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**DECLARATION
OF
COVENANTS,
CONDITIONS, AND
RESTRICTIONS
FOR
MOUNTAINSIDE
ESTATES**

**A Planned Unit Development
in Cache County**

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This DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR MOUNTAININSIDE ESTATES (“Declaration”) is effective when recorded with the Cache County Recorder’s Office by Capstone Consulting, LLC, a Utah limited liability company, and Shree Giriraj Ji, Inc., a Michigan Corporation (collectively “Declarants”).

RECITALS

- A. The real property situated in Cache County, Utah, described in Exhibit A, attached to and incorporated in this Declaration by reference, is hereby submitted, together with all buildings and improvements previously, now, or hereafter constructed in the Project, and all easements and rights appurtenant thereto, to a residential planned unit development consisting of residential Dwellings and related Common Areas pursuant to Utah Code § 57-8a-101 *et seq.* that shall be known as Mountainside Estates (the “Project”).
- B. Declarant is the owner of the real property subject to this Declaration. By signing this Declaration, Declarant consents to subjecting the Project to the terms, covenants and restrictions contained herein.
- C. Declarant hereby desires to establish for the mutual benefit of all future Owners and Occupants of the Project, certain covenants, conditions, restrictions, easements, rights, privileges, assessments and liens as set forth herein, which shall run with and be a burden upon the Project.
- D. Declarant desires to create an association of homeowners, which entity shall possess the power to maintain and administer the Common Areas, collect and disburse assessments and charges hereinafter provided for, and administer and enforce the provisions of this Declaration. It is intended that this Declaration shall serve as a binding contract between the Association and each Owner; however, nothing herein, is intended to create a contractual relationship between Declarant and the Association or Declarant and any Owner, or to inure to the benefit of any third-party. Additionally, it is not intended that this Declaration be read in conjunction with any deed or real estate purchase contract to create privity of contract between Declarant and the Association.
- E. Declarant intends that the Owners, Occupants, Mortgagees, and all other persons hereafter acquiring any interest in the Project shall at all times enjoy the benefits of, and shall hold their interest subject to this Declaration, which is recorded in furtherance of establishing a general plan of planned unit ownership for the Project, and for establishing Rules for the use, occupancy, management, and enjoyment thereof.
- F. Declarant explicitly reserves for itself the option in the future to expand the Project.

ARTICLE I DEFINITIONS

The capitalized terms used in this Declaration shall have the meanings set forth in this Article. Unless the context clearly requires otherwise, the masculine, feminine and neuter genders and the singular and the plural shall be deemed to include one another, as appropriate.

- 1.1 **Act** shall mean and refer to the Utah Community Association Act, codified beginning at Section

57-8a-101, Utah Code Annotated, as the same may be amended from time to time.

- 1.2 **Additional Land** shall mean and refer to, without limitation, any parcel of land that is annexed into the Project in accordance with the provisions outlined in this Declaration.
- 1.3 **Architectural Control Committee** or **ACC** shall mean and refer to the Board or, if so appointed by the Board, a committee having architectural control powers as further described in Article X.
- 1.4 **Articles** shall mean and refer to the Articles of Incorporation for the Association, as amended and restated from time to time.
- 1.5 **Assessments** shall mean any monetary charge or fee imposed or levied by the Association against Owners as provided in this Declaration or other Governing Documents.
- 1.6 **Association** shall mean and refer to the Mountainside Estates Homeowners Association, a Utah non-profit corporation. Failure of the Association to maintain its corporate status will not result in the dissolution of the Association.
- 1.7 **Board or Board of Directors** shall mean and refer to the Board of Directors of the Association as duly elected in accordance with the terms and conditions of the Articles of Incorporation and Bylaws of the Association. The Board is the governing body of the Association.
- 1.8 **Bylaws** shall mean and refer to the Bylaws of the Association as the same may be amended from time to time. A copy of the Bylaws is attached hereto as Exhibit B.
- 1.9 **Common Areas** all land within the Project, and the improvements situated thereon, which the Declarant designates as "Common Areas" or "Open Space" on the Plat or other recorded instrument, and other real property which the Association now or hereafter owns in fee for the benefit of Owners for as long as the Association is the owner of the property.
- 1.10 **Common Expenses** shall mean (a) all sums lawfully assessed against Owners; (b) expenses of administration, maintenance, management, operation, repair and replacement of the Common Areas which are maintained by the Association, as well as any other areas the Association is required to maintain pursuant to this Declaration; (c) expenses allocated by the Association among the Owners; (d) expenses agreed upon as common expenses by the Association or its Board of Directors; (e) expenses declared common expenses by the Declaration; and (f) other miscellaneous charges incurred by the Association or the Board pursuant to the Act, this Declaration, the Bylaws, or the Rules.
- 1.11 **Declarant** shall mean and refer to Capstone Consulting, LLC, a Utah limited liability company, and Shree Giriraj Ji, Inc., and any successors in interest.
- 1.12 **Declaration** shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Mountainside Estates, as may be amended from time to time.
- 1.13 **Design Guidelines** shall mean and refer to those requirements governing the location, color, materials, and architectural design of dwellings, structures, and improvements within the Project as adopted by the Board or ACC as provided herein. The initial Design Guidelines are attached hereto as Exhibit D.

1.14 **Director** shall mean and refer to an individual member of the Board of Directors.

1.15 **Dwelling** shall mean and refer to a structure which is designed and intended for use and occupancy as a single-family residence, together with all improvements located on or with respect to the Lot concerned which are used in connection with such residence. The Dwelling shall include, without limitation, the roofs and all exterior surfaces, exterior trim, gutters, downspouts, and foundations. The Dwelling shall also include any mechanical equipment and appurtenances located within any one Dwelling, or located without said Dwelling but designed to serve only that Dwelling, such as appliances, electrical receptacles and outlets, air conditioning compressors, furnaces, water heaters, apparatus, systems or equipment, fixtures and the like. All pipes, wires, conduits, or other utility lines or installations constituting a part of the Dwelling or serving only the Dwelling, and any structural members, parts, components or any other property of any kind, including fixtures or appliances within any Dwelling, which are removable without jeopardizing the integrity, soundness, safety or usefulness of the remainder of the building within which the Dwelling is located shall be deemed to be a part of the Dwelling.

1.16 **Governing Documents** shall mean collectively, the Declaration, Articles of Incorporation, Bylaws, Plat, and any Rules adopted by the Board.

1.17 **Lot** shall mean and refer to each of the individual Lots within the Project, as shown on the Plat, with the exception of the Common Areas. A Lot shall include any Dwelling or other improvement constructed thereon. There shall initially be sixty-four (64) Lots within the Project. However, if Declarant expands the Project as authorized herein, the Project may contain up to one-hundred (100) total Lots.

1.18 **Manager** shall mean a person, persons, or entity, if any, selected by the Board to manage the affairs of the Association and Project.

1.19 **Member** shall mean and refer to a Lot Owner.

1.20 **Mortgage** shall mean and refer to a mortgage, deed of trust, or trust deed or the act of encumbering any Lot or any property by a mortgage, trust deed, or deed of trust.

1.21 **Mortgagee** shall mean and refer to any person or entity named as a mortgagee of a mortgage or beneficiary under or holder of a deed of trust.

1.22 **Occupant** shall mean and refer to any Person, other than an Owner, living, dwelling, or staying in a Dwelling. This includes, but is not limited to, all lessees, tenants, and the family members, agents, and representatives living, dwelling, or staying in a Dwelling. Occupants shall be bound by the Restrictions in this Declaration and shall be liable for any fines that are assessed for violations of the Governing Documents.

1.23 **Owner** shall mean the record owner, whether one or more Persons, of a fee simple title to any Lot which is a part of the Project, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.

1.24 **Period of Declarant Control** shall mean the period of time during which the Declarant may enforce the Special Declarant Rights set forth in this Declaration. Such period of time shall

commence on the date this Declaration is recorded and terminate on the occurrence of the earliest of the following events: (i) twenty-four (24) months after the date on which all of the Lots have been conveyed to purchasers, including Lots that may be included within the Additional Land, regardless of whether such Additional Land has been added hereto; or (ii) the Declarant executes and records a written waiver of its right to control the Association. If the Declarant elects to waive one or more, but not all, of its Special Declarant Rights, then the Period of Declarant Control shall remain effective with respect to all retained Special Declarant Rights.

- 1.25 **Person** shall mean and refer to a natural individual, corporation, business entity, estate, partnership, trustee, association, joint venture, government, governmental subdivision, or agency or other legal entity capable of holding title to real property.
- 1.26 **Plat** shall mean and refer to the official subdivision plat(s) of the Mountainside Estates subdivision, filed and recorded in the official records of the Cache County Recorder's Office and any Additional Land annexed into the Project.
- 1.27 **Project** shall include the real property described in Exhibit A, together with the buildings, improvements, and permanent fixtures located thereon, and all easements and rights appurtenant thereto and shall at any point in time mean and refer to the Mountainside Estates subdivision.
- 1.28 **Restrictions** shall mean the covenants, conditions, assessments, easements, liens, and restrictions set forth in this Declaration.
- 1.29 **Rules** shall mean and refer to the rules, resolutions, regulations, policies, architectural guidelines, etc. adopted by the Board.

ARTICLE II PROJECT DESCRIPTION

- 2.1 **Submission.** The Declarant hereby confirms that the real property described with particularity on Exhibit A attached hereto and incorporated herein by this reference is hereby submitted to the Act. The Declarant hereby declares that the Project and all of the Lots shall be held, conveyed, transferred, sold, mortgaged, encumbered, occupied, used, and improved subject to the Restrictions, which Restrictions shall constitute covenants and conditions running with the land and shall be binding upon and inure to the benefit of the Declarant, the Association, and each Owner, including their respective heirs, successors, and assigns.
- 2.2 **Name.** The Project, as submitted to the provisions of this Declaration, shall be known as Mountainside Estates. The Project is not a cooperative.
- 2.3 **Description of Improvements.** The major improvements contained in the Project will initially include 64 Lots, each with a Dwelling. There are also Common Areas as further provided herein, along with other improvements detailed on the Plat. Other Lots or Common Area upon the Additional Land may be added as reserved by the Declarant. All improvements have been and shall continue to be constructed in a style and of materials architecturally compatible with the other improvements in the Project. The Lots, their locations, and approximate dimensions are indicated on the respective Plats.

- 2.4 **Common Areas.** The Common Areas of the Project are identified on the Plats or defined in Article I above.
- 2.5 **Lots.** Each Lot within the Project is identified on the Plat. Subject to further specification herein, each Lot consists generally of shall mean each individual parcel of real property shown on the Plat as a Lot, together with all improvements located thereon and all appurtenances thereunto appertaining.
- 2.6 **Registered Agent.** The Registered Agent of the Association shall be as provided in the entity filings with the Utah State Department of Commerce, Division of Corporations and Commercial Code. The Board may change the Registered Agent without Owner vote or approval.
- 2.7 **Expansion of Project.** The Project may be expanded by the Declarant by the recording of a Supplemental Declaration in accordance with the provisions of Article XII.

ARTICLE III **MEMBERSHIP AND VOTING RIGHTS**

- 3.1 **Membership.** Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to the Lot in which the Owner has the necessary interest, and shall not be separated from the Lot to which it appertains. Membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the transfer of ownership of the Lot to which it is appurtenant, and then only to the new Owner. Any attempt to make a prohibited transfer is void. In the event an Owner fails or refuses to transfer the membership registered in his name to the purchaser of his Lot, the Association shall have the right to record the transfer upon its books and thereupon the old membership outstanding in the name of the seller shall be null and void.
- 3.2 **Voting Rights.** Except as otherwise disallowed in this Declaration or the Bylaws or limited by the Special Declarant Rights reserved by the Declarant, Owners shall be entitled to one (1) vote per Lot owned.
- 3.3 **Multiple Ownership Interests.** If there is more than one Owner of a Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast by any of such Owners, whether in person or by proxy or by written ballot, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made or if there are conflicting votes from the same Lot, the vote involved shall not be counted for any purpose except towards establishing a quorum.
- 3.4 **Record of Ownership.** Every Owner shall promptly file the conveyance document (or in the case of contract buyer, a copy of the sales contract) for his Lot with the secretary of the Association who shall maintain a record of ownership of the Lots. Any Owner who mortgages his Lot or any interest therein by a mortgagee which has priority over the lien of any assessment provided herein shall notify the secretary of the Association of the name and address of the Mortgagee and also of the release of such Mortgage. Any cost incurred by the Association in obtaining the information about an Owner as specified herein which is not furnished by such

Owner shall nevertheless be at the expense of such Owner and shall be reimbursed to the Association as an “Individual Assessment” in accordance with the provisions of Article V.

3.5 **Proxies.** An Owner may give his proxy, either specific or general, to another Owner, a third person, or to a contract purchaser or his Lot to vote on all matters coming before the Association for vote provided the same is in writing, signed by the Owner, and is presented to those Association officers conducting such vote or as may be further provided in the Bylaws.

ARTICLE IV EASEMENTS AND RIGHTS IN COMMON AREAS

4.1 **Easement of Enjoyment.** Each Member shall have a right and easement of use and enjoyment in and to the Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Any Member may delegate the right and easement of use and enjoyment described herein to any family member, tenant, lessee, or contract purchaser who resides on such Member’s Lot.

4.2 **Title to Common Areas.** The Declarant has or will convey title to the Association on various Common Areas; however, neither this conveyance nor any other provision of the Declaration shall be construed to create a contractual relationship between the Association and Declarant.

4.3 **Limitation on Easement.** A Member’s right and easement for the use and enjoyment of the Common Areas shall be subject to the following:

- a) The right of the Association to impose reasonable limitations on the number of guests per Member who at any given time are permitted to use the Common Areas;
- b) The right of the Association to charge reasonable admission and other fees for the use of the recreational facilities situated upon the Common Areas;
- c) The right of the Association to suspend voting rights and right to use the Common Areas by an Owner for any period during which any Assessments against his Lot remain unpaid, and for a period not to exceed sixty (60) days for any infraction of the Rule;
- d) The right of the Association to dedicate or transfer all or any part of the Common Areas, and any sewer, water and storm drain lines to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association. Any such dedication or transfer must, however, be assented to by a majority of the Owners.

4.4 **Delegation of Use.** An Owner may delegate his right of use and enjoyment to the Common Areas to family members, tenants, or contract purchasers who reside on the Project. The rights and privileges of such donee or assignee shall be subject to suspension in the same manner and to the same degree as those of an Owner, as described in the preceding Section.

4.5 **Association Easement.** The Association, its Board, employees, agents, and contractors shall have non-exclusive easements to use the Common Areas to perform their duties as assigned by the Governing Documents.

4.6 **Easement for Utility Services.** The Project is subject to a blanket easement over, across, above, and under it for ingress, egress, installation, maintenance, repair, and replacement of

utilities. Utilities include, without limitation, water, sewer, gas, telephone, electricity, data, video, and cable.

4.7 **Easements for Encroachments.** If any portion of a Common Area structure or improvement encroaches upon any Lot, or if any structure or improvement of a Lot encroaches upon any other Lot or the Common Area as a result of the manner in which the improvements were initially approved and constructed or due to settling, shifting, alteration, replacement, repair, or restoration by the Association, a valid easement for encroachment, and maintenance of such encroachment, shall exist for the life of the improvement or structure.

4.8 **Compliance with Restrictions and Rules.** Each Owner and Occupant shall comply with the Restrictions imposed by this Declaration. Further, each Owner, Occupant and guest shall fully and faithfully comply with the Association's Rules and Restrictions and shall be jointly and severally liable for any fines for violations thereof.

ARTICLE V BUDGET AND ASSESSMENTS

5.1 **Annual Budget.** The Board shall prepare and adopt an annual budget for the Association. The annual budget shall provide, without limitation, for the maintenance of the Common Areas and for the administration, management, and operation of the Association. The Board may revise the budget from time to time as the Board deems appropriate. If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect until a new annual budget is adopted. The budget shall be made available to the Owners within thirty (30) days after adoption. Owners may disapprove a budget according to the provisions of the Act.

5.2 **Covenant to Pay Assessments.** Each Owner of a Lot by the acceptance of a deed therefore, whether or not it be so expressed in the deed, hereby covenants and agrees with each other and with the Association to pay to the Association all Assessments, including without limitation, all Annual, Special, and Individual Assessments described below, and other fees, charges, levies, and fines as may be provided in the Governing Documents.

5.3 **Purpose of Assessments.** Assessments levied by the Association shall be used for the purpose of promoting the health, safety, and welfare of residents of the Project, including but not limited to the appearance and aesthetics of the Project. The use made by the Association of funds obtained from Assessments may include, but is not limited to: payment of the cost of taxes and insurance on the Common Areas; maintenance, repair, and improvement of the Common Areas; establishing and funding a reserve to cover major repair or replacement of improvements within the Common Areas; and any expenses necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under the Governing Documents.

5.4 **Declarant's Exemption From Assessments.** Anything to the contrary notwithstanding, the Declarant shall not be obligated to pay Assessments on any Lot owned by it until such time as the Declarant elects in writing to pay Assessments, and only for so long as the Declarant elects to pay Assessments.

5.5 **Annual Assessments.** Annual Assessments shall be made on a calendar year basis. The Board shall give written notice of each Annual Assessment not less than fifteen (15) days prior to the beginning of the next calendar year. Each Annual Assessment shall be due and payable in monthly or quarterly installments on dates established by the Board. At least fifteen (15) days prior to the effective date of any change in the amount of the Annual Assessment, the Association shall give each Owner written notice of the amount.

5.6 **Special Assessments.** The Board may levy a Special Assessment payable over such a period as the Board may determine for the purpose of defraying, in whole or in part any expense or expenses not reasonably capable of being fully paid with funds generated by Annual Assessments; the cost of any construction, reconstruction, or unexpected repair or replacement of the Common Areas; or for any other expense incurred or to be incurred as provided in this Declaration. Special Assessments over one-thousand dollars (\$1,000) in a calendar year must be approved and assented to by a majority of the Members present in person or by proxy at a meeting duly called for such purpose. Notice in writing of the amount of any Special Assessments and the time for their payment shall be given as soon as is reasonably possible to the Owners. Payment shall be due on the dates and in the manner determined by the Board and provided in the notice. Notwithstanding the foregoing, Declarant may levy Special Assessments in any amount deemed necessary during the Period of Declarant Control without Owner approval.

5.7 **Individual Assessments.** In addition to Annual and Special Assessments authorized above, the Board may levy Individual Assessments against a Lot and its Owner for: (a) administrative costs and expenses incurred by the Board in enforcing the Governing Documents against the Owner or his/her Occupants; (b) costs associated with the maintenance, repair, or replacement of Common Areas caused by the neglect or actions of an Owner or his/her Occupants; (c) any other charge, fine, fee, expense, or cost designated as an Individual Assessment in the Governing Documents or by the Board, including, without limitation, action taken to bring a Dwelling and its Owner into compliance with the Governing Documents; (d) costs of providing services to the Lot upon request of the Owner; and (e) attorney fees, court or collection costs, fines, and other charges relating to any of the foregoing, regardless of whether a lawsuit is filed. In addition, Individual Assessments may be levied against a Lot and its Owner specifically benefited by any improvements to adjacent roads, sidewalks, planting areas or other portions of the Common Areas made on the written request of the Owner of the Lot to be charged. The aggregate amount of any such Individual Assessments shall be determined by the cost of such improvements, repairs, maintenance, or enforcement action, including all overhead and administrative costs and attorney fees, and shall be allocated among the affected Lots according to the special benefit or cause of damage or maintenance or repair work or enforcement action, as the case may be. Individual Assessments may be levied in advance of the performance of the work. If a special benefit arises from any improvement which is part of the general maintenance obligations of the Association, it shall not give rise to an Individual Assessment against the Lot(s) benefited, unless such work was necessitated by the Owner's or his/her Occupants' negligence.

5.8 **Allocation of Assessments.** Except for Individual Assessments, Annual and Special Assessments shall be fixed at a uniform rate for all Lots, unless otherwise provided in the Governing Documents.

5.9 **Application of Excess Assessments.** In the event the amount budgeted to meet Common Expenses for a particular fiscal year proves to be excessive in light of the actual Common Expenses, the Board in its discretion may apply the excess to reserves, credit the excess against future Assessments, or pay the excess to the Owners, as the Board deems appropriate. The decision of the Board shall be binding and conclusive. In addition, the Association shall not be obligated to reduce the amount of Assessments in succeeding years if an excess exists for a prior year.

5.10 **No Offsets.** All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount or withholding of any amount shall be permitted for any reason, including, without limitation, a claim that the Association owes the Owner money, or that the Association is not properly exercising its duties and powers as provided in this Declaration.

5.11 **Certificate Regarding Payment.** Upon the request of an Owner, prospective purchaser, mortgagee, or encumbrancer of a Lot, the Association shall issue a certificate stating whether or not all Assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who in good faith rely thereon. The Association may charge the requesting Owner, prospective purchaser, mortgagee, or encumbrancer of a Lot a reasonable fee as permitted in the Act.

5.12 **Personal Obligation and Lien.** All Assessments, together with any interest, late fees, collection costs, and attorney fees shall constitute and remain: (a) a charge and continuing lien upon the Lot with respect to which such Assessment is made; and (b) the personal obligation of the person who is the Owner of such Lot at the time the Assessment falls due. No Owner may exempt himself or his Lot from liability for payment of Assessments by waiver of his rights concerning the Common Areas or by abandonment of his Lot. In a voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all such unpaid Assessments, late payment fees, interest, and costs of collection, including reasonable attorneys' fees, which shall be a charge on the Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore.

5.13 **Billing and Collection Procedures.** The Board shall have the right to adopt Rules setting forth procedures for the billing and collection of Assessments, provided that such procedures are not inconsistent with the provisions hereof. The failure of the Association to send an invoice to an Owner shall not relieve any Owner of liability for any Assessment or charge under this Declaration, but the Assessment lien therefore shall not be foreclosed or otherwise enforced until the Owner has been given not less than thirty (30) days written notice prior to such foreclosure or enforcement, at the address of the Owner on the records of the Association, of the Assessment or installment and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. A copy of such notice may also be provided to

the Occupant(s) of the Owner if the Owner is not a resident at the Project.

5.14 **Due Date and Delinquency.** Assessments shall be paid in a timely manner. Payments are due in advance on the first day of the month or the first day of such other period established for the payment of Assessments. Payments are delinquent if received more than ten (10) days from the date that they became due. Whenever an Assessment is delinquent, the Board may at its option invoke any one or more options or all of the sanctions granted in this Article or the Act.

5.15 **Collection Charge.** If the Association does not otherwise adopt or establish billing and collection procedures in the Rules, the following shall apply. Delinquent accounts shall be charged a twenty-five dollar (\$25.00) late fee each month until the Owner's account (including all collection charges, costs, and attorneys' fees) is paid in full. Interest may accrue on all unpaid balances at the rate of eighteen percent (18%) per annum. Collection charges, interest, and/or late fees shall constitute part of the Assessment lien provided above until paid.

5.16 **Collection Action at Law.** The Association may exercise any or all of the following remedies to collect delinquent Assessments:

- a) The Association may suspend such Owner's voting rights.
- b) The Association shall have a lien against each Lot for any Assessment levied against the Lot and any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Lot from the date on which the Assessment, fine, or charge is due. This lien shall arise and be perfected as of the date of the recording of this Declaration. At any time, any Assessment or installment thereof is delinquent, the Association, by and through its Board or any Manager, may file a notice of lien in the deed records of Cache County, Utah against the Lot with respect to which the delinquency pertains. Once filed, such lien shall accumulate all future Assessments or installments, interest, late fees, penalties, fines, attorney fees, and other appropriate costs properly chargeable to an Owner by the Association, until such amounts are fully paid. Said lien may be foreclosed at any time as allowed by law. The lien of the Association shall be superior to all other liens and encumbrances except: a lien or encumbrance recorded before the original Declaration was recorded; a first or second security interest on the Lot secured by a mortgage or trust deed that is recorded before the Association's notice of lien; or a lien for real estate taxes or other governmental assessments against the Lot. The Association through its duly authorized agents, may bid on the Lot at any foreclosure sale, and may acquire and hold, lease, mortgage, and convey the Lot.
- c) The Association may bring an action to recover a money judgment for unpaid Assessments, fines, and charges under this Declaration against an Owner without foreclosing or waiving the lien described above. Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.
- d) If the delinquent Owner is leasing his Lot or any portion thereof, the Board may, at its option, so long as such default shall continue, demand and receive from any tenant of

the Owner the rent due or becoming due and the payment of such rent to the Board shall discharge such tenant for rent due, and shall discharge the Owner for such Assessments to the extent of the amount so paid.

- e) The Association shall have any other remedy available to it whether provided in the Governing Documents, the Act, or other law or in equity.

5.17 **Power of Sale.** The Association shall have all rights of foreclosure granted by the Act, both judicially and non-judicially. Pursuant to Utah Code §§ 57-1-20 and 57-8a-302, an Owner's acceptance of an interest in a Lot constitutes a simultaneous conveyance of the Lot in trust, with power of sale, to the Association's attorney of record, as trustee, for the benefit of the Association, for the purpose of securing payment of Assessments under the terms of this Declaration. The Association may appoint a qualified successor trustee by executing and recording a substitution of trustee form.

5.18 **Reserve Account.** The Board shall establish a reserve account to fund long- term maintenance of Common Areas. The Board shall follow any statutory requirement to conduct a reserve analysis and utilize such reserve analysis in making decisions regarding the funding of a Reserve Account. The Board shall not be personally liable for failure to fund the reserve unless willful or intentional misconduct is proven in a court of law. Notwithstanding the foregoing, such reserve fund duties and obligations shall not apply to the Association and Board during the Period of Declarant Control.

5.19 **Reimbursement of Tax Collection by County Authorized.** It is recognized that under the Declaration that the Association will own the Common Areas, which may obligate it to pay property taxes to Cache County to the extent taxes are required on such Common Areas. Each Owner will be required to reimburse the Association for its pro rata share of such taxes paid. Notwithstanding anything to the contrary contained in the Declaration, Cache County shall be authorized to collect such pro rata share of taxes directly from each Owner by inclusion of said share with the tax levied on each Lot.

5.20 **Account Payoff Fees.** The Association may charge a fee for providing Association payoff information needed in connection with financing, refinancing, or closing of the sale of a Lot as provided for in Utah Code § 57-8a-106. The amount of such fee shall be fifty dollars (\$50.00) or as otherwise established in the Rules. Additional paperwork required in a private sale between an Owner and purchaser may be obtained from the Association but may incur additional fees.

5.21 **Association Responsibility after Foreclosure.** If the Association takes title to a Lot pursuant to a foreclosure (judicial or non-judicial), it shall not be bound by any of the provisions related to the Lot that are otherwise applicable to any other Owner, including but not limited to obligations to pay assessments, taxes, or insurance, or to maintain the Lot. By taking a security interest in any Lot governed by this Declaration, Mortgagees cannot make any claim against the Association for nonpayment of taxes, Assessments, or other costs and fees associated with any Lot if the Association takes title to a Lot related to a failure to pay Assessments.

5.22 **Homestead Waiver.** Pursuant to Utah Code § 57-8a-301, and to the extent any liens are created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, each Owner waives the benefit of any homestead or exemption laws of the State of Utah now in effect, or in effect from time-to-time hereafter.

ARTICLE VI

DUTIES AND POWERS OF THE ASSOCIATION

6.1 **Organization of Association.** The Association shall serve as the governing body for all Owners. The Association shall make provisions for the maintenance, repair, replacement, administration, and operation of the Common Area and Common Expenses, and other matters as provided in the Act, this Declaration, and the Bylaws. The Association shall have all rights and powers granted to it under the Act and in this Declaration, the Articles, and the Bylaws. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the Owners in accordance with this Declaration, the Articles, and the Bylaws. Except as specifically authorized in this Declaration, the Articles, or the Bylaws, no Owner or group of Owners shall have authority to take any action on behalf of the Owners, the Association, or the Board of Directors.

6.2 **Legal Organization.** The Association may be incorporated as a nonprofit corporation. In the event the nonprofit corporate status expires or is invalidated in any manner, the Board of Directors, in its sole discretion, may renew and/or reincorporate the Association. Any such expiration or invalidation shall not relieve any Owner from paying Assessments and abiding by all Restrictions contained in this Declaration.

6.3 **General Powers and Obligations.** The Association shall have, exercise and perform all of the following powers, duties, and obligations:

- a) The powers, duties, and obligations granted to the Association by this Declaration, its Bylaws, and the Articles of Incorporation;
- b) The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Utah;
- c) The powers, duties, and obligations of a homeowners association pursuant to the Utah Community Association Act, or any successor thereto;
- d) The powers, duties, and obligations not reserved specifically to Owners; and
- e) Any additional or different powers, duties, and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to this Declaration or otherwise promoting the general benefit of the Owners within the Project.

The powers and obligations of the Association may from time to time be amended, repealed, enlarged, or restricted by changes in this Declaration made in accordance with the provisions herein, accompanied by any necessary changes in the Articles of Incorporation or Bylaws of the Association made in accordance with such instruments and with the nonprofit corporation

laws of the State of Utah.

6.4 **Specific Powers and Duties.** The powers and duties of the Association shall include, without limitation, the following:

- a) **Maintenance and Services.** The Association shall provide maintenance and services for the Project as provided in Article VII and other provisions of this Declaration.
- b) **Insurance.** The Association shall obtain and maintain in force policies of insurance as provided in this Declaration or the Bylaws of the Association. The Association shall have no obligation to obtain or maintain any insurance covering the personal and real property of any Owner(s), and each Owner shall be responsible for obtaining and maintaining such personal and real property insurance.
- c) **Rulemaking.** The Association, through its Board of Directors, shall make, establish, promulgate, amend, and repeal Rules governing the conduct of persons and the operation and use of the Project as it may deem necessary or appropriate in order to assure a clean, aesthetically pleasing, peaceful, and orderly use and enjoyment of the Project. Pursuant to Utah Code section 57-8a-218(15), the requirements of Utah Code §§ 57-8a-218(1) through (13), except subsection (1)(b)(ii), are hereby modified to not apply to the Association.
- d) **Assessments.** The Association shall adopt budgets and impose and collect Assessments as provided in Article V of this Declaration.
- e) **Enforcement.** The Association shall perform such acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce the provisions of the Governing Documents of the Association. The Association may assess fines to Owners, Occupants, or their guests for violations of the Governing Documents in accordance with the provisions of the Governing Documents and the Act.
- f) **Title to Common Areas.** The Association shall hold title to all Common Areas conveyed to it by its developer and pay all real property taxes and assessments levied upon any portion of the Common Areas, unless paid by the Owners, provided that the Association shall have the right to contest or compromise any such taxes or assessments.
- g) **Employment of Agents, Advisers, and Contractors.** The Association may employ the services of any person or corporation as managers, hire employees to manage, conduct, and perform the business, obligations, and duties of the Association, employ professional counsel and obtain advice from such persons or firms or corporations such as, but not limited to, community association managers, landscape architects, accountants, recreational experts, architects, planners, lawyers, reserve study specialists, or what is convenient for the management, maintenance, and operation of the Project. Any agreement with a Manager shall not exceed a term of two (2) years, renewable by agreement of the parties for a successive two (2) year term, and shall be

terminable by the Association upon no more than sixty (60) days' advanced notice. The Board has no authority to enter into a management agreement or contract inconsistent with the terms of the Governing Documents or that provides for a termination fee or requirement for termination for cause.

h) **Litigation.** The Board may instigate litigation to enforce the provisions of this Declaration or any other Common Law or statutory right which the Association is granted. Other than litigation required for the collection of past due Assessments, the Association shall not commence any litigation without prior approval of a majority of the Members, if the litigation shall exceed the cost of five thousand dollars (\$5,000.00) either in attorney fee expenses or in costs (including any expert reports).

i) **Bulk Service Agreements.** The Association shall have the right to enter agreements, as the Board deems appropriate, for the provision of cable, television, internet, telephone, or other similar services for all of the Lots or groups of Lots. Such services shall be assessed to the Owners pursuant to the provisions of this Declaration and in any Assessment, may be broken out as a separate line item on invoices, statements, or notices of Assessment.

6.5 **Liability.** A member of the Board or an officer of the Association shall not be liable to the Association or any Member thereof for any damage, loss, or prejudice suffered or claimed on account of any action or failure to act in the performance of his or her duties, except for intentional or willful bad acts or acts of recklessness. In the event any Board member or any officer of the Association is made a party to any proceeding because the individual is or was a director or officer of the Association, the Association shall indemnify such individual against liability and expenses incurred to the maximum extent permitted by law, except where the Board member or officer is found by a court of law to have engaged in willful or intentional misconduct in carrying out his/her duties.

6.6 **Board of Directors.** The governing body of the Association shall be the Board of Directors. Except where a matter or vote is specifically reserved to the Owners, the Board shall act in all instances on behalf of the Association. Board Members shall be elected pursuant to the provisions set forth in the Bylaws. The Bylaws may set forth requirements for serving on the Board. Without limiting the generality of the foregoing, the Board may appoint one or more "Committees", and such Committees (which may consist of one or more Members, as determined by the Board) shall have such authority and duties as may be determined from time to time by the Board relating to the budgeting, operation, financial management and administration of the Project ("Delegated Duties"). While any Committee established by the Board shall report to the Board regularly regarding its activities, the Board may by express directive relinquish and transfer all authority and responsibility with respect to such Delegated Duties to an applicable Committee. Notwithstanding the foregoing, during the Period of Declarant Control, the Declarant shall have the sole authority to act as the Board of Directors, or to appoint Board Members. Declarant appointed Board Members shall not be bound by the qualification requirements in the Bylaws.

6.7 **Registration with the State.** In compliance with Utah Code § 57-8a-105, the Association shall be registered with the Utah Department of Commerce and shall update its registration to keep any required information current as required by law.

6.8 **Management.** The Project shall be managed by a professional manager, selected by the Declarant, or upon the termination of the Period of Declarant Control, shall be selected by the Board to assist in the management and operation of the Project and may delegate such of its powers and duties to the Manager as it deems appropriate; rescrving the right, however, to control and oversee the administration thereof. Any powers and duties delegated to any Manager may be revoked by the Board at any time, with or without cause. Following the Period of Declarant Control, the Board shall have the option to either renew the contract with the Manager selected by the Declarant, or hire a different Manager.

ARTICLE VII MAINTENANCE

7.1 **Association Maintenance.** The Association shall maintain, repair, and replace the Common Areas. The Association shall have no responsibility to maintain or repair public streets within the Project. A maintenance allocation chart has been attached hereto as Exhibit C, which further defines and clarifies Association and Owner maintenance, repair, and replacement responsibilities.

The maintenance allocations provided in this Article shall clarify, expand upon, and supersede any maintenance provisions contained in the Plat or other Governing Documents. The Common Areas shall be maintained in a safe condition and in a good and workmanlike manner such as to carry out the purpose for which such areas are intended. The Board in its sole discretion shall determine the maintenance standard of the Common Areas. The Association shall have no obligation to perform any exterior building maintenance and/or repair of any part of a Lot, Dwelling, or any other landscaping installed by an Owner without the Association's express agreement for such maintenance.

7.2 **Snow Removal.** Unless otherwise removed by the city, the Association shall be responsible to remove snow that accumulates on the sidewalks located between the Project and (a) 1400 North Street, and (b) 1200 East Street.

7.3 **Services.** The Association shall provide or contract for such services as the Board may reasonably deem to be of benefit to the Project, including, without limitation, landscaping and garbage/trash removal services for all Lots.

7.4 **Owner Maintenance.** Each Owner shall have the obligation to provide exterior and interior maintenance of the Lot and Dwelling, including but not limited to painting, repair, replacement, and care of roofs, gutters, down spouts, exterior building surfaces, driveways, structural elements of the Lot and Dwelling, foundations, windows, doors, utility lines that solely service the Lot or Dwelling. As necessary or desirable, each Owner shall paint, repair, and otherwise maintain the exterior and interior of his Dwelling and shall maintain, repair, and replace all mechanical devices, including but not limited to, appurtenant electrical, plumbing,

and heating, ventilating and air conditioning systems. Each Owner shall be responsible for performing all snow removal on the sidewalks and driveways located on their Lot.

Owners shall be responsible to maintain, repair, and replace non-perimeter fences which mark the boundaries of their Lots. In the event, the backyard portion of a Lot is not enclosed by a fence upon initial construction, the Association may grant permission for an Owner to enclose such area with approved fencing; but, such approval must be made in writing at the discretion of the Board. The cost and responsibility to maintain, repair, and replace any portion of such non-perimeter fence, which serves, benefits, or bounds one Lot shall be borne exclusively by the Owner bounded thereby.

Further descriptions of Owner maintenance, repair, and replacement responsibilities are contained in the maintenance allocation chart attached as Exhibit C.

7.5 **Owner Maintenance Neglect.** The Association shall have the power and authority without liability to any Owner for trespass, damage, or otherwise, to enter upon any Lot for the purpose of maintaining and repairing such Lot or any improvement thereon; but only if the Owner fails to maintain and repair such Lot or improvement, or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such Lot in violation of this Declaration or any Rules of the Association. All costs incurred by the Association shall be assessed to the Owner as an Individual Assessment. The Board shall have the sole authority and discretion to decide whether an Owner has failed to meet its maintenance obligations. Except as necessary to prevent personal injury or property damage in an emergency, the Association shall first provide reasonable notice and an opportunity to cure before exercising the power granted herein. All costs incurred by the Association in remedying Owner maintenance neglect shall be an Individual Assessment against the Owner's Lot as provided in Article V.

The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration or any Rules promulgated by the Board, or to enforce by mandatory injunction or otherwise all the provisions of this Declaration and such Rules.

7.6 **Maintenance Caused by Owner Negligence.** If the need for maintenance or repair of Common Areas as specified herein is caused through the willful or negligent acts of an Owner, or through the willful or negligent acts of the family, guests, tenants, or invitees of an Owner, the Board may cause such repairs to be made by the Association and the cost of such maintenance or repair work shall be added to and become an Individual Assessment (as set forth above) to which such Lot is subject.

ARTICLE VIII INSURANCE

8.1 **Types of Insurance.** The Association shall obtain and keep in full force and effect at all times the following types of insurance coverage, provided by a company licensed to do business in

the State of Utah:

- a) **Liability Insurance.** Liability insurance with adequate limits of liability for bodily injury and property damage, consistent with that of similarly situated association in Cache County.
- b) **Director's and Officer's Insurance.** Adequate director's and officer's liability insurance (aka Errors and omissions insurance).
- c) **Fidelity Bond.** A separate fidelity bond in a reasonable amount to be determined by the Board to cover all non-compensated officers as well as all employees for theft of Association funds,

8.2 **No Fire and Casualty Insurance Carried by Association.** The Association shall not be responsible to purchase insurance coverage on the Lots or on the Dwellings. Each Owner is required to obtain insurance on their own Lot for their own protection and benefit and as a requirement of any loan they may have on their Dwelling, which Owner's insurance is for the purpose of insuring the Lot against fire damage, water damage, water pipe damage, theft and vandalism, plus those additional types of losses normally covered by homeowners insurance that are not covered under the Association. Each Owner should provide a copy of this Article VIII to their insurance agent to make sure they obtain adequate and complete insurance coverage.

8.3 **Additional Coverage.** The provisions of this Declaration shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required by this Declaration in such amounts and in such forms as the Association may from time to time deem appropriate.

8.4 **Adjustment and Contribution.** Exclusive authority to adjust losses under the insurance policies hereafter in force on Town Point shall be vested in the Association. In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by individual Owners or their Mortgagees.

8.5 **Insurance Carried by Owners.** Each Owner is responsible for and shall obtain insurance, at his own expense, providing coverage upon his own Lot and for general liability coverage, including without limitation, coverage for personal injury, property damage, and such other risks as each Owner may deem appropriate.

ARTICLE IX USE RESTRICTIONS

9.1 **Use of Common Areas.** The Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions applicable to Lots and Dwellings.

9.2 **Use of Lots and Dwellings.** All Lots are intended to be improved with single-family Dwellings and are restricted to such use. Except as may be approved to the contrary, each Dwelling shall be used only as a single-family Dwelling. No gainful occupation, business,

trade, or other nonresidential use shall be conducted on any Lot or Dwelling without the prior written consent of the Board and applicable governmental entities. However, the Board shall not approve commercial activities otherwise prohibited by this Section unless the Board determines that: only normal residential activities would be observable outside of the Dwelling; the business activity does not involve persons coming on to the project who do not reside in the Project; the business activity does not involve the solicitation of Occupants or Owners; the business will not result in the increase of the cost of the Association's insurance; and that the activities would not be in violation of applicable local ordinances.

9.3 **Offensive or Unlawful Activities.** No noxious or offensive activities shall be carried on upon any Lot, Dwelling, or Common Area, nor shall anything be done or placed on any Lot or Common Area which interferes with or jeopardizes the quiet enjoyment of other Lots, Dwellings, or the Common Areas, or which is a source of annoyance to residents. No unlawful use shall be made of a Lot or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. No use shall be made of any Lot which would result in an increase in the cost of the Association's insurance or which would cause the improvements within the Project or any part thereof to be uninsurable against loss by fire or other perils included in insurance contracts, or cause such insurance to be canceled or suspected, or cause any company issuing such insurance to refuse renewal thereof.

9.4 **Recreational Vehicles.** No boats, trailers, motorhomes, large trucks, commercial vehicles, RVs, or the like belonging to Owners or other Occupants of the Project shall be parked within the Project for a period exceeding forty-eight (48) hours unless parked within the Owner's enclosed garage or enclosed within an Owner's fenced in backyard. No motor vehicle of any kind shall be repaired, constructed, or reconstructed upon any Lot or other Common Areas, except for emergency repairs to vehicles. The Board is authorized to adopt Rules that vary or expand upon the restrictions set forth in this Section.

9.5 **Pets.** Domestic pets may be kept in Dwellings in conformance with local government requirements. No pets, animals, livestock, or poultry of any kind shall be bred in, on, or about the Project. The Board may adopt Rules adding further restrictions related to pets not inconsistent with this Declaration including but not limited to restrictions on the number and types of pets, requirements for registration with the Association, and noise limitations. All pets must be properly licensed and registered with the appropriate governmental agency and must abide by all pet Rules adopted by the Board from time to time. Pets may not create a nuisance. The following acts of an animal may constitute a nuisance: (a) it causes damage to property of anyone other than its owner; (b) it causes unreasonable fouling of the air by odors; (c) it causes unsanitary conditions; (d) it defecates on any Common Area or Lot of another Owner and the feces are not immediately cleaned up by the responsible party; (e) it barks, whines, or howls, or makes other disturbing noises in an excessive, continuous, or untimely fashion; or (f) it molests or harasses a passersby by lunging at them or chasing passing vehicles. Pets may not be tied or tethered in the Common Area and shall be leashed or restrained whenever outside a Dwelling. The Association may levy Individual Assessments to Owners for any damages to

the Common Areas and landscaping caused by a pet, including burn spots in the lawn from urine.

9.6 **Machinery and Equipment.** No machinery or equipment of any kind shall be placed, used, operated, or maintained on or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use, maintenance, or construction of a Dwelling or appurtenant structures.

9.7 **Nuisances.** No resident shall create, maintain or permit a nuisance in, on or about the Project. For purposes of this Section a “nuisance” includes any behavior which annoys, disturbs or interferes with other residents and interferes with their right to the quiet and peaceful enjoyment of their property. The Board shall have the sole discretion and authority to determine if an activity or condition constitutes a nuisance. A nuisance includes, but is not limited to, the following:

- a) The development of any unclean, unhealthy, unsightly, or unkempt condition on, in or about a Lot or the Common Areas;
- b) The storage of any item, property or thing that will cause any Lot or the Common Area to appear to be in an unclean or untidy condition or that will be noxious to the senses;
- c) The accumulation of rubbish, unsightly debris, garbage, equipment, or other things or materials that constitute an eyesore as reasonably determined by the Board;
- d) The storage of any substance, thing or material upon any Lot or in the Common Areas that will emit any foul, unpleasant or noxious odors, or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the other residents at the Project;
- e) The creation or maintenance of any noxious or offensive condition or activity in or about any Lot or the Common Areas;
- f) Actions or activities tending to cause embarrassment, discomfort, annoyance, distress or a disturbance to any other residents, their guests or invitees, particularly if the police or sheriff must be called to restore order;
- g) Maintaining any plants, animals, devices or items, instruments, equipment, machinery, fixtures, or things of any sort whose activities or existence in any way is illegal, noxious, dangerous, unsightly, unpleasant, or of a nature that diminishes or destroys the enjoyment of the Association by other residents, their guests or invitees;
- h) Too much noise in, on or about any Lot or the Common Area, especially after 10:00 p.m. and before 7:00 a.m., or use of outside speakers or amplifiers;
- i) Too much traffic in, on or about any Lot or the Common Area, especially after 10:00 p.m. and before 7:00 a.m.;
- j) Allowing a pet to be unleashed while outside of the Dwelling or fenced backyard;

- k) Continuous barking, meowing, or other animal noises; and
- l) Allowing a pet to urinate or defecate in the Common Areas or failing to clean up immediately any feces deposited by a pet in the Common Area.

9.8 **Signs.** The Association may regulate and restrict signs in the Project to the extent permitted by law. The Board may adopt Rules for the regulation of signs. Unless otherwise designated in the Rules, lawn signs are prohibited, except "For Sale" or "For Rent" signs that may be placed outside the main entry of the Dwelling or as directed by the Board. All other signs may only be erected or maintained on the Project, whether in a window or otherwise, with the prior written approval of the Board of Directors. Signs may not exceed 24" X 30" in size and may only be posted into the ground with wire or stakes no more than 4" square.

9.9 **Trash Containers and Collection.** All garbage and trash shall be placed and kept in covered containers of a type and style which shall be approved by the Board. Insofar as possible, such containers shall be maintained as not to be visible from the street view except to make them available for collection for a reasonable amount of time as determined by the Board. The Association may adopt additional Rules for the storage and concealment of trash containers.

9.10 **Parking.** Owners, Occupants, and tenants must first use their garages before other vehicles may be parked outside of the garage. Vehicles shall not be parked at an entrance to or in front of a garage or walkway or at any other location within the Project, which would impair vehicular or pedestrian access.

9.11 **No Patio / Deck Storage.** No observable outdoor storage of any kind shall be permitted on patios, front yards, porches, etc., except for patio furniture and portable barbecue grills in good condition which may be maintained on backyard patios. Said patio furniture shall conform with standards set by the ACC.

9.12 **Window Coverings.** Every Owner shall be obligated to ensure that window coverings are installed within their Dwelling within one month of purchasing or taking possession of the Dwelling. Furthermore, the ACC is authorized to adopt and implement reasonable Rules pertaining to the type, color, material, etc. of window coverings.

9.13 **Leases.** The leasing of Dwellings is permitted. The Board may adopt Rules to regulate the leasing of Dwellings which may include but are not limited to: requiring a copy of each lease to be provided to the Board, reporting of name and contact information for all adult tenants, reporting of vehicle information of the tenants, and any other information deemed necessary by the Board. Unless otherwise modified by Association Rule, the following leasing restrictions shall apply: all leases shall provide that the tenant is subject to and shall abide by the Governing Documents and the tenant's failure to do so shall constitute a breach of the lease agreement. Within 10 days after delivery of written notice of the creation of a nuisance or violation of the Governing Documents by a tenant, the Owner shall proceed promptly to either abate or terminate the nuisance, or cure the default, and notify the Board in writing of his or her intentions. If the Owner fails to act accordingly, the Board may initiate eviction proceedings on behalf of the Owner, and through this Declaration the Owner hereby assigns

the Association the authority to do so.

9.14 **Variances.** The Board may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article if the Board determines in its discretion (by unanimous vote): (i) either that the restriction would create an unreasonable hardship or burden on an Owner or Occupant, or that a change of circumstances since the recordation of this Declaration has rendered such restriction obsolete and unreasonable to enforce; and (ii) that the activity permitted under the variance will not have any financial affect or any other substantial adverse effect on the Association or other Owners of the Project and is consistent with the high quality of life intended for residents of the Project. Any such variance shall be unenforceable and without any effect whatsoever unless reduced to writing and signed by every member of the then-existing Board. No variance may be granted that is inconsistent with the Act.

ARTICLE X ARCHITECTURAL CONTROLS

10.1 **Architectural Control Committee.** The Board may appoint a three (3) member Architectural Control Committee, the function of which shall be to insure that all improvements and landscaping within the Project harmonize with existing surroundings and structures. The ACC need not be composed of Owners. If the ACC is not appointed, the Board shall perform the duties required of the ACC. The Declarant shall act as the ACC during the Period of Declarant Control.

10.2 **Architectural Controls.** To maintain a degree of protection to the investment which homeowners in this area may make, homes of superior design are requisite, and designs shall be limited to those approved by the ACC in its sole discretion. In the event of any reconstruction of an improvement or a residential Dwelling due to a casualty, the design, quality, and appearance of the reconstructed home shall be substantially the same as the structure initially built, unless otherwise approved by the ACC. No landscaping, grading, excavation, building, fence, wall, residence, or other structure, or alteration of any kind, shall be commenced, erected, maintained, improved, altered, or made until the construction plans and specifications, have been approved in writing by the ACC. All subsequent additions to or changes or alterations in any building, fence, wall, or other structure, including exterior color scheme, and all changes in the grade within the Project, shall be subject to the prior written approval of the ACC. Once approved by the ACC, no changes or deviations in or from the plans and specifications shall be made without the prior written approval of the ACC. Subsequent to receiving approval of the ACC and prior to the commencement of construction, each Owner will be responsible for obtaining a building permit, as needed, from the city.

No construction, reconstruction or modification of a home or landscaping may commence without approval by the ACC of the working drawings including, but not limited to, the following:

- a) A site plan to scale showing the entire site, building, garages, walks, drives, fences, lights, and retaining walls, with elevations of the existing and finished grades and

contours including those at the outside corners of the buildings and at adjacent property line and street fronts and elevations of floors from a designated point on the street.

- b) Detailed floor plans showing dimensions and measurements.
- c) Detailed elevations, indicating all materials and colors and showing existing and finished grades.
- d) Detailed sections, cross and longitudinal.
- e) Details of cornices, porches, windows, doors, garages, garden walls, steps, patios, fences, carriage lights, etc.

Specifications shall give complete descriptions and color samples of materials to be used on the exterior of the residence. The ACC will base its approval of construction plans, specifications, landscaping plans, and other alterations upon compliance with the Design Guidelines, any other design guidelines adopted by the Association. Any costs incurred by the Association in reviewing plans, specifications, or the like shall be assessed against the requesting Owner as an Individual Assessment. The ACC may also establish a reasonable fee for reviewing plans and specifications.

10.3 Design Guidelines. The Declarant or the Board may adopt Design Guidelines for the purpose of maintaining a consistent character and quality of appearance of the improvements within the project. The initial Design Guidelines are attached hereto as Exhibit D. Exhibit "D" may be modified without the need to amend this Restated Declaration or record any document in the office of the County Recorder. The Declarant shall have sole and full authority to amend the Design Guidelines during the Period of Declarant Control. The Declarant's right to amend the Design Guidelines shall continue even if it delegates reviewing authority to the ACC. Upon termination or delegation of the Declarant's right to amend, the Board shall have the right to amend the Design Guidelines.

- a) The Design Guidelines may designate the design, style, model, and manufacturer of any materials to be used for an exterior improvement or alteration that is acceptable to the Board and ACC. The Design Guidelines may also designate landscaping requirements. Such designations shall be for the purpose of achieving uniformity of appearance and preservation of property values.
- b) Unless otherwise approved by the ACC due to the existence of exceptional circumstances, all Dwellings approved by the ACC shall have a minimum of 1,500 square feet on the Dwellings main level and shall have no less than a two car attached garage.

Amendments to the Design Guidelines shall apply prospectively only. They shall not require modifications to or removal of any structures previously approved once the approved construction or modification has begun. However, any new work on such structures must comply with the Design Guidelines as amended.

10.4 Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent

the erection or maintenance by Declarant, or its duly authorized agents, of temporary structures, trailers, improvements or signs necessary or convenient to the development, marketing, or sale of property within the Project. Furthermore, the provisions of this Declaration which prohibit or restrict non-residential use of Dwellings, regulate parking of vehicles, and restrict signage, banners, and the like, shall not prohibit the construction and maintenance of model homes by Declarant and/or other persons engaged in the construction of residences within the Project so long as the location of such model homes and the opening and closing hours are approved by the ACC, and the construction, operation and maintenance of such model homes otherwise complies with all of the provisions of this Declaration. The ACC may also permit Lots and other areas to be used for parking in connection with the showing of model homes so long as such parking and parking areas are in compliance with city ordinances and any rules of the ACC. Any homes constructed as model homes shall cease to be used as model homes at any time the Owner thereof is not actively engaged in the construction and sale of residences within the Project, and no home shall be used as a model home for the sale of homes not located within the Project.

10.5 **Variances.** The ACC may authorize variances from compliance with any of the architectural provisions of this Declaration or Design Guidelines when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration may require. Such variances must be in writing and must be signed by all of the members of the ACC (or Board if acting as the ACC). If a variance is granted, no violation of the Governing Documents shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of a variance shall not operate to waive any Restrictions of the Governing Documents, other than those specifically identified in the variance, nor shall it affect an Owner's obligation to comply with all governmental laws and regulations.

10.6 **Liability for Damages.** The ACC shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by it made pursuant to this Article.

ARTICLE XI ENFORCEMENT

11.1 **Enforcement of Governing Documents.** The Association, Declarant, or any Owner shall have the right to enforce, by proceedings at law or in equity, each provision of this Declaration and other Governing Documents, including the right to prevent any violation of such, and the right to recover damages and other sums for such violation(s). The prevailing party in any action for the enforcement of any provisions of the Governing Documents (including but not limited to litigation and the appeal thereof) shall be entitled to collect court costs and reasonable attorney fees. Occupants, guests, and invitees shall be personally liable for any fine assessed as a result of their action in violation of the provisions of the Governing Documents. Failure to enforce any covenant or restriction within the Governing Documents shall in no event be deemed a waiver of the right to do so thereafter.

ARTICLE XII
SPECIAL DECLARANT RIGHTS

12.1 **Improvements.** Declarant hereby reserves the right, without obligation, to construct:

- a) Any improvement shown on the Plat or included in the Project;
- b) Any other buildings, structures, or improvements that Declarant desires to construct in the Project, or any other real estate owned by Declarant, regardless of whether the same ever become part of the Project.

12.2 **Expandable Project.** The Declarant herewith expressly reserves the right and option to expand the Project by the addition of Additional Land, or portions thereof, and Lots and Dwellings to be constructed thereon, in accordance with the provision of this Section.

- a) The Project may be expanded by the addition of all or a portion of the real property designated by Declarant, such real property or portions thereof where applicable being referred to as "Additional Land".
- b) Expansion of the Project by the Declarant is without limitation, except as set forth in this Section, and shall be effective without prior approval of the Association or any Owner.
- c) Declarant's right to expand the Project shall not expire until the Declarant elects in writing to not add Additional Land to the Project.
- d) Additional Land may be added in total or in part, and in any order as Declarant may determine.
- e) All improvements upon Additional Land shall be made in such a manner as to conform to all governmental regulations appertaining thereto, but such improvements may be located upon the Additional Land, or any portion thereof, in such manner as the Declarant deems appropriate in its sole discretion, subject to the requirements contained herein. All additional Lots and Dwellings to be constructed upon the Additional Land will be constructed exclusively for residential use.
- f) Declarant consents and agrees that any Lot and Dwelling constructed within the Project upon the Additional Land will be similar in all material respects to the Dwellings presently contained or to be constructed upon the Project and shown on the Plat. Notwithstanding the above, no assurances can be made by the Declarant in every instance that such structures and improvements will be identical in all regards.
- g) The Declarant simultaneously with the submission of Additional Land to the Project shall prepare and record in the County records, a supplemental Plat pertaining to such Additional Land to be added showing the location and dimensions of each Lot created from and located upon such Additional Land, and the designation of each Lot so created.
- h) Simultaneously with the recording of said supplemental Plat, the Declarant shall duly execute, acknowledge, and record a Supplemental Declaration setting forth that an

expansion of the Project has occurred. Such Supplemental Declaration shall: (i) reference this Declaration, (ii) state that the provisions of this Declaration apply to the Additional Land, and (iii) include a legal description of the Additional Land added to the Project.

- i) If Declarant expands the Project, some of the Additional Land Some may contain additional Common Areas, which the Association shall own and be required to maintain according to the requirements found in the Declaration.

12.3 **Special Declarant Rights.** Special Declarant Rights are those rights reserved for the benefit of the Declarant in this Declaration and the Governing Documents and shall include, among others, and regardless of anything in the Declaration to the contrary, the following rights, which shall remain in effect during the entire Period of Declarant Control, or for the maximum period allowed by law:

- a) the right to maintain sales offices, model Dwellings, and signs advertising the Project or any Dwelling at any location in the Project;
- b) the right to use easements through the Common Areas as set forth in this Declaration;
- c) the right to convert any part of the Project to a different regime of residential ownership;
- d) the right to create or designate additional Common Area within the Project;
- e) the exclusive right to act as the Board of Directors, or appoint or remove Board Members in Declarant's sole discretion, during the Period of Declarant Control;
- f) unless expressly and specifically bound by a provision of the Governing Documents, Declarant shall be exempt from the provisions of the Governing Documents;
- g) the right to set all assessments for the Association including annual, special, and individual assessments;
- h) the right to set all fines and fees for the Association including but not limited to collection fees, architectural review fees, and fines for violations of Association Rules;
- i) the exclusive right to amend the Declaration, Bylaws, and Rules of the Association without approval from any Members;
- j) the right to exert any right allowed to the Board or the Association pursuant to the Act and this Declaration;
- k) the right to make and adopt Association Rules without being subject to the requirements of Utah Code § 57-8a-217; and
- l) pursuant to Utah Code § 57-8a-211(10), Utah Code § 57-8a-211(2) through (9), shall not apply or have any effect during the Period of Declarant Control, and the Declarant shall have no duty whatsoever to obtain a Reserve Analysis, or to fund any Reserve Fund during the Period of Declarant Control.

12.4 **Exercising Special Declarant Rights.** Declarant may exercise the Special Declarant Rights at any time prior to the later to occur of the date on which the Period of Declarant Control expires or the date when the Declarant relinquishes such rights in writing. Declarant may exercise its Special Declarant Rights in any order, and no assurance is given as to the order in which Declarant will exercise them. If Declarant exercises any Special Declarant Right with respect to any portion of the Project, Declarant may, but is not obligated to, exercise that Special Declarant Right with respect to any other portion of the Project. Notwithstanding anything to the contrary contained in this Declaration, Declarant may exercise any Special Declarant Right described in this Article and any other right reserved to the Declarant in this Declaration, without the consent of the Association or any of the Owners.

12.5 **Interference with Special Declarant Rights.** Neither the Association nor any Owner may take any action or adopt any Rules that interferes with or diminishes any Special Declarant right contained in this Declaration without Declarant's prior written consent. Any action taken in violation of this Section shall be null and void and have no force or effect.

12.6 **Limitation on Improvements by Association.** Until such time as the earlier of the following events occur: (a) termination of the Period of Declarant Control, or (b) such time as Declarant chooses, neither the Association nor the Board shall, without the written consent of Declarant, make any improvement to or alteration in any of the Common Areas created or constructed by Declarant, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Areas as originally constructed or created by Declarant.

12.7 **Transfer of Special Declarant Rights.** The Declarant may transfer, convey, or assign its rights created or reserved under this Declaration to any Person in whole or in part. The Declarant's successor shall enjoy any and all Declarant rights set forth in the Declaration regardless of whether such rights are stated to be transferable. All references in the Governing Documents to Declarant shall equally apply to its successor. A contract transferring a Declarant's rights may, but shall not be required to, be recorded in the office of the Cache County Recorder.

12.8 **Changes by Declarant.** Nothing contained in this Declaration shall be deemed to affect or limit in any way whatsoever the right of the Declarant, its successors or assigns, to sell or to change the location, design, method of construction, grade, elevation, or any other part or feature of a Lot and Dwelling prior to the contracting for the conveyance of the Lot to a purchaser.

12.9 **Easements Reserved to Declarant.**

- a) The reservation to Declarant, its successors and assigns, of non-exclusive easements and rights of way over those strips or parcels of land designated or to be designated on the Plat as "Public Utility Easement," or otherwise designated as an easement area over any road or Common Area on the Project, and over those strips of land running along the front, rear, side and other Lot lines of each Lot shown on the Plat.
- b) An easement for the installation, construction, maintenance, reconstruction and repair

of public and private utilities to serve the Project and the Lots therein, including but not limited to the mains, conduits, lines, meters and other facilities for water, storm sewer, sanitary sewer, gas, electric, telephone, cable television, and other public or private services or utilities deemed by Declarant necessary or advisable to provide service to any Lot, or in the area or on the area in which the same is located.

- c) Easement granting the privilege of entering upon the Common Areas for such purposes and making openings and excavations thereon, which openings and excavations shall be restored in a reasonable period of time, and for such alterations of the contour of the land as may be necessary or desirable to affect such purposes.
- d) The reservation to the Declarant and its successors and assigns, of a non- exclusive easement and right-of-way in, through, over and across the Common Area for the purpose of the storage of building supplies and materials, and for all other purposes reasonably related to the completion of construction and development of the Project and the provision of utility services, and related services and facilities.
- e) The Declarant reserves unto itself and its successors and assigns, the right to dedicate all of said roads, streets, alleys, rights of way, or easements, including easements in the areas designated as "open space" and storm water management reservation, to public use all as shown on the Plat. No road, street, avenue, alley, right of way or easement shall be laid out or constructed through or across any Lot or Lots in the Project except as set forth in this Declaration, or as laid down and shown on the Plat, without the prior written approval of the Declarant.
- f) Declarant further reserves unto itself and its successors and assigns, the right at or after the time of grading of any street or any part thereof for any purpose, to enter upon any abutting Lot and grade a portion of such Lot adjacent to such street, provided such grading does not materially interfere with the use or occupancy of any structure built on such Lot, but Declarant shall not be under any obligation or duty to do such grading or to maintain any slope.

12.10 No Modification of Declarant Rights. The Special Declarant Rights in this Declaration or other Governing Documents, and specifically in this Article, shall not be substantively or procedurally altered, amended, or removed without the written consent of the Declarant until at least six (6) years have passed after the Period of Declarant Control has ended, at which time the Declarant's approval shall no longer be required. Any document or amendment attempted without obtaining proper consent shall be void *ab initio* to the extent it attempts to alter the rights of the Declarant or any provision of this Article without the consent of the Declarant.

ARTICLE XIII RIGHTS OF FIRST MORTGAGEE

13.1 Title in Mortgagee. Any first Mortgagee who obtains title to a Lot pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage will not be liable for such Lot's

Assessments or charges which accrue prior to the acquisition of title of such Lot by the Mortgagee. However, such first Mortgagee shall be responsible for all Assessments levied while it holds title to the Lot.

- 13.2 **Notice of Default by Owner.** In the event an Owner neglects, for a period of sixty (60) days or more, to cure any failure on his part to perform his obligations under this Declaration or other Governing Documents, the Association, upon written request from the Mortgagee, shall give written notice of such fact to the Mortgagee covering such Owner's Lot.
- 13.3 **Priority.** No provision herein is intended, nor shall it be construed, to give any Lot Owner, or any other party, priority over any rights of the first Mortgagee of a Lot pursuant to its Mortgage in the case of a distribution to such Lot Owner of insurance proceeds or condemnation awards for losses to or a taking of Common Areas.

ARTICLE XIV **RIGHT OF ENTRY**

- 14.1 **Right to Enter Lots.** The Association, acting through the Board or its duly authorized agent may, upon reasonable notice of at least forty-eight (48) hours, enter upon or into any Lot to abate any infractions, to fulfill its responsibilities, or to make repairs or correct any violation of any of the Declaration. Owners shall be responsible for any costs incurred by the Association as a result of entering a Lot under this Section and shall indemnify and hold harmless the Association for all damages related to such entry, except for such damages resulting from recklessness or bad faith.

ARTICLE XV **AMENDMENTS**

- 15.1 **Amendments by Declarant.** Until after the termination of the Period of Declarant Control, the Declaration and the Plat may be amended solely by the Declarant without any additional approval required. In addition, during the Period of Declarant Control, no other amendment shall be valid or enforceable without the Declarant's prior written consent.
- 15.2 **Amendments by Association.** After the termination of the Period of Declarant Control, this Declaration may be amended upon the affirmative vote of at least sixty-seven percent (67%) of the voting interests of the Association. No meeting shall be required for an amendment if the required vote for approval is obtained by written consent or ballot. Any amendment(s) shall be effective upon recordation in the office of the Cache County Recorder. In such instrument, the Board shall certify that the vote required by this Section for amendment has occurred. If a Lot is owned by more than one Owner, the vote of any one Owner shall be sufficient to constitute approval for that Lot under this Section. If a Lot is owned by an entity or trust, the vote of any one officer, trustee, or agent of the entity shall be sufficient to constitute approval for that Lot under this Section. No acknowledgment of any signature used for voting shall be required. Notwithstanding, the foregoing, the Members' authority to amend Articles XII and XVI of this Declaration is subject to the amendment restrictions set forth therein, and any amendment purporting to modify the provisions of Articles XII and XVI shall be null and

void unless such amendment is in compliance with the amendment provisions and restrictions therein.

ARTICLE XVI DISPUTE RESOLUTION

16.1 **Statement of Intent.** Prior to purchasing a Lot, every Owner is capable of obtaining an inspection and is permitted to perform, or pay someone else to perform, any inspection on any Lot and Dwelling the Owner is purchasing regarding any aspect of the Project. Moreover, if any warranty is provided, it identifies only those items warranted by the Declarant or the contractor who built the Lot. Having had the ability to inspect prior to purchasing a Lot, having received a written warranty if any warranty is provided, and having paid market price for a Lot in the condition the Lots and Common Area are in at the time of purchase, it is acknowledged that it is unfair and improper to later seek to have the Declarant and/or any contractor performing work in the Project to change, upgrade, or add additional work to the Project outside of any express warranty obligation. Moreover, the Owners (by purchasing a Lot) and the Declarant acknowledge and agree that litigation is an undesirable method of resolving disputes and conflicts in that it can be slow, expensive, uncertain, and can often negatively impact the sale value and ability to obtain financing for the purchase of Lots for years, unfairly prejudicing those Owners who must or want to sell their Lot during any period when litigation is pending. For this reason, the Owners by purchasing a Lot and the Declarant agree and acknowledge that claims and disputes with Declarant and or the contractor who built the Lot shall not be pursued through court action, but shall be asserted and resolved only through certain specific alternative dispute resolution mechanisms and only after full disclosure, right to cure periods, and knowing approval of the Owners, as set forth herein. In addition, the Association and the Owners agree that they take ownership and possession of the Lots and Common Area AS IS, with no warranties of any kind except as otherwise required as a matter of law. The Declarant and the contractors who build the Lots specifically disclaim any warranties of merchantability, fitness for a particular use, or of habitability, to the full extent allowed by law.

16.2 **Arbitration.** To the fullest extent permitted by law, all claims and disputes of any kind that any Owner or the Association may have involving the Declarant or contractor who built a Lot, or any agent, employee, executing officer, manager, affiliate or owner of the Declarant, or any engineer or contractor involved in the design or construction of the Project, which arises from or is in any way related to a Lot, Common Area, or any other component of the Project (a “Dispute”), shall be submitted to final and binding arbitration. Binding arbitration shall be the sole remedy for resolving claims and disputes between or involving the Declarant, the contractor, and any Owner or between or involving the Declarant, the contractor, and the Association. Arbitration proceedings shall not be commenced unless the Pre-Arbitration Requirements set forth in Section 17.3 below have been satisfied in full. Without in any way limiting the foregoing, Disputes subject to binding arbitration shall include:

- a) Any allegation that a condition in any of the Lots, Dwellings, or Common Area is a construction defect;

- b) Any disagreement as to whether an alleged construction defect has been corrected;
- c) Any disagreement about whether any warranties, including implied warranties, are applicable to the subject matter of any Dispute;
- d) Any disagreement as to the enforceability of any warranties alleged to be applicable to the subject matter of any Dispute;
- e) Any disagreement about whether any warranty alleged to be applicable to the subject matter of any Dispute has been breached;
- f) Any alleged violations of consumer protection, unfair trade practice, or other statutes;
- g) Any allegation of negligence, strict liability, fraud, and/or breach of duty of good faith, and all other claims arising in equity or from common law;
- h) Any allegation that any condition existing in the Project or created by the Declarant, including construction-related noise, dust, and traffic, is a nuisance;
- i) Any disagreement concerning the issues that should be submitted to binding arbitration;
- j) Any disagreement concerning the timeliness of performance of any act to be performed by Declarant;
- k) Any disagreement as to the payment or reimbursement of any fees associated with binding arbitration;
- l) Any other claim or disagreement arising out of or relating to the sale, design, or construction of any of the Lots, Dwellings, or Common Areas.

16.3 **Pre-Arbitration Requirements.** An Owner or the Association may only pursue a claim against the Declarant or contractor to the extent described herein or by law after the following dispute resolution efforts have been completed:

- a) Right to Cure: the Owner shall provide to the Declarant or contractor a written Notice of Claim (defined below) and permit the Declarant or contractor one hundred eighty (180) days to cure or resolve the claim or defect or to try to get the builder or the appropriate subcontractor to cure or resolve the claim or defect, prior to initiating any formal arbitration proceedings;
- b) If the dispute is not resolved within the 180-day Right to Cure period, the parties agree to mediate the dispute prior to taking further action or commencing arbitration. If additional, different, or modified claims, damages, calculations, supporting information, or descriptions are added, provided to, or asserted against the Declarant or contractor that were not included in any previously submitted Notice of Claim, the Right to Cure period provided for in this section shall immediately apply again and any pending action or proceedings, including any mediation or arbitration, shall be stayed during the 180-day period.

- c) "Notice of Claim" shall mean and include the following information: (1) an explanation of the nature of the claim, (2) a specific breakdown and calculation of any alleged damages, (3) a specific description of the claim along with any supporting opinions, information, or factual evidence upon which the claim is based, (4) photographs of any alleged condition, if applicable, (5) samples of any alleged defective conditions or materials, (6) all efforts taken to avoid, mitigate, or minimize the claim or any alleged damages arising therefrom, and (7) the names, phone numbers, and address of each person providing factual information, legal or factual analysis, or legal or factual opinions related to the claim.

16.4 **Binding Arbitration.** If a claim or dispute has not been resolved after satisfying and complying with the above-described "Pre-Arbitration Requirements," then the claimant (Owner or Association or contractor) shall have the right to proceed with binding arbitration; however, the Association shall not pursue or commence binding arbitration unless such action is first approved by a majority of the total votes of the Association after first obtaining a written opinion from legal counsel advising the Association of the likelihood of success on the merits of the claims, the anticipated costs and legal fees, the anticipated expert witness fees, and the likelihood of recovery if the Association prevails. The written opinion from legal counsel, addressing these topics, must be provided to all Owners before the formal vote on whether to proceed with binding arbitration. The binding arbitration shall be conducted by a member of the American Arbitration Association's Panel of Construction Arbitrators, or by a different arbitrator or arbitration service provider if mutually approved by the parties. The binding arbitration shall be conducted according to the rules and procedures set forth in the Construction Industry Arbitration Rules promulgated by the American Arbitration Association. The award of the arbitrator shall be final and may be entered as a judgment by any court of competent jurisdiction.

16.5 **Fees and Costs.** Each party shall bear its own attorney fees and costs (including expert witness costs) for the arbitration. The arbitrator shall not award attorney fees or expert witness fees to the prevailing party. The arbitration filing fee and other arbitration fees shall be divided and paid equally as between the parties.

16.6 **No Court Proceeding.** If any Owner, the Association, or the Declarant or contractor files a proceeding in any court to resolve any Dispute, such action shall not constitute a waiver of the right of such party, or a bar to the right of any other party, to seek arbitration of that or any other Dispute and such court shall, upon motion of any party to the proceeding, stay the proceeding before it and direct that such Dispute be arbitrated in accordance with the terms set forth herein.

16.7 **Subrogation.** The Association and each Owner waives any right to subrogation against the Declarant and any builder and engineer in the Project. This waiver shall be broadly construed and applied to waive, among other things, any attempt by any insurer of any Owner or of the Association from pursuing or exercising any subrogation rights, whether arising by contract, common law, or otherwise, against the Declarant, the engineer, and builder, and their officers, employees, owners, and representatives. To the full extent permitted by law, the Association and Owners hereby release Declarant, the Project engineer, and builder, their respective officers, employees, owners, and representatives from any and all liability to the Association and all Owners, and anyone claiming through or under them by way of subrogation or otherwise, for any loss, injury, or damage to

property, caused by fire or any other casualty or event, even if such fire or other casualty shall have been caused by the fault or negligence of Declarant or builder, their officers, employees, owners, and representatives. The Association and each Owner agrees that all policies of insurance shall contain a clause or endorsement to the effect that this release and waiver of subrogation shall not adversely affect or impair such policies or prejudice the right of the Association or any Owner to recover thereunder. The Association and all Owners shall indemnify and defend the Declarant, the builder, and any of their officers, employees, owners, or representatives from any claims barred or released by this provision, including but not limited to any claim brought under any right of subrogation.

- 16.8 **No Rights Created.** Nothing in this Declaration or in this Article XVI shall grant or otherwise create a right of action by the Association against the Declarant, the developer or the builder, that does not otherwise already exist under Utah law.
- 16.9 **Amendment.** The restrictions contained in this Article XVI shall not be substantively or procedurally altered, amended, or removed without the written consent of the Declarant until at least six (6) years have passed after the Period of Declarant Control has ended

ARTICLE XVII MISCELLANEOUS

- 17.1 **Notices.** Any notice required or permitted to be given to any Owner or Member according to the provisions of this Declaration shall be deemed to have been properly furnished if personally delivered, emailed, or if mailed, postage prepaid, to the Person who appears as an Owner, at the latest email or mailing address for such Person appearing in the records of the Association at the time notice is sent. If no email or mailing address has been provided, the physical address of the Lot owned by said Owner shall be used for notice purposes.
- 17.2 **Consent in Lieu of Voting.** In any case in which this Declaration requires authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Members entitled to cast the required percentage of membership votes. The Association may use any method allowed under Utah law and the Utah Revised Nonprofit Corporation Act.
- 17.3 **Dissolution.** The Association may be dissolved by the affirmative assent in writing from 90% of the Owners. Upon dissolution of the Association, all of its agency or authority to be used for purposes similar to those provided for in the Articles of Incorporation or this Declaration. In the event such dedication or transfer is not made or is not accepted, the Association's assets shall be transferred to a nonprofit corporation, trust, or other entity to be used for such similar purposes, and each Owner shall continue to be obligated to make assessment payments for the maintenance and upkeep of the Common Areas, common access roadways, curbs, gutters, and sidewalks on a pro rata basis which conforms substantially with the assessments procedure, terms and conditions set forth in Article V.
- 17.4 **Interpretation and Severability.** The captions which precede the Articles and Sections of this

Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any party thereof, and any gender shall include the other. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

- 17.5 **Covenants to Run with Land.** This Declaration and all provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of the Association and all parties who hereafter acquire any interest in a Lot or in the Common Areas shall be subject to the terms of this Declaration and the provisions of any Rules, agreements, instruments, and determinations contemplated by this Declaration; and failure to comply with any of the foregoing shall be grounds for an action by the Association or an aggrieved Owner for the recovery of damages, or for injunctive relief, or both. By acquiring any interest in a Lot or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.
- 17.6 **Reasonable Accommodations.** Notwithstanding anything to the contrary in this Declaration, the Association, upon receipt of a written opinion from its counsel that such action is required, may make or permit reasonable accommodations or modifications to the Project that are otherwise prohibited by the Governing Documents, as required under Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act) as amended, to accommodate a Person with a disability (as defined by Federal law at the time the accommodation is requested). Reasonable accommodations or modifications may include modifications to a Lot, the Common Area facilities and buildings, or deviations from provision of the Governing Documents. Any such modification and accommodation made under this section shall not act as a waiver of the provisions of the Governing Documents with regard to anyone else.
- 17.7 **No Waiver.** Failure by the Association or by any Owner to enforce any Restriction or provision herein contained, or contained in the Bylaws or the Rules, in any certain instance or on any particular occasion shall not be deemed a waiver of such right of enforcement as to any such future breach of the same or any other Restriction or provision.
- 17.8 **Condemnation.** If a portion of the Common Area is taken by eminent domain, or sold under threat thereof, and is not comprised of and does not include any Lot, the Board shall cause the award to be utilized for repairing or restoring that area in the Project adjacent to the taking, and the portion of the award not used for restoration shall be added to the general funds of the Association. If a Lot is taken by eminent domain, or sold under threat thereof, leaving the Owner with a remnant that may not be practically or lawfully used for any purpose permitted by this Declaration, then that Lot's interest in the Common Areas shall be reallocated to the remaining Lots in proportion to their respective interests immediately before the taking.
- 17.9 **Security.** The Declarant or Association shall in no way be considered an insurer or guarantor of security within or relating to the Project, including any Common Area in which the Association may have an obligation to maintain, and the Association shall not be held liable for any loss or damage by reason of any failure to provide adequate security or any

ineffectiveness of security measures undertaken. Owner or Occupant agree by purchasing a Lot in this Association that the Association, Declarant, and the Board are not insurers of the safety or well-being of Owners or Occupants or of their personal property, and that each Owner or Occupant assumes all risks for loss or damage to persons, the Lots, the Common Areas, and to the contents of improvements located thereon to the extent not insured by the Association. **EACH OWNER AND OCCUPANT UNDERSTANDS AND ACKNOWLEDGES THAT THE ASSOCIATION, DECLARANT, AND BOARD HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND AND THAT EACH OWNER OR OCCUPANT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE SECURITY OF THE PROJECT.**

17.10 **Effective Date.** The Declaration and any amendment hereof shall take effect upon its filing in the office of the Cache County Recorder.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by a duly authorized representative.

DECLARANT:

Capstone Consulting, LLC
A Utah Limited Liability Company

Brett J. Lawyer
By: Brett J. Lawyer
Its: Managing Member

STATE OF UTAH)
: ss.
COUNTY OF WEBER
Cache AB

On the 24th day of August, 2022, personally appeared before me
Brett J. Lawyer and did acknowledge that (s)he is the signer of the foregoing instrument and signed
the foregoing instrument in his/her capacity as owner/manager of Capstone Consulting, LLC.

Janette Heen
NOTARY PUBLIC

Shree Giriraj Ji, Inc.,
A Michigan Corporation

Jay Patel
By: Jay Patel
Its: Managing Member.

STATE OF ~~UTAH~~ Georgia
: ss.
COUNTY OF ~~WEBER~~ Gwinnett)

Jay Patel On the 24th day of August, 2022, personally appeared before me
and did acknowledge that (s)he is the signer of the foregoing instrument and signed
the foregoing instrument in his/her capacity as owner/manager of Shree Giriraj Ji, Inc.

Jay Patel
NOTARY PUBLIC



DECLARANT:

Capstone Consulting, LLC
A Utah Limited Liability Company

Brent J. Lawyer
By: Brent J. Lawyer
Its: Managing Member

STATE OF UTAH)
: ss.
COUNTY OF WEBER)
Cache or

Brett J. Lawyer On the 24th day of August, 2022, personally appeared before me and did acknowledge that (s)he is the signer of the foregoing instrument and signed the foregoing instrument in his/her capacity as owner/manager of Capstone Consulting, LLC.



Annette Heinz
NOTARY PUBLIC

Shree Giriraj Ji, Inc.,
A Michigan Corporation

By: _____
Its: _____

STATE OF UTAH)
: ss.
COUNTY OF WEBER)

On the _____ day of _____, 2022, personally appeared before me and did acknowledge that (s)he is the signer of the foregoing instrument and signed the foregoing instrument in his/her capacity as owner/manager of Shree Giriraj Ji, Inc.

NOTARY PUBLIC

EXHIBIT A

LEGAL DESCRIPTION

Port of the Northeast Quarter of Section 26, Township 12 North, Range East of the Salt Lake Base and Meridian described as follows:

Commencing at the Northeast Corner of Section 26, Township 12 North, Range 7 East of the Salt Lake Base and Meridian monumented with a Railroad Spike, thence S 89°39'23" W 1386.76 feet along the north line of the Northeast Quarter of said Section 26; South 50.00 feet to the POINT OF BEGINNING and running

thence S 00°33'21" W 110.57 feet;

thence N 89°32'24" E 26.23 feet;

thence along the boundary of Hillcrest Heights North, Unit No. 1 the next six courses:

- 1) thence S 00°03' 49" E 90.00 feet;
- 2) thence S 05°39'05" w 90.51 feet;
- 3) thence S 03°02' 41" w 109.74 feet;
- 4) thence S 60°52'30" w 205.91 feet;
- 5) thence S 08°36'04" E 101.12 feet;
- 6) thence S 11°14'22" w 101.98 feet;

thence S 26"29'41" W 180.22 feet along the boundary of Hillcrest Heights North, Unit No. 1, Hillcrest Height North, Phase 4 and Hillcrest Height North, Phase 5;

thence along Hillcrest Height North, Phase 5 the next four courses:

- 1) thence S 24°36'48" W 23.46 feet;
- 2) thence S 00°42'49" E 199.21 feet;
- 3) thence S 88°48'02" E 20.82 feet;
- 4) thence S 00°41'35" E 217.51 feet;

thence S 89°46'20" W 986.48 feet to the east right of way line of 1200 East Street;

thence along said east right of way line the next three courses:

- 1) thence N 02°09'01" E 484.26 feet;
- 2) thence Northerly, 77.88 feet along a curve to the left having a radius of 1,533.00 feet, a central angle of 02°54'39" and a chord that bears N 00°41'42" E 77.87 feet;
- 3) thence N 00°45'38" W 269.09 feet;

thence along the south right of way line of 1400 North/1500 North Street the next five courses:

- 1) thence S 89°54'20" E 85.09 feet;
- 2) thence Easterly, 196.37 feet along a curve to the left having a radius of 340.00 feet, a central angle of 33°05'30" and a chord that bears N 73°32'55" E 193.65 feet;
- 3) thence N 57°00'10" E 659 .45 feet;
- 4) thence Easterly, 205.17 feet along a curve to the right having a radius of 360.00 feet, a central angle of 32°39'13" and a chord that bears N 73°19'47" E 202.40 feet;
- 5) thence N 89°39'23" E 191.51 feet to the point of beginning, containing 26.07 acres, more or less.

TAX PARCEL NO. 05-011-0006

EXHIBIT B

BYLAWS OF MOUNTAINSIDE ESTATES HOMEOWNERS ASSOCIATION

These BYLAWS OF MOUNTAINSIDE ESTATES HOMEOWNERS ASSOCIATION are effective upon recording in the Cache County Recorder's Office pursuant to the Utah Community Association Act and the Utah Revised Nonprofit Corporation Act (referred collectively herein as the "Acts").

RECITALS

A. The Association is organized for all lawful purposes for which a nonprofit corporation may be organized under the Utah Revised Nonprofit Corporation Act, as amended, subject to the terms and conditions contained in the Declaration and Articles of Incorporation.

B. These Bylaws are adopted to complement the Declaration, to further define the rights of the Association and the Owners, to provide for the ability to effectively govern and operate the Association and the Project known as Mountainside Estates Subdivision and, to further the Association's efforts to safely, efficiently, and economically provide a quality living environment.

ARTICLE I DEFINITIONS

1.1 Except as otherwise provided herein or as may be required by the context, all capitalized terms used herein shall have the same meaning and effect as used and defined in the Declaration of Covenants, Conditions and Restrictions for Mountainside Estates.

ARTICLE II APPLICATION

2.1 All present and future Owners, Mortgagees, Occupants, and their invitees and guests, and any other persons who may use the facilities of the Project in any manner are subject to these Bylaws, the Declaration, and Rules. The mere acquisition or rental of any of the Dwellings or the mere act of occupancy or use of any said Dwellings or the Common Areas will signify that these Bylaws, the Declaration, and the Rules are accepted, ratified, and will be complied with by said persons.

ARTICLE II OWNERS

3.1 **Annual Meetings.** The Annual Meeting of the Owners shall be held each year on a day and time established by the Board of Directors. The purposes of the Annual Meeting may include the election of Board Members, the distribution of financial reports and budget, a review of any revisions to the Rules, distributing the most recent reserve study, and to transact such other business as may come before the meeting. If the election of Board Members cannot be held during the Annual Meeting, or at any adjournment thereof, the Board shall cause the election to be held either at a Special Meeting of the Owners to be convened as soon thereafter as may be convenient or at the next Annual

Meeting. The Board may from time to time by resolution change the month, date, and time for the Annual Meeting. Annual Meetings shall not be required during the Period of Declarant Control, but the Declarant may hold Annual Meetings at its discretion.

3.2 Special Meetings. Special Meetings of the Owners may be called by a majority of the Board, the Declarant, the President, or upon the written request of Owners holding not less than forty percent (40%) of the voting interests of the Association. Any written request for a Special Meeting presented by the Owners shall be delivered to the President and shall include the original signature of each Owner affirmatively supporting such request along with a complete statement of the purpose of the meeting on each page containing signatures. The President shall then call, provide notice of, and conduct a Special Meeting within 45 days of receipt of the Owner request. During the Period of Declarant Control, Special Meetings may only be called by the Declarant.

3.3 Place of Meetings. The Board may designate any place in Cache County that is reasonably convenient for the Owners as the place of meeting for any Annual or Special Meeting. If no designation is made, or if a Special Meeting is otherwise called, the place of the meeting shall be held at the office of the Association or its Manager.

3.4 Notice of Meetings. The Board shall cause written or printed notice of the date, time, and place (and in the case of a Special Meeting, the purpose or purposes) for all Owner meetings. Such written or printed notice shall be delivered to each Owner of record entitled to vote at such meeting not more than sixty (60) nor less than ten (10) days prior to the meeting. Such notice may be sent via email, text, hand-delivery, or regular mail. If sent by email or text, such notice shall be deemed delivered and effective on the date transmitted to the Owner's email address or telephone number registered with the Association. If mailed, such notice shall be deemed to be delivered and effective on the date deposited in the U.S. mail if addressed to the Owner's address registered with the Association. Each Owner shall register with the Association such Owner's current email address, phone number, and mailing address for purposes of notice hereunder. Such registered email, phone number, and mailing address may be changed from time to time by notice in writing to the Association. If no address is registered with the Association, an Owner's Residence shall be deemed to be the Owner's registered address and notice to the Residence address may be made by first- class mail or by posting the meeting notice on the front door. An Owner may opt out of receiving notices from the Association via email or text by giving written notice to the Board stating that the Owner will not accept notices by way of email or text.

3.5 Qualified Voters. An Owner shall be deemed to be in "good standing" and "entitled to vote" at any meeting of the Association if he or she has fully paid his or her share of any Assessment (together with any interest and/or late fees) at least 48 hours prior to the commencement of the meeting and is not in violation of any provision of the Governing Documents.

3.6 Record Date for Notice Purposes. The Board may designate a record date, which shall not be more than sixty (60) nor less than ten (10) days prior to the meeting, for the purpose of determining Owners entitled to notice of any meeting of the Owners. If no record date is designated, the last date on which a notice of the meeting is mailed or delivered shall be deemed to be the record date for determining Owners entitled to notice. The persons or entities appearing in the records of the Association on such record date as the Owner(s) of record of Lots in the Project shall be deemed to be the Owners of record entitled to notice of the Owner meeting.

3.7 Quorum. At any Owner meeting, the number of Owners present, either in person or by proxy shall constitute a quorum for the transaction of business.

3.8 Proxies. At each Owner meeting, each Owner entitled to vote shall be entitled to vote

in person or by proxy provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been signed by the Owner or by the Owner's attorney. A proxy may be written on paper or received via email, facsimile, text, or any other electronic or physical means. A signature as required herein shall mean any indication that the document is from and consented to by the person who is purported to have sent it. If a Lot is jointly owned, the instrument authorizing a proxy to act may be executed by any one (1) Owner of such Lot or the Owner's attorney when duly authorized in writing. A proxy given by an Owner to any person who represents the Owner at meetings of the Association shall be in writing, dated, and signed by such Owner. Such instrument may allow the proxy to vote on any issue arising at any particular meeting or meetings, or may set forth the specific matters or issues upon which the proxy is authorized to act. Proxies shall be filed with the Secretary (or with such other officer or person who may be acting as Secretary of the meeting) before the meeting is called to order. The Secretary shall record all proxies in the meeting minutes.

3.9 Votes. With respect to each matter submitted to an Owner vote, each Owner entitled to vote at the meeting shall have the right to cast, in person or by proxy, the number of votes appertaining to the Lot of such Owner, as shown in the Declaration. The affirmative vote of a majority of the votes entitled to be cast by the Owners present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by Owners, unless a greater proportion is required by the Articles of Incorporation, these Bylaws, or the Declaration. When a Lot is jointly owned, any Owner may exercise the vote for such Lot on behalf of all Co-Owners of the Lot. In the event of two (2) conflicting votes by Co-Owners of a Lot, no vote shall be counted for that Lot. In no event shall fractional or cumulative votes be exercised with respect to any Lot. Only those Owners whose accounts with the Association are not more than thirty (30) days delinquent shall be entitled to vote.

3.10 Waiver of Irregularities. All inaccuracies and irregularities in calls or notices of meetings and in the manner of voting, in the form of proxies and the method of ascertaining Owners present, and in the decision and votes of the Board or of the Owners shall be deemed waived by those Members in attendance if no objection is made at the meeting. For those Members who are not in attendance at the meeting, the right to challenge inaccuracies and irregularities in calls, notices, voting, and decisions shall be waived if no objection is made within thirty (30) days of the date of the meeting.

3.11 Action Taken Without a Meeting. Owners have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of Owners in accordance with the requirements of Utah Code §16-6a-707 or § 16- 6a-709 and any other applicable section of the Acts. Any action so approved shall have the same effect as though taken at an Owner meeting. Ballots or written consents may be obtained via any electronic or physical means including but not limited to email, facsimile, text, or paper document.

3.12 Minutes of Meetings. The Secretary shall take minutes of all meetings of the Owners. The minutes shall include, at a minimum, (1) the identification of the Persons present in person and by proxy, (2) the meeting date, (3) the identification of any issue that is voted on or decided in the meeting, (4) the number of votes cast for and against any issue decided upon, and (5) the exact wording of any resolution passed at the meeting. The failure to take appropriate minutes or otherwise comply with this section does not invalidate any action taken at a meeting. Draft meeting minutes for each annual meeting of the Owners shall be made available to all Owners within thirty (30) days of the annual meeting.

ARTICLE IV

BOARD OF DIRECTORS

4.1 Powers. The Project and the affairs and business of the Association shall be managed by the Board of Directors. The Board may exercise business judgment and all of the powers of the Association, whether derived from the Declaration, these Bylaws, the Articles, or the Acts except such powers that the Declaration, these Bylaws, the Articles, and the Acts vest solely in the Owners.

4.2 Number and Qualifications. The property, business, and affairs of the Association shall be governed and managed by a Board of Directors composed of either three (3) or five (5) persons, as determined by the Board. Board Members must be at least 18 years old and must be an Owner or the spouse of an Owner of a Lot in the Project. No two (2) Board Members may reside in the same Dwelling or be business partners if the business is related to their ownership of a Lot. If an Owner is a corporation, partnership, limited liability company, or trust, an officer, partner, member, manager, agent, trustee, or beneficiary of such Owner may be a Board Member. If a Board Member ceases to meet any required qualifications during the Board Member's term, such person's membership on the Board shall automatically terminate. During the Period of Declarant Control, the Qualification requirements of these Bylaws shall not apply and the Declarant may exercise all powers of the Board as permitted by law.

4.3 Election. During the Period of Declarant Control, Board Members shall be appointed by Declarant. Following the Period of Declarant Control, the election of Board Members shall be made by the Owners. At such election, the Owners or their proxies may cast, with respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The Association may accept written ballots for Board Member election voting purposes from those Members unable to attend a meeting in which an election is held. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

4.4 Term of Office. During the Period of Declarant Control, Board Member terms shall be determined exclusively by Declarant. Following the Period of Declarant Control, the Owners shall elect Board Members for two (2) year terms. The terms shall be staggered and overlap so that elections for Board Member positions are held each year at the Annual Meeting. Board Members may serve consecutive terms if elected.

4.5 Regular Meetings. The Board shall hold meetings at least quarterly or more often at the discretion of the Board. During the Period of Declarant Control, Board Meetings shall be held at the discretion of the Declarant so long as at least one Board Meeting is held each year and a Board Meeting is held each time the Association increases a fee or raises an Assessment.

4.6 Special Meetings. Special meetings of the Board may be called by the President or a majority of Board Members on at least two (2) business days' prior notice to each Board Member.

4.7 Meeting Notice. The person or persons authorized to call Board meetings may fix any place, within Cache County, as the place for holding the meeting and shall provide a conference call-in number for Board Members not able to attend in person. Notice shall be given personally, by email, or by telephone, including text message at least two (2) business days' in advance of the meeting. By unanimous consent of the Board, Board meetings may be held without call or notice to the Board Members, but notice shall always be provided to those Owners who have requested notice of Board meetings.

4.8 Quorum and Manner of Action. A majority of the then authorized number of Board Members shall constitute a quorum for the transaction of business at any meeting of the Board. The act of a majority of the Board Members present at any meeting at which a quorum is present and for which

proper notice was provided shall be the act of the Board. The Board Members shall act only as the Board of Directors, and individual Board Members shall have no powers as such.

4.9 Owner Attendance. Any Owner may request notice of Board meetings by requesting such notice from a Board Member and providing a valid email address at which the Owner will receive notice. Owners who have requested notice of Board meetings shall be given notice along with the Board Members and shall be provided any call-in number or other means of attendance by electronic communication that is provided to Board Members. If Owners attend a Board meeting, the Board may select a specific period of time during the meeting and limit Owner comments to such time period. The Board in its sole discretion may set a reasonable length of time that each Owner may speak.

4.10 Open Meetings. Except as provided below in (a) through (f), following the Period of Declarant Control, Board meetings shall be open to Owners. The Board may hold a closed executive session during a meeting of the Board if the purpose of the closed executive session is to:

- (a) Consult with legal counsel of the Association to obtain legal advice and discuss legal matters;
- (b) Discuss existing or potential litigation, mediation, arbitration, or an administrative proceeding;
- (c) Discuss a labor or personnel matter;
- (d) Discuss a matter relating to the initial contract negotiations, including the review of a bid or proposal;
- (e) Discuss a matter involving a Person, if the Board determines that public knowledge of the matter would violate the Person's privacy; or
- (f) Discuss a delinquent assessment. During the Period of Declarant Control, Board meetings may be closed to Owners, unless the Board, in its sole discretion and without obligation, determines to open the meeting (or a portion thereof) to the Owners.

4.11 Board Meetings Generally. The Board may designate any place in Cache County as the place of meeting for any regular or special Board meeting. The Board may allow attendance and participation at any Board meeting by telephone or any other electronic means that allows for Board Members to communicate orally in real time. Following the Period of Declarant Control, if a Board meeting is held by telephone, the Association shall provide the call-in information such that Owners may call-in to access the meeting.

4.12 Board Action. Notwithstanding noncompliance with any provision within this Article, Board action is binding and valid unless set aside by a court of law. A person challenging the validity of a Board action for failure to comply with this Article may not bring the challenge more than sixty (60) days after the Board has taken the action in dispute.

4.13 Compensation. No Board Member shall receive compensation for any services that such member may render to the Association as a Board Member; provided, however, that a Board Member may be reimbursed for expenses incurred in performance of such duties as a Board Member to the extent such expenses are approved by a majority of the other Board Members. Nothing herein contained shall be construed to preclude any Board Member from serving the Project in any other capacity and receiving compensation therefore, so long as approved in advance by a majority of disinterested Board Members.

4.14 Resignation and Removal. A Board Member may resign at any time by delivering a

written resignation to either the President or the Secretary. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any Board Member who is appointed by the Declarant may only be removed by the Declarant. The Declarant may remove a Board Member it appoints at any time. A Board Member elected by the Owners after the Period of Declarant Control may be removed at any time, with or without cause, at a Special Meeting of the Owners duly called for such purpose upon the affirmative vote of more than fifty percent (50%) of the entire voting interests of the Association. At such a meeting, the Owners shall vote for a new Board Member to fill the remaining term of the removed Board Member. Board Members may also be removed by the other active Board Members upon the occurrence of any of the following: failure to attend three (3) consecutive Board meetings, failure to remain current on Assessments, or a violation of the Governing Documents. If removal occurs based on the preceding sentence, then the remaining Board Members may appoint a replacement to serve the remaining term of the removed Board Member.

4.15 **Vacancies.** If vacancies occur in the Board during the Period of Declarant Control, the Declarant shall appoint a Board Member to fill the vacancy. Following the Period of Declarant Control, if vacancies occur in the Board for any reason (including death, resignation, or disqualification) except removal by the Owners, the Board Members then in office shall continue to act, and such vacancies shall be filled by a majority vote of the Board Members then in office, though less than a quorum. Any vacancy in the Board occurring by reason of removal of a Board Member by the Owners may be filled by election of the Owners at the meeting at which such Board Member is removed. Any Board Member elected or appointed hereunder to fill a vacancy shall serve for the unexpired term of his predecessor. Except by reason of death, resignation, disqualification, or removal, Board Members shall continue to serve until their successors are elected.

4.16 **Action Without a Meeting.** Board Members have the right to take any action in the absence of a meeting which they could take at a meeting subject to the requirements of Utah Code §16-6a-813 and any other applicable sections of the Acts. Any action so approved shall have the same effect as though taken at a meeting of the Board.

4.17 **Waiver of Notice.** Before or at any meeting of the Board, any Board Member or Owner may waive notice of such meeting and such waiver shall be deemed the equivalent of proper notice. Attendance by a Board Member or Owner at any meeting thereof shall be a waiver of notice by that Board Member or Owner of the time, place, and purpose thereof.

4.18 **Adjournment.** The Board may adjourn any meeting from day to day for such other time as may be prudent or necessary, provided that no meeting may be adjourned for longer than thirty (30) days.

4.19 **Meeting.** A Board meeting does not include a gathering of Board Members at which the Board does not conduct and vote on Association business.

ARTICLE V

OFFICERS

5.1 **Officers.** The officers of the Association shall be a President, Vice President, Secretary, Treasurer, and such other officers as may be appointed by the Board.

5.2 **Election, Tenure, and Qualifications.** The officers of the Association shall be elected by the Board of Directors at the first Board meeting following each Annual Meeting of the Owners. Each officer shall hold such office until the next ensuing meeting of the Board following the Annual Meeting of the Owners and until a successor has been elected and qualified, or until such officer's death,

or until resignation, disqualification, or removal in the manner provided in these Bylaws, whichever first occurs. Any person may hold any two (2) or more of such offices, except that the President may not also be the Secretary. No person holding two (2) or more offices shall act in or execute any instrument in the capacity of more than one (1) office.

5.3 Subordinate Officers. The Board may appoint such other officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority, and perform such duties as the Board may from time to time determine.

5.4 Resignation and Removal. Any officer may resign at any time by delivering a written resignation to any member of the Board or to any managing agent of the Association. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed and replaced upon the affirmative vote of a majority of the Board Members at any time, with or without cause.

5.5 Vacancies. If any vacancy shall occur in any office by reason of death, resignation, removal, disqualification or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by majority vote of the Board at any regular or special Board meeting.

5.6 President. The President shall be the chief executive of the Association. The President shall preside at meetings of the Board of Directors and at meetings of the Owners. At the meetings, the President shall have all authority typically granted to the person presiding over the meeting including but not limited to: (1) the right to control the order of the meeting, (2) the right to arrange for the removal of any disruptive Owner or person, (3) the right to impose and enforce reasonable rules and procedures related to the meeting such as those found in "Robert's Rules of Order" or "The Modern Rules of Order." The President shall sign on behalf of the Association all conveyances, mortgages, documents, and contracts, and shall do and perform all other acts and things as required by the Board.

5.7 Vice President. The Vice President shall perform all duties of the President when the President is absent or unable or refuses to act at any meeting of the Board or Owners. The Vice President shall perform such other duties as required by the Board of Directors.

5.8 Secretary. The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration, Rules, or any resolution the Board may require. The Secretary shall also act in the place of the Vice President in the event of the President's and Vice President's absence or inability or refusal to act.

5.9 Treasurer. The Treasurer shall have the custody and control of the funds and financial accounts of the Association, subject to the action of the Board, and when requested by the President, shall report the state of the finances of the Association at each meeting of the Owners and at any meeting of the Board. The Treasurer shall perform such other duties as required by the Board.

5.10 Compensation. No officer shall receive compensation for any services rendered to the Association as an officer, provided, however, that an officer may be reimbursed for expenses incurred in performance of such duties as an officer to the extent such expenses are approved by the Board.

ARTICLE VI COMMITTEES

6.1 Designation of Committees. The Board may designate such committees as it may deem

appropriate in carrying out its duties, responsibilities, functions, and powers. No member of such committee shall receive compensation for services rendered to the Association as a member of the committee; provided, however, that the committee member may be reimbursed for expenses incurred in performance of such duties as a committee member to the extent that such expenses are approved by the Board. A committee shall not have powers, duties, or responsibilities beyond those specifically assigned by the Board in a written resolution. The Board may terminate a committee at any time.

6.2 Proceeding of Committees. Each committee may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such committee may determine. Each such committee shall keep a record of its proceedings and shall regularly report such proceedings to the Board.

6.3 Quorum and Manner of Acting. At each committee meeting, the presence of members constituting at least a majority of the authorized membership of such committee (but in no event fewer than two (2) members) shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such committee. The committee members shall act only as a committee, and the individual members thereof shall have no powers as such. A committee may only exercise the authority granted to it by the Board.

6.4 Resignation and Removal. A committee member may resign at any time by delivering a written resignation to the President, the Board, or the presiding officer of such committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Board may at any time, with or without cause, remove any committee member.

6.5 Vacancies. If any vacancy shall occur in any committee designated by the Board due to disqualification, death, resignation, removal, or otherwise, the remaining members shall, until the filling of such vacancy by the Board, constitute the then total authorized membership of the committee and, provided that two (2) or more members are remaining, may continue to act. Such vacancy may be filled at any meeting of the Board.

ARTICLE VII **INDEMNIFICATION**

7.1 Indemnification. In addition to the indemnification provisions and requirements set forth in the Declaration, no Board Member, officer, or committee member shall be personally liable for any obligations of the Association or for any duties or obligations arising out of any acts or conduct said Board Member, officer, or committee member performed for or on behalf of the Association. The Association shall and does hereby indemnify and hold harmless each person who shall serve at any time as a Board Member, officer, or committee member of the Association, as well as such person's heirs and administrators, from and against any and all claims, judgments and liabilities to which such persons shall become subject, by reason of that person having heretofore or hereafter been a Board Member, officer, or committee member of the Association or by reason of any action alleged to have been heretofore or hereafter taken or omitted to have been taken by him as such Board Member, officer, or committee member and shall reimburse any such person for all legal and other expenses reasonably incurred in connection with any such claim or liability; provided that no such person shall be indemnified against or be reimbursed for or be defended against any expense or liability incurred in connection with any claim or action arising out of such person's willful or intentional misconduct. The rights accruing to any person under the foregoing provisions of this Section shall not exclude any other right to which such person may lawfully be entitled, nor shall anything herein contained restrict the right of the Association to indemnify or reimburse such person in any proper case, even though not

specifically provided for herein or otherwise permitted. The Association, its Board Members, officers, committee members, employees, and agents shall be fully protected in taking any action or making any payment or in refusing so to do in reliance upon the advice of counsel.

7.2 Other Indemnification. The indemnification herein provided shall not be deemed exclusive of any other right to indemnification to which any person seeking indemnification may be entitled under the Acts or under any agreement, vote of disinterested Board Members or otherwise, both as to action taken in any official capacity and as to action taken in any other capacity while holding such office. It is the intent that all Board Members, officers, and committee members be and hereby are indemnified to the fullest extent permitted by the laws of the State of Utah and these Bylaws. The indemnification herein provided shall continue as to any person who has ceased to be a Board Member, officer, committee member, or employee and shall inure to the benefit of the heirs, executors and administrators of any such person.

7.3 Insurance. The Board, in its discretion, may direct that the Association purchase and maintain Directors and Officers insurance on behalf of any person who is or was a Board Member, officer, committee member, Manager or employee of the Association or is or was serving at the request of the Association as a Board Member, officer, committee member, Manager, employee, or agent of another association, corporation, partnership, joint venture, trust or other enterprise against any liability asserted against, and incurred by, such person in any such capacity or arising out of such person's status as such, whether or not the Association would have the power to indemnify such person against liability under the provisions of this Article.

7.4 Settlement by Association. The right of any person to be indemnified shall be subject always to the right of the Association through the Board, in lieu of such indemnity, to settle any such claim, action, suit or proceeding at the expense of the Association by the payment of the amount of such settlement and the costs and expenses incurred in connection therewith.

ARTICLE VIII **RULES AND REGULATIONS**

8.1 Rules. The Board shall have the authority to adopt and establish by resolution such Association Rules as it deems necessary for the maintenance, operation, management, and control of the Project. The Board may from time to time, by resolution, alter, amend, and repeal such Rules and use their best efforts to see that they are strictly observed by all Owners and residents. Owners are responsible to ensure that their lessees, invitees, and guests strictly observe the Rules then in effect as well as the covenants and restrictions of the Declaration and shall be jointly and severally liable for their violations and resulting fines. Copies of all Rules adopted by the Board shall be sent to all Owners at least ten (10) days prior to the effective date thereof.

ARTICLE IX **AMENDMENTS**

9.1 Amendments by Declarant. During the Period of Declarant Control, the Declarant acting alone may amend, alter, or repeal and adopt new Bylaws for any reason, without Owner approval. No other amendment shall be valid or enforceable during the Period of Declarant Control unless the Declarant has given written consent to such amendment. Any amendment during the Period of Declarant Control shall be executed by Declarant on behalf of the Association and shall become effective upon recordation in the office of the Cache County Recorder.

9.2 Amendments by Association. After termination of the Period of Declarant Control, the Bylaws may be amended by the Owners upon the affirmative vote of more than sixty-seven percent (67%) of the voting interest of the Association. Any amendment(s) shall be effective upon recordation in the office of the Cache County Recorder. In such instrument the President shall execute the amendment and certify that the vote required by this Section has occurred. If a Lot is owned by more than one Owner, the vote of any one Owner shall be sufficient to constitute approval for that Lot under this Section. If a Lot is owned by an entity or trust, the vote of any one officer, trustee, or agent of the entity shall be sufficient to constitute approval for that Lot under this Section. No acknowledgment of any Owner signature shall be required. No amendment shall restrict, limit, or impair any Declarant rights without the express written consent of the Declarant.

ARTICLE X **MISCELLANEOUS PROVISIONS**

10.1 Waiver. No restriction, condition, obligation, or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

10.2 Invalidity; Number; Captions. The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of these Bylaws. As used in these Bylaws, the singular shall include the plural, and the plural the singular. The masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions are intended solely for convenience of reference and shall in no way limit any of the provisions of these Bylaws.

10.3 Conflicts. These Bylaws are intended to comply with the Declaration. In case of any irreconcilable conflict, the Declaration shall control over these Bylaws.

EXHIBIT C

MAINTENANCE ALLOCATION
CHART

ITEM	HOA	OWNER	NOTES
GENERAL NOTE			Shared items are to be resolved between the Owners involved in use of the item.
A/C Pad & Unit	X		
Address Numbers	X		
Attic	X		
Cable/Satellite TV	X		
Ceiling	X		
Fireplace, Flue, & Vent Pipes – Cleaning & Repair	X		
Circuit Breakers for Unit	X		
Door and Door Frames - Exterior	X		
Door and Door frames - Interior	X		
Door Hardware	X		
Door steps/stoops/porch	X		
Doorbell	X		
Drains – Dwelling & Lots	X		
Dryer Vent Cleaning	X		
Electrical Wiring/Panel	X		
Exterior Wall Finishes (Rock/Stucco/Siding, etc.)	X		
Fence - Vinyl - future replacement	X		
Fence - Vinyl - repairs from wind/shifting	X		
Fence - Vinyl - repair damage caused by resident/guests	X		
Fireplace Component, including spark arrestor	X		
Floor Coverings	X		
Foundation - Structural	X		
Foundation – Cracks, cosmetic	X		
Front Landing/Porch	X		
Furnace	X		
Garage Door Openers, Springs, Hinges, Parts	X		
Garage Doors Paint, Repair, Replace	X		
Gas Pipes	X		
Gate Hardware & Locks	X		
Hose Bib/Faucet/Spigot	X		
Hot Water Heater	X		
Landscape – on each individual Lot	X		
Landscape – common area	X		
Maintenance of playground equipment in the Common Area installed by Declarant	X		
Lights - Garage Fixtures & Bulbs	X		
Lights - Eaves (Electrical Issue/Replacement)	X		
Lights - Eaves Bulb	X		
Lights - Porch Fixture & Bulb	X		

Driveways		X	
Patios		X	
Porches		X	
Sidewalks outside of the Common Area		X	
Paint - Exterior Finishes, doors, garage doors, etc.		X	
Paint - Interior		X	
Patio Slab		X	
Pest Control Interior		X	
Phone Lines		X	
Plumbing Pipes Inside Dwellings and on Lots		X	
Rain Gutters – clean-out, repair, replacement		X	
Rain Gutters - drains away from building		X	
Roof - future replacement		X	
Roof Leak		X	
Sewer pipes		X	
Shutters		X	
Skylights		X	
Sliding Glass Doors		X	
Snow Removal – Driveways & Sidewalks on Lots		X	
Snow Removal – sidewalks on 1400 North Street, and 1200 East Street.	X		
Termites, pests, rodents, insects, etc.		X	
Trash		X	
TV Reception		X	
Utility Doors		X	
Vent covers - Exterior		X	
Walkways to individual unit- not shared		X	
Wall - Bearing Interior Wall		X	
Wall - Partition Interior Wall		X	
Water (except on common area)		X	
Weatherstripping		X	
Window Boxes		X	
Window Frames		X	
Window Glass & Screens		X	

Termites, pests, rodents, insects, etc.		X	
Trash		X	
TV Reception		X	
Utility Doors		X	
Vent covers - Exterior		X	
Walkways to individual unit- not shared		X	
Wall - Bearing Interior Wall		X	
Wall - Partition Interior Wall		X	
Water (except on common area)		X	
Weatherstripping		X	
Window Boxes		X	
Window Frames		X	
Window Glass & Screens		X	

EXHIBIT “D”

DESIGN GUIDELINES FOR THE MOUNTAINSIDE ESTATES SUBDIVISION

As authorized by Article X of the Declaration of Covenants, Conditions, and Restrictions for Mountainside Estates, the Declarant for the Mountainside Estates Homeowners Association hereby adopts these Design Guidelines for the Mountainside Estates Subdivision (“Design Guidelines”). Any property owner planning to undertake any building project, including additions and exterior renovations, on any property located within the Mountainside Estates Subdivision is required to supply the architect, draftsperson, contractor, and site construction supervisor with a copy of these Design Guidelines prior to the onset of any building project, and must receive written authorization from the HOA or its delegated authority before beginning construction.

1.1 Design and Layout Considerations:

- A. Building projects should incorporate materials, colors, and architectural styles in harmony with the mountain environment.
- B. Special considerations.
 - (1) Grades.
 - (2) Trees.
 - (3) Views.
 - (4) Neighboring sites, house locations, existing and planned setbacks.
 - (5) Overall landscape.

1.2 Building Size:

- A. Dwelling sizes shall consist of a minimum square footage of 1,500 square feet above ground level of enclosed living space, exclusive of porches (open or covered), decks, and common garages. All two-story dwellings shall contain not less than 1,150 square feet on the ground level of enclosed living space, exclusive of all porches (open or covered), decks, and common garages, and 2,250 square feet above grade. Total square footage for any dwelling shall not be less than 2,250 square feet, inclusive of basement and second story if applicable). Garages shall consist of at least 2 bays. Side load garages are encouraged where possible.

1.3 Building Location:

- A. Each owner shall stake his Lot on all four corners to identify the Lot boundaries.
- B. The foundation walls, the edge of roof lines, and the decks of all dwellings and structures on any building lot shall not be located nearer to the side or rear property lines than as specified by Logan City Building Code.

1.4 Building Height:

A. No Lot shall have a dwelling or other structure that exceeds the maximum height permitted by applicable Logan City Building Code. Chimneys, flag poles and similar structures not used for human occupancy are excluded for purposes of calculating the height of a structure.

1.5 Exterior Walls:

A. Materials encouraged (must be fire resistant) include:

- (1) Cementboard
- (2) Native stone
- (3) Brick
- (4) Rock
- (5) Stucco
- (6) Exposed patterned concrete
- (7) Natural wood siding (that meets requirements of the Logan City Fire Marshall).

A minimum of 75% of the exterior front finish, and 50% of the exterior side finish, shall consist of rock, brick, stone or cementboard,

B. Prohibited materials include:

- (1) No natural wood siding is permitted without fire resistant sealer.
- (2) No vinyl or aluminum siding shall be permitted.

C. Foundations:

- (1) Exposed concrete over three (3) feet in height is required to be faced with stone natural, cultured or stone aggregate), or finished with other materials approved by the Architectural Control Committee (“ACC”).
- (2) Preferred facing for exposed concrete is stone or river rock veneer.
- (3) Architectural patterned concrete may be used when integrated into the total design.

D. Finishes:

- (1) Transparent or semi-transparent finishes and earth tones are required on wood surfaces. Transparent finishes are preferred.
- (2) Bright contrasting finishes are not recommended.
- (3) Any artwork applied to the exterior walls must be approved in advance by the ACC.
- (4) Railings shall be metal or wood. Vinyl railings are not permitted.

1.6 Roofs:

A. Design shall be complimentary to existing architecture.

- (1) No roofline shall extend within 5 feet of the side or rear property lines.

(2) Roof materials allowed must be fire resistant and muted earth tone in color. Acceptable materials include:

- i. Non-reflective metal.
- ii. Stone finish.
- iii. Synthetic or manufactured shingles. Asphalt shingles must be approved for style and color.

1.7 Windows:

- A. Insulated glass windows as required by state and local codes.
- B. Wood window frames are recommended.
- C. Metal or vinyl window frames with natural colors may be considered.
- D. Mirrored glass is not acceptable.
- E. Low-E window systems are encouraged.

1.8 Exterior Doors (including garage doors):

- A. Solid core wood, plank or insulated metal are acceptable for exterior doors.

1.9 Energy Efficiency/Solar Design:

- A. Passive solar design considerations are encouraged whenever possible.
- B. Active solar applications may be approved if panels are an integral part of architectural design and inoffensive from neighboring views.
- C. Energy saving features are encouraged, such as high density, high R-value, or other wall and ceiling insulators.
- D. High efficiency furnaces and hot water heaters are recommended.

1.10 Skylight Recommendations:

- A. Only flat glass skylights are recommended on sloped roofs.
- B. Bubble or gable skylights are discouraged because of problems with snow and ice movement.

1.11 Exposed Metal, Chimney, Vents:

- A. All exposed metals, such as facias, gravel stops, flashing, wall vents, roof vents, metal enclosures, and chimneys shall be painted an approved color. Inconspicuous metal smoke stacks and roof flashing may be exempted.
- B. Spark screens are mandatory on all chimneys. Chimneys or stacks should not be placed in proximity of existing trees.

1.12 Site Development Standards:

- A. Lot setbacks are as specified in Logan City code.
- B. Fences, wall, and barrier devices may be used for privacy and screening purposes but should be incorporated into the total design. The ACC will review their design, appropriateness, size and construction in relation to the proposed residence and neighboring Lots.
- C. Garages and carports must be integrated with the home design. A minimum of two (2) permanent parking spaces must be provided on the site. The ACC may grant an exception to these parking requirements if parking cannot be provided on the Lot due to physical constraints of the Lot. Any use of road easement property must be approved by the ACC.
- D. Retaining walls: For sites requiring retaining walls, these should be built of:
 - (1) Native stone.
 - (2) Patterned concrete or pre-cast concrete units, and hill holding blocks.
 - (3) Rock.
 - (4) Treated wood timber.
 - (5) Other materials harmonious to the area and approved by the ACC.

1.13 Land Use and Building Type:

- A. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one (1) single-family dwelling and private garage sufficiently sized for two or more vehicles (i.e., not less than twenty-two by twenty-two (22' x 22')) without the approval of the ACC. Any deviations from this requirement must be approved in writing by the ACC.

1.14 Tree Conservation, Landscaping, and Re-vegetation:

It is the Association's main intent to maintain and preserve any common area landscaping before, during and after construction. Trees and vegetation adjacent to a construction area should be protected (with boundary tape, hay bales, or by similar means) during the construction period, and storage of any building materials should be located in areas that will not damage adjacent or common area landscaping.

A. Tree Removal and Replacement Standards

- (1) The Owner or Contractor who damages trees, shrubs, or groundcover in adjacent lots or common area shall be required to replace such plants or trees by replanting of same species and type. Any evergreen and aspen trees removed without authorization shall be replaced by two trees 8-foot minimum for evergreen trees and 12 foot minimum for aspen trees. Coniferous trees (trees with cones) shall be replaced by two (2) similar coniferous trees at least twelve-feet (12) in height at the time of planting. Tree replacement and the number of trees required shall be determined by the ACC. All trees cut down for construction shall be promptly removed to

prevent bark beetle infestation. Any fallen, dead, beetle, or mistletoe infected trees shall be removed from the site.

- (2) Any diseased trees on the Property should be removed.
- B. Penalty. Any person violating any of the provisions of this section shall be required to pay a maximum penalty of five hundred dollars (\$500) per individual tree and a minimum payment of two hundred fifty dollars (\$250) per individual tree removed improperly.

1.15 Accessory Structures and Facilities. Patio structures, trellises, swimming pools, sunshades, gazebos, tennis courts, greenhouses, and any other appurtenant buildings shall be constructed of materials consistent with the colors, textures, and materials approved for the dwelling and shall be integral to the architecture of the house. All pools must be fenced and be in compliance with any applicable city ordinances. All accessory structures and facilities require the prior written approval of the ACC.

- A. Swimming pools, spas, fountains, and game courts shall be located to avoid excessive impact to adjacent properties with light or sound. No game courts shall be located in front yards. Pool heaters and pumps must be screened from view and sound insulated from neighboring houses.
- B. Temporary shelters, and metal storage units are not acceptable.

1.16 Landscaping. Use of landscaping materials for hedges and retaining walls is encouraged. No structures or fences shall be permitted within eight feet (8') of the right-of-way line for any street or public way. Fences, walls, or hedges shall not exceed the maximum height permitted by city code; provided, however, that no opaque wall, fence, or hedge or screening materials shall be maintained within a required front yard. Installation of all fences and walls is subject to the prior written approval of the ACC and the reasonable approval of adjacent Owners. Lots not built on within 18 months of purchase shall be maintained.

1.17 Natural Damage:

- A. No Property Owner or contractor shall interfere with or redirect the natural course of any drainage and run-off or construct any improvement, place any landscaping or create any condition which shall alter the drainage pattern or run-off from its natural flow into or across the land of another, except to the extent such alteration in the drainage pattern or run-off is approved in writing by the ACC and any other public authorities having jurisdiction.

1.18 Outdoor Lighting:

- A. Lighting of parking areas or walkways that is necessary for safety purposes should be installed in a manner which enhances the overall appearance of the Owner's property, but which will not be disturbing to neighbors, pedestrians or motorists. In general, floodlights are discouraged unless required in a particular circumstance and used with proper shading device. No lights shall be allowed on any site which are unreasonably bright or cause unreasonable glare.

1.19 Job Site Maintenance & Nuisance Reduction

- A. Cleanliness of the job site will be inspected during construction. The owner is responsible for any trash or construction related debris, including dirt and gravel left by contractors and employees on association roads and common areas. Dumpsters are to be emptied prior to overfilling.
- B. Concrete trucks must be cleaned only on the job site at a designated spot.
- C. Construction work and delivery truck hours are to be from 7:30 a.m. to 7:00 p.m., Monday through Friday; 8:00 a.m. to 8:00 p.m. on Saturdays. No construction or delivery activity is to take place on Sundays.
- D. No music is to be played from vehicles or other external sources that are outside the house under construction. If music is played indoors, it must not be so loud that it can be heard by adjacent homeowners in the neighborhood.
- E. Construction vehicles, including delivery trucks, cement trucks, dump trucks, backhoe tractor-trailers, and any similar construction equipment must be parked on the property designated as the job site. In the event that additional parking or loading/unloading space is temporarily required, vehicles and/or equipment must be parked far enough off of the road to allow private and emergency vehicles to pass by.

1.20 Miscellaneous Notes:

- A. Structural snow loads should meet or surpass the standards for site elevation, historical snow depths, and seismic zone
- B. Excessively heavy or large construction excavation equipment will not be permitted due to possible destruction of the road and road bed.
- C. No vehicles with steel treads shall be driven on Association Roads without prior written approval from the ACC.