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**AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS,  
AND RESTRICTIONS, RESERVATION OF EASEMENTS, AND BYLAWS  
FOR  
MOUNTAIN VIEW SUBDIVISION**

06-264-0001 thru 0071  
06-275-0201 thru 0236  
06-294-0301 thru 0335  
06-315-0101 thru 0123

**LOCATED IN DAVIS COUNTY, UTAH**

**AFTER RECORDING PLEASE RETURN TO:  
Ivory Homes, Ltd. d/b/a Ivory North  
Brad Mackay  
3340 North Center Street  
Lehi, Utah 84045  
(801) 747-7440**

Amended and Restated Declaration of Covenants, Conditions and Restrictions, Reservation of Easements, and  
Bylaws for Mountain View Subdivision

**AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND  
RESTRICTIONS, RESERVATION OF EASEMENTS, AND BYLAWS  
FOR  
MOUNTAIN VIEW SUBDIVISION,**

This Amended and Restated Declaration of Covenants, Conditions, and Restrictions, Reservation of Easements, and Bylaws for Mountain View Subdivision (the "Declaration") is made and executed by Ivory Homes, Ltd. d/b/a Ivory North, of 978 East Woodoak Lane, Salt Lake City, Utah 84117 (the "Declarant").

**RECITALS**

A. The Declaration of Protective Covenants for Mountain View Subdivision Phase 1 was recorded in the office of the County Recorder of Davis, Utah on August 28, 2006 as Entry No. 2196530 in Book 4105 at Pages 413-454 of the official records (the "Original Declaration").

B. The related Plat Map for Phase 1 of the Mountain View Subdivision has also been recorded in the office of the County Recorder of Davis County, Utah.

C. The First Supplement to the Declaration of Covenants, Conditions and Restrictions for Mountain View Phase 2 Subdivision was recorded in the office of the County Recorder of Davis, Utah on November 30, 2007 as Entry No. 2324580 in Book 4419 at Pages 1164-1171 of the official records (the "First Supplement").

D. The related Plat Map for Phase 2 of the Mountain View Subdivision has also been recorded in the office of the County Recorder of Davis County, Utah.

E. The Second Supplement to the Declaration of Covenants, Conditions and Restrictions for Mountain View Phase 3 Subdivision was recorded in the office of the County Recorder of Davis, Utah on May 12, 2008 as Entry No. 2364703 in Book 4531 at Pages 1488-1491 of the official records (the "Second Supplement").

F. The related Plat Map for Phase 3 of the Mountain View Subdivision has also been recorded in the office of the County Recorder of Davis County, Utah.

G. In Article III, Section 3 and Article XV of the Original Declaration Declarant reserved the unilateral right to amend the Original Declaration, expand the Subdivision to annex additional Amended and Restated Declaration of Covenants, Conditions and Restrictions, Reservation of Easements, and Bylaws for Mountain View Subdivision

land, and expand the application of the Declaration.

H. The Declarant desires to create a single association of property owners and to eliminate the need for any subassociations.

I. It is the intent of Declarant that Mountain View Towns Phase 1 will be a part of the Mountain View Subdivision which currently consists of:

- Phase 1 containing 67 single family residence Lots;
- Phase 2 containing 35 single family residence Lots; and
- Phase 3 containing 34 single family residence Lots.

J. It is the intent of Declarant that purchasers of Lots in Mountain View Towns Phase 1 will benefit from the following recreational and other amenities which are currently part of the Mountain View development:

- Club Ivory;
- Parks;
- Open Space; and
- Other Recreational Amenities and Common Elements of a Less Significant Nature.

K. It is the intent of Declarant that Mountain View Towns Phase 1 will consist of up to three (3) Buildings as shown on the Final Plat.

L. It is the intent of Declarant that Mountain View Towns Phase 1 will consist of up to twelve (12) Town Home Units as shown on the Final Plat.

M. Declarant is the fee simple owner of record of that certain real property located in Woods Cross City, Davis County, Utah and described with particularity on Exhibits A-1, A-2, A-3 and A-4 attached hereto and incorporated herein by this reference (collectively, the "Mountain View Subdivision")

N. Whereas the real property described on Exhibit A-4 is to be known as the "Mountain View Towns Phase 1 Property".

O. Whereas the real property described on Exhibit A-3 is to be known as the "Mountain View Phase 3 Property".

P. Whereas the real property described on Exhibit A-2 is to be known as the "Mountain View Phase 2 Property".

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Q. Whereas the real property described on Exhibit A-1 is to be known as the "Mountain View Phase 1 Property".

R. Declarant desires to expand the Subdivision by creating Mountain View Towns Phase 1 which will contain twelve (12) Town Homes. Mountain View Towns is an expandable project and may contain up to sixty (60) Town Homes, although this number is subject to change.

S. Declarant now intends that the Mountain View Subdivision shall become subject to the Declaration.

T. The Mountain View Subdivision is located in the City of Woods Cross in Davis County, Utah and is described with particularity in Article II below.

U. The Mountain View Subdivision is an area featuring unique and distinctive terrain;

V. By subjecting the Mountain View Subdivision to this Declaration, it is the desire, intent, and purpose of Declarant to create a development in which beauty shall be substantially preserved, which will enhance the desirability of living on or visiting real estate subject to the Declaration, and which will increase and preserve the utility, attractiveness, quality, and value of the lands and improvements therein.

W. The Declarant has constructed single family residences on the Phases 1, 2 and 3 Property and has or is in the process of constructing upon the Mountain View Towns Phase 1 Property some Town Home Units. The Mountain View Subdivision also contains Common Areas and Facilities. The streets in the Mountain View Subdivision have been or will be dedicated to Woods Cross City. The construction has been or will be completed in accordance with the plans contained in the Final Plats recorded in the Office of the Davis County Recorder.

X. The Declarant has sold or intends to sell to various purchasers the fee title to the individual Lots and Town Home Units contained in the Mountain View Towns Phase 1 Property, together with an appurtenant membership interest in the Association, subject to the Final Plats and Declaration.

Y. The Declarant desires by filing this Declaration and the Final Plats to submit the Mountain View Subdivision and all improvements now or hereafter constructed thereon to the provisions, covenants, conditions, restrictions, and easements set forth herein.

Z. Since the completion of the Mountain View Subdivision may be in phases, the completed Subdivision will consist of the original phase and all subsequent phases.

**COVENANTS, CONDITIONS AND RESTRICTIONS, RESERVATION OF  
EASEMENTS, AND BYLAWS**

NOW, THEREFORE, for the reasons recited above, the Declarant hereby covenants, agrees and declares that the Property shall be subject to the following covenants, conditions, and restrictions, reservation of easements, and bylaws.

**ARTICLE 1. DEFINITIONS**

The following definitions shall apply to this Declaration:

1. The term Accessory Building shall mean and refer to any structure which (1) is not the preliminary structure, (2) contains at least 120 square feet, (3) requires a building permit, (4) is not a shed, shack or other out-building (for which a building permit is not required), and (5) qualifies as such under the totality of the circumstances in the sole opinion of the Architectural Review Committee.

2. The term Additional Charges shall mean and refer cumulatively to all collection and administrative costs, including but not limited to all attorneys fees, late charges, accruing interest, service fees, filing and recordation fees, and other expenditures incurred or charged by the Association.

3. The term Additional Land shall mean and refer to any and all additional real property annexed or to be annexed to the real property initially submitted to the Original Declaration.

4. The term Architectural Review Committee shall mean the person or persons appointed to review the designs, plans, specifications, Homes, architecture, fencing, landscaping, and other physical improvements within the Subdivision (the "ARC").

5. The term Assessment shall mean and refer to any amount imposed upon, assessed, or charged an Owner or Permittee.

6. The term Area of Common Responsibility shall mean and refer to the area and items for which the Association is responsible.

7. The term Area of Personal Responsibility shall mean and refer to the area and items for which the Owners are responsible.

8. The term Articles of Incorporation shall mean and refer to the Articles of Incorporation of the Association on file or to be filed with the Utah Department of Commerce.

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9. The term Association shall mean and refer to the association of Owners at the Mountain View Subdivision taken or acting as a group in accordance with this Declaration.

10. The term Board of Directors shall mean and refer to the governing board of the Association.

11. The term Board shall mean and refer to the Board of Directors.

12. The term Builder shall mean an owner, Declarant, or contractor who obtains a construction or occupancy permit for one or more Buildings, Homes, or Town Home Units.

13. The term Building shall mean and refer to any of the structures constructed in the Subdivision.

14. The term Building Exterior Assessment shall mean and refer to any amount imposed upon, assessed, or charged an individual Owner for the maintenance, repair, or replacement of the building exterior surfaces of his or her Town Home Unit, which is not considered a Common Expense.

15. The term Bylaws shall mean and refer to the Bylaws of the Association, a copy of which is attached hereto, marked Exhibit "C", and incorporated herein by this reference.

16. The term Capital Improvement or Addition shall mean and refer to a permanent addition to or the betterment of real property that enhances its capital value and improves the expenditure of labor or money and is designed to make the property more useful or valuable as distinguished from ordinary repairs.

17. The term City shall mean and refer to the City of Woods Cross in Davis County, Utah.

18. The term Club Ivory shall mean and refer to the swimming pool, clubhouse, and other unique recreational amenities at Mountain View Subdivision constructed by the Declarant for the exclusive use and enjoyment of the Owners.

19. Common Area and Facilities shall mean and refer to all real property in the Towns Phase 1 Property owned in common by the Town Home Unit Owners including but not limited to the following items:

(a) The real property and interests in the Subdivision and the real property submitted hereby, including the entirety of the Phases 1, 2, 3, and 4 properties and all improvements constructed thereon, excluding the individual Lots and Town Home Units.

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- (b) All Common Areas and Facilities designated as such in the Final Plat;
- (c) Any Common Areas designated as such in the Final Plat for the exclusive use of a Town Home Unit or Units;
- (d) All utility installations and all equipment connected with or in any way related to the furnishing of utilities to the Project and intended for the common use of all Town Home Unit Owners such as power, gas, water, and sewer;
- (e) The Project's outdoor grounds including the Entry or Entries, Entry Monument or Monuments, landscaping, open space, and green space;
- (f) Club Ivory;
- (g) Landscaped Easements;
- (h) Landscaped Roundabout;
- (i) Street Lights;
- (j) Common Area Parcel A;
- (k) Common Area Parcel B;
- (l) Perimeter fencing;
- (m) All portions of the Mountain View Subdivision not specifically included within the individual Lots, Homes, or Town Home Units; and
- (n) The Property owned by the Association or for the common benefit of its Members includes all other parts of the Project normally in common use, necessary for the Members use, or convenience. The Association is responsible for the existence, maintenance, safety, operation, or management of the Property described within this paragraph.

Anything to the contrary notwithstanding, utility installations such as power, gas, water, and sewer may be dedicated to the City and, if so, this definition shall not be construed to allow the Association to exclude the City from the ownership and control of the utility systems so dedicated.

20. The term Common Expense shall mean and refer to:

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- (a) All sums lawfully assessed against the Owners;
- (b) Expenses of administration of the Association and the maintenance, repair, or replacement of the Common Area and Facilities;
- (c) Expenses allocated by the Association among all of the Owners;
- (d) Expenses agreed upon as common expenses by the Association; and
- (e) Expenses declared as common expenses by the Declaration.

21. The term Community shall mean and refer to the Mountain View Subdivision.

22. The term Community Standard shall mean and refer to the standard of conduct, maintenance, or other activity generally prevailing in the Mountain View Subdivision as determined by the Board of Directors from time to time.

23. The term Covenant to Share Costs shall mean and refer to any contract, agreement, declaration of easements, licenses, and/or covenant to share costs executed by the Declarant or the Association and recorded in the Office of the County Recorder which creates easements for the benefit of the Owners and/or which obligates the Association to share the costs of maintaining certain real, personal, or mixed property described therein.

24. The term Declarant shall mean and include Ivory Homes, Ltd. d/b/a Ivory North and any person or persons who might acquire title from it to all or some of the unsold Lots through purchase, assignment, or other transfer including foreclosure or deed in lieu of foreclosure; or, in the situation where any person purchases all or some of the remaining Lots in a sale in the nature of a bulk sale. The person acquiring any of such property from the Declarant shall be considered a Declarant with respect to that portion of the property so acquired and shall have the right to develop the property and/or sell such property in accordance with the terms and provisions of this Declaration; provided, however, a notice of succession shall be recorded in the Office of the County Recorder signed by both the current Declarant and by its successor in interest as the new Declarant.

25. The term Declaration shall mean and refer to this Amended and Restated Declaration of Covenants, Conditions, Restrictions, Reservation of Easements, and Bylaws for Mountain View Subdivision.

26. The term Dedicated Streets shall mean and refer to those streets, roads, and cul-de-sacs within the Mountain View Subdivision formally dedicated to the City or any other municipal or governmental body politic, entity, or agency.

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27. The term Default Assessment shall mean and refer to an Assessment against an Owner or a Lot for failure to perform an obligation under the Project Documents or because the Architectural Review Committee has incurred an expense on behalf of the Owner under the Declaration.

28. The term Design Guidelines shall mean and refer to any design guidelines required by the City, Association, or the Architectural Review Committee.

29. The term Developmental Rights shall mean and refer to the right granted hereunder to the Declarant, its agents, representatives, employees, successors, and assigns to develop and improve the Mountain View Subdivision.

30. The term Director shall mean and refer to a member of the Board of Directors.

31. The term Eligible Guarantor shall mean and refer to a governmental guarantor of a mortgage or trust deed who has requested notice in writing of certain matters from the Association in accordance with the Declaration.

32. The term Eligible Insurer shall mean and refer to an insurer of a mortgage or trust deed who has requested notice in writing of certain matters from the Association in accordance with this Declaration.

33. The term Eligible Mortgagee shall mean and refer to a mortgagee, beneficiary under a trust deed, or lender who has requested notice in writing of certain matters from the Association in accordance with this Declaration.

34. The term Eligible Votes shall mean and refer to those votes available to be cast on any issue before the Owners. A vote which is for any reason suspended is not an "eligible vote".

35. The term Entry shall mean and refer to the entry way or entry ways into Mountain View Subdivision.

36. The term Entry Monument shall mean and refer to the monument, planter boxes, landscaping features, and other physical improvements identifying the Mountain View Subdivision, in whole or in part, located at or near any Entry or entrance to the Project.

37. The term Final Plat shall mean and refer to the recorded Final Plat for the Mountain View Subdivision on file in the Office of the County Recorder and where the context clearly requires the individual Final Plat for each Phase of the Subdivision.

38. The term Governing Documents shall mean and refer to the Project Documents.

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39. The term Guest shall mean and refer to a guest, visitor, or invitee of an Owner or the occupant of a Unit.

40. The term Guest Parking shall mean and refer to those parking spaces reserved for the exclusive use of Guests.

41. The term Home shall mean and refer to a dwelling, residence, or home constructed upon a Lot.

42. The term Home Plans shall mean and refer to the design guidelines, architectural design, development, landscaping, and other guidelines, standards, controls, and procedures, including but not limited to, application and plan review procedures, adopted pursuant hereto and applicable to the Project. All Homes constructed within the Project or on the Property shall be restricted to those home plans shown in that certain annual catalog used by Declarant entitled "Ivory Homes Catalog," a copy of which is attached to the Development Plan with the City and incorporated herein by this reference. It may be updated annually, subject to the prior review and approval of the City.

43. The term Improvement shall mean and refer to any physical change or addition to the Land to make it more valuable.

44. The term Individual Charge shall mean and refer to a charge levied against an Owner or Permittee for all expenses resulting from the act or omission of such Person, excepting the Owner's failure to pay any Assessment. Individual Charges shall include, by way of illustration but not limitation, any expense resulting from the act or omission of any Owner or Permittee including:

(a) The cost to repair any damage to any portion of the Property on account of loss or damage caused by such Person; or

(b) The cost to satisfy any expense to any other Owner or Owners or to the Association due to any intentional or negligent act or omission of such Person, or resulting from the breach by such Person of any provisions of the Project Documents; or

(c) Any fines.

While Individual Charges are not Assessments, they are secured by a lien in the same manner as Assessments as set forth below. The Association also shall have all other remedies, both legal and equitable, described in the Project Documents available against any Owner for nonpayment.

45. The term Land shall mean and refer to the Property.

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46. The term Landscaping shall mean and refer to the grass, trees, shrubs, bushes, flowers, plants, and like improvements located within the Property as well as the appurtenant sprinkling and irrigation systems.

47. The term Landscaping Easement shall mean and refer to Parcel B, which is intended to be Club Ivory and the Landscaped Park Area.

48. The term Landscaped Park Area is a forty foot (40') buffer zone located on Redwood Road and other landscaped Common Area, as shown on the Final Plat, descriptions of which are incorporated herein by this reference.

49. The term Lender shall mean and refer to a Mortgagee.

50. The term Lot shall mean and refer to a lot as shown on the Final Plat. Each Lot shall be assigned a separate "parcel" or tax identification number by the appropriate governmental agency.

51. The term Lot Number shall mean and refer to the number, letter, or combination thereof designating a particular Lot as identified on the Final Plat.

52. The term Majority shall mean and refer to those eligible votes of Owners or other groups as the context may indicate totaling more than fifty (50%) percent of the total eligible number.

53. The term Manager shall mean and refer to the Person appointed or hired by the Association to manage and operate the Mountain View Subdivision.

54. The term Map shall mean and refer to the Final Plat.

55. The term Member shall mean and refer to an Owner unless the context clearly requires otherwise.

56. The term Membership shall mean and refer to membership in the Association.

57. The term Mortgage shall mean and refer to any mortgage, deed of trust, or other security instrument (including the seller's rights under a contract for deed) by which a Lot and/or Town Home Unit or any part thereof or interest therein is encumbered. A First Mortgage is a Mortgage having priority as to all other Mortgages encumbering a Lot and/or a Town Home Unit, or any part thereof or interest therein.

58. The term Mortgagee shall mean and refer to any person or entity named as the mortgagee, beneficiary, or holder of the seller's interest (so long as a copy of the contract for deed is given to the Association) under any Mortgage by which the interest of any Owner is encumbered, or any successor to the interest of such person under such Mortgage. A First Mortgagee shall mean and refer to any person or entity holding a First Mortgage including any insurer or guarantor of a First Mortgage. Any and all Mortgagee protections contained in Declaration and Third Supplement shall also protect the Declarant as the holder of a First Mortgage of a Lot and/or a Town Home Unit or any interest therein.

59. The term Neighborhood shall mean and refer to a group of similar homes in a particular area designated by the Declarant as a "neighborhood", such as the Town Homes Neighborhood.

60. The term Neighborhood Expenses shall mean and refer to expenses exclusive to a Neighborhood, as opposed to Common Expenses, including by way of illustration but not limitation the Neighborhood Landscaping Expenses for the Town Homes Neighborhood.

61. The term Office of the County Recorder or County Recorder shall mean and refer to the Office of the County Recorder of Davis County, Utah.

62. The term Open Space shall mean and refer to the definition of "open space" adopted by the City by applicable ordinance. In the absence of such a definition, the term "open space" shall mean land on which improvements and activities shall be permitted and prohibited as designated in subsections (a) and (b) below, respectively:

(a) The following improvements and activities shall be permitted: unimproved land, landscaping, green space, and Open Space; and

(b) The following improvements and activities shall be prohibited: temporary or permanent buildings or building-type structures of any kind, impervious surfaces other than those used only for maintenance of the Common Areas and Facilities, noxious or offensive activities of any kind, any activity which is or which may become a nuisance, and dumping or storage of refuse, garbage, or other waste.

63. The term Owner shall mean and refer to a Person who is the owner of a fee or an undivided fee interest in a Lot, excluding a Mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

64. The term Permittee shall mean a Guest, tenant, renter, lessee, and non-occupant residents.

65. The term Person shall mean and refer to a natural person, corporation, partnership, trust, limited liability company, or other legal entity.

66. The term Plans and Specifications shall mean and refer to any and all documents designed to guide or control the construction of an Improvement, alterations, modifications, changes, additions, and the like thereto, including without limitation, all documents indicating the size, shape, configuration, and/or materials to be incorporated; all site plans, excavation and grading plans, elevation drawings, floor plans, techniques, samples of exterior colors, plans for utility services, and all other documentation or information relevant to the improvement or proposal in question.

67. The term Plat shall mean and refer to the Final Plat.

68. The term Plat Map shall mean and refer to the Final Plat.

69. The term Private Street, Road, Cul-de-sac, Way or Drive shall mean and refer to those streets, roads, cul-de-sacs, ways, drives, or turnabouts within the Project not dedicated to the City or any county, state, or other governmental body politic, entity or agency.

70. The term Project shall mean and refer to Mountain View Subdivision.

71. The term Project Documents shall mean and refer to this Declaration, Bylaws, Articles of Incorporation, and Rules and Regulations.

72. The term Property shall mean and refer to all of the land or real estate, improvements, and appurtenances comprising the Mountain View Subdivision submitted to this Declaration.

73. The term Recreational, Oversized, or Commercial Vehicle shall mean and refer to any recreational, commercial, or oversized vehicle, motor home, commercial vehicle, 18 wheelers, tractor-trailer truck, tractor, golf cart, mobile home or trailer (either with or without wheels), camper, camper trailer, boat or other watercraft, boat trailer, or any other recreational or commercial transportation device of any kind.

74. The term Repair shall mean and refer to merely correcting the damage done sometimes by accident or fire or other cause, but more often due to the ravages of time and the deterioration resulting from ordinary wear and tear, by substituting for the damage, decayed, or worn-out parts with new materials, usually similar to that replaced, and so restoring the structure to its original sound condition.

75. The term Residence Number shall mean and refer to the number, letter, or combination of name, numbers, and letters that identifies a Lot.

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76. The term Resident shall mean and refer to any person living or staying at Mountain View Subdivision. This includes but is not limited to any and all natural persons residing in a Lot.

77. The term Single Family shall mean and refer to one of the following: (a) a single person, (b) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, or (c) a group of not more than three unrelated persons who maintain a common household to be distinguished from a group occupying a boarding house, club, fraternity, or hotel. An additional person or persons may also be allowed under appropriate circumstances, for example, as a caretaker or as domestic help, with the prior written consent of the Board of Directors.

78. The term Single Family Residence shall mean and refer to (a) both the architectural style of a Lot and (b) the nature of the residential use permitted therein.

79. The term Subdivision shall mean and refer to the Mountain View Subdivision.

80. The term Towns Phase 1 Plat Map shall mean and refer to the Final Plat for Mountain View Towns Phase 1 Property of the Project, prepared and certified to by Ralph E. Goff, a duly registered Utah Land Surveyor holding Certificate No. 144147, and filed for record in the Office of the County Recorder of Davis County, Utah concurrently with the filing of this Declarational Declaration.

81. The term Townhouse shall mean and refer to a Town Home Unit.

82. The term Townhome shall mean and refer to a Town Home Unit.

83. The term Town Home Neighborhood shall mean and refer to the Neighborhood of Town Home Units.

84. The term Town Home Unit shall mean and refer to a Lot and all mechanical equipment and appurtenances located (a) within any one Town Home Unit or (b) located without the Town Home Unit but designated and designed to serve only that Town Home Unit such as electrical receptacles and outlets, air conditioning compressors, furnaces, water heaters, apparatus, systems or equipment, fixtures and the like shall be considered part of the Town Home Unit; so shall all decorated surfaces of interior walls, floors and ceilings, including but not limited to, all paint, wallpaper, wall coverings, windows and window frames, doors and door frames, trim, carpeting, tile and linoleum; all pipes, wires, conduits, or other utility lines or installations constituting a part of the Town Home Unit or serving only the Town Home Unit; and any structural members, parts, components, or any other property of any kind including fixtures or appliances within any Town Home Unit, which are removable without jeopardizing the integrity, soundness, safety, or usefulness of the remainder of the Building within which the Town Home Unit is located shall be deemed to be

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part of the Town Home Unit.

85. The term Total Votes shall mean and refer to the total number of votes appertaining to all Lots in the Mountain View Subdivision.

86. The term Tract shall mean and refer to all of the land or real estate submitted to this Declaration.

87. The term Unit shall mean and refer to a Home.

88. The term Use Restrictions shall mean and refer to the use expressly set forth herein, which are subject to change.

89. The term Visible From a Neighboring Property shall mean with respect to any object that such object is or would be visible to an individual six (6') tall standing at ground level on any portion of the neighboring property.

90. The term Water-Wise Techniques shall mean and refer to the water-wise guidelines marked Exhibit "C," attached hereto and incorporated herein by this reference.

## ARTICLE II. SUBMISSION

The Land described with particularity on Exhibits A-1, 2, 3, and 4 attached hereto and incorporated herein by this reference is hereby submitted to the Declaration and the Utah Community Association Act, Utah Code Ann., §§57-8a-1 et seq. (the "Act"). The Mountain View Towns Phase 1 Property, described with particularity on Exhibit A-4 is hereby annexed to and shall be subject to the Declaration. The recordation of this Declaration shall constitute and effectuate the expansion of the Subdivision making the real property described in Exhibit A-4 subject to this Declaration and the functions, powers, rights, duties, and jurisdiction of the Association.

The Land is hereby made subject to, and shall be governed by the Act, and the covenants, conditions and restrictions set forth herein. The Land is also subject to the right of the City to access the roads within the Project for emergency vehicles, service vehicles, and to all of the utility installations up to the residential meters.

The Land is SUBJECT TO the described easements and rights-of-way. Easements and rights-of-way in favor of the City include any dedicated roadways and public utility easements and are depicted on the Plat Map.

TOGETHER WITH the Landscape Easement, Roundabout, Club Ivory, and all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or Amended and Restated Declaration of Covenants, Conditions and Restrictions, Reservation of Easements, and Bylaws for Mountain View Subdivision

accompanying the above-described parcel of real property, including by way of illustration and not limitation, all easements and rights-of-way in and to the detention basin, entry way, monument, and park.

ALL OF THE FOREGOING IS SUBJECT TO: The Landscape Easement and Roundabout. All liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservation and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described Tract or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible and necessary easements and rights-of-way; all easements and rights-of-way of record; any easements, rights of-way, encroachments, or discrepancies shown on or revealed by the Plat Map or otherwise existing; an easement for each and every common area improvement, equipment, pipes, lines, cables, wires, utility systems, or similar facilities which traverse or partially occupy the above-described Tract; and all easements necessary for servicing, repairing, ingress to, egress from, maintenance of, and replacement of all such common area improvements, equipment, pipes, lines, cables, wires, utility systems, and similar facilities.

### ARTICLE III. AREA OF APPLICATION

1. Existing Lots. This Declaration shall apply to all of the Property and to any Additional Land annexed to the Subdivision. Mountain View Subdivision currently consists of:

- Phase 1 containing 67 single family detached homes; and
- Phase 2 containing 35 single family detached homes; and
- Phase 3 containing 34 single family detached homes.

2. Additional Lots. The Mountain View Subdivision is hereby expanded to add Phase 4 and up to 39 Town Home Units.

3. Residential Nature of the Project. This is a residential Subdivision.

4. Area of Application. This Declaration shall apply to all of the Property.

5. Right to Expand Application. The Declarant shall have the unilateral right to expand the application of this Declaration to other property by written amendment to this Declaration duly recorded, and without additional Owner approval required.

6. Grant of Common Area and Facilities. The Declarant hereby grants to the Association ownership of the Common Area and Facilities.

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6. Ground Water. Many areas in the City have ground water problems due to a seasonally high (fluctuating) water table. Approval of the Final Plat does not constitute a representation by the City or the Declarant that building at any specified elevation will solve ground water problems. Solution of these problems is the sole responsibility of the Permit Applicant and the Owner. All finish floor elevations on Buildings constructed shall be at least six inches (6") above the curb or street or proposed street level adjacent to the Building, except where the Owner provides an independent engineering report that is approved by the City.

7. Airport Overlay Zone. This Subdivision is located in the Airport Overlay Zone subject to an aviation easement.

#### ARTICLE IV. RESIDENTIAL AREA COVENANTS

1. Land Use and Building Types. Phases 1, 2, and 3 contain single family detached Homes. Phase 1 Mountain View Towns contains or will contain Town Homes. Ivory Homes shall be the exclusive Builder. All Building Plans must be approved by Declarant. For Homes constructed in Phases 1, 2, and 3 all exterior elevations of all Buildings, front, side, and rear, shall be either brick, rock, hardboard and/or stucco; other construction materials are not allowed on the front exterior elevations; and aluminum or vinyl is not permitted, except on the eaves, soffit, and fascia.

2. Architectural Control. Architectural designs, plans, and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements shall be submitted to the Architectural Review Committee (the "ARC") for review and approval. Information concerning irrigation systems, drainage, lighting, landscaping, and other features of proposed construction should be submitted if applicable. Designs submitted for approval shall be limited to those prepared by architects or by qualified residential designers of outstanding ability whose previous work may be reviewed as a part of the approval process. Decisions of the Architectural Review Committee may be based on purely aesthetic considerations.

3. Dwelling Cost, Quality, and Size. Declarant shall determine the quality, size, and cost of each Home constructed upon a Lot in Phases 1, 2, and 3. The minimum Lot size will be eight thousand (8,000) square feet with a minimum side yard setback of eight feet (8') on each side, for a combined distance of sixteen (16') feet between Homes, a front yard set back of twenty five (25') feet, and minimum frontage of seventy (70') feet.

4. Location of Home. The Declarant shall determine the location of a Home constructed upon a Lot in Phases 1, 2, and 3, which must be within the "buildable area" designated on the Final Plat.

5. Landscaping. All landscaping, including the front, rear, and side yards, must be completed within nine (9) months of the date of the issuance of the certificate of occupancy.

6. Streets and Traffic. Streets within the Project shall be developed in accordance with the approved Project Master Plan and the City's General Plan, and shall be subject to City review and approval. Street connections to Redwood Road shall be coordinated with representatives of UDOT and the City, as required by the City. Declarant will stub a street through to the 0.7 acre park located in the southeast corner of the Property in a location acceptable to the City.

7. Entry Monument and Buffer. Declarant will construct an attractive entrance monument at the entry way to the Project to be maintained as part of the Common Area and Facilities by the Association. Declarant will construct a buffer zone acceptable to the City within a forty (40') foot setback area abutting Redwood Road running adjacent to the Project.

8. Trail Location and Maintenance. A trail will be constructed by Declarant through the Project within the A-1 drain right-of-way and in those areas shown on the Project Master Plan approved by the City (the "Project Trail"). The City will maintain the Project Trail once constructed.

9. Parks, Amenities, and Open Space. As part of the Common Areas and Facilities, Declarant will construct open space and landscaping within the A-1 drain right-of-way, Club Ivory, and three parks at various locations throughout the Project. Declarant in phases 2 and 3 will install, at no cost to the City, a gazebo, picnic shelter, tot lot, playground, and volleyball area in the 0.7 acre park located in the southeast corner of the Property. The gazebo is to be located in the 0.4 acre park. Declarant will construct and install landscaped open space within the power and sewer corridors on the west side of the Project.

10. Temporary Turnaround – Lots 53 and 67. Lots 53 and 67 will have a temporary concrete turn-around which is 22 feet by 27 feet located on the north property line of each lot. These temporary concrete turn-arounds will be eliminated at such time as Mountain View Boulevard becomes a through street.

11. Easements for Utilities and Drainage Facilities. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded Plat and over the rear ten (10') feet of each Lot. Within these easements, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction or flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

12. Conveyance. Every conveyance or contract for the sale of a Lot and every other instrument affecting title to a Lot may describe that Lot by the number shown on the Final Plat in substantially the following fashion:

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Lot No. \_\_\_\_\_, as shown in the Declaration and on the Final Plat for MOUNTAIN VIEW SUBDIVISION, Phase \_\_\_\_\_, appearing in the records of the County Recorder of Davis County, Utah, together with an undivided interest in and to the Common Area and Facilities, as the same are established and identified in the Declaration and Final Plat referred to above.

SUBJECT TO: All liens for current and future Assessments and charges imposed or levied pursuant to the Declaration of Covenants, Conditions, Restrictions, Reservation of Easements, and Bylaws for Mountain View Subdivision; mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described tract or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible easements and rights-of-way; and all easements and rights-of-way of record; all easements, rights-of-way, encroachments, or discrepancies shown on or revealed by the Final Plat or otherwise existing; an easement for every pipe, line, cable, wire, utility line, or similar facility which traverses or partially occupies the above-described tract; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, lines, cables, wires, utility lines, and similar facilities.

Such description shall be construed to describe the Lot, together with the appurtenant membership in the Association, and to incorporate all the rights and limitations incident to such ownership contained in the Project Documents.

13. Documents of Conveyance. Title to each Lot is hereby made subject to the terms and conditions hereof which bind the Declarant and all subsequent owners, whether or not it be so expressed in the deed by which any Owner acquired a Lot.

14. Power Lines. There are or may be power lines, poles and related equipment on the Property which are subject to the jurisdiction and control of Rocky Mountain Power Company or its successors and assigns. Keep all objects, including masts, poles, ladders and tools away from power lines at all times. Never assume that an overhead power line is electrically insulated. Always assume that contact with any line can be lethal. Keep away from all downed power lines. Your safety is our number one concern. Use of this information is at your own risk and does not imply that Declarant or its successors in interest accept responsibility for accidents that arise in relation to your actions. Please follow all guidelines, rules and regulations of Rocky Mountain Power Company or its successors and assigns.

## ARTICLE V. USE RESTRICTIONS

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1. Residential Purposes. Each Lot is intended and restricted to be used for residential use. No Home may be occupied by more than one Family. Each Owner shall have and enjoy the privileges of fee simple ownership of his or her Lot. There shall be no requirements concerning who may own a Lot, it being intended that it may and shall be owned as any other property rights by any Person. Unless otherwise expressly and specifically noted, the Project shall be used only for residential purposes and the Common Areas and Facilities shall only be used in a manner consistent with the residential nature of the Project.

2. Obstruction of Common Area and Facilities. There shall be no obstruction of Common Areas by Owners or Permittees without the prior written consent of the Board of Directors.

3. Rules and Regulations. The Board of Directors may, by Rules and Regulations, prohibit or limit the use of the Common Areas as may be reasonably necessary for protecting the interests of all Owners or protecting the Lots or the Common Areas. No Owner or Permittee shall violate the Rules and Regulations as adopted from time to time by the Board of Directors.

4. Storage of Items in Common Area. Nothing shall be kept or stored on any part of the Common Areas without the prior written consent of the Board of Directors, except as specifically provided herein. Nothing shall be altered on, constructed in, or removed from the Common Areas except upon the prior written consent of the Board of Directors.

5. Insurance. Nothing shall be done or kept in any Lot or in the Common Area which would result in the cancellation of the insurance on the Property or increase the rate of the insurance on the Property, but for such activity that the Association would pay without the prior written consent of the Board of Directors.

6. Laws. Nothing shall be done or kept in any Lot or in the Common Areas or any part thereof which would be a violation of any statute, rule, ordinance, regulation, permit, or other validly imposed requirement of any governmental body.

7. Damages. No damage to or waste of the Common Area and Facilities shall be committed by any Owner or any invitee of any Owner, and each Owner shall indemnify and hold the Board of Directors and the other Owners harmless against all loss resulting from any such damage or waste caused by that Owner or an invitee; provided, however, that any invitee of the Declarant shall not under any circumstances be deemed to be an invitee of any other Owner.

8. Maintenance. Each Owner shall keep the exterior of his or her Lot and the adjacent Common Area in a clean, sanitary, attractive condition, and good state of repair.

9. Alterations. No alterations, plumbing, electrical, or similar work within the Common Area and Facilities shall be done by any Owner or Resident without the prior written consent of the  
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Board of Directors, except emergency repair. No alterations, plumbing, electrical, or similar work within a Lot that may affect the structural integrity of the Building or another Lot shall be done by any Owner or Resident without the prior written consent of the Board of Directors, except emergency repair.

10. Sales. Notwithstanding anything herein to the contrary, until the Declarant has completed and sold all of the Lots, neither the Owners who have purchased Lots nor the Board of Directors shall interfere with the completion of the contemplated improvements and sale of the Lots. The Declarant may make such use of the unsold Lots and the Common Areas as may facilitate such completion and sale, including but not limited to, the maintenance of a sales office, the showing of the Lots, and the display of signs.

11. Equal Treatment. Similarly situated Owners and residents shall be treated similarly.

12. Displays. The rights of Owners and residents may display religious and holiday signs, symbols, and decorations on their Lots of the kinds normally displayed in residences located in single family residential neighborhoods and shall not be abridged, except that the Association may adopt time, place, and manner restrictions regulating displays which are visible from outside the Lot.

13. Noise Makers. Signs, symbols, and decorations generally, such as wind chimes, wreaths, dream catchers, pinwheels and so forth, may be controlled by rule and may not be installed or placed so as to be visible to or heard by other residents without the express prior written consent of the Board of Directors.

14. Occupancy. No rule shall interfere with the freedom of occupants of Lots to determine the composition of their households, except that this Declaration limits residency in a Lot to a Single Family and the Association shall have the power to limit the total number of occupants permitted in each Lot on the basis of the size and facilities of the Lot and its fair share use of the Common Areas and Facilities, which, unless otherwise agreed in writing shall be no more than two (2) individuals per bedroom plus one (1).

15. Activities. No rule shall interfere with the activities carried on within the confines of Lots, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Lots, that generate excessive noise or traffic, that create unsightly conditions visible from outside the Lot, or that create unreasonable sounds of annoyance.

16. Commercial Activities and Home Occupation Guidelines. Home businesses are allowed if they conform to all local home occupation and zoning ordinances for the Subdivision, do not create a nuisance, do not threaten the health, safety or welfare of the Subdivision and the business activity is consistent with the residential character of the Subdivision. No commercial trade

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or business may store any inventory over 250 cubic feet, and it must be contained within the Town Home Unit so as not to be Visible From a Neighboring Property. The operator must have a City issued business license. Approval by the Management Committee is required if the business activity involves people coming into the Subdivision who are not residents, the parking of motor vehicles by non-residents within the Subdivision, increase in traffic flow or changes in traffic patterns, or door-to-door solicitations. The leasing of a Lot shall not be considered a trade or business within the meaning of this subsection.

17. Bikes. Bikes shall be subject to and governed by the rules and regulations adopted by the Board of Directors.

18. Trash. No Lot shall be used as a dumping ground. All trash, garbage, debris, rubbish, or other waste shall be kept in a sealed, sanitary bag or container, and stored out of sight except for a twenty-four (24) hour period on pick-up days.

19. Satellite Dishes. Satellite dishes, aerials, antenna, or systems may only be installed in accordance with FCC regulations taking into consideration the written guidelines established for or by the Board of Directors. The Board of Directors may bar, in its sole discretion, satellite dishes, aerials, antenna, or systems, including HAM radio antenna, not expressly authorized by FCC regulations.

20. Pets. No pets, animals, livestock, or poultry of any kind may be commercially bred at the Property. Up to two (2) domestic pets as that term is defined by City Ordinance per Lot are allowed. All pets must be properly licensed and registered. Pets may not create a nuisance. The following acts shall be considered a nuisance: (a) causing damage to the property of anyone other than the pet owner; (b) causing unreasonable fouling of the air by odors; (c) causing unsanitary conditions; (d) running loose throughout the Property and not in a cage or on a leash and under the control of a responsible person; (e) barking, howling, whining, or making other disturbing noises in an excessive, continuous, or untimely fashion; (f) molesting or harassing passersby by lunging at them or chasing passing vehicles; (g) attacking or threatening to attack people or other domestic animals; (h) otherwise acting so as to bother, annoy, or disturb the sensibilities of a reasonable person or interfering with the right of residents to the peaceful and quiet enjoyment of their property; or (i) the mere number of pets maintained creates an offensive or dangerous condition to the health, welfare, or safety of other residents. The Board of Directors may require pet registration and may charge a registration fee and/or pet security deposit.

21. Signage. No signs, billboards, or advertising structures or devices of any kind may be built, installed or displayed on the Property or in any Lot, except one 2' x 2' "For Sale" sign may be put in one window of a Lot. No "For Rent" signs or political signs are allowed. Anything herein to the contrary notwithstanding, this signage restriction does not apply to and is not binding upon the Declarant, who is expressly authorized to employ and use whatever signs or signage it deems

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appropriate to market its Lots.

22. Zoning Ordinances. All land use and buildings shall be in compliance with all zoning and land use ordinances as well as all regulations of the municipalities and agencies governing the Property land use and buildings.

23. Patios, Decks, and Balconies. Personal property placed on a patio, deck, or balcony shall be managed and controlled by rule adopted by the Board of Directors, as it may be modified from time to time and may, although the Board of Directors is not obligated to do so, allow one table, one set of chairs, and one BBQ grill, if covered and not visible to the other residents. Clothes lines, the hanging or drying of clothes, swimsuits, towels, dream catchers, wind chimes, pinwheels, the storing of bicycles, tricycles, equipment, machinery, furniture, appliances, furnishings, or other items which may be considered inappropriate or unsightly by the Board of Directors in its sole discretion shall not be allowed.

24. Window Air Conditioners and Coolers. No air conditioning systems or units are allowed except those initially installed by the Declarant and replacements authorized in writing by the Board of Directors. Window air conditioning units, swamp coolers, or other similar refrigeration devices are not permitted.

25. Only vinyl fencing is allowed. No other fencing materials are permitted without the express written consent of the Declarant, its successors, or assigns. No fence or other similar structure shall be erected in any required front yard to a height in excess of three and one half (3.5') feet; nor shall any fence or other similar structure be erected in any side or rear yard to a height in excess of six (6') feet. Fencing on corner Lots shall meet the requirements of the ordinances of the City regarding vision triangle standards for safe visibility. Fencing, except that installed initially by the Declarant and its replacement authorized by the Board of Directors, is not allowed. All replacement fencing must be approved in writing by the Board of Directors in order to maintain quality of construction and the integrity of the original design scheme.

26. Motor Vehicles. Motor vehicles in the Subdivision are subject to the parking rules and regulations adopted by the Board of Directors from time to time.

(a) No Recreational, Commercial, or Oversized motor vehicles may be parked (1) in the front yard setback of any Lot or (2) within the side yard setback on either the street side of a corner Lot or on the residential street side except while loading or unloading and then for no more than forty eight (48) hours, or more than one time during any seven day period.

(b) No parking pads designed for the storage of vehicles or other materials, either temporary or permanent, shall be constructed or placed, nor shall any trailers, mobile homes, trucks over ¾ ton capacity, boats and watercraft, campers not on a truck bed, motor homes, buses, tractors, Amended and Restated Declaration of Covenants, Conditions and Restrictions, Reservation of Easements, and Bylaws for Mountain View Subdivision

Recreational, Commercial or Oversized vehicles, maintenance and/or commercial equipment of any kind be parked or stored in the Subdivision unless it is behind the front yard setback and without the side yard building setback on the street side of a corner Lot or on the residential street side, and in an enclosed area screened from street and public view, so as not to be Visible From a Neighboring Property. Sufficient side yard gate access should be planned and provided for in the design of the Home to permit ingress, egress and storage of such trailers, oversized, and recreational type vehicles on the side and rear yards.

27. Nuisance. No noxious or offensive activity shall be carried on, in, or about the Property, nor shall anything be done or permitted thereon which may be or may become an annoyance, disturbance, bother, or nuisance to the neighborhood, or which might interfere with the right of other residents to the quiet and peaceful enjoyment of their property.

28. Neighborhood Activities. This Property is located by and is subject to the normal everyday sounds, odors, and all other aspects associated with the nearby manufacturing area and an outdoor entertainment venue.

29. Owner-Occupancy. In order to maintain the value of the purchased property and subdivision, a Home must be owner-occupied for a period of at least one (1) year after closing. The term "owner-occupied" shall mean a Unit occupied by one of the following: (a) The vested owner (as shown on the records of the Davis County Recorder); (b) The vested owner and/or spouse, children, or siblings; or (c) The shareholder, partner, member, trustor, beneficiary, or other legal representative of an institutional owner (provided, such person (and/or spouse, children, or parents) holds a beneficial interest in such legal entity of at least fifty (50.0%) percent.

30. Leases. Each Owner agrees, by the acceptance of a deed or other document of conveyance to a Lot, that in order to maintain the value of the purchased property and the subdivision, the leasing and renting of Homes in the Subdivision is subject to the following covenants, conditions, and restrictions:

(a) Rental Rules. Renting rules and regulations adopted by the Board of Directors, as they may be amended from time to time.

(b) Rental Moratorium. No Owner may lease or rent his or her Home for a period of one (1) year from the date of closing.

(c) Short Term Rentals. No Owner shall be permitted to lease his or her Home for short term, transient, hotel, vacation, seasonal or corporate use purposes. For purposes of this section the term "short term" shall be considered to be any rental with an initial term of less than six (6) months. Daily or weekly rentals are expressly prohibited. No Owner may lease individual rooms to separate Persons or less than the entire Home, including by way of illustration but not limitation,

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letting a room to domestic help or a caretaker, without the prior express written consent of the Board of Directors.

(d) Signage. "For Rent" or "For Lease" signs are prohibited.

(e) Approvals. The Board of Directors must approve in writing all lease and rental agreements as to form. Any lease or rental agreement not approved or in violation of the Project Documents shall be considered "non-conforming" and, as such, voidable by the Board of Directors.

(f) Rental Agreements. The Association may also require that Owners use lease forms or addenda, such as the Crime Free Addendum or the Project Addendum, approved by the Association (or include specific terms in their leases).

(g) No Other Restrictions. Other than as stated in this Section, there is no restriction on the right of any Owner to lease or otherwise grant occupancy rights to his or her Home.

31. Water Wise Techniques. Each Owner is strongly encouraged, although not required to, implement the Water-Wise Techniques.

32. Club Ivory. The right of a person to use Club Ivory and/or the other recreational amenities is conditioned upon qualifying as a Resident or Guest. The Board of Directors or Manager may require the Owner and/or prospective user to provide documentation, such as a lease or rental agreement, to prove residency from time to time.

33. Pollutants and Hazardous Materials. The storage of any substance, toxin, hazardous waste, pollutant, or other dangerous materials in, on, or about the Subdivision is prohibited.

34. Embarrassing Acts. Actions or activities tending or likely to cause embarrassment, discomfort, annoyance, distress, or a disturbance to other Residents are prohibited.

35. Plants, Animals or Devices. The maintenance of any plants, animals, devices, or things of any sort which is illegal, noxious, or dangerous are prohibited.

36. Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying, or mining operations, oil wells, tanks, tunnels, mineral excavations or shafts, derricks, or other devices for the boring for oil or natural gas of any kind are permitted.

37. Energy Conservation Equipment. Solar energy collector pads, wind turbines, and other energy conservation equipment or attendant hardware must be in compliance with Utah Code Ann. §17-27-901 and City ordinance.

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38. Sight Distance at Intersections. No fence, wall, hedge, planting, or the like which obstructs sight lines at elevations between two (2') feet and six (6') feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points twenty five (25') feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight line limitations shall apply on a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines

39. Storage. The storage or accumulation of junk, trash, garbage, manure, commercial materials, equipment, or other materials offensive to the senses so as to be Visible From a Neighboring Property, visible from the street is prohibited.

40. Open Yard Space. Open yard space shall remain open, unoccupied, and unobstructed by Buildings, vehicles and/or hard surfaces, such as asphalt, cement or other packed surface from this time henceforth and forever.

41. City Ordinances. Violations of City ordinances are expressly prohibited.

42. Pools, Spas, Game Courts, and Batting Cages. Swimming pools, water features, spas, game courts, batting cages and the like shall be located so as to avoid unreasonably impacting adjacent properties with balls, light, or sound. Pool heaters and pumps must be screened so as not to be Visible From a Neighboring Property or visible from the street.

43. Storage of Commercial Equipment. No Lot shall be used or maintained as a storage area for commercial equipment of any kind for use in a trade or business, except as may be permitted by City ordinance or county codes for a residential area and then it must be stored so as not to be Visible From a Neighboring Property.

44. View Impairment. Neither the Declarant nor the Association guarantees or represents that any view over and across any property, including any Lot or Building will be preserved without impairment. Neither the Declarant nor the Association shall have the obligation to prune or thin trees or other landscaping except as set forth herein. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

45. Holiday Lights. Reasonable holiday lights are permitted thirty (30) days prior to any major holiday but must be taken down within the thirty (30) days following the holiday.

## **VI. ARCHITECTURAL REVIEW (Single Family Detached Homes)**

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For single family detached Homes in the Subdivision, including but not limited to those constructed in Phases 1, 2, and 3, the following covenants, conditions, and restrictions shall apply. This Article does not apply to any Town Home Units or other attached Homes, including but not limited to those constructed in Phase 1 Towns.

1. Architectural Review Committee. The Architectural Review Committee (the "ARC") shall consist of the Declarant or its designee so long as it shall own a Lot or other property in the Subdivision. Thereafter, the Board of Directors or its designees shall constitute the ARC.

2. Fees and Deposits. The ARC may charge an application, processing fee and/or a security deposit in a sum to be determined by the Board of Directors.

3. Home Requirements. The Declarant intends to use a mix of the plan sizes and choices shown in the Ivory Homes Catalog of Homes in selecting the Homes to be built within the Subdivision, as it may be amended or supplemented from time to time. Declarant intends that at least sixty five (65%) percent of the two-story Homes constructed within the Subdivision will contain 2,000 or more finished square feet, excluding basements, carports, garages, and porches. Declarant intends that at least sixty five (65%) of the single story homes, including ramblers, constructed within the Subdivision will contain 1,900 or more finished square feet, excluding basements, carports, garages, and porches. The design elements for the Homes will be consistent with the design elements reflected in the Ivory Homes Catalog of Homes.

4. Architectural Issues. Since aesthetics, the harmony of design, and quality of construction and materials throughout the Subdivision are important, all architectural designs, plans, specifications, and construction must be (a) reviewed and approved in writing by the ARC, subject to the approval of the Board of Directors and (b) consistent with the (i) covenants, conditions, and restrictions set forth herein, and (ii) Home plans.

5. Ratification. Unless an Owner has received a written objection to the architecture of his or her Home bearing a date before the recordation of this Declaration, the Buildings as constructed are hereby approved ratified.

6. Designs, Plans, and Specifications. Architectural designs, plans, and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements shall be submitted to the ARC for its review and approval. Information concerning irrigation systems, drainage, lighting, landscaping, and other features of proposed construction should be submitted if applicable. Designs submitted for approval shall be limited to those prepared by architects or by qualified residential designers of outstanding ability whose previous work may be reviewed as a part of the approval process.

(a) Review Considerations Generally. In reviewing each submission, the ARC may consider the proposed design, harmony of external design with existing structures, the common scheme, the location in relation to surrounding structures, topography, finish grade, and elevation, among other things.

(b) Aesthetics. Decisions of the ARC may be based on purely aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary as ARC members change over time.

(c) Minimum Home Requirements. No Home shall be constructed or altered unless it meets the following minimum requirements:

- (1) Only single family detached residential Homes are allowed.
  - (2) The height of any Home shall not exceed two stories above ground.
  - (3) No slab on grade Homes are permitted.
  - (4) Without the prior written consent of the ARC, a basement is required for each Home.
  - (5) Without the prior written consent of the ARC, each Home shall have a private garage for not less than two motor vehicles.
  - (6) The Home exteriors, in their entirety, must consist of either maintenance free stucco or masonry, unless another construction material is approved by the ARC in writing. No aluminum or vinyl is permitted.
  - (7) Any detached accessory building must conform in design and materials with the primary residential Home.
  - (8) Any and all plans and specifications for an Accessory Building must be submitted, reviewed, and approved in writing in advance.
  - (9) Any detached Accessory Building must conform in design and materials with the primary residential Home.
  - (10) All Lots shall be fully landscaped.
  - (11) No fence or similar structure shall be placed in any front yard. No fence or similar structure shall be placed in any side or rear yard in excess of six (6) feet. Vinyl fencing is
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allowed without additional approval required. Wood, masonry, and wrought iron fencing may be allowed with the express prior written consent of the ARC, although approval may be denied. Chain link fencing is strictly prohibited. If there is a dispute as to what constitutes the front, side, or rear yards, or whether a variance has been granted, the decision of the ARC shall be final, binding, and conclusive.

(12) Conditional uses must be approved in writing, such as a swimming pool, spa, equipment building, athletic court, tennis court, basketball court, soccer pitch, batting cage, and so forth.

(13) No tin sheds are allowed.

(d) Preliminary Architectural Drawings, Plans, and Specifications. The ARC may require, as a minimum, the following additional items:

(1) Plot plan to scale of entire site with buildings located and elevation of floors shown above or below a designated point on the street.

(2) Floor plans of each floor level to scale.

(3) Elevations to scale of all sides of the Home.

(4) One major section through Home.

(5) A perspective (optional).

(6) Specifications of all outside materials to be used on the exterior of the Home.

(e) Final Plans and Specifications and Working Drawings. The ARC may also require, as a minimum, the following:

(1) Plot plans to scale showing the entire site, building, garages, walks, drives, fencing, carriage lights, retaining walls, elevations of the existing and finished grade and contours including those at the outside corners of the buildings and at adjacent property lines and street fronts, and elevations of floors from a designated point on the street.

(2) Detailed floor plans.

(3) Detailed elevations, indicating all materials and showing existing and finished grades.

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(4) Detailed sections -- cross and longitudinal.

(5) Details of cornices, porches, windows, doors, garages, garden walls, steps, patios, fences, carriage lights, etc. Specifications shall give complete description of materials to be used with supplements, addenda, or riders noting the colors of all materials to be used on the exterior of the Home.

(f) Landscaping. All Lot landscaping, grading, and drainage is subject to the following covenants, conditions, restrictions and easements, and shall be completed strictly in accordance with the Landscaping Guidelines adopted by the Declarant or the ARC and so as to comply with and not impair all applicable ordinances and flood control requirements.

(1) All Lot landscaping must be completed within nine (9) months of closing.

(2) Landscaping shall include, by way of illustration but not limitation, the planting of a lawn and/or other appropriate ground cover, planting beds and flower beds, appropriate bushes and shrubs, and the planting of trees in accordance with the Street Tree Planting Plan, a copy of which is attached hereto, marked Exhibit "D" and incorporated herein by this reference.

(3) The Declarant will provide the City with a bond for landscaping whenever possible.

(4) In the event that such a bond is provided, it shall be refunded, upon the buyer's completion of the City's landscaping requirements, inspection, and approval to the Owner.

(5) By accepting a deed or other document of conveyance to a Lot, the Owner hereby agrees, acknowledges, and consents that if the Declarant is required by the City to install front yard landscaping prior to receiving a final inspection on the Lot, to the basic front yard landscaping so provided and further agrees that the landscaping installed by Declarant is in lieu of, abrogates and cancels any 2,000 sq. ft. of sod promised on any promotional materials, including by way of illustration but not limitation the Purchase Price Addendum and the Ivory Homes Catalogue of Homes.

(6) The Owner is responsible for the initial planting of trees.

(7) Trees, lawns, shrubs, or other plantings placed on a Lot shall be properly nurtured, maintained, and replaced by the Owner.

(8) Any weeds or diseased or dead lawn, trees, ground cover, bushes, or

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shrubs shall be removed and replaced.

(9) All replacement trees must also satisfy the requirements of the Street Tree Planting Plan.

(10) The landscaping of a Lot may not adversely affect the value or use of any other property or detract from the original design scheme and appearance of the subdivision.

(11) No concrete, cement or masonry products, pavers, brick, stone, cobblestone, tile, terrazzo, slabs, slate, rocks, pebbles, gravel, permeable pavements and so forth or other artificial or impermeable surfaces (collectively "controlled surfaces") may be installed or constructed as landscaping in the front, side or rear yards of a Lot without the express prior written consent of the ARC.

(12) Front, side, or rear yards constructed primarily or substantially of controlled surfaces are prohibited.

(13) If Declarant is required to install front yard landscaping prior to receiving a final inspection from the City, then the Owner, by accepting a deed or other document of conveyance to a Lot, acknowledges, understands, and agrees that only a basic front yard landscaping will be provided by Declarant and that this service will be provided in lieu of the 2,000 sq. ft. of sod promised on any promotional materials, including but not limited to the Purchase Price Addendum and/or the Ivory Homes Catalogue of Homes.

(14) Should any Owner fail to comply with the provisions of this paragraph, the Declarant or the ARC shall have the right to seek an order from a court of proper jurisdiction requiring specific performance to comply with the provisions hereof or to recover damages, or both, and shall also have the authority but not the obligation to complete the landscaping or restore the property to its original condition without being guilty of a trespass, and require the Lot Owner to pay the cost of labor and materials.

(15) The costs and expenses incurred, including a reasonable attorneys' fee, whether or not a lawsuit is filed, shall be considered the personal obligation of the Lot Owner and shall constitute a lien on the interest of the Owner in such property, enforceable at law or equity, until payment is made.

(g) Easements For Entry, Entry Monument, Drainage System, Irrigation, and Utilities. Easements for the Entry, Entry Monument, Subsurface Drain System, and the master storm drain system and related facilities, irrigation, and utilities are reserved hereby and as shown on the recorded Final Plat. If any portion of the Entry or Entry Monument encroaches or comes to encroach upon a Lot, in whole or in part, as a result of construction, reconstruction, repair, shifting, settling, or

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movement, an easement for such encroachment is created hereby and shall exist so long as such encroachment exists. An Owner may not do any landscaping, grading, or work, or install any structure, building, improvement, planting, or other object, natural or artificial, or materials which may damage or interfere with the installation and maintenance of utilities, Entry Monument, or which may change the direction of flow of drainage channels in, on, or about the easements and rights-of-way, or which may obstruct or retard the flow of water through the drainage channels in the easements and rights-of-way. If a drainage channel is altered by an Owner, the Declarant and/or the Association expressly reserve the right to enter onto the property to restore the area at the cost of the Owner, and without being guilty of a trespass. In addition, the easement and right-of-way area on each Lot, including by way of illustration but not limitation, the Entry Monument, in whole or in part, utilities, drainage systems and facilities, and irrigation, and all improvements within said area shall be maintained continuously by the Owner of the property, at his or her sole expense, excepting those improvements for which a public authority or utility company is expressly responsible. The Declarant, Association, and City are hereby granted any and all necessary and appropriate easements and rights-of-way under, over, across, and through the Subdivision for the purpose of access, ingress, egress, installation, maintenance, replacement, expansion, and relocation of the foregoing, including by way of illustration but not limitation the Subsurface Drain System and the master storm drain system.

(h) Slope and Drainage Control. The Declarant shall establish a storm drainage system designed to serve the Subdivision (the "Master Storm Drain System"). The A-1 drain right of way shall be used as part of the storm drain and detention facilities. No structure, plant, improvement, or other material may be placed or permitted to remain, or other activities undertaken which may damage or interfere with the Master Storm Drain System, established controls, create erosion or sliding problems, or which may change the direction or flow of drainage channels, or obstruct or retard the flow of water through the channels to the detention basin. It shall be the responsibility of each Owner to see that the use of his or her Lot conforms with and continues to conform to any established grading and drainage plan that has previously been designed by the Declarant and/or City. No changes to the Established Drainage Pattern on any Lot shall be permitted without the prior written consent of the Declarant or Association. For purposes of this section, the term "Established Drainage Pattern" is defined as the approved drainage pattern, facilities, and improvements in existence at the time a Lot is conveyed to a purchaser by the Declarant, its successor, or assign. The cost of all improvements, maintenance, repairs, and replacements of that part of the Master Storm Drain System located within the boundaries of any Lot shall be the responsibility of the Owner. The cost of all improvements, maintenance, repairs, and replacements of that part of the Master Storm Drain System located in the Common Area shall be the responsibility of the Association. If an Owner fails to properly manage, maintain, repair, or replace that part of the Master Storm Drain System on his or her Lot, then the Association shall have the right, but not the obligation, to maintain, repair, or replace the systems and to charge the cost thereby incurred to said Owner. The Association shall not have the authority to change by vote, alienation, alteration, transfer, sale, or otherwise the use of the currently existing areas and structures designed

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to control storm water runoff unless the consent of the appropriate governmental agencies has first been obtained in writing.

(i) Accessory Buildings. Accessory Buildings are considered conditional uses and require the written approval of the ARC. Applications to construct or install an Accessory Building will be evaluated separately by the ARC, subject to at least the following minimum guidelines:

(1) Any detached Accessory Building must conform in design and construction materials with the primary residential Home;

(2) The maximum height of an Accessory Building shall be twelve (12') feet, (although the ARC may grant an exception if, in its sole opinion, such is in the best interest of the Subdivision); and

(3) If there is a dispute of any kind whatsoever, such as whether a structure is an Accessory Building, the decision of the Declarant or, upon the termination of the Period of Declarant's Control, the Board of Directors shall be final, conclusive, and binding

(j) Approval. In the event that the ARC fails to disapprove any application within thirty (30) days after submission of all information and materials reasonably requested, the application shall be considered approved, subject to the minimum requirements as set forth herein.

(k) No Waiver of Future Approvals. The approval of the ARC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans, and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

(l) Variance. The ARC may authorize variances from compliance with any of the architectural guidelines when circumstances such as topography, natural obstructions, hardship, aesthetic, or environmental considerations require, but only in accordance with its duly adopted rules and regulations, and prior written consent of the City Board of Adjustment. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c) estop the ARC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of financing shall not be considered a hardship warranting a variance.

(m) Limitation of Liability. Neither the Declarant nor the ARC, or any of their Amended and Restated Declaration of Covenants, Conditions and Restrictions, Reservation of Easements, and Bylaws for Mountain View Subdivision

employees, agents, representatives, or consultants shall be responsible in any way for any defects in any plans or specifications submitted, revised, or approved in accordance with the provisions of this Declaration, nor for any structural or other defects in any work done according to such plans and specifications. By accepting a deed or other document of conveyance to a Lot, each Owner agrees to and shall defend, indemnify, save and hold the Declarant and the ARC, and their employees, agents, representatives, or consultants, harmless from any and all loss, damage, or liability they may suffer, including defense costs and attorney fees, as a result of any claims, demands, actions, costs, expenses, awards, or judgments arising out of their review or approval of architectural designs, plans and specifications.

(n) Enforcement of Architectural Guidelines. Any construction, alteration, or other work done in violation of this Declaration shall be considered to be nonconforming. Upon written request from the ARC an Owner shall at his or her own cost and expense remove such non-conforming construction, alteration, or other work and shall restore the land to substantially the same condition as existed prior to the non-conforming construction, alteration, or other work. Should an Owner fail to remove and restore as required hereunder, the ARC shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as existed prior to the construction, alteration, or other work, without being deemed to be a trespasser. ✓

(o) City Right of Enforcement. The City is hereby made a party to the covenants established by this Declaration for the sole purpose of protecting and preserving the use of the Subsurface Drain System and the Master Storm Drain System, and structures that serve the Subdivision; provided, however, the City shall not be considered a member of the Association, nor shall it have a vote in the management, operation, or regulations of its affairs; nevertheless, and anything to the contrary notwithstanding, the City is granted this express right of enforcement.

(p) Contractors. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Declaration may be excluded by the ARC from the Project, subject to the notice and the opportunity to be heard. In the event of sanctions after notice and hearing, neither the ARC nor the Declarant, nor their employees, agents, representatives or consultants shall be held liable to any person for exercising the rights granted by this Section.

(q) Ivory Homes Catalogue. Any and every home design, plan, or specification contained within the Ivory Homes Catalogue shall be considered approved and qualify for construction, and no other consent shall be required, provided the home elevations meet and the home otherwise satisfies all of the architectural control requirements of the City PUD ordinance. Any and all deviations from the Ivory Homes Catalogue, including by way of illustration but not limitation, design, construction materials, and coloration, must be expressly approved in writing by the ARC: The approval of the Ivory Homes Sales staff and/or construction personnel is insufficient.

**ARTICLE VII  
ARCHITECTURAL REVIEW  
(Townhomes)**

The following general design guidelines are adopted by the Declarant for the purpose of protecting and preserving the integrity of the original design scheme and maintaining a uniformity of appearance and quality of construction. The minimum guidelines are intended as a guide to the conduct and activities of all Owners, so that everyone living in and using the facilities at Mountain View Towns will enjoy the maximum pleasure without annoyance or interference from others. These minimum guidelines may be supplemented by rules and regulations adopted by the Board of Directors from time to time. Decisions may be made purely for aesthetic reasons. The Architectural Review Committee may require an application for architectural reviews and may charge an Owner an application, processing fee and/or a security deposit in a sum to be determined by the Board of Directors.

1. Doors. The Owners are responsible to replace the exterior doors to their Town Home Units as they age or are damaged. The replacement doors must be approved in writing by the Architectural Review Committee. Any replacement door not so approved shall be considered non-conforming and must be removed, at the Owner's sole expense, within thirty (30) days after delivery of a written demand.

2. Windows. The Owners are responsible to replace the window units and glass to their Town Home Units as they age or are damaged. The replacement window units and glass, and any window treatments, must be approved in writing by the Architectural Review Committee.

3. Structural Alterations to Buildings and Doors. No Owner may make any structural alterations to the exterior of a Building or door without the express prior written consent of the Board of Directors.

4. Integrity of Construction Materials. No Owner may make any modifications to the construction materials used by the Declarant on the initial construction of a Building without the express prior written consent of the Board of Directors.

5. Integrity of Color Scheme. No Owner may change the color scheme of the Buildings or doors without the express prior written consent of the Board of Directors.

6. Natural and Artificial Objects. No Owner may place any plants and planters or other natural or artificial objects in the Common Area (including any limited common or private area, such as a porch, landing, patio, balcony or deck) without the express prior written consent of the Board of Directors.

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7. Draperies, Shades and Window Coverings. The draperies, shades and other interior window coverings in Town Home Units shall present a uniform appearance from the outside of the Town Home Units. All draperies, shades or other interior window coverings shall be installed or employed in each Town Home Unit by the Board of Directors or with the prior inspection and written approval of the Board of Directors. The Board of Directors shall have the right to establish rules requiring window coverings to present a uniform appearance from the exterior of Buildings.

8. Decorations. No Owner may place or allow the placement of any artificial objects on the door to his or her Town Home Unit or the exterior of the Building, including by way of illustration but not limitation wreathes, hangings, brackets, busts, angels, cherubs, stars, metal works, glass works, castings, fountains, pots, window boxes, urns, bird feeders, bird baths, sculptures, statuary, stonework, address numbers, wall décor or ornaments, pottery, benches, balusters, trellises, and so forth.

9. Common Area. No Owner shall erect or construct in the Common Areas any structure of any type whatsoever without the prior written approval of the Board of Directors.

10. Personal Property. No Owner shall place, store, keep or permit to be placed, stored or kept, upon the Common Areas and Facilities any personal property, including, but not limited to, vehicles of any type except pursuant to the rules and regulations of the Association without the prior written approval of the Board of Directors.

11. Redecoration. No Owner shall have the right to redecorate or make alterations or repairs to any Common Area facility or furnishing, Building or the exterior of a Town Home Unit.

12. Signage. No signs, flags or advertising devices of any nature, including, without limitation, for sale or for rent signs, political, informational or directional signs or devices, shall be erected or maintained on any part of Mountain View Towns, except as may be necessary temporarily to caution or warn of danger, except as may be used by Declarant as part of its sales program, except to advertise Mountain View Towns.

13. BBQs. No solid-fuel burning devices such as charcoal grills and wood burning stoves or fireplaces shall be used, kept or stored in the Common Area or within any Town Home Units.

14. Littering. Owners shall not or permit their Permittees to litter.

15. Burning Materials. No burning trash, garbage or other waste materials will be permitted at Mountain View Towns.

16. Structural Integrity. No Owner shall do any act that would impair the structural soundness or integrity of the Buildings or the safety of property, impair any easement or  
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hereditament appurtenant to the Project.

17. Local Codes and Ordinances. Mountain View Towns falls under the jurisdiction of the City of Woods Cross and all ordinances and codes apply.

18. Remedies. The Association has several other practical ways of assuring compliance with these essential regulatory provisions, including by way of illustration but not limitation:

- Suspension of voting rights;
- Suspension from use of recreation facilities;
- Default Assessments;
- Individual Assessments; and
- Assessment of fines.

19. Default Maintenance Charges. If after delivery of written notice of a violation and the opportunity to be heard, the default continues, and it is determined that any responsible party has failed or refused to discharge properly his or her obligation with regard to the maintenance, repair, or replacement of the real property and improvements described herein, or that the need for maintenance, repair, or replacement thereof is caused through the willful or negligent act of any Person, then the Association or Board of Directors may but are not obligated to provide such maintenance, repair, or replacement at the sole risk, cost and expense of the defaulting or responsible party (the "Default Maintenance Cost"). The requirement of notice and the opportunity to be heard is hereby waived in the event of an emergency. The term "emergency" as used herein means a situation or condition in which there is a threat of imminent and substantial harm to person or property. The Default Maintenance Cost is the debt of such defaulting or responsible party at the time the expense is paid and shall be collectible as such. It may be considered a "fine" against a Owner or an Individual Assessment. The Owner shall have thirty (30) days after delivery of written notice of the charge to appeal the decision by requesting that his or her name be added to the agenda at the next regularly scheduled meeting of the Board of Directors. A monetary obligation assessed hereunder which remains unpaid after the time for appeal has expired shall become a lien against the Owner's interest in the property.

20. Enforcement of Architectural Guidelines. Any construction, alteration, or other work done in violation of this Declaration shall be considered to be non-conforming. Upon written request from the ARC an Owner shall at his or her own cost and expense remove such non-conforming construction, alteration, or other work and shall restore the land to substantially the same condition as existed prior to the non-conforming construction, alteration, or other work. Should an Owner fail to remove and restore as required hereunder, the ARC shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as existed prior to the construction, alteration, or other work, without being deemed to be a trespasser.

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## ARTICLE VIII. RIGHT OF ENTRY

1. Right of Entry. Wherever sanitary sewer connections, water connections, electricity, gas, telephone, or drainage facilities are installed with the Subdivision, the Owners of any Lot or Lots served by said connections, lines, or facilities shall have the right and are hereby granted an easement to the full extent necessary therefore, to enter upon the Lots owned by others, or to have utility companies enter upon the Lots owned by others, in or upon which said connections, lines, or facilities, or any portion thereof lie, to repair, replace, and generally maintain said connections as and when the same may be necessary as set forth herein. Any premises so entered shall be restored by those entering to as near its form condition as is reasonably possible.

2. Limitation. Nothing in this Article may be construed to grant any new easement without the express written authorization of the Lot Owner.

## ARTICLE XI. COMMON EXPENSES AND ASSESSMENTS

1. Obligation to Pay Assessments. Each Owner of any 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 by illustration but not limitation, his or her share of the Common Expenses, regular Assessments, Special Assessments, Individual Assessments, Default Assessments, Benefit Assessments, Assessments unique to a Neighborhood, Building Exterior Assessments, and all other Assessments assessed by or pursuant to the Declaration, Assessments assessed by or pursuant to the Declaration, Special, Individual, or Default Assessments, and other fees, charges, levies, and fines as provided in the Project Documents. Anything to the contrary notwithstanding, the Declarant is not obligated to pay Assessments on Lots it owns.

2. Total Annual Assessment. The total annual Assessment against all Lots shall be based upon advance estimates of cash requirements by the Board of Directors to provide for the payment of each Owner's share of the Common Expenses and all estimated expenses growing out of or connected with the maintenance and operation of the Common Area and Facilities, among other things, expenses allocated by or pursuant to the Declaration, expenses allocated by or pursuant to the Declaration, expenses of Management; grounds maintenance; taxes and special assessments levied by governmental authorities until the Lots are separately assessed as provided herein; premiums for all insurance which the Board of Directors is required or permitted to maintain; common lighting and heating; water charges; trash collection; sewer service charges; repairs and maintenance; wages for Board of Directors employees; legal and accounting fees; any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus and/or sinking fund; and any other expenses and liabilities which may be incurred by the Board of Directors for the benefit of the Owners under or by reason of this Declaration.

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3. Utilities. Each Lot shall be separately metered for gas and electricity. Costs of gas and electric service to the Lots shall be paid by the individual Owners. Water and sewer for individual Lots shall be separately metered. Costs for water and sewer services to the Lots shall be paid by the individual Owners. Common utilities shall be considered a Common Expense. Water, sewer, gas, electricity, and garbage for Common Area and Facilities may be metered separately or in combination with individual Lots.

4. Uniform and Equal Allocation of Common Expenses. Expenses attributable to the Common Areas and Facilities as a whole shall be apportioned among all Lots not owned by the Declarant equally and uniformly.

5. Calendar Year Basis. Annual Assessments shall be made on a calendar year basis. The Board of Directors shall give written notice of each annual Assessment not less than thirty (30) days nor more than sixty (60) days prior to the beginning of the next calendar year. The first annual Assessment shall be for the balance of the calendar year remaining after the date fixed by the Board of Directors. Each annual Assessment shall be due and payable in monthly installments on the first day of each and every month and no separate notices of such monthly installment shall be required. Each monthly Assessment shall bear interest at the rate of eighteen (18%) percent per annum from the date it becomes due and payable if not paid within thirty (30) days after such date.

6. Special Assessments. In addition to annual Assessments, the Board of Directors may levy in any Assessment year a Special Assessment, payable over such a period as the Board of Directors may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Property or any part thereof, or for any other expense incurred or to be incurred as provided in this Declaration. This paragraph shall not be construed as an independent source of authority for the Board of Directors to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other paragraphs of this Declaration. Any amounts assessed pursuant hereto shall be assessed to the Owners in proportion to their respective membership interest in the Association. Notice in writing of the amount of such 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 provided in the notice. Any Special Assessment or part thereof shall bear interest at the rate of eighteen (18%) percent per annum from the date it becomes due and payable if not paid within thirty (30) days after such date.

7. Lien Rights. All sums assessed to any Lot pursuant to this section, together with interest thereon as provided herein, shall be secured by a lien on such Lot in favor of the Association. Such lien shall have such priorities as established by law.

8. Notice of Lien. To establish a lien for any unpaid Assessment, the Board of Directors shall prepare a written notice of lien as set forth by statute. No notice of lien shall be recorded until

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there is a delinquency in the payment of an Assessment or other monetary obligation. Such lien may be enforced by judicial foreclosure by the Board of Directors as provided by law. The lien shall also secure, and the Owner shall also be required to pay to the Board of Directors any Assessments against the Lot which shall become due during the period of foreclosure sale or other legal sale. The Board of Directors may bid on the Lot at foreclosure or other sale and may acquire, hold, convey, lease, rent, encumber, use, and otherwise deal with the same as the Owner thereof.

9. Release of Lien. A release of lien shall be executed by the Board of Directors and recorded in the office of the County Recorder of Davis County, Utah, upon payment of all sums secured by a lien which has been made the subject of a recorded notice of lien.

10. Encumbrancers. If an encumbrancer holding a lien on a Lot pays any amounts secured by the lien created by this section, the encumbrancer shall be subrogated to all rights of the Board of Directors with respect to such lien including priority.

11. Notice of Unpaid Assessments. The Board of Directors shall report to any encumbrancer of a Lot any unpaid Assessments remaining unpaid for longer than ninety (90) days if the encumbrancer has requested in writing such notice.

12. Personal Obligation. The amount of any Assessment against any Lot shall be the personal obligation of the Owner thereof. Suit to recover a judgment of such personal obligation shall be maintainable by the Board of Directors without foreclosing or waiving the lien securing the same. No Owner may void or diminish any personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment of his or her Lot or any amenities.

13. Request For Statement of Assessments Due. Upon payment of a reasonable fee not to exceed ten dollars (\$10.00) and upon written request of any Owner, any Mortgagee, prospective Mortgagee, or prospective purchaser of a Lot may request and the Board of Directors shall issue a written statement setting forth the amount of unpaid Assessments, if any, with respect to such Lot; the amount of the current yearly Assessment and the portion thereof which has theretofore been paid; and credit for advanced payments or prepaid items. Such statement shall be conclusive upon the Board of Directors in favor of persons who rely thereon in good faith. Unless such request for a statement of account shall be complied with within ten (10) days, all unpaid Assessments which become due prior to the making of such request shall be subordinate to the lien of a Mortgagee which acquired its interest subsequent to requesting such statement. Where a prospective purchaser makes such a request, both the lien and unpaid Assessments and the personal obligations of the purchaser shall be released automatically if the statement is not furnished within ten (10) days, and that purchaser subsequently acquires the Lot.

14. Joint and Several Liability. A purchaser of a Lot shall be jointly and severally liable with the seller for all unpaid Assessments against the Lot up to the time of the conveyance without Amended and Restated Declaration of Covenants, Conditions and Restrictions, Reservation of Easements, and Bylaws for Mountain View Subdivision



prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such Assessments.

15. Right to Terminate Utilities for Non-Payment. The Board of Directors may elect to terminate utilities to a Lot for non-payment of Assessments.

16. Right to Terminate Privilege to Use Club Ivory and Other Amenities. The Board of Directors may elect to terminate the right of an Owner or Lot to use Club Ivory and/or other amenities for non-payment of Assessments.

17. Right to Collect Rents Directly From Tenant. The Board of Directors may elect to collect unpaid Assessments directly from renter, tenant, or lessee in the manner set forth in Utah Code Ann. §57-8-20, as it may be amended from time to time.

18. Lenders. Anything to the contrary notwithstanding, any Mortgagee who obtains title to a Lot pursuant to the remedies in the mortgage or trust deed or through foreclosure will not be liable for more than six (6) months of the unpaid regularly budgeted Assessments, dues, or charges accrued before acquisition of the title to the property by the mortgage, although the Mortgagee will also be liable for any reasonable attorney's fees or costs related to the collection of the unpaid dues. All other grantees who obtain title to a Lot in a voluntary conveyance or pursuant to the remedies in a mortgage or trust deed or through foreclosure shall be jointly and severally liable with the trustor or mortgagor for all unpaid Assessments, late fees, default interest, and collection costs, including a reasonable attorney's fee against the Lot for its share of the Common Expenses up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the trustor or mortgagor the amounts paid by the grantee.

19. Default Interest. Any Assessment, fine, or other monetary obligation shall bear interest at a rate to be determined by the Board of Directors from the date it becomes due and payable if not paid within thirty (30) days after such date.

20. Late Fees. A late fee in a sum to be determined by the Board of Directors may be charged on any payment not paid within ten (10) days after its due date.

21. Benefit Assessments. The majority of the Lots in a Neighborhood may elect by an affirmative vote to incur an additional expense to enhance, upgrade, better or improve the Neighborhood and create a Benefit Assessment to pay for the expense. The Lots in the Neighborhood benefitted may be assessed a Benefit Assessment, and a Benefit Assessment shall be equitably apportioned among those Lots according to the benefit received. The Board of Directors shall bill and collect the Benefit Assessment like any other Assessment. Failure of a Neighborhood to exercise its authority under this Section shall not be grounds for any action against the Neighborhood, Association, or Board of Directors, and shall not constitute a waiver of the

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Neighborhood's right to exercise its authority under this Section in the future with respect to any betterment expenses, including an expense for which the Neighborhood has not previously exercised its authority under this Section.

### ARTICLE X. CAPITAL IMPROVEMENTS

All expenses for Capital Improvements or Additions shall be governed by and subject to the following conditions, limitations, and restrictions:

1. Board of Directors Approval. Any Capital Improvement or Addition to the Project which costs ten percent (10%) or less of the Total Annual Budget, and does not alter the nature of the Project, may be authorized by the Board of Directors alone (the "Capital Improvement Ceiling"). A major repair or major maintenance expense shall not be considered a Capital Improvement or Addition.

2. Owner's Approval. Any Capital Improvement, the cost of which will exceed the Capital Improvement Ceiling, must, prior to the commencement of construction, be authorized by at least a majority of the percentage of undivided ownership interest in the Common Area.

3. Material Alteration of Subdivision. Any Capital Improvement which would materially alter the nature of the Project (e.g., changing the roofing materials, the construction of the external Building surfaces, color scheme, etc.) must, regardless of its cost and prior to being constructed or accomplished, be authorized by at least sixty-seven (67%) percent of the undivided ownership interest in the Common Areas.

### ARTICLE XI. INSURANCE

1. Association. The Board of Directors shall obtain and keep in full force and effect at all times the following insurance coverage provided by companies duly authorized to do business in Utah (collectively, "Master Policy").

(a) The Manager, Board of Directors, or Association, will obtain insurance against loss or damage by fire and other hazards for all Common Areas and Facilities, excluding the Lots, Town Home Units, and the Buildings in which the Town Home Units are located. The insurance premiums shall be a Common Expense. Casualty insurance on the Property in such amounts as shall provide for full replacement thereof on the event of damage or destruction, all in the manner in which a corporation owning similar buildings would, in the exercise of prudent business judgment, obtain such insurance. Such insurance shall at a minimum include fire and extended coverage, and vandalism and malicious mischief coverage. The Board of Directors may comply with the above requirements by the purchase of blanket coverage and may elect such "deductible" provisions as in the opinion of the Board of Directors are consistent with good business practice.

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(b) The Association will obtain broad form comprehensive liability coverage in such amounts and in such forms as it deems advisable to provide adequate protection. Coverage shall at a minimum include liability for personal injuries, operation of automobiles on behalf of the Association or Board of Directors, and activities in connection with the ownership, operation, maintenance, and other use of the Property.

(c) Workers' compensation or employers' liability insurance and all other similar insurance in respect to employees of the Board of Directors in the amounts and in the forms now or hereafter required by law.

(d) A fidelity bond in the amount of 150% of the Association's estimated annual Common Expenses and reserves, to insure against dishonesty of employees, destruction, disappearance of money or securities, and forgery.

2. Single Family Detached Home Owners. Each Owner of a single family detached Home will obtain:

- (a) Public liability insurance; and
- (b) Fire and casualty insurance on his or her Home and its contents.

3. Town Home Unit Owners. Each Town Home Unit Owner will obtain:

- (a) Public liability insurance; and
- (b) Insurance against loss or damage by fire or other hazards for his or her Town Home Unit, the Building in which his or her Town Home Unit is contained, including by way of illustration but not limitation, the foundation, columns, beams, girders, supports, basements, exterior surfaces and roofs, and contents.

Each Owner shall provide the Association with a Certificate of Insurance upon request. The insurance premium shall be an individual expense. The Owner shall obtain and keep in full force and effect at all times the required insurance coverage provided by companies duly authorized to do business in Utah. The provisions of this subsection shall not be construed to limit the power or authority of the Owner to obtain and maintain insurance coverage in addition to any insurance coverage required hereunder, in such amounts and in such forms as he or she may deem appropriate.

4. Association: Other Risks. The Board of Directors may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate with respect to the Property, Amended and Restated Declaration of Covenants, Conditions and Restrictions, Reservation of Easements, and Bylaws for Mountain View Subdivision

including any personal property of the Board of Directors located thereon. The provisions of this section shall not be construed to limit the power or authority of the Board of Directors to obtain and maintain insurance coverage in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Manager, Board of Directors, or Association may deem appropriate.

5. Owners: Additional Insurance. This Section is without prejudice to the right and obligation of each Town Home Unit Owner to insure his or her own Town Home Unit for his or her benefit.

6. Model Unit Furnishings and Furniture. The Board of Directors may obtain insurance on the personal property and furnishings initially placed in the Town Home Units by Declarant upon completion of construction of the Property in such amounts as shall provide for the full replacement thereof in the event of damage or destruction from casualty.

7. Mortgagee Protection. Such policies shall provide a standard, non-contributory mortgages clause in favor of each first Mortgagee which shall have given notice to the Board of Directors of such first mortgage.

8. Cancellation. Each policy shall also provide that it cannot be canceled by either the insured or the insurance company until after ten days prior written notice is first given to each Owner, the Declarant, and to each first Mortgagee.

9. Invalidation or Suspension. All policies of insurance shall, if possible, provide that the insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular Owner guilty of breach of warranty, act, omission, negligence, or noncompliance with any provision of such policy, including payment of the insurance premium applicable to that Owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy. All policies of insurance shall, if possible, provide that the insurance under any such policy as to the interest of all other insured Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

10. Right to Adjust Claims. The Board of Directors may adjust claims.

11. Duplicate Coverage of a Claim. If a claim is covered by a Lot Owner's policy and the Master Policy, it is the intent of the Declarant that the Lot Owner's policy be considered primary and the Master Policy secondary, and the failure of the Owner's insurance carrier to provide coverage under such circumstances shall be considered an act of bad faith.

12. Deductible. The deductible on a claim made under the Master Policy shall be paid for Amended and Restated Declaration of Covenants, Conditions and Restrictions, Reservation of Easements, and Bylaws for Mountain View Subdivision

by the party responsible for the loss covered by the claim. If multiple parties are responsible, then each party shall pay his or her proportionate share. If no one is clearly responsible for a claim, then the Association by default shall be responsible for the deductible.

## ARTICLE XII. CASUALTY DAMAGE OR DESTRUCTION

1. Agent. All of the Owners irrevocably constitute and appoint the Board of Directors their true and lawful agent in their name, place, and stead for the purpose of dealing with the Property upon its damage or destruction. Acceptance of a deed from the Declarant or from any Owner shall constitute appointment of the Board of Directors as attorney-in-fact for the limited purposes as herein provided.

2. Authority. As attorney-in-fact, the Board of Directors shall have full and complete authority, right, and power to make, execute, and deliver any contract, deed, or other instrument with respect to the interest of an Owner which may be necessary or appropriate to exercise the powers herein granted. Repair and reconstruction of the improvements as used in the succeeding subparagraphs means restoring the Property to substantially the same condition in which it existed prior to damage, with each Town Home Unit and the Common Areas having substantially the same vertical and horizontal boundaries as before.

3. Option. In the event any Mortgagee should not agree to rebuild, the Board of Directors shall have the option to purchase such mortgage on behalf of the Association by payment in full of the amount secured thereby. The Board of Directors may obtain the funds for such purpose by Special Assessments.

4. Repairs. As soon as practicable after receiving estimates, the Board of Directors shall diligently pursue completion of the repair or reconstruction of the part of the Property damaged or destroyed, but only if the Property is damaged or destroyed to the extent of 75% or less than the value thereof. In the event the Property is destroyed or damaged to the extent of more than 75% of the value thereof, the Owners shall, at a meeting within one hundred (100) days after such damage or destruction duly called by the Board of Directors for the purpose, determine whether or not said premises should be rebuilt, repaired, or disposed of. Unless Owners representing at least 80% of the undivided interest in the Common Areas agree to the withdrawal of the Property from the provisions of the Act and this Declaration and to its subsequent disposal, the Property shall be repaired, rebuilt, or restored to substantially the same condition it was in immediately prior to destruction or damage. The Board of Directors may take all necessary or appropriate action to effect repair or reconstruction, as attorney-in-fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith. Such repair or reconstruction shall be substantially in accordance with the original plans and specifications of the Property or may be in accordance with any other plans and specifications the Owners may approve, provided that in such latter event the number of cubic feet and the number of square feet of any Town Home Unit may not vary by more than 5% from the

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number of cubic feet and the number of square feet for such Town Home Unit as originally constructed pursuant to the original plans and specifications, and the location of any building shall be substantially the same as prior to damage or destruction. The same easements for encroachments shall apply under the provisions of this Section.

5. Availability of Proceeds. The proceeds of any insurance collected shall be available to the Board of Directors for the purpose of repair or reconstruction. If the proceeds of insurance are insufficient to pay the estimated or actual cost of such repair or reconstruction, the Board of Directors may levy, in advance, a Special Assessment sufficient to provide funds to pay the estimated or actual costs of repair or reconstruction. Such Assessment shall be allocated and collected as provided in this Declaration. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair or reconstruction.

6. Establishment of Fund. The insurance proceeds held by the Board of Directors and the amounts received from Assessments constitute a fund for the payment of cost of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for cost or repair of reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair or reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made pursuant to the Assessments the Board of Directors made hereunder.

7. First Mortgagees. If seventy five (75%) percent of the Owners and all holders of first mortgages on Town Home Units agree not to rebuild, as provided herein, the Property may be removed from the provisions as prescribed therein. Withdrawal shall be in accordance with the Utah Statutes.

### **ARTICLE XIII. BOARD OF DIRECTORS RIGHTS AND OBLIGATIONS**

1. Composition. The business, property, and affairs of the Association shall be managed by a Board of Directors composed of three (3) individuals. Until the first regular meeting of the Association is held pursuant after the termination of the Declarant's Period of Control, the Declarant alone shall be entitled to select the three (3) members of the Board of Directors. In the event a seat on the Board of Directors which was filled by Declarant becomes vacant, Declarant shall have the right to select a replacement member to sit on the Board of Directors for the balance of the term associated with the vacated seat. In all other cases of vacancy, the remaining members of the Board of Directors shall elect a replacement as provided in the Bylaws.

2. Management. The Board of Directors shall be responsible for the exclusive management and control of the Common Area and Facilities, and all improvements thereon (including furnishings and equipment related thereto), and shall keep the same in good, clean, attractive, and sanitary condition, order, and repair. The Board of Directors shall be responsible for

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repair or replacement of Common Area and Facilities and shall have the exclusive right to contract for all goods, services, and insurance payments which are made for such repairs or replacement. The cost of such management, operation, maintenance, and repair by the Board of Directors shall be a Common Expense. The Board of Directors may delegate some of its management responsibilities to a manager or management company.

3. Managing Member. During the Period of Declarant's Control, the Declarant hereby reserves to itself and is hereby granted the unilateral right to appoint an individual to act as the attorney-in-fact for the Board of Directors and in its name, place, and stead, and on its behalf, and for its use and benefit (the "Managing Member"), including by way of illustration but not limitation the right, power and authority to exercise or perform any act, power, duty, right, or obligation whatsoever that the Board of Directors now has, or may hereafter acquire the legal right, power, or capacity to exercise or perform in connection with, arising from, or relating to any person, item, transaction, thing, business property, real or personal, tangible or intangible, or matter whatsoever. This reservation and grant is to be construed and interpreted as a general power of attorney. The enumeration of specific items, rights, acts, or powers herein is not intended to, nor does it, limit or restrict, and is not to be construed or interpreted as limiting or restricting, the general powers herein granted to said Managing Member.

4. Rights and Privileges. The Board of Directors may exercise any right or privilege given to it expressly by this Declaration, by law, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

5. Rights and Obligations. The Board of Directors shall have the rights and obligations set forth in the Bylaws, including by way of illustration but not limitation the right to assess and collect Assessments and each Lots' share of the Common Expenses.

6. Services. The Board of Directors may obtain and pay for the services of any person or entity to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Board of Directors shall determine to be necessary or desirable for the proper operation of the Property, whether such personnel are furnished or employed directly by the Board of Directors or by any person or entity with whom or which it contracts. The Board of Directors may obtain and pay for legal and accounting services as necessary or desirable in connection with the operation of the Property; the enforcement of this Declaration, the Bylaws, or any Rules and Regulations. The Board of Directors may arrange with others to furnish lighting, water, snow removal, grounds maintenance, and other common services. The cost of such services shall be borne equally and uniformly by the Owners.

7. Personal Property. The Board of Directors may acquire and hold, for the use and benefit of all Owners, tangible and intangible personal property, and may dispose of the same by sale

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or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Owners in the same proportion as their respective interests in the Association.

8. Rules and Regulations. The Board of Directors may make Rules and Regulations governing the use of the Lots, Town Home Units, and of the Common Area and Facilities, which Rules and Regulations shall be consistent with the rights and duties established in this Declaration.

9. Suspension of Privileges. The Board of Directors may suspend an Owner's voting rights as well as the right to use recreational amenities or individual utilities paid for with common funds for the period during which such Owner fails to comply with the Project Documents. Written notice and the opportunity to cure will be sent to the Owner. The Board of Directors may also take judicial action against any Owner to enforce compliance with the Project Documents, with other obligations, or to obtain damages for non-compliance, all to the extent permitted by law.

10. Right to Fine. The Board of Directors may fine or otherwise sanction an Owner or Permittee for a violation of the Project Documents.

#### ARTICLE XIV. EASEMENTS

1. The Declarant hereby RESERVES and the Association (and City where indicated) is hereby GRANTED the following easements and rights of way:

(a) Grant of Easement. Declarant hereby reserves to itself and grants to the Association, a non-exclusive, perpetual right-of-way and easement over, across, and through the Tract, together with the right to use, operate, maintain, repair, and replace the Common Areas and Facilities, subject to all of the terms, covenants, conditions, and restrictions set forth herein.

(b) Common Use of Easement. Said easement is to be used in common by the Association, Declarant, and each Owner, subject to all of the terms, covenants, conditions, and restrictions set forth herein.

(c) Private Easement. The easement created is intended to be used as a private non-exclusive easement for the exclusive use and benefit of Declarant, Association, and Owners.

(d) Encroachments. If any part of the Common Areas and Facilities encroaches or shall hereafter encroach upon a Building or Lot, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Building or Lot encroaches or shall hereafter encroach upon the Common Areas and Facilities, or upon an adjoining Building or Lot, an easement for such encroachment and for the maintenance of the same shall and does exist. Such easements shall extend for whatever period the encroachment exists. Such encroachments shall not be considered to be encumbrances either on the Common Areas and Facilities, Buildings, or Lots.

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Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of any improvement constructed or to be constructed within the Project, by error in the Condominium Plat, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

(e) Improvements. Improvements, including Buildings, Lots, Common Areas and Facilities, Exclusive Common Area, Limited Common Area and Restricted Limited Common Area constructed as subsequent phases of the Project may encroach upon portions of the Common Areas and Facilities of earlier phases of the Project. A perpetual easement for such encroachments necessary to repair, maintain, and operate such improvements is hereby granted.

(f) Rights of Access. Each Owner shall have the right to ingress and egress over, upon, and across the Common Areas and Facilities as necessary for access to the Building and Lot he or she is occupying and to any Limited Common Area appurtenant to his or her Lot, and shall have the right to the horizontal, vertical, and lateral support of his or her Home.

(g) Declarant's Easement. The Declarant hereby reserves to itself, and its affiliates and assignees, an exclusive easement to make such use of the Common Areas and Facilities as may be necessary or convenient to perform the duties and functions that each is obligated or permitted to perform pursuant to the Declaration, including, without limitation, the right to construct and maintain the Common Areas and Facilities for use by the Association and Owners.

(h) Construction Easements. The Declarant hereby reserves for itself and its affiliates and assignees a temporary construction easement over the Common Areas and Facilities for the purpose of doing all things that are reasonably necessary as a part of constructing any new improvements for the Project including all physical improvements as well as all Buildings and Lots. The Owners by acceptance of a deed or other document of conveyance to a Lot do hereby acknowledge and agree that there will be construction activities, traffic, noises, odors, and vibrations which may temporarily disrupt their quiet enjoyment of their property until all improvements are complete, and such Owners do hereby waive any right to object to such construction activity; provided, however, Declarant shall endeavor to use reasonable efforts to minimize the adverse impact of such construction activities on the Owners. Declarant's construction activities pursuant to the easement granted hereunder shall not be considered a violation of the Use Restrictions.

(i) Locations Facilities Easements. Declarant hereby reserves to itself a non-exclusive easement for itself and its affiliates and assignees to construct, operate, maintain, repair, and replace all types of telecommunication facilities, including but not limited to roof antennas, within suitable locations for such facilities (the "Locations of Facilities") within the Project. Declarant further reserves a right of access to the Locations of Facilities over, across, and through all other Common Areas and Facilities in order to access the Locations of Facilities to exercise the rights established herein. Declarant reserves the perpetual right to transfer by easement, license agreement,

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or other conveyance the rights reserved hereunder to one or more telecommunication facilities providers. Declarant may exercise all of such rights unilaterally and without the consent of any Owner, Mortgagee, or the Association. The Association, for itself and on behalf of all Owners, agrees to execute such further and additional instruments as may be requested by Declarant documenting the rights hereunder, in form satisfactory to the Declarant, and any assignee of its rights hereunder.

(j) Entry Monument Easement. Easements the Entry Monument and corresponding utility and drainage systems and facilities, and irrigation are reserved hereby and on the recorded Condominium Plat. An Owner may not do any landscaping, grading or work, or install any structure, building, improvement, planting, or other object, natural or artificial, or materials which may damage or interfere with the installation and maintenance of utilities, Entry Monument, or which may change the direction of flow of drainage channels in, on, or about the easements and rights of way, or which may obstruct or retard the flow of water through the drainage channels in the easements and rights of way. If a drainage channel is altered by an Owner, the Declarant and/or the Association expressly reserve the right to enter onto the property to restore the area at the cost of the Owner, and without being guilty of a trespass.

(k) Description of Easement and Right of Way. A non-exclusive easement over, across, through, above, and under the Lots and any common area for purposes of access, installation, construction, operation, regulation, inspection, maintenance, repair, replacement, and related services of the land drain system and facilities.

(l) Definition of Established Drainage Pattern. For purposes of this subsection, the term "established drainage pattern" shall mean the drainage pattern, facilities, and improvements in existence at the time a Lot is conveyed to a home purchaser by the Declarant, its successor or assign.

(m) Duty to Maintain Integrity of Established Drainage Pattern. Within these easements and rights of way, no structure, planting, or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in, on, or about the easements and rights of way, or which may obstruct or retard the flow of water through the drainage channels in the easements and rights of way. The easement and right of way area of each Lot and all improvements within said area shall be maintained continuously by the Owner, excepting those improvements for which a public authority or utility company is expressly responsible.

(n) Covenant Not To Interfere. No Owner shall interfere or attempt to interfere with the land drain system or the established drainage pattern established by the Declarant and City or their successors or assigns.

(o) Improvement of Lots Relative To Established Drainage Pattern. Each Owner shall be responsible to develop, improve, and landscape his or her Lot in a manner consistent with the

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land drain system and the established drainage pattern, and so as not to detract from, interfere with, or impair the land drain system or the established drainage pattern on any other Lot within the Project. No changes to the land drain system or the established drainage pattern on any Lot shall be permitted without the prior written consent of the City.

(p) Damage or Waste. Each Owner shall be strictly liable for any loss, damage, or claim caused to person or property in the Project caused by his negligence or carelessness.

(q) Encroachment. If any part of a Lot encroaches or shall hereafter encroach upon another Lot or Lots, an easement for such encroachment and for the maintenance of the same shall and does exist. Such encroachments shall not be considered to be encumbrances. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the building on the Property, by error in the Final Plat, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of the Property or any part thereof.

#### **XV. OPERATION, MAINTENANCE, AND ALTERATIONS**

The Subdivision, including all Lots and the Common Area, shall be maintained, repaired, and replaced in accordance with the following covenants, conditions, and restrictions:

1. General. The property shall be maintained in a usable, clean, functional, safe, sanitary, attractive, and good condition.

2. Association: The Area of Common Responsibility. The Association is responsible for the maintenance, repair, and replacement all of the Common Area and Facilities within or serving the Subdivision.

3. Lots and Single Family Detached Homes. Each Owner shall maintain in good condition his or her Lot and repair and replace all of the improvements thereon at his or her sole expense.

4. Town Home Units. Each Owner shall maintain, repair, and replace his or her Town Home Unit, the driveway and walkways servicing only his or her Unit, and the following improvements (whether or not such improvements are located within his or her Town Home Unit), including without limitation, all individual services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, fixtures, windows and window systems, glass, doors and door systems, garage doors and garage door systems, patios, balconies and decks, plumbing fixtures, systems and lateral pipes or valves, and all concrete, including the driveway, sidewalks, walkways, steps, porch and landing serving or servicing only his or her Town Home Unit, including any damage caused thereby and not covered by insurance. Each Owner shall also maintain any Common Area or Facility appurtenant to his or her Town Home Unit broom clean and free of debris, including his or her

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driveway, walkways, porch, landing, patio, deck or balcony, broom clean and free of grease spills, leaks, personal property, trash, litter, and debris. All maintenance, repairs, and replacements are subject to the approval of the Board of Directors as to construction materials, quality of construction and installation, and uniformity of appearance. No Owner shall allow his or her Town Home Unit or the Common Area and Facilities adjacent thereto to detract from the health, safety, uniform appearance, or design of the Project. Any repairs or replacements to physical improvements Visible to a Neighboring Property, including by way of illustration but not limitation, all driveways and walkways appurtenant to a Town Home Unit, are conditional upon and subject to the prior written approval of the Board of Directors in order to maintain quality of construction and uniformity of appearance. Any such repairs not approved by the Board of Directors shall be considered unacceptable and non-conforming.

5. Buildings Containing Town Home Units. Anything to the contrary notwithstanding, the Association, as part of its Area of Common Responsibility, is responsible for providing, contracting and/or subcontracting for the care, maintenance, repair, and replacement of the exterior surfaces of any Building containing Town Home Units in order to maintain quality of construction and uniformity of appearance (the "Building Exterior Assessment"); provided, however, each Owner, as part of his or her Area of Personal Responsibility, is personally and individually responsible to pay for his or her Building Exterior Assessment, which shall not be considered a Common Expense.

6. Landscaping Generally. To protect, honor, and preserve the integrity and aesthetics of the Project, all landscaping within the Project shall be maintained and cared for in a manner consistent with the (i) design scheme, standards of design, appearance, and quality of construction originally established by Declarant and (ii) in accordance with any City landscaping maintenance plans or ordinances. All landscaping shall be maintained in a safe, sanitary, and aesthetic condition. Any weeds or diseased or dead lawn, trees, ground cover, or shrubbery shall be removed and replaced. All lawn areas shall be mowed and edged; all trees, shrubs, and bushes shall be pruned, trimmed, and topped. No landscaping may adversely affect the value or use of any Lot or Town Home Unit, or to detract from the uniform design and appearance of the Project established by the Declarant.

7. Landscaping Rules and Regulations. The Board of Directors may adopt, amend, or repeal written landscaping rules, regulations, guidelines, standards, controls, and restrictions from time to time.

8. Lot Landscaping. The cost of maintaining the landscaping of a Lot upon which a single family detached Home is or is to be located is the sole responsibility of the Lot Owner.

9. Landscaping in Town Home Neighborhood. The cost of maintaining the landscaping of the Town Home Neighborhood is a Town Home Neighborhood Expense and shall be divided equally and uniformly among all of the Town Home Units, and shall not be considered a Common Expense.

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10. Default. If (except in the case of an emergency) after written notice and a hearing, it is determined that any responsible party has failed or refused to discharge properly his or her obligation with regard to the maintenance, repair, or replacement of the real property and improvements described herein, or that the need for maintenance, repair, or replacement thereof is caused through the willful or negligent act of any person, then the Association or Board of Directors may, but is not obligated to, provide such maintenance, repair, or replacement at the defaulting or responsible party's sole cost and expense (the "Default Maintenance Cost"). The Default Maintenance Cost is the debt of such defaulting or responsible party at the time the expense is paid and shall be collectible as such. In addition, it may be considered a "Fine" against an Owner. A Fine assessed hereunder which remains unpaid after the time for appeal has expired becomes a lien against the Owner's interest in the property in accordance with the same standards as a lien for the nonpayment of Common Expenses hereunder.

11. Changes to Design Scheme. The Declarant may make changes to the design and construction of the improvements located in or on the Common Areas without additional approval required, including without limitation, the consent of the Board of Directors or Members of the Association; provided, however, no Owner or Permittee may make any structural alterations to the Common Area and Facilities, without the express prior written consent of the Board of Directors.

12. Prohibited Acts. No Owner shall do any work or make any alterations or changes which would jeopardize the soundness or safety of the Property, reduce its value, or impair any easement or hereditament without, in every such case, the unanimous written consent of all the other Owners being first had and obtained.

13. Snow and Ice Accumulations: Owner's Responsibility. Each Owner is responsible for the removal of ice and snow accumulations from his or her driveway, walkways, steps, and porch.

14. Snow and Ice Accumulations: Association's Responsibility The Association is responsible for the removal of snow and ice accumulations from the common walks and private roads. The Association is not responsible to remove snow and ice accumulations from the driveways or walkways up to a house.

15. Ice Dams and Heat Tape. Each Owner is responsible for any and all damage caused by ice dams. If heat tape is required on or for a roof, each Owner shall be responsible to purchase, install, maintain, repair, and replace the heat tape, subject to the approval of the Board of Directors in order to maintain quality of construction and uniformity of appearance.

**XVI. PARTY WALLS  
(Town Home Units)**

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1. Definition. Each wall which is built as a part of the original construction of the Town Home Units upon the properties and placed on the dividing line between the Town Home Units shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply.

2. Cost Allocation. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

3. Damage or Destruction. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

4. Negligence. Notwithstanding any other provision of this section, an Owner who by negligent or willful acts causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

5. Contribution. The right of any Owner to contribution from any other Owner under this section shall be appurtenant to the land and shall pass to such Owner's successors in title.

#### **XVII. ENTRY AND CENTRAL DIRECTORY**

1. Entry. The Entry Monument and sign placed within the Common Area shall be maintained by the Owners in all respects. In the event of a partial or total destruction of the sign from any cause, the Owners shall rebuild the sign to restore it to its original dimensions and conditions consistent with applicable law. The Association shall have the sole and exclusive right to allocate the space on said sign for any and all purposes.

2. Central Directory. Any signs comprising a part of a central directory to the Subdivision, Neighborhood, or individual signs attached to individual Homes shall conform in all respects to the Governing Documents as administered by the Board of Directors.

#### **ARTICLE XVIII. DUTY OF OWNER TO PAY TAXES ON LOT**

Each Lot and its appurtenant membership interest in the Association is subject to separate assessment and taxation of each taxing authority and the special district(s) for all types of taxes and Assessments authorized by law, and that as result thereof, no taxes will be assessed or levied against the Property as such. Accordingly, each Owner will pay and discharge any and all taxes and assessments which may be assessed on his or her Lot.

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**ARTICLE XXIX. ALLOCATION OF PROFITS, LOSSES, AND VOTING RIGHTS**

1. Allocation of Voting Rights. Subject to the conditions set forth in Section 2 below, voting rights shall be distributed among the Lots equally. The ownership interest in the Association appurtenant to each Lot is equal. The ownership interest of each Lot and membership in the Association shall have a permanent character and shall not be altered without the express affirmative consent of at least two-thirds (2/3) of the Lots memorialized in an amendment to this Declaration duly recorded.

2. Voting Classes. Anything to the contrary notwithstanding, the Association shall have two (2) classes of membership -- Class A and Class B -- described more particularly as follows:

(a) Class A Members shall be all Owners with the exception of the Class B Members, if any.

(b) Class A Members shall be entitled to vote on all issues before the Association to, subject to the following:

(1) Each Lot shall have one (1) vote;

(2) No vote shall be cast or counted for any Lot not subject to assessment;

(3) When more than one person or entity holds such interest in a Lot, the vote for such Lot shall be exercised as those persons or entities that they determine and advise the Secretary of the Association prior to any meeting. In the absence of such advice, the vote of the Lot shall be suspended in the event more than one person or entity seeks to exercise it.

(4) Any Owner who has leased his or her Lot may, in the lease or other written instrument, assign the voting right appurtenant to that Lot to the lessee, provided that a copy of such instrument is furnished to the Secretary at least three (3) days prior to any meeting.

(c) Class B Member shall be the Declarant and any successor of Declarant who takes title for the purpose of development and sale of Lots, and who is designated as such in a recorded instrument executed by Declarant.

(1) The Class B Member shall originally be entitled to three (3) votes per Lot owned; provided, however, anything to the contrary notwithstanding, the Class B Member shall never have less than one more vote than all Class A votes combined.

(2) The Class B membership and the Class B Control Period shall

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terminate, and Class B membership shall convert to Class A membership upon the happening of the earlier of the following (which is hereinafter referred to as the "Event" or "Events"): (1) After all of the Lots have been sold or (2) when, in its sole discretion, Declarant so determines and records a written "Notice of Termination of Class B Control Period."

From and after the happening of these Events, whichever occurs earlier, the Class B Member shall be deemed to be a Class A Member entitled to one (1) vote for each Lot owned. At such time, the Declarant shall transfer control of the Association.

#### ARTICLE XX. AMENDMENT OF THIS DECLARATION

1. General. Except as provided elsewhere in this Declaration, including by way of illustration but not limitation, to sections pertaining to the annexation or withdrawal of land, any amendment to this Declaration shall require the affirmative written vote or consent of at least sixty-seven percent (67%) of the Total Votes of the Association cast either in person or by proxy at a meeting duly called for such purpose or otherwise approved in writing by such Owners without a meeting. Any amendment authorized pursuant to this Section shall be accomplished through the recordation in the Office of the County Recorder of an instrument executed by the Association. In such instrument an officer or Director of the Association shall certify that the vote required by this Section for amendment has occurred.

2. Initial Declarant Right to Amend. The Declarant alone may amend or terminate this Declaration prior to the closing of a sale of the first Lot in the Subdivision.

3. Unilateral Right to Amend Under Certain Conditions. Notwithstanding anything contained to the contrary in this Declaration, this Declaration may be amended unilaterally at any time and from time to time by Declarant if such Amendment is (1) necessary to correct typographical errors or inadvertent omissions; (2) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, regulation, or judicial determination which shall be in conflict therewith; or (3) reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Town Home Units subject to this Declaration; provided, however, any such Amendment shall not materially adversely affect the title to any Lot unless any such Owner shall consent thereto in writing.

4. Declarant's Right to Amend Unilaterally Prior to Termination of Declarant's Right to Control. Prior to the expiration of the Period of Declarant's Control, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such Amendment shall not materially adversely affect the substantive rights of any Owner hereunder, nor shall it adversely affect title to any property without the consent of the affected Owner.

5. To Satisfy Requirements of Lenders. Anything to the contrary notwithstanding,

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Declarant reserves the unilateral right to amend all or any part of this Declaration to such extent and with such language as may be requested by a State Department of Real Estate (or similar agency), FHA, VA, the FHLMC, or FNMA and to further amend to the extent requested by any other federal, state, or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration or approval of the sale of Town Home Units or Lots, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Town Home Unit or Lot, or any portions thereof. Any such amendment shall be effected by the recordation by Declarant of a written Amendment duly signed by the Declarant, specifying the federal, state, or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the change, modification, or amendment requested by such agency or institution. Recordation of such an Amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Amendment, when recorded, shall be binding upon all Town Home Units and Lots and all persons having an interest therein. It is the desire of Declarant to retain control of the Association and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of hereof deletes, diminishes, or alters such control in any manner whatsoever in the opinion of Declarant, Declarant shall have the unilateral right to amend this Declaration to restore such control.

6. Declarant's Rights. No provision of this Declaration reserving or granting to Declarant the Developmental Rights shall be amended without the prior express written consent of Declarant, which consent may be withheld, conditioned, or delayed for any reason or for no reason at Declarant's sole and exclusive discretion.

7. Consent of Eligible Mortgagee. The consent of Eligible Mortgagees of at least sixty seven percent (67%) of the Lots shall be required to any amendment which would terminate the legal status of the Mountain View Towns Phase 1 Property; and the consent of Eligible Mortgagees of at least fifty-one (51%) percent of the Lots shall be required to add to or amend any material provision of this Declaration or the Final Plat which establishes, provides for, governs, or regulates any of the following, which are considered as "material":

- (a) Voting rights;
- (b) Increases in Assessments that raise the previously assessed amount by more than twenty-five (25%) percent, Assessment liens, or the priority of Assessments liens;
- (c) Reduction in reserves for maintenance, repair, and replacement of the Common Area and Facilities;
- (d) Responsibility for maintenance and repairs;

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- (e) Reallocation of interests in the Common Area and Facilities, or rights to their use;
- (f) Redefinition of any Town Home Unit boundaries;
- (g) Convertibility of Town Home Units into Common Area and Facilities or vice versa;
- (h) Expansion or contraction of the Mountain View Towns Phase 1 Property, or the addition, annexation, or withdrawal of property to or from the Mountain View Towns Phase 1 Property;
- (i) Hazard or fidelity insurance requirements;
- (j) Imposition of any restrictions on the leasing of Town Home Units;
- (k) Imposition of any restrictions on an Owner's right to sell or transfer his or her Unit;
- (l) A decision by the Association to establish self-management if professional management had been required previously by the Project Documents or by an Eligible Mortgage holder;
- (m) Restoration or repair of the Mountain View Towns Phase 1 Property (after damage or partial condemnation) in a manner other than that specified in the documents;
- (n) Any provisions that expressly benefit mortgage holders, insurers, or guarantors; and
- (o) Any provisions required by Utah State Department of Real Estate (or similar agency), FHA, VA, the FHLMC, or FNMA, any other federal, state, or local governmental agency or a federally chartered lending institution, which in all respects shall govern and control.

8. Material Amendment. Any addition or amendment shall not be considered material for purposes of this Article if it is for the clarification only or to correct a clerical error.

9. Notice to Eligible Mortgagee. Notice of any proposed amendment to any Eligible Mortgagee to whom a written request to approve an addition or amendment to this Declaration or the Plat Final Plat is required shall be mailed postage prepaid to the address for such Mortgagee shown on the list maintained by the Association. Any Eligible Mortgagee who does not deliver to the Board

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of Directors or the Association a negative response to the notice of the proposed amendment within thirty (30) days from the date of such mailing shall be deemed to have approved the proposal. The foregoing consent requirements shall not be applicable to amendments to this Declaration and the Plat Final Plat or the termination of the legal status of the Subdivision if such amendments or such termination are made or accomplished in accordance with the provisions of this Declaration regarding Condemnation or Substantial Obsolescence.

10. Generally. Nothing herein contained, and no violation of these covenants, conditions, and restrictions, shall invalidate or impair the lien of any mortgage or deed of trust, given in good faith and for value.

## **ARTICLE XXI. EXPANSION OF THE TOWNS PHASE 1 PROPERTY**

1. Reservation of Option to Expand. Declarant hereby reserves the option to expand the Mountain View Towns Phase 1 Property to annex additional real estate and include additional Lots in the Mountain View Towns Phase 1 Property. This option to expand may be exercised from time to time, at different times and in any order, without limitation, provided however, the option shall expire five (5) years from the date following the first conveyance of a Lot in Phase I to a Lot purchaser unless sooner terminated by Declarant's recorded Waiver of such option, there being no other circumstances which will cause the option to expire prior to said five (5) years. Such right may be exercised without first obtaining the consent or vote of Lot Owners and shall be limited only as herein specifically provided. Such Lots shall be constructed on any or all portions of the Additional Land.

2. Supplemental Declarations and Supplemental Final Plats. Such expansion may be accomplished by the filing for record by Declarant in the office of the County Recorder of Davis County, Utah, no later than five (5) years from the date this Declaration is recorded, a Supplement or Supplements to this Declaration containing a legal description of the site or sites for new Lots, together with supplemental Final Plat or Final Plats containing the same information with respect to the new Lots as was required on the Final Plat with respect to the Phase I Lots. The expansion may be accomplished in phases by successive supplements or in one supplemental expansion.

3. Expansion of Definitions. In the event of such expansion, the definitions used in this Declaration automatically shall be expanded to encompass and refer to the Subdivision as so expanded. For example, the term "Property" shall mean the real property initially submitted under this Declaration, plus any Additional Land added to the Subdivision by a Supplemental Declaration or by Supplemental Declarations, and reference to this Declaration shall mean this Declaration as so supplemented. All conveyances of Lots after such expansion shall be effective to transfer rights in the Subdivision, with additional references to the Supplemental Declaration and the Supplemental Final Plat. The recordation in the office of the Davis County Recorder of a Supplemental Final Plat incident to any expansion shall operate automatically to grant, transfer, and convey to then Owners

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of Lots in the Subdivision as it existed before such expansion the respective undivided interests in the new Common Areas added to the Subdivision as a result of such expansion. Such recordation shall also operate to vest in any then mortgagee of any Lot in the Subdivision as it existed, interest so acquired by the Owner of the Lot encumbering the new Common Areas added to the Subdivision as a result of such expansion.

4. Declaration Operative on New Lots. The new Lots shall be subject to all the terms and conditions of this Declaration and of a Supplemental Declaration, and the Lots therein shall be subject to ownership within a planned development with all the incidents pertaining thereto as specified herein, upon recording the Supplemental Final Plat and Supplemental Declaration in the said office of the Davis County Recorder.

5. Right of Declarant to Adjust Ownership Interest in Common Areas. Each deed of a Lot shall be deemed to irrevocably reserve to the Declarant the power to appoint to Lot Owners, from time to time, the percentages in the Common Areas set forth in Supplemental or Declaration. The proportionate interest of each Lot Owner in the Common Areas after any expansion of the Subdivision shall be an undivided interest of the Subdivision as expanded. A power coupled with an interest is hereby granted to the Declarant, its successors, and assigns, as attorney-in-fact to shift percentages of the Common Areas in accordance with Supplemental or Declarations recorded pursuant hereto and each deed of a Lot in the Subdivision shall be deemed a grant of such power to the Declarant. Various provisions of this Declaration and deeds and mortgages of the Lots may contain clauses designed to accomplish a shifting of the Common Areas. None of said provisions shall invalidate the other, but each shall be deemed supplementary to the other toward the end that a valid shifting of the Common Areas can be accomplished. Notwithstanding anything to the contrary herein, no change in the percentage of undivided interest in the Common Areas may be effected more than five (5) years after the effective date of this Declaration.

6. Revised Schedule. Accordingly, upon the recordation of a Supplemental Declaration and Supplemental Final Plat incident to any expansion, the revised schedule of undivided interests in the Common Areas contained therein shall automatically become effective for all purposes and shall fully supersede any similar schedule which was contained in any Declaration associated with any prior phase. In the event the provisions of the separate instruments relating to the Mountain View Towns Phase 1 Property conflict irreconcilably, the terms of that instrument which was recorded most recently shall control.

7. Other Provisions Concerning Expansion. If the Subdivision is expanded as hereinbefore contained, then it is further provided that:

(a) All or any part of the Additional Land may be added to the Mountain View Towns Phase 1 Property without any limitations whatsoever save and except that all additional Lots created must be restricted to multi-family residential housing limited to one Family per Lot.

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(b) Portions of the Additional Land may be added to the Subdivision at different times without any limitations.

(c) Declarant shall have the right without further conveyance or documentation to build roads and access ways to the Additional Property through the easement areas as shown on the Final Plat. The Association shall not allow anything to be built upon or interfere with said easement areas.

(d) No assurances are made concerning:

(1) The locations of any improvement that may be made on any portion of the Additional Land that may be added to the Subdivision.

(2) Type, kind, or nature of improvement which may be created on any portion of the Additional Land, except that the Common Facilities, Buildings, and Lots will be comparable to the Phase I facilities on a per Lot basis and will be of a similar quality of materials and construction to Phase I and will be substantially completed prior to annexation.

(3) Whether any Lots created on any portion of the Additional Land will be substantially identical to those within the initial Subdivision except that Lots will be constructed of an equal or better quality of materials and construction than the Lots in Phase 1.

(4) Type, size, or maximum number of Common Area and Facilities which may be created within any portion of the Additional Land added to the Subdivision.

(e) Notwithstanding anything to the contrary which may be contained herein, this Declaration is not intended and shall not be construed so as to impose upon Declarant any obligation respecting, or to restrict Declarant in any way with regard to:

(1) The submission of any portion of the Additional Land to the provisions of the Act as Land under this Declaration;

(2) The creation, construction, or addition to the Subdivision of any Additional Land or improvements;

(3) The carrying out in any particular way or within any particular time of any development which may be undertaken except as herein mentioned; or

(4) The taking of any particular action with respect to the Additional Land, the Subdivision, or any other property.

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**ARTICLE XXII. TRANSFER OF MANAGEMENT**

Anything to the contrary notwithstanding, Declarant may at any time relinquish its reserved right to select the Members of the Board of Directors and may elect to transfer the management of the Association to a Board elected by the Owners. Upon the termination of the Period of Declarant's Control, or sooner if the Declarant so elects, Declarant shall notify Owners in writing of the effective date of such transfer (the "Transfer Date"). The transfer shall be considered effective on the date of the Notice of Transfer Date letter. Thereupon, the Owners shall be obligated to call a meeting to elect the members of the Owner controlled Board of Directors to take office as of the Transfer Date. Declarant covenants to cooperate with the Owners in effecting an orderly transition of management. The Owners covenant with the Declarant to cooperate with Declarant in effecting an orderly transition of management. Declarant shall cause all obligations for Common Expenses of the Association prior to the Transfer Date to be paid in full on or before such date, and shall transfer any Association funds to the newly elected Board of Directors.

**ARTICLE XXIII. WORKING CAPITAL FUND AND TRANSFER FEE  
(Town Home Units)**

1. Working Capital Fund. For the Town Home Units and to establish a separate reserve for the Town Home Neighborhood, a working capital fund shall be established by the Declarant for each Town Home Unit. Each Town Home Unit's share of the working capital fund shall be paid by the buyer of a Town Home Unit, collected by the title company, and transferred to the Association at the time of closing of the sale of each Town Home Unit. If the working capital contribution is paid for by the Declarant, in cash or kind, then the Declarant shall be reimbursed for such contribution by the buyer of such Town Home Unit at the time of closing. The purpose of the working capital fund is to ensure that the Board of Directors will have cash available to satisfy unforeseen expenses or to acquire additional equipment or services necessary for the operation, control, and regulation of the Mountain View Towns Phase 1 Property. Sums paid into the working capital fund are not to be considered advance payments of regular Assessments or any portion of the Common Expenses. After the termination of the Period of Declarant's Control the Board of Directors may continue the working capital fund for this purpose by charging a reasonable transfer or impact fee when Town Home Units are sold or rented.

2. Transfer Fee. Each Owner of a Town Home Unit agrees, by the acceptance of a deed or other document of conveyance to a Lot, that in order to maintain the value of the purchased property and the subdivision, to pay to the Association a sum equal to five percent (5%) of the gross sales price on the Lot as a transfer fee if his or her Lot is sold or if he or she enters into a lease/option or other similar agreement on the Lot during the initial one (1) year period after the date of closing.

**ARTICLE XXIV. ENFORCEMENT AND RIGHT TO RECOVER ATTORNEYS' FEES**

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1. General Remedies. Should the Association, Manager, Board of Directors, or an aggrieved Owner be required to take action to enforce the Project Documents, or to pursue any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise, they may recover all Additional Charges, including a reasonable attorney's fee, which may arise or accrue.

2. Additional Remedies. In addition, the Board of Directors may impose the following sanctions after proper notice and the opportunity to be heard:

(a) Imposing Individual Charges, Default Assessments, and Fines, which may be secured by a lien against the Owner's interest in the Property;

(b) Suspending an Owner's right to vote;

(c) Suspending any Person's right to use any of the recreational amenities located in the Common Area; provided, however, nothing herein contained shall authorize the Board of Directors to limit ingress or egress to or from a Lot;

(d) Requiring an Owner at his or her sole expense to remove any structure or improvement in the Common Area and Facilities, and upon the failure of the Owner to do so, the Board of Directors or its designee shall have the right to enter the property, remove the violation, and restore the property to its original condition, and such action shall not be deemed a trespass;

(e) Without liability to any Person, precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the Project Documents; and

(f) Levying Individual Charges and Default Assessments to cover costs and expenses incurred by the Association to bring an Owner into compliance.

#### ARTICLE XXV. MISCELLANEOUS

1. Service of Process. Until changed by amendment to this Declaration, the name of the person to receive service of process for and in behalf of the Association and the place of his office is:

Christopher P. Gamvroulas  
978 East Woodoak Lane  
Salt Lake City, Utah 84117

2. Severability. If any provision, paragraph, sentence, clause, phrase, or word of this Declaration should under any circumstance be invalidated, such invalidity shall not affect the validity

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of the remainder of this Declaration, and the application of any such provision, paragraph, sentence, clause, phrase, or word in any other circumstances shall not be affected thereby.

3. Captions and Headings. The headings appearing at the beginning of the paragraphs of this Declaration are only for convenience of reference and are not intended to describe, interpret, define, or otherwise affect the content, meaning, or intent of this Declaration of any paragraph or provision hereof.

4. Declarant's Sales Program. Anything to the contrary notwithstanding, for so long as Declarant continues to own a Lot in the Subdivision the following provisions shall be deemed to be in full force and effect. No Owner or occupant shall interfere or attempt to interfere with the completion of improvements, promotion, and/or sale of Lots owned by Declarant or Homes constructed thereon. Declarant shall have the right to maintain one (1) or more sales offices and one (1) or more model Homes at any one time. Such office and/or models may be one or more of the Homes owned by the Declarant, one or more separate structures or facilities placed on the Property for the purpose of aiding Declarant's sales effort, or any combination of the foregoing. Declarant shall have the right to maintain a reasonable number of promotional, advertising, and/or directional signs, banners or similar devices at any place or places on the Property. Declarant shall have the right from time to time to locate or relocate any of its sales offices, models, or signs, banners or similar devices. Declarant shall have the right to remove from the Project any signs, banners or similar devices and any separate structure or facility which was placed on the Property for the purpose of aiding Declarant's sales effort. All of the rights of Declarant under this Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer or assignment. Any Mortgage covering all Lots or Buildings in the Project title to which is vested in Declarant shall, at any given point in time and whether or not such Mortgage does so by its terms, automatically cover, encumber, and include all of the then unexercised or then unused rights, powers, authority, privileges, protections, and controls which are accorded to Declarant (in its capacity as Declarant) herein. Anything to the contrary notwithstanding, if the Declarant sells a model home or homes and is leasing the home back, neither the Owner(s) nor the Town Home Unit(s) shall be required to pay any Assessments, which are hereby expressly waived, for so as long as the Declarant is using the Town Home Unit as a model.

5. Interpretation. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders.

6. Covenants to Run with Land. This Declaration and all the 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 Declarant, all other signatories hereto, all parties who hereafter acquire any interest in a Lot, the Subdivision or the Property, and their respective grantees, transferees, heirs, devisees, personal representative, successors, and assigns. Each Owner

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or occupant of a Lot shall comply with, and all interests in all Lots shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, supplements, amendments, and determinations contemplated by this Declaration. By acquiring any interest in a Lot in the Project, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

7. Limitation of Liability. This Declaration of covenants, conditions, and restrictions is established for the benefit of the Property and the Owners. Any damage, loss, claim, or liability which might arise due to any decision, act, or failure to act of Declarant or its agents, representatives, and employees shall be exempt from any civil claim or action, including an action for negligence, brought by any person owning or having an interest in any Lot.

8. Indemnity. Each member of the Board of Directors shall be entitled to be indemnified and held harmless by the Owners against all cost, expenses, and liabilities whatsoever, including attorneys' fees reasonably incurred by him or her in connection with any proceeding to which he or she may become involved by reason of being or having been a member of the Board of Directors.

9. Duration. The covenants, conditions, and restrictions of this Declaration shall be binding upon all Owners and Lots, and all Persons claiming any right, title, or interest in or to the Property by, through or under them for a period of forty (40) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by at least of a majority of the then Owners has been recorded agreeing to terminate or change the covenants, in whole or in part.

10. Rule Against Perpetuities. If any of the covenants, conditions, or restrictions, or any of the other provisions hereof, shall be unlawful, void, or voidable for violation of the Rule Against Perpetuities, then such provisions shall only continue until twenty-one (21) years after the death of all lives in being on the date this instrument is recorded, at which time they shall automatically terminate or be terminated.

11. Effective Date. This Declaration shall take effect upon recording in the office of the County Recorder of Davis County, Utah.



**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

The Property referred to in the foregoing document is located in Davis County, Utah and is described more particularly as follows:

Mountain View Subdivision Phases 1, 2 and 3 as shown on the official plat thereof on file and of record in the office of the Davis County Recorder;

Mountain View Towns Subdivision, Phase 1, Lots 101-112, inclusive, as shown on the official plat thereof on file and of record in the office of the Davis County Recorder; and

All appurtenant Common Area and Facilities as shown on the official plats on file and of record in the office of the Davis County Recorder.

06-264-0001 thru 0067, 0068, 0069, 0070, 0071

06-275-0201 thru 0234, 0235, 0236

06-294-0301 thru 0334, 0335

06-

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**EXHIBIT "B"**

**BYLAWS OF THE  
MOUNTAIN VIEW ASSOCIATION**

**ARTICLE I  
NAME AND LOCATION**

**Section 1.01 Name and Location.** The name of the Association is the Mountain View Homeowners Association (the "Association"). The principal office of the Association shall be located at 978 East Woodoak Lane, Salt Lake City, UT 84117, but meetings of Members and Association may be held at such places within the State of Utah, as may be designated by Association.

**ARTICLE II  
DEFINITIONS**

**Section 2.01 Definitions.** Except as otherwise provided herein or as may be required by context, all terms defined in Paragraph 1 of the Declaration shall have such defined meanings when used in these Bylaws.

**ARTICLE III  
MEETINGS OF OWNERS**

**Section 3.01 Meeting of Owners.** The owners shall meet at least annually.

**Section 3.02 Notice of Meetings.** Written notice of each meeting of the Owners shall be given to each Owner by or at the direction of the Association by mailing a copy of such notice, postage prepaid, at least fifteen (15) days before such meeting to each Owner at his or her address last appearing on the books of the Association, or supplied by such Owner to the Association for the purpose of notice. Such notice shall specify the place, day, and hour of the meeting and, in the case of a special meeting, the purpose of the meeting.

**Section 3.03 Quorum.** The Owners present in person or by proxy shall constitute a quorum for any action except as otherwise expressly provided in the Project Documents.

**Section 3.04 Proxies.** At all Owners' meetings, each Owner may vote in person, by proxy or by absentee ballot. All proxies shall be in writing and filed with the Association. Every proxy shall be revocable and shall expire, if not previously revoked, eleven (11) months after the date it is given by

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the Owner.

**Section 3.05 Action Taken Without a Meeting.** The Association shall have the right to take any action in the absence of a meeting which it could take at a meeting by obtaining the written approval of all the Members. Any action so approved shall have the same effect as though taken at a meeting of the Association.

#### ARTICLE IV

#### BOARD OF DIRECTORS AND TERM OF OFFICE

**Section 4.01 Number.** The affairs of the Association shall be managed by a Board of Directors comprised of three (3) natural persons. Each Member must be duly qualified and appointed or elected.

**Section 4.02 Replacement.** If a Member resigns or is otherwise unable or unwilling to serve, then the remaining Members shall appoint a replacement to complete the term of office.

**Section 4.03 Term of Office.** Each Member on the Board of Directors shall serve a term of at least one (1) year.

**Section 4.04 Compensation.** No Member shall receive compensation for any service rendered to the Association as a member of the Board of Directors; although he or she may be reimbursed for actual expenses incurred in the performance of his or her duties and may enter into an independent contract to provide other services. A Member may enter into a separate and independent contract with the Association to provide additional services for a fee.

**Section 4.05 Meetings.** The Board of Directors shall meet as often as is reasonably necessary.

**Section 4.06 Action Taken Without a Meeting.** The Board of Directors shall have the right to take any action in the absence of a meeting which it could take at a meeting by obtaining the written approval of all the Members. Any action so approved shall have the same effect as though taken at a meeting of the Board of Directors.

**Section 4.07 Voting.** Each Member shall have one vote.

**Section 4.08 Appointments.** Until the termination of the Period of Declarant's Control, the Declarant shall have the exclusive and unilateral right to appoint all of the members of the Board of Directors.

**Section 4.09 Managing Member.** The Managing Member shall be the exclusive agent and

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representative of the Board of Directors during the Period of Declarant's Control pursuant to Article VIII, Section 3 of the Declaration. The initial Managing Member shall be Christopher P. Gamvroulas.

**ARTICLE V  
POWERS AND DUTIES OF THE ASSOCIATION**

**Section 5.01 Powers.** The Association shall have all of the powers of a Utah non-profit corporation, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Project Documents. The Association shall have the power to perform any and all lawful acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association. Without in any way limiting the generality of the foregoing, the Association may act through its Board of Directors and shall specifically have the powers and duties set out in this Article V, including the power and duty to interpret and enforce the Project Documents.

**ARTICLE VI  
COMMITTEES**

**Section 6.01 Subcommittees.** The Board of Directors may appoint such subcommittees as deemed appropriate in carrying out its purpose.

**ARTICLE VII  
BOOKS AND RECORDS**

**Section 7.01 Books and Records.** The books and records shall be kept with detailed accounts of the receipts and expenditures affecting the Association, and the administration of the Association specifying the maintenance, repair, and any other expenses incurred. The books and records, including any invoices, receipts, bills, proposals, documents, financial statements, and vouchers accrediting the entries thereupon shall be available for examination by the Owners or their duly authorized agents or attorneys, during general business hours on working days at the times and in the manner that shall be set and announced by the Association for the general knowledge of the Owners. All books and records shall be kept in accordance with generally accepted accounting practices.

**Section 7.02 Bookkeeping.** The accounting and financial statements for Association must be prepared and kept. The accountant or bookkeeper shall prepare and file all tax returns for the Association.

**Section 7.03 Audit.** Either a (a) majority vote of the Board of Directors or (b) majority vote of all of the Owners is necessary and sufficient to require a Compilation Report, Reviewed Statement, or Audited Statement of the HOA, the cost of which shall be allocated among all of the Owners equally and uniformly.

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**ARTICLE VIII  
AMENDMENTS**

**Section 8.01 Amendment to Bylaws.** These Bylaws may only be amended in one of the following ways: (a) unilaterally by the Declarant until the expiration of the Period of Declarant's Control, (b) the affirmative vote of a majority of the members of the Board of Directors, or (c) the affirmative vote of a majority of the Owners. In the event of a conflict between a vote of the Board and a vote of the Owners, the latter shall in all respects govern and control.

**Section 8.02 Conflict Among Articles, Bylaws, and Declaration.** In the case of any conflict between the Articles, Declaration, and these Bylaws, the Declaration shall in all respects govern and control.

**ARTICLE IX  
MISCELLANEOUS**

**Section 9.01 Miscellaneous.** The fiscal year of the Association shall begin on the first day of January and end on the 31 day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand this 7 day of May, 2009.

DECLARANT:  
IVORY HOMES, LTD. D/B/A IVORY NORTH.

By: *Christopher P. Gamvroulas*  
Name: Christopher P. Gamvroulas *DAVID R. WOLFGRAUN*  
Title: President *Secretary*

Amended and Restated Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements, and Bylaws for Mountain View Subdivision -





**EXHIBIT "C"**  
**WATER-WISE TECHNIQUES GUIDELINES**

Amended and Restated Declaration of Covenants, Conditions and Restrictions, and Reservation  
of Easements, and Bylaws for Mountain View Subdivision -

