, 3, 14, 15

(i) Within five (5) business days after the improvement on Lots S-RDHK-7 and S-RDHK-8 have been sold to Qualified Owners under the CLT model, the Town will deed to Mountain Country Affordable Lots S-RDHK-1, S-RDHK-2, S-RDHK-3, S-RDHK-14, and S-RDHK-15.

(ii) Mountain Country will thereafter construct single-family residences on Affordable Lots S-RDHK-1, S-RDHK-2, S-RDHK-3, S-RDHK-14, and S-RDHK-15 within five (5) years from the date of this Fifth Amended and Restated Agreement.

(iii) Within fifteen (15) calendar days following the completion of a properly constructed single-family residence on Affordable Lots S-RDHK-1, S-RDHK-2, S-RDHK-3, S-RDHK-14, and S-RDHK-15, Mountain Country will deed these five Affordable Lots to Southwest Land Trust.

(iv) Once Southwest Land Trust receives the deeds for these Affordable Lots S-RDHK-1, S-RDHK-2, S-RDHK-3, S-RDHK-14, and S-RDHK-15, the deed to the land and the residences will be bifurcated and the residences on Affordable Lot S-RDHK-1, S-RDHK-2, S-RDHK-3, S-RDHK-14, and S-RDHK-15 will be sold to five respective Qualified Owners.

d) Development Application Procedures

(i) At the request of Mountain Country and Southwest Land Trust, the Town will accept applications for and process on a priority basis, in compliance with the Town's standard practices and procedures as modified by the Development Criteria and this Fifth Amended and Restated Agreement, any discretionary and non-discretionary approvals or permits which Mountain Country and Southwest Land Trust may require from time to time with regard to the development or operation of the Affordable Lots, including without limitation any construction permits, inspections, and certificates of occupancy. Without limiting the generality of the foregoing, the Town will use its best efforts to promptly issue each construction permit and other authorization necessary for the development and operation of the Affordable Lots upon complete and satisfactory submission of the proper applications.

(ii) Mountain Country and Southwest Land Trust shall have the vested right to develop and operate the Affordable Lots in conformance with the Site Plan, the Development Criteria, and this Fifth Amended and Restated Agreement

(iii) Criteria for Easement Encroachments: Subdivision Plat Amendments
During construction, due to a number of potential factors, the need may arise for a building pad to be shifted slightly from what is shown on the plat, which will result in encroachment onto the common area. At present, the Parties contemplate changes to the layouts of Affordable Lots S-RDHK-1, S-RDHK-2, and S-RDHK-3. Relocation and encroachment of other Affordable Lots may be required based on the topography, grading issues, soils issues, or due to Town ordinances regarding visual impacts. Such relocation and encroachment of Affordable Lots must be approved by the Planning Commission at the time of DDR for each Affordable Lot. If these criteria are met, there shall be a valid easement upon the Common Areas for any such encroachment and for the maintenance of the same. Upon completion of the final Affordable Improvements, Mountain Country and Southwest Land Trust shall submit to the Town an amended plat that will show the actual locations of the building pads, and which will readjust the common area accordingly, thereby eliminating any ongoing easement for encroachments.

e) General Requirements for Affordable Lots

(i) Southwest Land Trust shall enter into a ground lease with a Qualified Owner using the Ground Lease attached hereto as Exhibit 7.

(ii) A residence situated on an Affordable Lot (herein referred to "Affordable Improvement") shall only be sold and transferred in accordance with the Ground Lease.

(iii) Mountain Country and Southwest Land Trust shall ensure a Qualified Owner does not make any modifications to an Affordable Improvement without the prior written approval of Mountain Country and Southwest Land Trust and in conformity with then prevailing Town ordinances and the Ground Lease signed at the time of sale to the Qualified Owner.

(iv) Mountain Country and Southwest Land Trust will perform a comprehensive annual inspection within each Affordable Improvement. Mountain Country and Southwest Land Trust will perform quarterly inspections outside of each Affordable Improvement.

(v) The current final plat of Redhawk at Springdale Subdivision contains notes allowing the locations of individual single-family dwellings to deviate slightly from the locations of the dwellings shown on the final plat and thereby encroaching into the common area. The plat notes are shown in subparagraphs (i) and (iv). Upon completion of the Affordable Improvements on all Affordable Lots, Mountain Country shall bear the sole responsibility of preparing an amended final plat that

reflects the "as built" locations of all Affordable Improvements. Mountain Country shall submit the amended final plat to the Town for review within ninety (90) days from the date the building permit for the last of the Affordable Improvements is issued. In keeping with plat note (ii), upon submission of an amended plat by Mountain Country, Southwest Land Trust, or their assigns, the Town agrees to accept the consents of property owners referred to in plat note (ii).

(vi) Mountain Country and Southwest Land Trust will notify a Qualified Owner that by acceptance of a deed to an Affordable Improvement and all lenders, mortgagees, lien holders and any others having a security interest in an Affordable Improvement by the recordation of mortgage, deed of trust, lien, notice of interest or other security instrument, do thereby consent and agree, without further notice to any party, to the amending of the Plat by Mountain Country and Southwest Land Trust or either of their successors, for the sole purpose of making minor adjustments in lot location when necessary, so that the actual "as built" location of the Affordable Improvements are located within the boundaries of the applicable lot.

6. Qualified Owner

- a) In order to qualify to own an Affordable Improvement, a person must apply using a form provided by the Parties. An example of such a form is attached as Exhibit 9 to this Agreement. Said form may be subject to change from time to time based upon qualifying criteria determined by the Parties. This potential owner is referred to as a "Qualified Owner." The Parties will make the final determination of whether a person meets the requirements to be a Qualified Owner. The criteria to select Qualified Owners will be done based on a point system pre-established to the advertisement of the availability of an Affordable Improvement. In the case of a tie, a lottery drawing will be held.
- b) Only a person can be a Qualified Owner.
- c) Mountain Country and Southwest Land Trust shall ensure that a Qualified Owner's annual income only at the time of application does not exceed 125% of the AMI for Washington County, Utah.
- d) Mountain Country and Southwest Land Trust shall only sell an Affordable Improvement to a Qualified Owner who is "actively employed" as defined by Springdale Town Code, Chapter 10, Article 13G, Section 4 as follows:
 - i. A person must work (1) within the municipal boundaries of the Town of Springdale or in Zion National Park (persons who work for outdoor or adventure guiding or tour services based in Springdale and who meet clients in Springdale satisfy this criterion, even if the guided trip or tour occurs outside of Springdale); (2) for an employer whose business location is in the Town of Springdale or Zion National Park; and (3) for at least 1,560

hours per year. A person must meet all three of these criteria to be qualified as "actively employed."

- e) Mountain Country and Southwest Land Trust shall ensure the Qualified Owner is "actively employed" for the entire duration of owning an Affordable Improvement.
- f) An Affordable Improvement owned by the Qualified Owner shall be the Qualified Owner's primary residence. An Affordable Improvement shall not be leased or rented at any time without the written permission of Mountain Country and Southwest Land Trust, in accordance with the Ground Lease.
- g) Mountain Country and Southwest Land Trust shall ensure that those living in an Affordable Improvement with a Qualified Owner will only be immediate family members ("Immediate Family Members") of the Qualified Owner. Immediate Family Members of the Qualified Owner are:
 - i. Up to one (1) additional person over the age of eighteen who is contributing financially to the household income and whose income is included when calculating AMI;
 - ii. Children (adopted or biological);
 - iii. An individual who has not attained the age of 18 years being domiciled with
 - 1. another person permitted to live in an Affordable Improvement having legal custody of the individual, or
 - 2. the designee of the other person permitted to live in an Affordable Improvement having legal custody of the individual with the written permission of the other person;
 - iv. Biological parent;
 - v. Grandchild (adopted or biological); or
 - vi. Biological grandparent.
- h) Mountain Country and Southwest Land Trust shall ensure that a Qualified Owner completes a home buyer's education course and financial literacy education course, both provided by Mountain Country, within fifteen (15) calendar days of signing closing documents with Mountain Country and Southwest Land Trust.
- i) Mountain Country and Southwest Land Trust shall require a Qualified Owner to certify annually that the Qualified Owner meets all the requirements enumerated herein to be a Qualified Owner by obtaining from each Qualified Owner a report by July 31 of each year and certifying that the Qualified Owner is in compliance

with all requirements of this Section 6. The report shall contain the following information for each Affordable Improvement:

- i. Name of the Qualified Owner(s) who are living in the Affordable Improvement;
 - ii. Name of the business and business manager employing the Qualified Owner(s);
 - iii. Number of hours the Qualified Owner(s) worked for the employer in the previous six months;
 - iv. Number of hours the Qualified Owner(s) is/are anticipated to work for the employer(s) in the next six months;
 - v. Statement by each Qualified Owner that the Affordable Improvement is the Qualified Owner's primary residence;
 - vi. Statement by each Qualified Owner that the Qualified Owner is not leasing the Affordable Improvement;
 - vii. Statement by each Qualified Owner that only Immediate Family Members reside in the Affordable Improvement with the Qualified Owner;
 - viii. Statement by each Qualified Owner that they are paying the yearly property taxes for their Affordable Improvement;
 - ix. The notarized signatures of the Qualified Owner(s) and the manager(s) of the business or organization for which each Qualified Owner(s) is/are employed, stating that the Qualified Owner is an employee in good standing; and
 - x. The notarized signature of each Qualified Owner, stating that by penalty of perjury the information on the form is true and correct.
- j) In the event Mountain Country and/or Southwest Land Trust find that a Qualified Owner of an Affordable Improvement does not meet the requirements of Section 6, Mountain Country and Southwest Land Trust shall allow the Qualified Owner the following:
- i. Thirty (30) calendar days after Mountain Country and Southwest Land Trust receive notice to cure for a violation of subsections 6(d), 6(g), 6(h), 6(i), or 6(j);
 - ii. Thirty (30) calendar days after Mountain Country and Southwest Land Trust receive notice to cure for a violation of subsections 6(e) or 6(f) if the Qualified Owner was no longer "actively employed" based on the

Qualified Owner's own choice or because the Qualified Owner was terminated for cause;

- iii. Six (6) months after Mountain Country and Southwest Land Trust receive notice to cure for a violation of subsections 6(e) or 6(f) if the Qualified Owner was no longer "actively employed" because the Qualified Owner was laid off or suffered a reduction in force by Qualified Owner's former employer and the Qualified Owner had been "actively employed" for up to and including two (2) years; or
 - iv. Two (2) years after Mountain Country and Southwest Land Trust receive notice to cure for a violation of subsections 6(e) or 6(f) if the Qualified Owner was no longer "actively employed" because the Qualified Owner was laid off or suffered a reduction in force by Qualified Owner's former employer and the Qualified Owner had been "actively employed" for over two (2) years.
- k) The Parties shall decide if the cure from subsection 6(j) is satisfactory.
 - l) Notwithstanding any other provisions of this subsection 6, upon a showing of undue hardship by a Qualified Owner, the Parties may, in their sole discretion, approve a Qualified Owner's written application to Mountain Country and Southwest Land Trust to continue residing in an Affordable Improvement beyond the cure period.
 - m) If an Affordable Improvement is not owned by a Qualified Owner, the title for the residence shall be transferred to the Southwest Land Trust. The Southwest Land Trust does not need to be a Qualified Owner to own an Affordable Improvement.
 - n) In order for an Affordable Improvement to be sold, Mountain Country and Southwest Land Trust shall ensure the buyer applies to be, and is accepted as, a Qualified Owner. Southwest Land Trust shall have the right of first refusal for each sale of an Affordable Improvement. If an Affordable Improvement is sold by a Qualified Owner, Southwest Land Trust shall set the sale price to ensure affordability for the next Qualified Owner. Southwest Land Trust will work with Mountain Country to determine this sale price.

7. Waiver of Rights. Mountain Country and Southwest Land Trust agree, pursuant to Utah Code Ann. § 10-9a-532, to disclose in writing to every Qualified Owner the rights each Qualified Owner may be giving up by agreeing to take ownership of an Affordable Improvement in accordance with the terms and conditions of this Fifth Amended and Restated Agreement as stated below. With the delivery of the disclosure, Mountain Country and Southwest Land Trust agree to obtain a notarized document from every Qualified Owner acknowledging the Qualified Owner's waived rights, which are as follows:

- a) An Affordable Improvement shall not be leased or rented at any time without the written permission of Mountain Country and Southwest Land Trust, in accordance with the Ground Lease.

- b) An Affordable Improvement may only be passed, transferred, or assigned in accordance with the Ground Lease.
- c) An Affordable Improvement shall be the Qualified Owner's primary residence;
- d) An Affordable Improvement shall only be occupied by a Qualified Owner and the Qualified Owner's Immediate Family Members;
- e) If an Affordable Improvement is sold, the Qualified Owner shall only receive the equity from the sale as provided in the Ground Lease; and
- f) An Affordable Improvement shall only be owned by a Qualified Owner who is "actively employed" during the entirety of Qualified Owner's ownership.

8. The Public Infrastructure. In the event Mountain Country and Southwest Land Trust elect to construct the Project on the Affordable Lots, then in connection with the same, Mountain Country and Southwest Land Trust shall construct (or cause to be constructed) the improvements generally described in Exhibit 3 attached hereto and incorporated herein by this reference (collectively the "Public Infrastructure"). The Public Infrastructure shall be constructed generally at the locations depicted on the Site Plan (Exhibit 2) attached hereto and incorporated herein by this reference. Nothing in this section should be construed as including within the definition of the Public Infrastructure any private improvements constructed on the Affordable Lots which are not located within the public right-of-way or easement identified in Exhibit 2. The scope and extent of the Public Infrastructure, including without limitation change orders applicable to the same, shall be determined by mutual agreement of the Town and Mountain Country and Southwest Land Trust and shall in all events meet the Town's minimum standards except as modified by the Town Council pursuant to Springdale Code 10-6A or Springdale Code 10-13D. Satisfaction of said standards shall be evidenced by the Town's issuance of the necessary permits and other approvals necessary for the construction of the Public Infrastructure.

- a) The Town shall as expeditiously as possible, but in no event later than necessary so as not to delay the construction of any portion of the Project, grant to (or obtain on behalf of) Mountain Country and Southwest Land Trust any and all easements, rights of entry, rights of way, and/or other use rights on or about all real property upon, through or under which any portion of the Public Infrastructure will be installed or which are useful or necessary for Mountain Country and Southwest Land Trust to complete the construction of the Public Infrastructure and the Project. The Town shall execute and record, or cause the execution and recordation of any and all documents or instruments reasonably required to effectuate this Section 7(a).
- b) The Town will use its best efforts to assist Mountain Country and Southwest Land Trust in obtaining all permits and approvals needed from any third party public or quasi-public entity which are necessary for the development, construction and operation of the Public Infrastructure and the Project.

- c) The construction of the Public Infrastructure shall satisfy all of the requirements of the Town for public improvements in connection with the development and operation of the Affordable Lots. Mountain Country and Southwest Land Trust shall not be required to construct any additional public improvements in connection with the proposed development and operation of the Affordable Lots.

9. Optional Incentives. The Town Council has approved the following Optional Incentives for the Affordable Lots.

- a) Modifications to Underlying Foothill Residential Zone Standards. The Affordable Lots are situated within the Foothill Residential Zone. However, pursuant to Springdale Code 10-13D-4(C), if property is approved for development within a Moderate Income Housing Development Overlay Zone, the Town Council may, in its sole discretion and subject to Springdale Code 10-6A, modify the development and zoning standards that would otherwise apply in the underlying zone. Accordingly, the Town Council has approved the following changes to the underlying zoning for the Project:

- i. Density Bonus. Hard surface coverage may not exceed thirty percent (30%) within the Project instead of the maximum twenty percent (20%) set forth in the Foothill Residential Zone Ordinance.

- ii. Height of Dwellings. The height of any single family residential dwelling on the Affordable Lots shall comply with the underlying Foothill Residential Zone requirements.

- b) Deferral of Impact Fees and Forgiveness of Building Permit, Inspection, and Zoning Application Fees. The applicable amounts for the Town's deferral or forgiveness of Town fees shall be computed at the greater of the rates set forth in the Town's current Fee Schedule in effect at the time of application for a building permit. A copy of the 2023 Fee Schedule is attached hereto as Exhibit 6 and incorporated herein by reference.

- i. Deferral of Impact Fees. The Town agrees to defer collection of impact fees for culinary water, wastewater (sewer), and parks and open space, for all of the Affordable Lots within the Project in perpetuity so long as the Affordable Lots are timely developed with Affordable Improvements and are thereafter sold to Qualified Owners.

- ii. The impact fee for habitat is a non-deferrable impact fee and will be collected by the Town as a condition precedent to the issuance of any building permits in the Project. The Parties understand and agree that the Town's deferral of impact fees shall create a lien against the dwellings affected thereby and Mountain Country and Southwest Land Trust

authorize the Town to record those instruments necessary to protect the Town's ability to recover the deferred amount for each affordable dwelling upon the expiration of the deferral period as set forth above. It is the intent of the Parties that such liens shall not accrue interest unless and until they become delinquent obligations. A lien obligation becomes delinquent as soon as the affordable dwelling is no longer designated as being affordable and the owner thereof fails to fully pay off the lien after being issued a ten (10) day written notice. From the date of such occurrence, the delinquent lien obligation shall bear interest at the rate of eighteen percent (18%) per annum until collected. Accordingly, in the case of the deferral of impact fees for the Affordable Improvements, the Parties agree that the deed to each shall carry a deed restriction setting forth the amount deferred by the Town for said Affordable Improvement. Additionally, the Parties agree that the Qualified Owner or the Town holding legal title to each Affordable Improvement shall cause to be recorded in the Office of the Washington County Recorder as a condition precedent to the issuance of an occupancy permit by the Town an instrument entitled "Deferred Impact Fee Assessment," which instrument shall at a minimum (1) identify the legal owner of the Affordable Improvement, (2) contain the legal description of the Affordable Improvement, (3) state the amount of the lien computed as set forth above, and (4) indicate that in the event the Town must commence legal action to collect the lien, including but not limited to judicial or non-judicial foreclosure proceedings as provided in the Utah Code, the Town shall be entitled to recover all costs and attorney fees incurred to recover said lien amount. Mountain Country and Southwest Land Trust agree to specifically advise all Qualified Owners taking ownership of any Affordable Improvement, and maintain records in the form of a signed statement from every such Qualified Owner manifesting their understanding and agreement to abide by this Section.

iii. Forgiveness of Building Permit, Inspection, and Zoning Application Fees.
The Town agrees to forgive and not charge Mountain Country and Southwest Land Trust for any of the following fees associated with its development of the Project:

1. Building permit application fees;
2. Building permit fee (based on valuation table in Town's Fee Schedule);
3. Building plan review fee (65% of building permit fee);
4. Excavation permit fee (based on valuation table in Town's Fee Schedule);
5. Water meter placement fee; and
6. All fees customarily charged by the Town from applicants for any zoning or development reviews by the Director of Community

Development or other Town staff, Planning Commission or Town Council.

Notwithstanding the forgoing explanation, the following fees may either not be waived or represent non-dischargeable fixed costs to the Town and will therefore be collected by the Town as a condition precedent to the issuance of a building permit: Fire District review fee, State 1% surcharge tax, Town engineer review fee, and water meter tap and meter set.

10. Acceptance of Dedication. Promptly upon the completion of the Public Infrastructure or any distinct portion thereof, the Town shall accept the dedication of the same from Mountain Country and Southwest Land Trust. The dedication shall be accomplished by an instrument prepared in accordance with State law and the Town's ordinances. Thereafter, the Town, at its sole cost and expense shall maintain, operate, repair and replace the Public Infrastructure as and when required to keep the Public Infrastructure in good condition and repair.

11. Approvals. The Town shall obtain, and shall maintain all necessary approvals, permits, consents and authorization from all governmental authorities and other persons or entities necessary for the Town ownership, maintenance, operation, repair and replacement of the Public Infrastructure.

12. Town Representations and Warranties. The Town acknowledges that Mountain Country and Southwest Land Trust are acquiring the Affordable Lots, entering into this Fifth Amended and Restated Agreement, and expending considerable sums in design and engineering fees associated with the Project in reliance on the findings, agreements, representations and warranties of the Town contained in this Fifth Amended and Restated Agreement. The Town acknowledges that Mountain Country and Southwest Land Trust shall continue to expend considerable sums with respect to the same in reliance on the findings, agreements, representations, and warranties of the Town contained in this Fifth Amended and Restated Agreement. The Town represents, warrants and covenants to Mountain Country and Southwest Land Trust that all of the Town's representations, findings, warranties and covenants set forth in this Fifth Amended and Restated Agreement are true in all material respects as of the date of this Fifth Amended and Restated Agreement. The Town further represents, warrants and covenants to Mountain Country and Southwest Land Trust as follows:

- a) The Affordable Lots are located within the municipal limits of the Town. The Affordable Lots are currently zoned or eligible for zoning as Moderate Income Housing Development Overlay Zone, which permits the construction and operation of the Public Infrastructure and the Project.
- b) The Town is a duly organized, validly existing municipal corporation in the State of Utah. The transactions contemplated by this Fifth Amended and Restated Agreement, the execution of this Fifth Amended and Restated Agreement and the Town's performance hereunder have been duly authorized by all requisite action of the Town and no other approval or consent is required for this Fifth Amended and

Restated Agreement to be binding upon the Town. The individuals executing this Agreement have all necessary authority to enter into this Fifth Amended and Restated Agreement and to bind the Town. The execution of this Fifth Amended and Restated Agreement and the consummation of the transactions contemplated hereby will not result in any violation of, or default under, any term or provision of any applicable agreement, instrument, law, rule, regulation or official policy to which the Town is a Party or by which the Town is bound.

- c) There is no litigation, referendum, investigation, initiative or proceeding pending or, to the knowledge of the Town, contemplated or threatened against the Town, the Affordable Lots, this Fifth Amended and Restated Agreement, the contemplated Public Infrastructure or the zoning of the Property, (collectively, "Actions," and each individually an "Action") which would impair or adversely affect the Town's ability to perform its obligations under this Fifth Amended and Restated Agreement or under any instrument or document related hereto or which would impair or adversely affect Mountain Country's or Southwest Land Trust's ability to construct the Project on the Affordable Lots or the Public Infrastructure.

13. Mountain Country Representations and Warranties. Mountain Country represents, warrants and covenants to the Town that all of Mountain Country's representations, warranties and covenants set forth in this Fifth Amended and Restated Agreement are true in all material respects as of the date of this Fifth Amended and Restated Agreement. Mountain Country represents, warrants and covenants to the Town and to Southwest Land Trust as follows:

- a) Mountain Country is a duly organized, validly existing non-profit corporation organized under the laws of the State of Utah.
- b) Mountain Country is a local nonprofit housing development organization and is a chartered member of NeighborWorks America ("NeighborWorks"), a Congressionally chartered nonprofit organization dedicated to creating places of opportunity in communities across the country.
- c) The transactions contemplated by this Fifth Amended and Restated Agreement, the execution of this Fifth Amended and Restated Agreement and Mountain Country's performance hereunder have been duly authorized by all requisite action of Mountain Country's board of directors and no other approval or consent is required for this Fifth Amended and Restated Agreement to be binding upon Mountain Country.
- d) The execution of this Fifth Amended and Restated Agreement and the consummation of the transactions contemplated hereby will not result in any violation of, or default under, any term or provision of any applicable agreement, instrument, law, rule, or regulation to which Mountain Country is a Party or by which Mountain Country is bound.

- e) Mountain Country will NOT encumber, hypothecate, or otherwise pledge the Affordable Lots as security or collateral for any loan, note, or other financial obligation that is not directly tied to and for which funds are used to improve the Affordable Lots.

14. Southwest Land Trust Representations and Warranties. Southwest Land Trust represents, warrants and covenants to the Town that all of Southwest Land Trust's representations, warranties and covenants set forth in this Fifth Amended and Restated Agreement are true in all material respects as of the date of this Fifth Amended and Restated Agreement. Southwest Land Trust represents, warrants and covenants to the Town and to Southwest Land Trust as follows:

- a) Southwest Land Trust is a duly organized, validly existing non-profit corporation organized under the laws of the State of Utah.
- b) The transactions contemplated by this Fifth Amended and Restated Agreement, the execution of this Fifth Amended and Restated Agreement and Southwest Land Trust's performance hereunder have been duly authorized by all requisite action of Southwest Land Trust's board of directors and no other approval or consent is required for this Fifth Amended and Restated Agreement to be binding upon Southwest Land Trust.
- c) The execution of this Fifth Amended and Restated Agreement and the consummation of the transactions contemplated hereby will not result in any violation of, or default under, any term or provision of any applicable agreement, instrument, law, rule, or regulation to which Southwest Land Trust is a Party or by which Southwest Land Trust is bound.
- d) Southwest Land Trust will NOT encumber, hypothecate, or otherwise pledge the Affordable Lots as security or collateral for any loan, note, or other financial obligation that is not directly tied to and for which funds are used to improve the Affordable Lots.

15. Cooperation and Alternative Dispute Resolution.

- a) Appointment of Representatives. To further the commitment of the Parties to cooperate in the implementation of this Fifth Amended and Restated Agreement, the Parties each shall designate and appoint a representative to act as a liaison between the Town and its various departments and Mountain Country and Southwest Land Trust. The initial representative for the Town (the "Town Representative") shall be its Town Manager; the initial representative for Mountain Country shall be its Executive Director; and the initial representative for Southwest Land Trust shall be the Executive Director of Mountain Country. The representatives shall be available at all reasonable times to discuss and review the performance of the Parties' respective obligations under this Fifth Amended and Restated Agreement.

- b) Expedited Town Decisions. The Parties agree that Mountain Country and Southwest Land Trust must be able to proceed expeditiously with the development of the Affordable Lots, the construction of the Project, and the construction of the Public Infrastructure and that, accordingly, an expedited Town review process is necessary once Mountain Country and Southwest Land Trust have submitted complete and satisfactory applications. The Town shall review all such matters in an expedited manner. The Town shall publish, post and give all required notices relating to the same in a diligent and expeditious manner. The Parties agree that if at any time Mountain Country or Southwest Land Trust believe that an impasse has been reached with the Town staff concerning any issue affecting the Affordable Lots, the Project or the Public Infrastructure, Mountain Country or Southwest Land Trust shall have the right to immediately appeal to the Town Representative for an expedited decision pursuant to this paragraph. If the issue on which an impasse has been reached is an issue where a final decision can be reached by the Town Staff, the Town Representative shall give Mountain Country or Southwest Land Trust a final decision within ten (10) business days after the request for an expedited decision is made. If the issue on which an impasse has been reached is one where a final decision requires action by the Town Council, the Town Representative shall be responsible for scheduling a Town Council hearing on the issue at the next regularly scheduled Town Council meeting after the request for an expedited decision is made; provided however, that if the issue is appropriate for review by the Town's Planning and Zoning Commission, the matter shall be submitted to the Commission first, and then to the Town Council. All Parties agree to continue to use reasonably good faith efforts to resolve any impasse pending any such expedited decision.

16. Default and Remedies

- a) Default by Mountain Country or Southwest Land Trust:
- i. If Mountain Country or Southwest Land Trust misrepresents its position to the Town in this Fifth Amended and Restated Agreement by giving incorrect or misleading information in any material respect, or fails to comply with any other term of this Fifth Amended and Restated Agreement, the Town reserves the right enforce this Fifth Amended and Restated Agreement in a court of law and Mountain Country will be responsible for the Town's attorney fees and costs to do so.
 - ii. Except as expressly set forth herein to the contrary, if the Town claims a default for Mountain Country or Southwest Land Trust's failure to perform as described in this Fifth Amended and Restated Agreement, the Town shall immediately deliver in writing a statement describing the nature of the default with specificity. Thereafter, Mountain Country or Southwest Land Trust shall have sixty (60) calendar days from receipt of the written default

claim to cure said default. If Mountain Country or Southwest Land Trust fails to cure within said timeframe, the Town reserves the right to enforce this Fifth Amended and Restated Agreement in a court of law and Mountain Country or Southwest Land Trust will be responsible for the Town's attorney fees and costs to do so.

- iii. If Mountain Country or Southwest Land Trust is or becomes dissolved.
- iv. If Mountain Country or Southwest Land Trust becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due.
- v. If Mountain Country or Southwest Land Trust makes a general assignment, arrangement or composition with or for the benefit of its creditors.
- vi. If Mountain Country or Southwest Land Trust (A) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organization or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official, or (B) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and such proceeding or petition is instituted or presented by a person or entity not described in clause (A) above and either (a) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (b) is not dismissed, discharged, stayed or restrained in each case within 15 days of the institution or presentation thereof.
- vii. If Mountain Country or Southwest Land Trust has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger).
- viii. If Mountain Country or Southwest Land Trust seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets.
- ix. If Mountain Country or Southwest Land Trust has a secured Party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on

or against all or substantially all its assets and such secured Party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within fifteen (15) days thereafter.

- x. If Mountain Country or Southwest Land Trust causes or is subject to any event with respect to which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in the above clauses (inclusive).

b) Remedies against Mountain Country or Southwest Land Trust:

- i. If Mountain Country or Southwest Land Trust takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts, Southwest Land Trust shall have sixty (60) calendar days from the discovery of the event in this Section to cure. If Southwest Land Trust fails to cure within that time frame, the Affordable Lots shall immediately be deeded back to the Town. The Town will pay Southwest Land Trust or Mountain Country, as the case may be, actual construction costs for the Affordable Improvements plus 3% per annum for the value of Affordable Improvements. The Town will not pay any sum to Southwest Land Trust or Mountain Country for the Affordable Lots.
- ii. If Mountain Country or Southwest Land Trust consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, or reorganizes, reincorporates or reconstitutes into or as, another entity and, at the time of such consolidation, amalgamation, merger, transfer, reorganization, reincorporation or reconstitution the resulting, surviving or transferee entity fails to assume all the obligations of Southwest Land Trust under this Fifth Amended and Restated Agreement, Southwest Land Trust shall have sixty (60) calendar days from the discovery of the event in this Section 15(b)(i) to cure. If Southwest Land Trust fails to cure within that time frame, the Affordable Lots shall immediately be deeded back to the Town. The Town will pay Southwest Land Trust or Mountain Country, as the case may be, actual construction costs for the Affordable Improvements plus 3% per annum for the value of Affordable Improvements. The Town will not pay any sum to Southwest Land Trust or Mountain Country for the Affordable Lots.
- iii. If Mountain Country or Southwest Land Trust is in default under any provision of this Fifth Amended and Restated Agreement, the Town shall be entitled, without prejudice to any other right or remedy that it may have under this Fifth Amended and Restated Agreement, at law or in equity, to specific performance by the defaulting Party of this Fifth Amended and Restated Agreement (and each Party hereby waives the defense that the other Party has an adequate remedy at law) and to receive reasonable attorney fees incurred in enforcing the terms of this Fifth Amended and

Restated Agreement. In the alternative, the Town may terminate this Fifth Amended and Restated Agreement and exercise any or all other remedies available to it at law or in equity.

17. Notices and Filings.

- a) Manner of Serving. All notices, filings, consents, approvals and other communications provided for herein or given in connection herewith shall be validly given, filed, made, delivered or served if in writing and delivered personally, by overnight mail, or sent by registered or certified United States Mail, postage prepaid, if to:

The Town:	Town of Springdale 118 Lion Blvd. P.O. Box 187 Springdale, UT 84767 Attn: Town Manager
Mountain Country:	Mountain Country Home Solutions 1031 W. Center St. Ste. 302 Orem, UT 84057
Southwest Land Trust:	Southwest Utah Community Land Trust 382 S. Bluff St. #150 St. George, UT 84770

Or to such other persons and addresses as either Party hereto may from time to time designate in writing and deliver in a like manner.

- b) Notices Effective. Notices shall be effective upon receipt or refusal.

18. Acknowledgement Regarding Legal Representation. Mountain Country and Southwest Land Trust expressly acknowledges that the law firm of Snow Jensen & Reece, P.C. has heretofore represented, and will hereafter continue to represent, only the Town in all aspects of this transaction, including the negotiation and drafting of this Fifth Amended and Restated Agreement and its incorporated Exhibits and in performing periodic legal reviews associated with the development of the Project as requested by the Town. Mountain Country and Southwest Land Trust further expressly acknowledges that they have not relied upon any representation, counsel or legal advice from Snow Jensen & Reece, P.C. or any of its attorneys in deciding whether to enter into this transaction or in evaluating this Fifth Amended and Restated Agreement or its incorporated Exhibits, and that Mountain Country and Southwest Land Trust have relied, and will continue to rely, solely upon the representations, counsel and legal advice of their own attorneys as deemed necessary by Mountain Country and Southwest Land Trust.

19. Acceptance of Ground Lease. The Town hereby accepts and approves the form and content of the Ground Lease attached hereto as Exhibit 7 and any changes that may be required by any government sponsored enterprise established to expand the liquidity of home mortgages by creating a secondary mortgage market, including but not limited to, the Federal National Mortgage Association ("Fannie Mae").

20. General.

- a) Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the Town or Mountain Country and Southwest Land Trust of the breach of any covenant of this Fourth Amended and Restated Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Fourth Amended and Restated Agreement.
- b) Counterparts. This Fifth Amended and Restated Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signature of all Parties may be physically attached to a single document.
- c) Headings. The descriptive headings of the paragraphs of this Fifth Amended and Restated Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.
- d) Exhibits. Any exhibit attached hereto shall be deemed to have been incorporated herein by this reference with the same force and effect as if fully set forth in the body hereof.
- e) Further Acts. Each of the Parties hereto shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Fifth Amended and Restated Agreement. Without limiting the generality of the foregoing, the Town shall cooperate in good faith and process promptly any requests and applications for plans and specifications, plat or permit approvals or revisions, and other necessary approvals relating to the development of the Affordable Lots by Mountain Country, Southwest Land Trust and its successors.
- f) Time of the Essence. Time is of the essence in the performance of this Fourth Amended and Restated Agreement.
- g) Successors. All of the provisions of this Fifth Amended and Restated Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties hereof. The Town may not assign any of its rights or obligations hereunder.

Mountain Country and Southwest Land Trust may only assign their rights and obligations hereunder following written approval by Town and pursuant to a written instrument that binds the successor(s) of Mountain Country, Southwest Land Trust, or both, as the case may, in perpetuity to the covenants and obligations of the Fifth Amended and Restated Agreement.

- h) No Partnership and Third Parties. It is not intended by this Fifth Amended and Restated Agreement to, and nothing contained in this Fifth Amended and Restated Agreement shall, create any partnership, joint venture or other similar arrangement between Mountain Country, Southwest Land Trust and the Town. No term or provision of this Fifth Amended and Restated Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a Party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder. Specifically, Mountain Country and Southwest Land Trust bear sole responsibility for all liens that may be placed on the property and for the timeliness of construction and related issues, and the town has no liability in respect to the same.
- i) Entire Agreement. This Fifth Amended and Restated Agreement constitutes the entire agreement between the Parties hereto pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, are hereby superseded and merged herein. Any modification of, or amendment to, any provision contained in this Fifth Amended and Restated Agreement shall be effective only if the modification or amendment is in writing and signed by both Parties. Any oral representation or modification concerning this Fifth Amended and Restated Agreement shall be of no force or effect.
- j) Names and Plans. Mountain Country and Southwest Land Trust shall be the sole owner of all names, titles, plans, drawings, specifications, ideas, programs, designs, and work products of every nature at any time developed, formulated or prepared by or at the instance of Mountain Country and Southwest Land Trust in connection with the Affordable Lots, the Project and the Public Infrastructure.
- k) Governing Law. This Fifth Amended and Restated Agreement is entered into in Utah and shall be construed and interpreted under the laws of the State of Utah.
- l) Reformation. Should any term, provision, covenant or condition of this Agreement be held to be void or invalid, the Parties shall reform this Fifth Amended and Restated Agreement to conform as closely as possible to the original intent hereof.
- m) Excused Delay in Performance. In addition to specific provisions of this Fifth Amended and Restated Agreement, for a period of time equal to the period of the force majeure delay, untimely performance by a Party hereto shall not be deemed to be a default where delays or inability to perform are due to war, insurrection,

strikes, slowdowns, lockouts, riots, floods, earthquake, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restriction, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, severe weather, inability (when the Party which is unable to perform is substantially without fault) of any contractor, subcontractor or supplier to perform acts of the other Party, acts or the failure to act of any utility, public or governmental agent or entity and/or other causes beyond the reasonable control of said Party. In the event that a Party hereto is unable to perform due to an event constituting force majeure as provided for above, then the time for performance by said Party shall be extended as necessary for a period of time up to the period of the force majeure delay.

- n) Attorney's Fees, Jurisdiction and Venue. The Parties expressly agree that the prevailing Party in any dispute (whether or not such dispute is resolved formally or informally, or by trial or alternative dispute resolution) shall be entitled to an award of all of its costs and attorney's fees. The Parties agree that the Fifth Judicial District Court for Washington County, Utah shall have jurisdiction to resolve all legal disputes; and the proper venue for any and all dispute resolution shall be in Washington County, Utah.
- o) Dispute Resolution. The Parties agree to submit to formal, non-binding mediation before pursuing any other legal means of resolving any disputes over this Fifth Amended and Restated Agreement or the Project.
- p) Conflicts. In the event of any conflict between the provisions of this Fifth Amended and Restated Agreement and the Ground Lease, the provisions of this Fifth Amended and Restated Agreement shall govern.

THIS FIFTH AMENDED AND RESTATED AGREEMENT shall be binding upon the Parties hereto, their administrators, heirs, successors or assigns and can be changed only by written agreement signed by all Parties.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on the date and year first above written.

MOUNTAIN COUNTRY HOME SOLUTIONS, a
Utah non-profit corporation

By: _____

Its: _____

strikes, slowdowns, lockouts, riots, floods, earthquake, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restriction, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, severe weather, inability (when the Party which is unable to perform is substantially without fault) of any contractor, subcontractor or supplier to perform acts of the other Party, acts or the failure to act of any utility, public or governmental agent or entity and/or other causes beyond the reasonable control of said Party. In the event that a Party hereto is unable to perform due to an event constituting force majeure as provided for above, then the time for performance by said Party shall be extended as necessary for a period of time up to the period of the force majeure delay.

- n) Attorney's Fees, Jurisdiction and Venue. The Parties expressly agree that the prevailing Party in any dispute (whether or not such dispute is resolved formally or informally, or by trial or alternative dispute resolution) shall be entitled to an award of all of its costs and attorney's fees. The Parties agree that the Fifth Judicial District Court for Washington County, Utah shall have jurisdiction to resolve all legal disputes; and the proper venue for any and all dispute resolution shall be in Washington County, Utah.
- o) Dispute Resolution. The Parties agree to submit to formal, non-binding mediation before pursuing any other legal means of resolving any disputes over this Fifth Amended and Restated Agreement or the Project.
- p) Conflicts. In the event of any conflict between the provisions of this Fifth Amended and Restated Agreement and the Ground Lease, the provisions of this Fifth Amended and Restated Agreement shall govern.

THIS FIFTH AMENDED AND RESTATED AGREEMENT shall be binding upon the Parties hereto, their administrators, heirs, successors or assigns and can be changed only by written agreement signed by all Parties.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on the date and year first above written.

MOUNTAIN COUNTRY HOME SOLUTIONS, a
Utah non-profit corporation

By: Sharlene Wilder

Its: Executive Director

SOUTHWEST UTAH COMMUNITY LAND
TRUST, a Utah non-profit corporation

By: Sharlene Uchida
Its: Executive Director

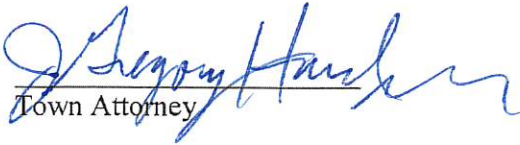
TOWN OF SPRINGDALE,
a Utah municipal corporation,

By: Barbara Bruno
Its: Mayor

ATTEST:

Ammemerm
Town Clerk

APPROVED AS TO FORM:


Town Attorney

State of Utah)
 ss.
County of Washington)

The foregoing Fifth Amended and Restated Moderate Income Housing Development Agreement was acknowledged before me this ____ day of _____, 2024, by _____, the _____ of Mountain Country Home Solutions, a Utah non-profit corporation, on behalf of the corporation.

Notary Public

State of Utah)
 ss.
County of Washington)

The foregoing Fifth Amended and Restated Moderate Income Housing Development Agreement was acknowledged before me this ____ day of _____, 2024, by _____, the _____ of Southwest Utah Community Land Trust, a Utah non-profit corporation, on behalf of the corporation.

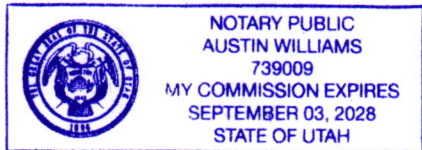
Notary Public

APPROVED AS TO FORM:

Town Attorney

State of Utah)
) ss.
County of Washington)

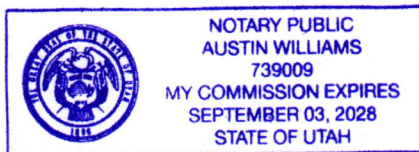
The foregoing Fifth Amended and Restated Moderate Income Housing Development Agreement was acknowledged before me this 23 day of December, 2024, by Sharlene Wilde, the Executive Director of Mountain Country Home Solutions, a Utah non-profit corporation, on behalf of the corporation.



Austin Williams
Notary Public

State of Utah)
)
) ss.
)
County of Washington)

The foregoing Fifth Amended and Restated Moderate Income Housing Development Agreement was acknowledged before me this 23 day of December, 2024, by Sharlene Wilde, the Executive Director of Southwest Utah Community Land Trust, a Utah non-profit corporation, on behalf of the corporation.



Austin Williams
Notary Public