

SECOND AMENDED AND RESTATED
DECLARATION OF
COVENANTS, CONDITIONS,
AGREEMENTS AND RESTRICTIONS FOR
**MOUNTAIN
VISTAS
CLUSTER
SUBDIVISION**
IN DAVIS COUNTY, UTAH

Parcel Nos. 11-493-0001; 11-493-0004 to 11-493-0025; 11-493-0054 to 11-493-0077; and 11-493-0080 to 11-493-0092; 11-509-0301 and 11-509-0302; 11-789-0003; 11-895-0003; 11-494-0028 to 11-494-0055; 11-534-0089 to 11-534-0135; 11-550-0134 to 11-550-0170; 08-357-0305 to 08-357-0308; 08-357-0310 to 08-357-0317; and 08-357-0319 to 08-357-0323; 11-680-0026 to 11-680-0027; 08-512-0001; and 08-536-0601 and 08-536-0602.

SECOND AMENDED AND RESTATED DECLARATION
OF COVENANTS, CONDITIONS, AGREEMENTS AND
RESTRICTIONS FOR
**MOUNTAIN VISTAS CLUSTER
SUBDIVISION**

This SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AGREEMENTS AND RESTRICTIONS FOR MOUNTAIN VISTAS CLUSTER SUBDIVISION is adopted by the Mountain Vistas Homeowners Association (the "**Association**"), a Utah non-profit corporation, and is effective as of the date it is recorded in the office of the Davis County Recorder.

RECITALS

- . The original, or enabling, Declaration of Covenants, Conditions, Agreements & Restrictions and Homeowners Association By-laws for Mountain Vistas Phases 1A & 1B Cluster Subdivision were recorded on August 23, 2001 in the Davis County Recorder's office as Entry No. 1684109, Book 2872, and beginning at Page 483.
- . The Amended and Restated Declaration of Covenants, Conditions Agreements & Restrictions and Homeowners Association By-laws for Mountain Vistas Phases 1A, 1B, 2A, 2B & 3 was recorded on April 11, 2008 in the Davis County Recorder's office as Entry No. 2356278, Book 4510, and beginning at Page 469 (the "**Current Declaration**").
- . This Second Amended and Restated Declaration of Covenants, Conditions, Agreements & Restrictions and Homeowners Association By-laws for Mountain Vistas Cluster Subdivision (the "**Second Amended Declaration**") is adopted to: (1) clarify and define the rights of the Association and the Owners, in and to the Project; (2) conform to changes to the Utah Community Association Act and other Utah law; (3) provide for a general plan for managing the Project and Property; and (4) in furtherance of the effort to efficiently and economically provide a quality living environment and protect and enhance the value of the Project and the Property.
- . This Second Amended Declaration, along with and subject to any future amendments, shall be the sole declaration for the Project and shall completely replace and supersede in all respects the Current Declaration and all prior declarations and amendments thereto made prior to the date of the recording of this Second Amended Declaration, regardless of whether or not such prior declarations and amendments were recorded, properly adopted, or referenced in this Declaration.

- . This Second Amended Declaration affects the real property located in Davis County, State of Utah, described with particularity on Exhibit A, which exhibit is attached hereto and incorporated herein by reference.
- . The Bylaws of the Association attached hereto as Exhibit B supersede and replace any previously adopted bylaws of the Association and any amendments thereto.
- . Pursuant to Utah Code Ann. §57-8a-104(1)(a)(i)(A), the undersigned, on behalf of the Association, hereby certifies that this Second Amended Declaration was approved by Owners holding at least sixty-seven percent (67%) of the total votes of the Association.

NOW, THEREFORE, pursuant to the Recitals set forth above, which are incorporated herein, and subject to the Terms and Conditions set forth below, the Association hereby adopts this Second Declaration. This Second Amended Declaration, together with the Plat, Bylaws, Rules adopted by the Association, and applicable statutes, shall define and govern the rights of the Owners and the Association related to the Project.

ARTICLE 1: DEFINITIONS

As used herein, unless the context otherwise requires:

- . 1.1 **“Act”** shall mean the Community Association Act codified beginning at § 57-8a-101 *et seq.*, Utah Code, in effect at the time this Second Amended Declaration is recorded, and as such statute may be amended from time to time.
- . 1.2 Reserved
- . 1.3 **“Architectural Control Committee” or “ACC”** shall mean the Mountain Vistas Homeowners Association’s Architectural Control Committee as set forth herein.
- . 1.4 **“Articles”** shall mean the Articles of Incorporation for the Association filed with the Utah Division of Corporations and Commercial Code, or the chartering document of any other legal entity, if any shall be formed for the Association.
- . 1.5 **“Assessment”** shall mean any monetary charge imposed or levied on an Owner by the Association as provided for in the Association’s Declaration or in the Act.
- . 1.6 **“Association”** shall refer to the MOUNTAIN VISTAS HOMEOWNERS ASSOCIATION, the membership of which shall include each Owner in the Project. The Association may be incorporated as a nonprofit corporation. If the Owners are ever organized as another type of entity or if the Owners act as a group without legal organization, the term “Association” as used in this Declaration shall refer to that entity or group.
- . 1.7 **“Board Member”** shall mean a duly-qualified and elected or appointed member of the Board of Directors.

- . 1.8 **“Board of Directors” or “Board”** shall mean the entity with primary authority to manage the affairs of the Association, which may also be referred to in the Association’s Governing Documents as the “Board of Trustees” or “Management Committee.” Whenever the context of the Governing Documents requires, the use of the terms Board of Trustees or Management Committee shall refer to and mean the Board of Directors.
- . 1.9 **“Bylaws”** shall mean the bylaws of the Association attached hereto as Exhibit B and all valid amendments and supplements thereto. No amendment to the Bylaws shall be effective until it is recorded with the office of the Davis County Recorder.
- . 1.10 **“Committee Member”** shall mean an appointed member of the Architectural Control Committee.
- . 1.11 **“Common Area”** shall, unless otherwise more specifically provided in this Declaration, mean the common area within the Project as reflected on the Mountain Vistas plats for Phases 1A, 1B, 2A, 2B, 3, 4, 5, and 6 and any improvements thereon, and specifically including, but not necessarily limited to: (a) the common area identified on the plats for each phase including any sidewalks, streetlights, playground equipment, or other improvements that may be constructed on such lot; and (b) all other parts of the Project outside of the Lots not dedicated to the public or which are necessary or convenient to the Project’s existence, maintenance, safety, or normally in common use. In accordance with the Plat, the Common Areas are owned by the Association.
- . 1.12 **“Common Expenses”** shall mean the actual and estimated costs for: (a) maintenance, management, operation, repair, and replacement of the Common Area which is maintained by the Association; (b) management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, consultants, and employees; (c) extermination, security, gardening, and other related services; (d) insurance and bonds required or allowed by this Declaration; (e) the establishment of reserves; (f) other miscellaneous charges incurred by the Association as provided for or allowed in the Act or the Governing Documents; and (g) any other expenses of the Association arising from the operation of the Association and not otherwise defined or precluded by the Governing Documents or any applicable law.
- . 1.13 **“Declaration”** shall mean this Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for Mountain Vistas Phases Cluster Subdivision, including all attached exhibits, which are incorporated by reference, and any and all amendments to this Declaration.
- . 1.14 **“Design Guidelines”** shall mean those requirements governing the site location and architectural design of Dwellings and other buildings, structures and improvements within the Project as adopted by the Board.
- . 1.15 **“Dwelling”** shall mean the single family residence built or to be built on any Lot, including the attached garage.

- . 1.16 **“Electronic Transmission” or “Electronically Transmitted”** means a process of communication not directly involving the physical transfer of paper that is suitable for the receipt, retention, retrieval, and reproduction of information by the recipient, whether by email, texting, facsimile, or otherwise.
- . 1.17 **“Governing Documents”** shall mean and refer to the Declaration, the Plat, the Bylaws, the Rules, the Articles, and any other written instrument by which the Association may exercise power, manage, maintain, or otherwise affect the Project.
- . 1.18 **“Lender”** shall mean a holder of a mortgage or deed of trust secured by a Lot.
- . 1.19 **“Lot”** shall mean and refer to any parcel in the Project, and may be designated on the Plat as a “Lot.”
- . 1.20 **“Manager”** shall mean any entity or Person engaged by the Board of Directors to manage the Project.
- . 1.21 **“Occupant”** shall mean a Person or Persons, other than an Owner, in possession of, using, entering into, or living in a Dwelling on the Project, including, without limitation, family members, tenants, guests, and invitees of an Owner or an Occupant.
- . 1.22 **“Owner”** shall mean the Person or Persons who are vested with record title to a Lot, and whose interest in the Lot is held (in whole or in part) in fee simple, according to the records of the County Recorder of Davis County, Utah; however, the term “Owner” shall not include a Lender or the trustee or beneficiary under a deed of trust.
- . 1.23 **“Park Strip”** shall mean the area in front of a Lot bordering a street beginning with the front line of the Lot and extending to the public asphalt roadway. The Park Strip shall include the sidewalk and the planting area between the side walk and the curb and gutter.
- . 1.24 **“Person”** shall mean a natural individual, corporation, estate, limited liability company, partnership, trustee, association, government, governmental subdivision or agency, or any other legal entity with the legal capacity to hold title to real property.
- . 1.25 **“Plat”** shall mean, and refer collectively to, the record of survey map or maps of the Mountain Vistas Phases 1A, 1B, 2A, 2B, and 3 Cluster Subdivision recorded in the records of the Davis County Recorder and all amendments and supplements thereto, including those for Phases 4, 5, and 6 of the Cluster Subdivision.
- . 1.26 **“Project”** shall mean the Property and all structures, Dwellings, and improvements thereon including the Lots and Common Areas.
- . 1.27 **“Property”** shall mean the property legally described and identified in Exhibit A and all easements and rights appurtenant thereto.
- . 1.28 **“Rules”** shall mean and refer to the rules, regulations, and resolutions adopted by the

Board of Directors.

- 1.29 **“Terms and Conditions”** shall mean any one or all of the terms, covenants, rights, obligations, and restrictions set forth in the Governing Documents.

ARTICLE 2: THE PROJECT

- 2.1 **Binding Effect of Governing Documents.** The Association hereby confirms that the Property is part of the Project and declares and agrees that the Project and all of the Lots shall be held, transferred, mortgaged, encumbered, occupied, used, and improved subject to the Terms and Conditions, which Terms and Conditions shall, to the extent they are included in recorded documents, constitute equitable servitudes and covenants and conditions running with the land and shall be binding upon and inure to the benefit of the Association, and each Owner, including the Owner’s heirs, executors, administrators, personal representatives, successors, and assigns. By acquiring any interest in a Lot such Owner consents to, and agrees to be bound by, each and every Term and Condition in the Governing Documents.
- 2.2 **Nature of the Project.** The Project is an individual single-family residential subdivision consisting of one hundred and eighty-eight (188) residential Lots. Each Lot may contain a separate home. The Project is a planned unit development and is not a cooperative and is not a condominium.
- 2.3 **Project Name.** The Project is named “Mountain Vistas Cluster Subdivision” and is located entirely in Davis County, Utah. The name used by the Association for the Project may be different than the name identified in this Declaration or on the Plat.
- 2.4 **Identification of Lots.** All of the Lots are referenced specifically and identified by location on the Plat.
- 2.5 **Registered Agent.** The registered agent of the Association shall be as provided for in entity filings of the Association.

ARTICLE 3: LOTS & COMMON AREA

- 3.1 **The Lots.** Each Lot is identified on the Plat by a distinct Lot number. Subject to further specification herein, each Lot generally consists of any and all improvements on or within the boundary of the Lot and all structures and related equipment or installation on or within the boundary of the Lot, including, but not limited to:
- (a) The Dwelling constructed on a Lot and components thereof, in or on the boundary of any Lot;
 - (b) All garages, sheds, or other approved structures attached to or located adjacent to a Dwelling;
 - (c) All pipes, wires, conduits, public utility, water or sewer laterals and lines, or any other

similar fixtures lying inside the designated vertical boundaries of a Lot or servicing only the Lot; and

(d) The driveway, any fence, and any yard area on the Lot, as identified on the Plat.

3.2 **Common Area.** Common Area shall, unless otherwise more specifically provided in this Declaration, mean the real property for the common use and enjoyment of the Owners and shall specifically include, but not be limited to, the following:

- (a) All Common Areas designated as such on the Plat including any area designated as a Common Area or open space;
- (b) All utility installations and all equipment connected with or in any way related to the furnishing of utilities for the common use of all Lot Owners or for the Common Area;
- (c) The perimeter fences, sidewalks, streetlights, landscaping, sprinkler system, and other amenities not dedicated to a municipality;
- (d) The entry monuments and surrounding landscaping features located on the monument easements of Lots 1 and 88, but not the real property on which the entry monuments and landscaping features are installed, as set forth on the Plat;
- (e) Any roads, streets, lanes, and cul-de-sacs within the Project not dedicated to a municipality; and
- (f) All other parts of the Project necessary or convenient to its existence, maintenance, safety, or normally in common use.

3.3 **No Severance of Common Area.** The right to and interest in the Common Area shall be appurtenant to each respective Lot and may not be severed from the ownership of the Lot.

3.4 **Drainage Easements.** The side and rear property lines of each Lot constitute drainage easements in favor of the Association, and no Lot shall be graded, and no structure or other obstacle shall be erected, placed, or permitted to remain thereon, in such a way as to interfere with the established drainage pattern over the Lot to and from the adjoining land. In the event it becomes necessary to change the established drainage pattern over a Lot, adequate provision shall be made for proper drainage. Any fence or wall erected along the side or rear property line of any Lot shall be constructed so as to not prevent or inhibit the flow of surface water from adjoining land where such flow is in accord with the established drainage pattern. Owners shall continuously maintain the sloped areas of each Lot and all improvements in them, except for those improvements for which a public authority, utility company, or the Association is responsible.

ARTICLE 4: MAINTENANCE & MODIFICATION

4.1 **Owner Responsibility for Maintenance of Lots.**

- (a) Each Owner shall furnish and be responsible for, at the Owner's own expense, all of the maintenance, repair, and replacement of the Owner's Lot, including, but not limited to, all of the Dwelling, structures, fences, driveways, sidewalks, lamp posts, planter box, mail box and any and all improvements thereof. Fences on Lots adjacent to Common Area are owned and shall be maintain by the Lot owner. Owners of the Lots sharing a common fence shall equally pay and be responsible for the maintenance, repair, and

replacement of such fence. The Owner is further responsible for the removal of snow from the driveways and sidewalks within or appurtenant to the Owner's Lot. The Board may adopt a standard of maintenance for any area which is the responsibility of the Owner, including landscape maintenance, and shall set forth such standard in the Rules.

- (b) The Owner shall be responsible for keeping the Lot, and all porches, patios, driveways, landscaping (including the grass, trees, shrubs, bushes, flowers, plants, similar improvements, and sprinkling and irrigation systems) located within the boundaries of the Lot, and other exterior areas of a Lot in a clean and sanitary condition, free of pests and rodents, and in good condition and repair. Owner shall pay for the maintenance, repair, and replacement of these areas appurtenant to the Owner's respective Lot. The Board may set forth in the Rules any limits, restrictions, or guidelines on what may or may not be left, stored, installed, or placed on the exterior of any Lot, which may include a prohibition on leaving, installing, or storing any items or animals in such places.
- (c) Individual Owner's landscaping should enhance the architecture of their home and the community and may be subject to review by the Board. The Board shall have the authority to disapprove any landscape practices including but not limited to extraordinary landscape treatments (i.e. lava rock gardens in park strips or other similar practices). Liability for non-compliance with said restrictions and covenants should not be borne by the Board as a result of misrepresentations by the applicant or oversights by the Board. A landscaping plan may be required if the Board deems necessary as a part of approving the architectural style of the home. Each owner must plant a minimum of two 2" caliper trees in the front yard or park strip found of the Kaysville City Approved Tree Species List. The Board shall have the authority to specify and limit the type and placement and /or removal of trees and other foliage. All trees, lawns, shrubs or other plantings shall be properly nurtured and maintained at the Owner's expense upon request of the Board.
- (d) Each Owner shall be responsible to maintain, repair, and replace the Park Strip fronting each Owner's Lot. This maintenance shall include, without limitation, the mowing and watering of the designated Park Strips, removal of weeds, clearing of debris, removal of snow from the sidewalk and other general care. The Association may set forth in the Rules the acceptable landscaping that shall be permitted in the Park Strip areas including any trees, grass, flowers, or otherwise, and may require Board approval of any maintenance practice or treatment of the Park Strip fronting each Owner's Lot.

4.2 Maintenance of Common Area.

- (a) Except as maintenance obligations are otherwise assigned to the Owners in this Declaration, the Association shall repair, maintain, replace, clean, and pay all expenses associated with the Common Area as that area is defined in this Declaration and identified on the Plat. This shall include the right to modify, remove fixtures from, add fixtures and structures to, place signs upon, and otherwise modify the Common Area. The Association shall do all such other and further acts that the Board deems necessary to preserve and protect the Common Area, in accordance with the general purposes specified in this Declaration. The Association retains the absolute right to remove and replace any structure, item, or condition in the Common Area.
- (b) The Association shall furnish and be responsible for, at the Association's expense, the maintenance, repair, and replacement of the Common Areas, including the following: (1) the lawn, trees, shrubs, and other plants and landscaping within the Common Areas; (2)

the sidewalks, playground and any future structures or amenities that may be constructed; and (3) any streetlights located within the Common Area; (4) the sprinkler system throughout the Common Areas of the Project; and (5) the culinary water main and water system to each Lot. Notwithstanding the foregoing and anything to the contrary in this Declaration, the Association shall not be obligated to maintain any utility or utility system or component which is maintained by any municipality.

- (c) **Snow Removal.** The Association shall take reasonable efforts to remove snow from any Common Area roads as necessary to allow vehicle and pedestrian access. In the discretion of the Board, the Association may provide more snow removal services for the removal of snow otherwise allocated to the Owners in this Declaration.
- (d) **Standard of Maintenance.** The Board may determine, in its sole discretion, the appropriate maintenance standard for the Common Area, so long as those areas are maintained in the best interests of the Owners.
- (e) **Assessment of Maintenance Expenses to Specific Owner.** If the need for maintenance, repair, or replacement is caused by an Owner or an Occupant, the Association shall assess to the particular Owner, who is also responsible for the Occupant's actions, the actual cost of such maintenance, repair, or replacement to the extent the costs are not paid for by any applicable insurance.

4.3 Default in Maintenance. If an Owner or Occupant fails to: (1) maintain a Lot or Park Strip area according to the maintenance standard set forth by the Association and as required in the Governing Documents, or (2) make repairs otherwise required of the Owner in such a manner as may be deemed reasonably necessary in the judgment of the Board to preserve and protect the structural integrity, attractive appearance, good condition, and value of the Lots in the Project, then the Association may take any action allowed for a failure to comply with the Governing Documents and may give written notice to such Owner or Occupant stating with particularity the nature of the default and the corrective action that the Board determines to be required and requesting that the same be carried out within a period of at least fourteen (14) days or a greater length of time if determined by the Board. This notice is a remedy available to the Association in addition to levying a fine against the Owner. If the Owner or Occupant fails to carry out such action within the period specified by the notice, then the Association may take any action allowed for a default of the Governing Documents. In addition, the Association may cause corrective action to be taken (which may include completing any landscape maintenance, snow removal, repairs, or replacements) and may assess the Owner for all costs associated therewith as an Individual Assessment as set forth in Article 7 herein.

4.4 Modifications to Lots and Architectural Review. Without the prior approval of the Association, an Owner may not: (1) install or build any new structure, fence, or Dwelling; (2) make alterations, upgrades, or modifications to any part of the exterior of any structure or Dwelling; and (3) install or alter any new or existing exterior feature such as a driveway, walkway, front yard landscaping or anything else that alters the exterior appearance of the Lot or to the appearance of the Park Strip. This provision is intended to be read as broadly as possible to require approval before any exterior work to a Lot, including changes to front yard landscaping.

- (a) **Architectural Control Committee.**

- (1) An Architectural Control Committee (or "ACC") may be appointed by the Board. Such committee shall consist of at least one (1) member, but may include more members at the discretion of the Board. The ACC shall be a Sub-Committee as defined in the Bylaws, and shall act in accordance with the requirements of Sub-Committees. The ACC shall have the Board's right of entry to verify compliance with this Section. At least one (1) Committee Member must be a Board Member. Members of the ACC shall serve for a term of one (1) year, and may serve for consecutive terms of service as appointed by the Board. Any vacancy on the Committee may be filled by the Board to serve the remainder of the term of the originally appointed member(s). The ACC may act even though a vacancy has not been filled. Any member of the Committee may be removed at any time by the Board with or without cause.
- (2) The Board need not appoint an ACC. If no such ACC is appointed, the Board shall have all powers of the Committee and may act in all ways and have all powers otherwise given to the Committee.
- (3) The ACC shall serve as an architectural review board and shall regulate the external design, appearance, and location of any structure on any Lot so as to enforce the architectural provisions of the Declaration or Architectural Design Guidelines as may be adopted by the Board.
- (b) Submission of Plans to Architectural Control Committee for Approval.
- (1) New Structures. No structure of any kind whatsoever shall be erected, placed, moved onto, or commenced without the prior written approval of the ACC. The Board may adopt Rules relating to obtaining of such prior written approval. Unless and until the Board adopts such Rules, the following provisions will apply. An Owner must submit such plans and specifications as the Committee may reasonably require, but shall in all cases include the following:
- . (i) A complete set of plans and specifications;
 - . (ii) A site plan showing the location of all proposed and existing structures on the Lot;
 - . (iii) Exterior elevations for the proposed structures;
 - . (iv) Specifications of materials, color scheme, and other details affecting the exterior appearance of the proposed structures; and
 - . (v) Description of the plans and provisions for landscaping and grading.
- (2) Exterior Modifications. No exterior remodels, additions, or major modifications to the Lot or exterior of the Dwelling whatsoever shall be commenced, erected, maintained, made, or done without the prior written approval of the ACC. By way of illustration, but not of limitation, the following are considered remodels, additions, or major modifications: painting the exterior of the Dwelling or any structure a new color; excavation; additions of new rooms to a structure; solar collectors or panels; changing the exterior material of a structure; installing a fence; or any other work that significantly alters the appearance of the Lot or Dwelling. The ACC may designate the design, style, model, and manufacturer of any materials to be used for an exterior improvement or alteration that is acceptable to the ACC. Such designations shall be for the purpose of achieving uniformity of appearance and preservation of property values. The Board may adopt Rules relating to obtaining such prior written approval. Unless and until the Board adopts such Rules, the following provisions shall apply:

- (i) Owners must submit such plans and specifications as the ACC reasonably may require, including any of the specific documents included in Section 4.4(d)(1)(i)-(v) that may be requested by the ACC.
 - (3) Interior Modifications. No approval is required for interior modifications that do not affect the exterior of the Dwelling, although the Board may still adopt Rules relating to the use of Common Area or roadways within the project for staging and other construction needs.
 - (4) Rear Yard Landscaping. No approval is required for modifications to the landscaping of the portion of the Lot behind a Dwelling, so long as such landscaping is not visible from the street.
- (c) Failure of Architectural Control Committee to Act. If the ACC, or Board if no ACC has been established, shall fail to act upon any written request submitted to it within ninety (90) days after a complete submission of documents in a form acceptable to the ACC, such request shall be deemed to have been approved as submitted, and no further action shall be required. The ninety (90) day period does not start to run if the ACC has requested, or requests, additional information in support of the Owner's request.
- (d) Architectural Design Guidelines. The ACC shall enforce the Architectural Design Guidelines, if any, adopted by the Board as Association Rules. Such Architectural Design Guidelines may include but are not limited to restrictions on: minimum and maximum square footage, building height, exterior siding and roofing materials, and landscaping. In the event that the Board does not adopt Architectural Design Guidelines, the following restrictions shall apply:
- (1) No Dwelling shall be erected, altered, placed, or permitted to remain on any Lot other than a detached single family home, with square footage and garage requirements as follows:
 - (i) One Story Dwellings (Rambler). The required minimum above ground floor finished space shall be 1,650 square feet with a minimum 3-car garage required, and 1,900 square feet or more above ground finished floor space with a minimum 2-car garage required.
 - (ii) Two Story Dwellings. The required minimum above ground finished floor space shall be 2,000 square feet with a minimum 3-car garage required, and 2,250 square feet or more above ground finished floor space with a minimum 2-car garage required.
 - (iii) Multi-level Dwellings. The required minimum above ground finished floor space shall be 2,100 square feet with a minimum 3-car garage required, and 2,300 square feet or more above ground finished floor space with a minimum 2-car garage required.
 - (2) Dwelling Quality. All construction shall be comprised of new materials, with the exception of used brick, which requires the prior written approval of the ACC.
 - (3) Dwelling Exterior Materials. The front elevations of all Dwellings shall have (2) two or more large full front facing panels (subject to the discretion of the ACC) of brick or rock. The side elevations of all Dwellings shall have at least a wainscot of brick or rock to a natural break point down the sides, with the remainder in stucco or comparable product as approved by the ACC. Hardie board, Cedar lapboard, or other types of siding may be allowed with prior written approval of the ACC. The ACC may waive any exterior material requirement where it will not complement the

- historic style of the Dwelling. Vinyl or aluminum siding shall not be allowed except for the soffit, fascia, and/or rain gutters.
- (4) Roofing. The roofing material for all Dwellings and other structures in the Project shall be architectural grade asphalt shingles of a thirty (30) year grade or better. All roof colors regardless of type must be approved by the ACC.
- (5) Detached Structures. All detached structures must receive prior written approval of the ACC. Detached structures must be constructed with exterior materials identical to those of the Dwelling unless otherwise approved by the ACC. All Owners are required to check the applicable building code requirements and zoning restrictions prior to constructing any detached structure.
- (6) Temporary Structures. Temporary structures, including tents, trailers, and sheds are not permitted on any Lot without prior written approval of the Board.
- (7) Detached or temporary structures may not be used, either temporarily or permanently, for residential purposes.
- (8) Fencing, Walls, and Hedges. Fences and walls should be kept to a minimum. The use of hedges is encouraged but hedges are required to be maintained in conformance with this Declaration and the Rules. Any fence or wall constructed on any Lot must be approved by the ACC and be constructed as follows:
- (i) Materials. All permitted fences or walls shall be constructed with brick, stone, wrought iron, rough-sawn cedar, or vinyl. No fences or walls may be constructed with chain link, wire mesh, slump block (painted or unpainted) or concrete block unless approved in writing by the Architectural Control Committee.
 - (ii) Height. Fences, walls, hedges, and similar structures, including any top of a separate material, shall not be erected in a front yard in excess of three (3) feet, nor shall be erected in any side or rear yard to a height in excess of six (6) feet. Where a retaining wall protects a cut below the natural grade and is located on the property line separating two or more lots, a fence, wall, hedge, or similar structure no more than six (6) feet in height may be constructed on top of the retaining wall.
- (9) Roof mounted air conditioners, satellite dishes and antennas shall be kept obscured and hidden from view of the front yard and street. Notwithstanding the foregoing, the Board may approve the placement of such equipment within view of the front yard or street if there is evidence that such placement is necessary for the efficient and proper use of the equipment.
- (10) Curbside Amenities. All lanterns must be connected to the appurtenant Owner's individual utility service and all utility costs will be assumed by the individual Owner. Owners shall keep the lanterns appurtenant to their Lots maintained at all times and shall be responsible for their repair and replacement. The light shall be kept in working order at all times as to maintain proper and adequate street lighting in the Project. Each Owner will be required to install and maintain a mailbox and an electrical lantern and planter box. The materials for the mailbox and planter box shall be consistent with the materials and style of the Lot's Dwelling. The style of lamp post and light fixture shall uniform throughout the association.
- (11) Swimming Pools. Owners may construct swimming pools if Lot size and topography allow. Pools must be fenced in accordance with all Federal, State and

Local safety ordinances. It is the sole responsibility of the Owner to comply with these standards. If the fencing requirements of any safety ordinances conflict with the fencing restrictions of the Association, then the safety ordinance fence requirements shall govern. All swimming pools and detached structures must be approved by the ACC.

(12) Landscaping. Owners must receive approval from the ACC for all front yard (including the Park Strip) and side yard landscaping installations and modifications, and the ACC may, in its discretion, require a landscaping plan in conjunction with building plans for a Dwelling as required pursuant to this Section. Each Lot's landscaping should enhance the architecture of the Dwelling and the community. The ACC may disapprove any landscaping practices including extraordinary landscape treatments such as lava rock gardens in park strips or similar practices. All landscaping, including trees, lawns, shrubs, and plantings, shall be properly maintained and/or replaced at the Owner's expense and upon the ACC's request. All trees planted within public rights-of-way shall comply with Kaysville City ordinances and any applicable approved tree species requirements.

(13) Commencement of Landscaping. Commencement of landscaping of the front and side yard areas of each Lot must begin within three (3) months of the issuance of a Certificate of Occupancy. Notwithstanding the foregoing, if a "Certificate of Occupancy" is issued during the months of November through March, then front yard landscaping shall commence no later than April 30th. All landscaping of the front and side yards must be completed within six (6) months of commencement.

(14) Conformity with applicable law. All improvements on a Lot shall be made, constructed, and maintained, and all activities on a Lot shall be undertaken, in conformity with all laws and ordinances of the city of Kaysville, Davis County, and the State of Utah, including all zoning and land use ordinances.

- (e) Expenses of Architectural Control Committee. The ACC may charge the Owner of a Lot the actual costs incurred by the ACC or Association for the processing of any request, plans, or specifications including consultation with a professional.
- (f) Variances. The ACC may authorize variances from compliance with any of the architectural provisions of this Declaration or any supplement thereto, including restrictions on height, size, floor area, placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic, or environmental consideration may require. Such variances must be in writing. If a variance is granted, no violation of the Governing Documents shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of a variance shall not operate to waive any Terms and Conditions of the Association's Governing Documents, other than those specifically identified in the variance, nor shall it affect an Owner's obligation to comply with all governmental laws and regulations.
- (g) Failure to Obtain Prior Approval. All improvements must be submitted to the ACC in writing to permit the ACC to review the size, placement, floor plan, and exterior materials. Approvals must be obtained in writing prior to the beginning of construction. If approval is not obtained before construction begins, the Owner may be subject to a fine for a continuing violation of the Association's Governing Documents. The Association may further pursue an action to enjoin the Owner from further installation or construction

of the improvement until approval is given. In accordance with Article 17 of this Declaration, the Association shall be entitled to recover its reasonable attorneys' fees and costs incurred in pursuing any such action and in seeking legal advice (regardless of whether or not a lawsuit is commenced) concerning the Association's legal remedies and rights to bring the Owner into compliance with the Association's Governing Documents.

- 4.5 **Utilities.** All utilities are metered separately to each Lot and such utility charges shall be the responsibility of each Lot Owner.

ARTICLE 5: ORGANIZATION & GOVERNANCE OF ASSOCIATION

- 5.1 **Organization of Association.** The Association shall serve as the organizational body for all Owners.
- 5.2 **Legal Organization.** The Association may be organized as a non-profit corporation. In the organization, reorganization, or amendment of any documents related to the legal organization of the Association, the terms in all such documents shall, to the extent possible under the applicable law, be consistent with the terms in the Declaration and the Bylaws attached hereto or any lawful amendment thereto. If the legal entity should ever expire or be dissolved for any reason as required or permitted by law, in any reorganization or reinstatement of the entity, the Association shall, to the extent possible and subject to any then-existing legal requirements, adopt documents consistent with the terms of the Declaration and Bylaws.
- 5.3 **Membership.** Membership in the Association shall at all times consist exclusively of the Owners. Each Owner shall be a member of the Association so long as such Owner has an ownership interest in a Lot and such membership shall automatically terminate when the Owner ceases to have an ownership interest in a Lot. Upon the transfer of an ownership interest in a Lot, the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. If titled ownership to a Lot is held by more than one Person, the membership appurtenant to that Lot shall be shared by all such Persons in the same proportional interest and by the same type of tenancy in which title to the Lot is held.
 - 5.3.1 **Voting.** Each member shall be entitled to one vote for each Lot owned. When more than one member owns any Lot, the vote for such Lot shall be exercised, as they determine among themselves, but in no event shall more than the appropriate vote be cast with respect to any Lot.
- 5.4 **Availability of Documents.** The Association shall make available to the Owners, Lenders, and insurers of any Lender, current copies of the Governing Documents and other minutes, books, records, and financial statements related to the operations of the Association. The term "available" as used in this Section shall mean available for inspection and copying within thirty (30) days, unless a shorter time period is required by law, after receiving a proper written request, during normal business hours and under other reasonable conditions. The Association shall have the right to refuse to disclose

information that the Board of Directors determines, in good faith, would reveal sensitive personal or financial information of another Owner or of an employee or agent of the Association, such as bank account numbers, birth dates, or social security numbers. The Association may require that the Owner comply with any statutory provision or other legal requirement applicable to providing this information before providing it.

5.5 **Board of Directors.** The Board shall conduct the affairs of the Association in accordance with the Governing Documents. The Board shall consist of the number of members outlined in the Bylaws. The Board is responsible for the day-to-day operation of the Association. The Board may also appoint various committees to assist with duties.

5.5.1 **Personal liability.** No Board Member, officer, or committee member shall be personally liable for any obligations of the Association or for any duties or obligations arising out of any acts or conduct said Board Member, officer, or committee member performed for or on behalf of the Association.

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

5.5.3 **Resignation and Removal.** Any officer may resign at any time by delivering a written resignation to any Board Member or to any Manager. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed and replaced by the Board at any time, with or without cause.

5.5.4 **Vacancies and Newly Created Offices.** If any vacancy shall occur in any office by reason of death, resignation, removal, disqualification, or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by the Board at any regular or special meeting. During the time that any office is vacant and no other officer is available to perform the duties of that office as required below, the Board shall ensure that the duties and responsibilities of the office are performed.

5.5.5 **The President.** The President shall preside at meetings of the Board of Directors and at meetings of the Owners. At all meetings, the President shall have all authority typically granted to the Person presiding over a meeting including but not limited to: (a) the right to control the order of the meeting, (b) the right to arrange for the removal of any disruptive Persons who may include but not be limited to any Person who: (1) refuses to abide by rules or requests of the presiding Person related to the order of the meeting and when speaking is permitted, or (2) engages in vulgar, threatening, or otherwise inappropriate language or gestures, (c) the right to impose and enforce reasonable rules and procedures related to the meeting such as those found in "Robert's Rules of Order" or "The Modern Rules of Order," and (d) the right to designate the Manager or any other Person to preside over any meeting at which the President is present. The President shall sign on behalf of the Association all conveyances, mortgages, documents, and contracts, and shall do and perform all other acts and things as required by the Board. The President shall have the general authority to implement decisions of the Board and shall oversee the operations of the Association. The President shall have authority in case of emergency to take action without Board of Directors' approval as is necessary and prudent to preserve and protect the Property. The President shall be responsible for the duties of any other office while that office is vacant.

5.5.6 **The Vice President.** The Vice President shall have the custody and control of the funds of the Association, subject to the action of the Board of Directors and, when requested by the President, shall report the state of the finances of the Association at each meeting of the Owners and at any meeting of the Board. The Vice President shall have authority and obligation to generally implement the requirements of Governing Documents as related to the funds of the Association. The Vice President shall also act in the place and stead of the President in the event of the President's absence or inability or refusal to act. The Vice President shall perform such other duties as required by the Board of Directors.

5.5.7 **The Secretary.** The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration, the law, or any resolution of the Board may require such Person to keep. The Secretary shall execute any necessary communication and notice with the Owners. The Secretary shall also act in the place and stead of the President in the event of the President and Vice President's absence or inability or refusal to act. The Secretary shall perform such other duties as required by the Board.

5.5.8 **The Treasurer.** The Treasurer shall have the custody and control of the funds of the Association, subject to the action of the Board and, when requested by the President, shall report the state of the finances of the Association at each meeting of the Owners and at any meeting of the Board. The Treasurer shall have authority and obligation to generally implement the requirements of Governing Documents as it relates to the funds of the Association. The Treasurer shall also act in the place and stead of the President in the event of the President, Vice President, and Secretary's absence or inability or refusal to act. The Treasurer shall perform such other duties as required by the Board.

5.6 **Board Members.**

(a) **Qualification.**

(1) To be on the Board of Directors, a Person must be an Owner and over the age of eighteen years old. If an Owner is a corporation, estate, limited liability company, partnership, trust, or other legal entity, an officer, principle, shareholder, partner, member, manager, trustee, or beneficiary of such Owner may be a member of the Board of Directors. Only one Board Member may serve per Lot.

(2) The Bylaws shall provide for procedures to ensure this requirement is maintained and may include, but are not limited to, the removal of Board Members.

(b) **Reasonable Ongoing Requirements for Board Members.** The Bylaws may place reasonable obligations and requirements on existing Board Members to retain their membership on the Board of Directors, such as a requirement that a Board Member attend a specified number of meetings. The Bylaws may further provide for a procedure for removal of any Board Member who fails to comply with the reasonable requirements, which may include some action of the remaining Board Members.

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

**ARTICLE 6:
GENERAL RIGHTS & RESPONSIBILITIES OF THE ASSOCIATION**

- 6.1 **Rights and Responsibilities of the Association.** The Association shall have the following rights and responsibilities in addition to any others set forth in the Governing Documents or provided by law.
- 6.2 **Maintenance.** The Association shall make provisions for completing all maintenance, repair, and replacement requirements of the Association. This shall include the right to modify, remove fixtures from, add fixtures and structures to, place signs upon, and otherwise modify the Common Area. The Association shall do all such other and further acts that the Board of Directors deems necessary to preserve and protect the Common Area and the Project, in accordance with the general purposes specified in this Declaration.
- 6.3 **Capital Improvements.** Capital improvements shall be governed by and subject to the following conditions, limitations, and restrictions:
 - (a) Any capital improvement to the Project that does not materially alter the nature of the Project may be authorized by the Board alone. A material alteration to the Project is, for example, the installation of a previously non-existent and materially significant fixture or permanent removal of a materially significant fixture such as a swimming pool, a tennis court, playground equipment, or parking area. Landscaping alterations and the addition or removal of signs or small structures are not material unless they cause other material changes such as those listed above.
 - (b) Any capital improvement which would materially alter the nature of the Project, regardless of its cost and prior to being constructed or accomplished, must be authorized by the consent of Owners holding at least greater than fifty percent (50%) of the total votes of the Association and must be approved of by the Board of Directors. Notwithstanding anything to the contrary, no material alteration that changes the size, shape, or location of any Lot shall be permitted without the written consent of all directly affected Owners.
- 6.4 **Paying Expenses.** The Association shall provide for the payment of Common Expenses and any other obligations incurred by the Association.
- 6.5 **Setting and Collecting Assessments.** The Association shall establish, collect, and account for Assessments as necessary to operate the Project consistent with the requirements of the Governing Documents.
- 6.6 **Adopting and Enforcing Rules.** The Association may adopt Rules for the regulation and operation of the Project. If they are adopted, they shall be consistently and uniformly enforced. The Rules may address any issues including those addressed in any other Governing Document. The Rules may supplement, clarify, and add detail to issues addressed in other Governing Documents so long as they do not contradict the same. The Board's determination as to whether a particular activity being conducted or to be conducted violates or will violate the Rules shall be conclusive, subject to a judicial

determination if any is timely sought.

- . 6.7 **Entering Lots.** After having given the appropriate notice as required in Article 16, the Association shall have the right at all times and upon reasonable notice (and at any time in case of an emergency) to enter into any Lot to abate any infractions, to make repairs, to correct any violation of any of the Terms and Conditions, or to abate any condition that threatens the health or property of any Owner or Occupant.
- . 6.8 **Hiring Managers and Delegating Responsibilities.** The Association may hire a Manager to assist the Board in the management and operation of the Project and may delegate its powers and obligations in the Governing Documents to the Manager, employees, or other agents as it deems appropriate; provided, however, that only the Board shall have the right to approve Association budgets, fines to Owners, and regular and special Assessments. Any powers and duties delegated to any Manager or other Person may be revoked by the Board at any time, with or without cause.
- . 6.9 **Other Necessary Rights.** The Association shall have any other right that is reasonably necessary to carry out the terms of the Governing Documents. Except where a matter or vote is specifically reserved to the Owners, the Board may act in all instances on behalf of the Association.
- . 6.10 **Enforcement Rights.** In addition to any other remedies allowed or provided in the Governing Documents for any violation of the Governing Documents, the Association may: (1) impose fines; (2) collect rents directly from tenants if Owners fail to pay Assessments; and (3) take any other action or seek any other remedy allowed by the Act or other applicable Utah law.
- . 6.11 **Discretion in Enforcement.**
 - . (a) Subject to the discretion afforded in this Section, the Board shall uniformly and consistently enforce and implement the Terms and Conditions in the Governing Documents.
 - . (b) The Board shall use its reasonable judgment to determine whether to exercise the Association's powers to impose sanctions or pursue legal action for a violation of the Governing Documents, and may include in this analysis: (1) whether to compromise a claim made by or against the Board or the Association, and (2) whether to pursue a claim for an unpaid Assessment.
 - . (c) The Association may not be required to take enforcement action if the Board determines, after fair review and acting in good faith and without conflict of interest, that under the particular circumstances: (1) the Association's legal position does not justify taking any or further enforcement action; (2) the covenant, restriction, or rule in the Governing Documents is likely to be construed as inconsistent with current law; (3) a technical violation has or may have occurred and the violation is not material as to a reasonable Person or does not justify expending the Association's resources; or (4) it is not in the Association's best interests to pursue an enforcement action, based upon hardship, expense, or other reasonable criteria.
 - . (d) Subject to Subsection (e), if the Board decides under Subsection (c) above to forego

enforcement, the Association is not prevented from later taking enforcement action.

(e) The Board shall not be arbitrary, capricious, or act against public policy in taking or not taking enforcement action.

- 6.12 **Reserve Fund.** The Association shall maintain a reserve fund and shall obtain and update a Reserve Analysis as required in this Declaration and the Act.
- 6.13 **Conflicts of Interest with Service Providers and Vendors.** The Association shall not permit any paid services or materials obtained by the Association to be performed or provided by: (1) any Board Member; (2) any relative of any Board Member, Manager, or of any officer, employee, or owner of the Manager; (3) any business or entity in which any Board Member, Manager, or employee, officer, or owner of any Manager or any relative of the same is employed or has more than a one percent (1%) ownership or beneficial interest; or (4) any business, entity, or Person with any familial or financial relationship with any Board Member, Manager, or of any officer, employee, or owner of the Manager, or any relative of the same. A relative is any natural individual known to be related by blood or marriage. The provision of services and materials for purpose of this provision shall include Managers, insurance brokers, investment or financial advisors, accountants, landscapers, contractors, and all other companies and Persons providing services to the Association.
- 6.14 **Establishing Hearing Procedures.** The Board of Directors shall have the authority to create a reasonable hearing process applicable in case the Association shall take adverse action related to any particular Owner or group of Owners or in case a hearing process is required by law. The Board shall not be under any obligation to offer a hearing process, except as required by law or by the Governing Documents and in any such process shall have the authority to designate the procedure related to any such hearing and to make any and all final determinations of issues subject to the hearing process. The Board may establish the hearing process on an as-needed basis for particular matters as they arise or may set forth a process in the Rules applicable generally to such matters that it designates. The Board may rely on any reasonable information and evidence in determining whether or not a violation of the Rules has occurred both initially and after a hearing.
- 6.15 **Annual Meeting.** The Association shall arrange for and conduct an annual meeting each year as provided for in the Bylaws and shall arrange for and conduct such other meetings of the Association as shall be properly requested pursuant to the Governing Documents or the law.
- 6.16 **Reinvestment Fee Covenant upon Sale or Transfer of Lot.** The Board may require the transferor/seller or transferee/buyer to pay a fee related to the transfer of a Lot (a "Reinvestment Fee") as provided for in Utah Code Ann. § 57-1-46. A transfer is any change in the ownership of the Lot as reflected in the office of the county recorder, regardless of whether it is pursuant to the of a sale of the Lot or not. The amount of the Reinvestment Fee shall be set by the Board, in the Board's sole discretion, provided that in no event shall the Reinvestment Fee exceed the maximum amount allowed by law. If

no amount is otherwise set by the Board, the amount of the Reinvestment Fee shall be the maximum rate permitted by law. The Association shall not levy or collect a Reinvestment Fee for any of the transfers exempted by Utah Code Ann. §57-1-46. The Association shall have authority to record any notice required by law to effectuate this section. The Association shall have the authority to enact Rules to effectuate the terms of this section in a prompt and reasonable manner.

ARTICLE 7: BUDGETS & ASSESSMENTS

- . **7.1 Purpose of Assessments.** Money collected by the Association shall be used for: the purposes of promoting the health, safety, and welfare of the Owners; the management, maintenance, care, preservation, operation, and protection of the Project; enhancing the quality of life of the Owners in the Project; enhancing and preserving the value of the Project; and in the furtherance of carrying out or satisfying any other duty or power of the Association.

- . **7.2 Budget and Regular Assessment.**
 - (a) The Board of Directors shall adopt a budget for the following fiscal year not later than thirty (30) days prior to the beginning of each fiscal year. The Board may revise that budget from time to time as the Board deems appropriate. If the Board fails to adopt a budget, the last adopted budget shall continue into effect until a new budget is adopted.
 - (b) The budget shall estimate the total Common Expenses to be incurred for the next fiscal year (or that fiscal year for a revised budget), which shall be broken down into reasonably detailed expense categories. The budget shall include a line item that identifies the amount to be placed into the reserve fund. The budget may include contingencies and estimates as the Board deems appropriate.
 - (c) The costs and fees for the cable communication services and private utilities shall be part of the part of the budget and shall be included in the regular Assessments.
 - (d) The Board shall make a copy of the budget available to all Owners no later than thirty (30) days after the adoption of the proposed budget or any revised budget.
 - (e) The amount of the regular Assessments shall be based on the budget and shall be divided equally among the Lots.
 - (f) Owners may disapprove a proposed budget pursuant to the terms of Section 57-8a-215 of the Act.

- . **7.3 Payment of Regular Assessments.** Unless otherwise established by the Board and communicated to each Owner, each Owner shall pay to the Association the Owner's regular Assessment in one (1) annual payment.

- . **7.4 Adjustments to Regular Assessments.** In the event the Board determines that the estimate of total charges for the current year is, or will become, inadequate to meet all Common Expenses for any reason, it may then revise the budget and each Owner's share of the new budget total shall be equal. Upon notice of the adjustment, and unless modified by the Board, each Owner shall thereafter pay to the Association the Owner's adjusted regular Assessment.

- . 7.5 **Capital Improvements.** Expenses for capital improvements may be included in the budget or paid for through Special Assessments.
- . 7.6 **Allocation of Assessments.** Except as otherwise provided herein, all Assessments (other than Individual Assessments) shall be divided equally among all Owners.
- . 7.7 **Special Assessments.** The Board may levy a Special Assessment payable over such a period as the Board may determine for the purpose of defraying, in whole or in part any expense or expenses not reasonably capable of being fully paid with funds generated by Regular Assessments; the cost of any reconstruction or unexpected repair or replacement of the Common Areas; or for any other expense incurred or to be incurred as provided in this Declaration. Special Assessments equal to or less than \$15,000 (to be divided equally among the Lots) in a calendar year may be levied by the Board in its sole discretion. Special Assessments totaling more than \$15,000 dollars in a calendar year must be approved and assented to by a majority of the Owners present in person or by proxy at a meeting duly called for such purpose. Notice in writing of the amount of any Special Assessments and the time for their payment shall be given as soon as is reasonably possible to the Owners. Payment shall be due on the dates and in the manner determined by the Board and provided in the notice.
- . 7.8 **Individual Assessments.** Individual Assessments may be levied by the Association against a particular Lot and its Owner for:
 - . (a) Costs of providing services to the Lot upon request of the Owner;
 - . (b) Costs incurred in bringing an Owner or the Owner's Lot or Dwelling into compliance with the provisions of the Governing Documents;
 - . (c) Fines, late fees, collection charges, and interest;
 - . (d) Nonpayment of a Reinvestment Fee;
 - . (e) Any other charge designated as pertaining to an individual Lot in the Governing Documents; and
 - . (f) Attorney fees, costs, and other expenses relating to any of the above.
- . 7.9 **Acceptance of Materials or Services.** In the event the Association undertakes to provide materials or services that are not otherwise required in the maintenance of the Project, which benefit individual Lots, and which can be accepted or not by individual Owners, such Owners, in accepting such materials or services, agree that the costs thereof may be an Individual Assessment pertaining, at the discretion of the Board of Directors.

**ARTICLE 8:
NONPAYMENT OF ASSESSMENTS & LIABILITY**

- . 8.1 **Delinquency.** Assessments not paid within the time required shall be delinquent. Whenever an Assessment is delinquent, the Board of Directors may, at its option, invoke any or all of the remedies granted in this Article. The failure of the Association to send a statement to an Owner or an error in any such statement (other than a certificate of payment) shall not relieve any Owner of liability for any Assessment or charge under the

Governing Documents.

- 8.2 **Collection Charges and Interest.** The Board may adopt Rules governing the collection of Assessments. If the Board does not otherwise adopt or establish billing and collection procedures, the following shall apply: Assessments shall be due on shall be due and payable on the first day of the fiscal year. Assessments will be considered past due thirty (30) days after the due date. If no payment is received after (30) days from the due date, the Association may charge a late fee of \$25 per month. In addition to late fees, interest at the rate of 18% per annum may accrue on all unpaid balances, including unpaid prior attorney fees, interest (resulting in compounding of interest), late fees, and Assessments. The Association may also assess to the Owner a collection charge, additional late fees, and any other reasonable charges by a Manager related to collections.
- 8.3 **Personal Obligation and Lien.** All Assessments, together with any interest, late fees, collection costs, and attorney fees if collection efforts become necessary shall be, constitute, and remain: (a) a charge and continuing lien upon the Lot with respect to which such Assessment is made; and (b) the personal obligation of the person who is the Owner of such Lot at the time the Assessment falls due. No Owner may exempt himself or his Lot from liability for payment of Assessments by waiver of his rights concerning the Common Areas or by abandonment of his Lot. In a voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all such unpaid Assessments, late payment fees, interest, and costs of collection, including reasonable attorney fees, which shall be a charge on the Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore.
- 8.4 **Collection Action at Law.** The Association may exercise any or all of the following remedies to collect delinquent Assessments:
- (a) The Association may suspend such Owner's voting rights.
 - (b) The Association shall have a lien against each Lot for any Assessment levied against the Lot and any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Lot from the date on which the Assessment, fine, or charge is due. This lien shall arise and be perfected as of the date of the recording of the original declaration. At any time, any Assessment or installment thereof is delinquent, the Association, by and through its Board or any Manager, may file a notice of lien in the deed records of Davis County, Utah against the Lot with respect to which the delinquency pertains. Once filed, such lien shall accumulate all future Assessments or installments, interest, late fees, penalties, fines, attorney fees, and other appropriate costs properly chargeable to an Owner by the Association, until such amounts are fully paid. Said lien may be foreclosed at any time as allowed by law. The lien of the Association shall be superior to all other liens and encumbrances except: a lien or encumbrance recorded before the original Declaration was recorded; a first or second security interest on the Lot secured by a mortgage or trust deed that is recorded before the Association's notice of lien; or a lien for real estate taxes or other governmental assessments against the Lot. The Association through its duly authorized agents, may bid on the Lot at any foreclosure sale, and may acquire and hold, lease, mortgage, and convey the Lot.

(c) The Association may bring an action to recover a money judgment for unpaid Assessments, fines, and charges under this Declaration against the Owner without foreclosing or waiving the lien described above. Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.

(d) If a delinquent Owner is leasing his Lot or any portion thereof, the Board may, at its option, so long as such default shall continue, demand and receive from any tenant of the Owner the rent due or becoming due and the payment of such rent to the Board shall discharge such tenant for rent due, and shall discharge the Owner for such Assessments to the extent of the amount so paid.

(e) The Association may terminate utilities paid out of the Common Expense, and the right to use the Common Areas.

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

(g) Payments shall be credited first to collection costs (including attorney fees), then to interest and late fees, then to the oldest assessments, then the most recent assessments.

- 8.5 **Power of Sale.** The Association shall have all rights of foreclosure granted by the Act, both judicially and non-judicially. Pursuant to Utah Code §57-1-20 and §57-8a-302, an Owner's acceptance of an interest in a Lot constitutes a simultaneous conveyance of the Lot in trust, with power of sale, to the Association's attorney of record, as trustee, for the benefit of the Association, for the purpose of securing payment of Assessments under the terms of this Declaration. The Association may appoint a qualified successor trustee by executing and recording a substitution of trustee form.
- 8.6 **Attorney Fees Incurred as a Result of a Default.** In addition to any attorney fees and costs provided for herein, the Association shall be entitled to recover all reasonable attorney fees and costs incurred as a result of an Owner's failure to timely pay Assessments, including but not limited to attorney fees and costs incurred to: (1) obtain advice about a default; (2) collect unpaid Assessments; (3) file lawsuits or other legal proceedings related to a default in an effort to collect unpaid Assessments; (4) file pleadings, notices, objections, and proofs of claim in any bankruptcy proceeding; (5) examine the debtor or others related to collections; (6) monitor any bankruptcy proceedings including but not limited to regular monitoring of an Owner's progress in a chapter 13 or chapter 11 plan for the duration of the plan; (7) file any motions, objections, or other adversary proceedings in a bankruptcy matter and all related activities including seeking and responding to discovery; taking depositions or examinations; introducing evidence, hiring and paying expert witnesses; filing motions, pleadings, and other papers; attending trials, hearings, or other court proceedings, including as reasonably necessarily related to assert any non-dischargeability of debts, to assert claims against the estate or co-debtors, to challenge exemptions, to pursue any appropriate adversary proceeding, or for any other reason related to the ultimate attempt to collect unpaid Assessments; and (8) foreclose a lien, secure lien rights, or prepare any notice of lien. This provision is to be construed broadly to permit the Association to recover any reasonable fees and costs in any way related to an Owner's default in the payment of Assessments and the ultimate collection of those Assessments.

**ARTICLE 9:
PROPERTY RIGHTS IN LOTS & COMMON AREA**

9.1 General Easements to Common Area and Lots.

(a) Subject to all other terms of the Governing Documents, each Owner shall have the right and a nonexclusive license for use and enjoyment of the Common Area and facilities, subject to any other restrictions related to such use. Such right and nonexclusive license shall be appurtenant to and shall pass with title to each Lot and in no event shall such appurtenant rights be separated therefrom. Occupants shall have the same access and use rights to the Common Area and facilities as an Owner. All such rights shall be subject to any Rules established by the Board of Directors.

(b) The Association shall have nonexclusive easements with the right of access over and across each Lot, to make inspections, to prevent or mitigate damage to Common Area and to maintain, repair, replace, or effectuate the restoration of the Common Area and facilities that the Association is responsible for maintaining which are accessible from such Lot. Such rights shall be exercised only after the notice required in this Declaration. The Association shall have a nonexclusive right to grant permits, licenses, and easements upon, across, over, under, and through the Common Area and facilities for purposes necessary for the proper operation of the Project.

- 9.2 Public Utilities.** Easements and rights-of-way over the Project for the installation and maintenance of electricity lines, telephone lines, cable television lines, fiber optics, water lines, gas lines, sanitary sewer lines, drainage facilities, telecommunication fixtures and equipment, utility fixtures and equipment, and such lines, fixtures, or equipment needed or determined by the Board of Directors to be helpful in serving the Project, Lots, or Lot Owners in the Project are hereby established and dedicated; provided, however, use of said easements and rights-of-way shall not unreasonably interfere with the use of the Common Area and facilities and the Lots by the Owners or Occupants. The Association shall have the power to grant and convey, in the name of the Association or all of the Owners as their attorney-in-fact, to any Person, easements and rights-of-way in, on, over, or under the Common Area and facilities or Lots for the purpose of constructing, erecting, operating, or maintaining lines, cables, wires, wireless transmission or reception equipment, conduits, or other devices for electricity, cable television, power, telecommunications, internet, telephone, public sewers, storm water drains and pipes, water systems, sprinkling systems, water heating and gas lines or pipes and any other public, quasi-public, or private improvements or facilities. Each Owner in accepting the deed to a Lot expressly consents to such easements and rights-of-way and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way. Such Owner and those claiming by, through, or under an Owner agree to execute promptly all such documents and instruments and to do such other things as may be necessary or convenient to effect the same at the request of the Association. However, no easement can be granted pursuant to this paragraph if it would permanently and materially interfere with the use, occupancy, or enjoyment by any Owner of such Owner's Lot.

- 9.3 Easements for Encroachments.** If any portion of the Common Area or any subdivision

improvement encroaches upon any Lot, or if any Lot encroaches upon any other Lot or the Common Area as a result of the manner in which the subdivision improvements are constructed or due to settling, shifting, alteration, replacement, repair, or restoration by the Association, a valid easement for encroachment, and maintenance of such encroachment, shall exist for the life of the improvement or structure.

- 9.4 **Limitation on Easement.** An Owner's rights and license for the use and enjoyment of the Common Area shall be subject to any other limitation in the Governing Documents and the right of any governmental or quasi-governmental body having jurisdiction over the Project to access and to have rights of ingress and egress over and across any roadway, parking area, or open areas contained within the Project for purposes of providing police and fire protection, transporting school children, and providing other governmental or municipal services.
- 9.5 **Views.** Views from a Lot and the Project are not assured or guaranteed in any way. There is no warranty concerning the preservation of any view or view plane from the Project and each Owner and Occupant in such Owner's Lot acknowledges and agrees that there are no view easements or view rights appurtenant to the Lot or the Project.
- 9.6 **Private Easements:** The Association shall have non-exclusive easements and rights of way over, under, and across those portions of each Lot and parcels of land designated on the Plat Maps as "Existing Public Utility Easement," or otherwise designated as an easement area, for the installation, constriction, maintenance, reconstruction, and repair of cable communication services and private utilities to the Lots and Units ("Private Utility Equipment"). If there exists a Lot within the Association where the Plat Maps do not indicate the Existing Public Utility Easement, the Association shall have the Private Utility Easement upon all such Lots, as follows: a 10-foot-wide nonexclusive private utility easement along each side of all front and rear Lot lines, and an 8-foot-wide non-exclusive private utility easement along the sides of each Lot. No Lot Owner shall permit an alteration, obstruction, or disturbance of these easements and the Equipment without the prior written consent of the Association's Board of Directors. Any Owner who allows such unauthorized alteration or disturbance of the easements and / or Equipment shall be liable for any and all costs, including reasonable attorneys' fees, incurred by the Association to restore the easement and / or Equipment. These easements shall run perpetually with the land, and shall be binding upon all Lots within the Association.

ARTICLE 10: USE LIMITATIONS & CONDITIONS

- 10.1 **Signs.** The Association may regulate and restrict signs in the Project, to the extent permitted by law, in the Rules and Regulations. Unless the Association adopts additional rules regulating signs in the Project, no signs or any other device with the apparent purpose of communicating any message to someone outside of a Lot shall be hung or displayed on a Dwelling or Lot except as permitted herein, or by the Board in writing. "Signs" shall include any type of object (including but not limited to flags, billboards, banners, plaques, a-frames, easel signs, poly-bag signs, corrugated plastic signs, lawn

signs, window signs) used to convey a message, symbol, idea, identification, or for any other purpose that signs are typically used, that is placed in, on, or outside of a Lot with the apparent purpose, in whole or in part, of making it visible to people outside of the Lot. Notwithstanding the foregoing, the following signs shall be permitted:

- (a) Occupants may display one reasonably sized American flag on the exterior of a Dwelling consistent with the Freedom to Display the American Flag Act of 2005, the Utah Display of Flag Act, and Utah Code § 57-8a-219. Flags, if displayed, must be displayed in accordance with United States Code Title 4, Chapter 1.
- (b) Occupants may display political signs related to a particular election. Political signs are permitted for a period of 60 days before and two days after any election. One sign per candidate or ballot measure of no more than 20x24 inches in size is permitted for each Lot.
- (c) Occupants may display one "for sale" sign in front of a Dwelling or Lot.

10.2 **Nuisance.** No noxious or offensive activity shall be carried on within the Project, nor shall any activity that might be or become an annoyance or nuisance to the Owners or Occupants be permitted to interfere with their rights of quiet enjoyment or increase the rate of any insurance or decrease the value of the Lots. No Owner or Occupant shall engage in activity within the Project in violation of any law, ordinance, statute, rule, or regulation of any local, city, county, state, or federal body. The Board may adopt rules that further describe the activities that are deemed to be nuisances within the Project. A Nuisance includes but is not limited to:

- (a) Any unclean, unhealthy, unsanitary, unsafe, unsightly, untidy, or unkempt condition or any condition noxious to the senses including but not limited to any condition that emits any foul, unpleasant, or noxious odors or any condition that causes any unreasonable noise or other unreasonable condition that disturbs or might disturb the peace, quiet, safety, comfort, or serenity of the other Occupants at the Project;
- (b) Actions or activities tending to cause unreasonable embarrassment, discomfort, annoyance, distress or a disturbance to any other Occupant, their guests or invitees, particularly if police or the sheriff must be called to restore order;
- (c) The pursuit of hobbies or other activities, including but not limited to the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions; and
- (d) The failure to regularly remove rubbish, trash, refuse, waste, dust, debris, and garbage from a Lot.
- (e) The failure to maintain fencing, yard, or other features visible from common ground or street.

10.3 **Temporary Structures.** No structure or building of a temporary character, including a tent, trailer, or shack, shall be placed upon the Project or used therein for longer than forty-eight (48) hours unless approved in writing by the Board.

10.4 **Parking.** Unless otherwise permitted by the Association in the Rules, the following parking restrictions shall apply. No equipment, material, or vehicles of any nature shall be stored on any street located within the Project. Licensed, regularly used passenger vehicles may be parked in the street of the Project for brief periods of time (i.e. less than

twenty-four hours). Overnight parking of vehicles shall be restricted to the driveway of the Dwelling being visited. Recreational vehicles (including, without limitation, motorcycles, trailers, campers, vans, snowmobiles, OHVs, or boats) are prohibited from being stored at the front of the house and shall only be permitted to park at the front of the house for temporary periods not exceeding seventy-two (72) hours for loading and unloading. No cars on blocks or non-running vehicles are permitted. The Association may post "no parking" signage as necessary to enforce parking restrictions. The Association may adopt additional Rules relating to the parking of vehicles within the Project by Owners, Occupants, and their respective family members, tenants, guests, and invitees, including, without limitation: (a) the right to remove or cause to be removed any vehicles that are improperly parked; (b) restrictions on the type and condition of vehicles allowed to be parked; (c) restrictions on the time period and duration of temporary parking; and (d) the assessment of fines to Owners who violate the Rules or their Occupants and guests who violate such Rules. Through the Rules, the Association may restrict or limit parking on the public roadways by Owners, Occupants, and their respective family members, tenants, guests, invitees and by other people associated with the use of the Lots. The primary purpose of each garage appurtenant to each Lot is for the parking and storage of automobiles and other vehicles. All parking of vehicles should be limited to garages or driveways. No vehicle may be parked or driven on or over sidewalks (unless the sidewalk is part of the driveway), curbs, or landscaping.

10.5 **Recreational Vehicles & Trailers.** Recreational vehicles, trailers, campers, vans, RVs, boats, snowmobiles, OHVs, oversized vehicles, and other similar recreational vehicles shall not be allowed to be kept on a Lot unless said vehicle or trailer is kept at all times within a closed garage or in the side yard behind a fence, except for loading and unloading as permitted under Section 10.4, above.

10.6 **Animals.** Owners may only keep animals in accordance with City, County, and State laws and ordinances. Domestic animals generally kept in households such as dogs, cats, birds, fish, and hamsters may be kept in the Project subject to the rules and requirements of this Declaration. No more than a combination of any two (2) domestic animals allowed under this Section shall be kept in a Lot or Dwelling without prior approval of the Board. No livestock or poultry may be kept on any Lot. Notwithstanding the foregoing, no animal may be kept within a Lot which: (1) is raised, bred, kept, or maintained for any commercial purposes; (2) causes a nuisance; or (3) in the good faith judgment of the Board of Directors, results in an annoyance or threat of injury, or is obnoxious to or unreasonably causes anxiety to other Owners or Occupants within the Project. The Board of Directors may exercise its judgment for specific animals even though others of the same breed or type are permitted to remain. All fecal matter shall be immediately cleaned up in the Project. The Board may adopt Rules adding further Terms and Conditions related to animals in the Association not inconsistent with this Declaration including but not limited to requirements for registration, specific fees or deposits for Owners of Lots that have animals, the use of leashes, and noise and barking limitations. An Owner who keeps a pet or animal of any kind is liable for any and all damage caused by such pet or animal and shall indemnify and hold harmless the Association and any other Owner from any loss, claim, or liability of any kind arising from or related to such pet or animal.

Incessantly barking dogs will not be permitted and will result in fines. Owners and occupants may not permit their dogs to roam unattended in the Project. Dogs must be kept in a Dwelling, dog run, or kennel. All dog runs and kennels shall be screened off and out of the direct view from any street, and should be in the rear yard of the Lot. When not confined on a Lot or in a Dwelling, all dogs must be leashed and under the direct control and supervision of an Owner.

- 10.7 **Residential Occupancy.** No trade or business may be conducted in or from any Dwelling unless:
- (a) The existence or operation of the business activity is not apparent or detectable by sight, sound, or smell, from any other Dwelling or Lot;
 - (b) The business activity conforms to all zoning and legal requirements for the Project and the business activity;
 - (c) The business activity does not involve persons coming onto the Project who do not reside in the Project in a matter and/or amount that would constitute a nuisance;
 - (d) The business activity does not involve the solicitation of Occupants or Owners of the Project;
 - (e) The business activity is consistent with the residential character of the Project and does not constitute a nuisance or a hazardous or offensive use or threaten the security or safety of other Owners and Occupants of the Project;
 - (f) The business activity is disclosed to the Board before business is commenced along with a description of the business activity, a statement of the amount of space required in the Dwelling or Lot for such activity, and a description of any impact on the Project;
 - (g) The business activity will not result in the increase of the cost of any of the Association's insurance;
 - (h) The Board's ongoing requests for information related to the business as necessary to determine compliance with this paragraph are responded to fully and completely.
- 10.8 **No Subdivision.** No Lot or Dwelling shall be split, subdivided, separated, or timeshared into two (2) or more Lots or Dwellings or property interests (whether temporally or spatially), and no Owner of a Lot shall sell a part thereof without prior written approval of the Board.
- 10.9 **Landscape Maintenance.** Owners shall be responsible for maintaining their yards, gardens, fences, Park Strips, and mowing their lawns. The Association may adopt Rules further regulating the landscape maintenance for the Lots including standards for repairs, weed control, etc.
- 10.10 **Energy Conservation Equipment.** No solar energy collector panels, other energy conservation equipment or attendant hardware shall be constructed or installed on the property without the prior written consent of the Board.

ARTICLE 11: AMENDMENTS

- 11.1 **General Amendment Requirements.** Except as otherwise provided herein, this

Declaration may be amended by the affirmative vote of Owners holding at least sixty-seven percent (67%) of the total votes of the Association. The approval required to amend the Declaration may be obtained by ballot, vote, or any other means allowed by law. The vote of approval for any one Owner of a Lot is sufficient if there are multiple Owners of the Lot, and so long as any other Owner of the parcel does not vote inconsistently.

- 11.2 **Execution and Effective Date of Amendments.** An amendment that has been adopted as provided herein shall be executed by the Board of Directors, through its agent, who shall certify that the amendment has been approved and adopted and that the procedures and requirements necessary to amend the Declaration have been complied with. The amendment shall be effective when it is recorded in the office of the County Recorder of Davis County, Utah.
- 11.3 **Changes to Plat or Boundaries of the Association.** The Association may adopt an amended Plat, supplemental Plat, correction to the Plat, or boundary agreement related to any boundary in or around the Project, including any boundary to any Lot or Lots upon the approval by vote of sixty-seven percent (67%) of the total votes of the Association of Owners.

ARTICLE 12: NOTICE

- 12.1 **Notices.** Any notice to be given to an Owner, a Lender, or the Association under the provisions of the Governing Documents shall be in writing and shall be delivered as follows:
 - (a) Notice to an Owner from the Association.
 - (1) Notice to an Owner shall be effective upon the satisfaction of any of the following delivery methods:
 - (i) By a written notice delivered personally to the Owner, which shall be effective upon delivery.
 - (ii) By a written notice placed in the first-class United States mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Owner's Lot. Unless otherwise provided by law, such as provided in Utah Code § 16-6a-103(4), any notice so deposited in the mail shall be deemed effective five (5) days after such deposit.
 - (iii) By electronic transmission to an Owner which includes:
 - (A) By email that is sent to an email address provided by the Owner for the purpose of Association communications; or an email sent to an email address from which the Owner has communicated related to Association matters, and so long as no indication is received that the email may not have been delivered. Unless otherwise provided by law, any notice sent by email shall be deemed effective when received or five (5) days after it is sent.
 - (B) By text message to a phone number provided by the Owner

for the purpose of Association communications; or a phone number from which the Owner has communicated related to Association matters, and so long as no indication is received that the text message may not have been delivered. Unless otherwise provided by law, any notice sent by text message shall be deemed effective when received or five (5) days after it is sent.

(iv) By any other method that is fair and reasonable as provided for in the Act or otherwise provided for by law.

(2) Notwithstanding Subsection (1) of this Section, the Association shall send all notices by U.S. Mail if an Owner, by written demand, demands that the Association send all notices by mail.

(3) In the case of co-Owners, notice to one of the co-Owners is effective as notice to all such co-Owners. The Association shall not be required to give more than one notice per Lot, whether electronic or not. In case any two (2) co-Owners receive conflicting notice demands, notice shall be proper if mailed by first-class mail to the Lot address.

(4) In case posting of a notice on the Lot is permitted, such posting is effective when posted on the front or primary access door to the primary Dwelling and any such posting may be removed by the Association the sooner of either (a) two (2) days after the event or action for which notice was given; or (b) ten (10) days after the posting.

(b) Association Entry to Lots. The Association acting through the Board or its duly authorized agent may, upon reasonable notice of at least 72 hours, enter upon any Lot on the areas located outside the exterior boundaries of a Dwelling, regardless of whether or not the Owner or Occupant thereof is present at the time, to abate any infractions, to fulfill its responsibilities, to exercise its rights, and to correct any violation of any of the Governing Documents. The notice set forth in this Section shall not be necessary in case of an emergency threatening other Dwellings, Occupants, or other parts of the Project. Nothing in this Section shall be construed to authorize the entry of the Association into the interior of a Living Unit without the consent of the Owner unless there is an emergency threatening another Dwelling or the Occupants of another Dwelling. Owners shall maintain up-to-date emergency contact information records with the Association, including any local representative an Owner may have for notice purposes.

(c) Notice to a Lender. Notice to a Lender shall be delivered by first-class U.S. Mail, postage prepaid, to the most recent address furnished by such Lender in writing to the Association for the purpose of notice or, if no such address shall have been furnished, to any office of the Lender. Any address for a Lender that is found on a document recorded on the title of a Lot shall be deemed an office of the Lender. Any notice so deposited in the mail shall be deemed effective when received, or five (5) days after such deposit.

(d) Notice to Association from an Owner. An Owner's notice to the Association shall be effective upon the satisfaction of any of the following delivery methods:

(1) By a written notice delivered personally to a Board Member, which shall be effective upon delivery;

(2) By a written notice placed in the first-class U.S. Mail, postage prepaid, to the current registered business address of the Association. Any notice so deposited in the

mail shall be deemed effective when received, or five (5) days after such deposit;

(3) By written email correspondence to the Association: (1) that is sent to an email address provided by the Association in the prior twelve (12) months for the purpose of Association communications or (2) that is emailed to an email address from which the President of the Association has communicated related to Association matters, and so long as no indication is received that the email may not have been delivered or received. Any notice sent by email shall be deemed effective when received, or five (5) days after it is sent;

(4) By text message to a phone number provided by the Association for the purpose of Association communications, and so long as no indication is received that the text message may not have been delivered. Unless otherwise provided by law, any notice sent by text message shall be deemed effective when received or five (5) days after it is sent.

ARTICLE 13: ATTORNEY FEES AND COSTS

13.1 Legal Costs Associated with Disputes with Owners.

(a) Owner Liable for Fees Incurred in Dispute. If the Association utilizes legal counsel to enforce any Term and Condition after notice to the Owner that the Association intends to enforce the Term and Condition or after the Owner communicates or demonstrates an intent not to comply with the Term and Condition, the Association may assess all reasonable attorney fees and costs associated with such enforcement to the Owner, regardless of whether a lawsuit is initiated or not.

(b) Costs. The term "costs" as used in this Section shall include all costs including but not limited to copying costs, deposition costs, expert witness fees, investigative costs, service costs, and filing fees paid to courts. "Costs" is specifically defined in this Declaration to be broader and to include costs that are not included in costs as the term is used in the Utah Rules of Civil Procedure.

ARTICLE 14: RESERVES

14.1 **Requirement for Reserves.** The Association shall obtain a reserve analysis as required by the Act and shall maintain a reserve fund for the maintenance, repair, and replacement of the Common Area, pursuant to the following provisions:

(a) Collection. Reserve funds may be collected as part of regular or special Assessments, as determined by the Board.

(b) Amount. In formulating the Association's yearly budget, the Association shall include a reserve fund line item in an amount the Board of Directors determines, based on the reserve analysis, to be prudent. A reserve fund line item means the line item in the Association's annual budget that identifies the amount to be placed into the reserve fund.

(c) Owner Veto. Within forty-five (45) days after the day on which the Association adopts the annual budget, the Owners may veto the reserve fund line item by a fifty- one percent (51%) vote of the total votes of the Association at a special meeting called by the Owners for the purpose of voting whether to veto a reserve fund line item. If the Owners veto a reserve fund line item and a reserve fund line item exists in a previously approved annual budget of the Association that was not vetoed, the Association shall fund the reserve account in accordance

with that prior reserve fund line item.

(d) **Surplus Monies Applied to Reserves.** The Association may retain surplus Association money as additional reserves rather than refund it to the Owners or credit it to future Assessments.

(e) **Segregation of Reserves.** In accordance with Utah Code § 57-8a-211, the Association shall segregate money held for reserves from regular operating and other accounts.

(f) **Reserve Analysis.** In accordance with Utah Code § 57-8a-211, the Board shall cause a reserve analysis with an onsite evaluation to be conducted no less frequently than every six (6) years. The Board shall review and, if necessary, update a previously conducted reserve analysis no less frequently than every three (3) years. The Reserve analysis shall include, at a minimum: (1) a list of the components identified in the reserve analysis that will reasonably require reserve funds; (2) a statement of the probable remaining useful life, as of the date of the reserve analysis, of each component identified in the reserve analysis; (3) an estimate of the cost to repair, replace, or restore each component identified in the reserve analysis; (4) an estimate of the total annual contribution to a reserve fund necessary to meet the cost to repair, replace, or restore each component identified in the reserve analysis during the component's useful life and at the end of the component's useful life; and (5) a reserve funding plan that recommends how the association may fund the annual contribution set forth in the reserve analysis. The reserve analysis and updates shall project a minimum of thirty (30) years into the future.

(g) **Qualifications for Person Preparing Reserve Analysis.** The Board may conduct a reserve analysis itself or may engage a reliable person or organization, as determined by the Board, to conduct the reserve analysis. The Person preparing the reserve study shall have: (1) experience in current building technologies, (2) a solid working knowledge of building-cost estimating and life-cycle costing for facilities, and (3) the tools and knowledge to prepare a report. Preferable qualifications include the RS (Reserve Specialist) designation available through the Community Association Institute (CAI), the PRA (Professional Reserve Analyst) designation offered through the Association of Professional Reserve Analysts (APRA), or other designations by similar associations establishing that the Person has some formal training related to preparing a reserve analysis.

(h) **Summary and Copies of Reserve Analysis.** In accordance with Utah Code § 57-8a-211, the Association shall annually provide Owners a summary of the most recent reserve analysis or update. The Association shall provide a copy of the complete reserve analysis or update to any Owner requesting a copy.

ARTICLE 15: LEASING AND NON-OWNER OCCUPANCY

. 15.1 **No Restriction on Leasing and Non-Owner Occupancy.** Subject to the requirements in this Article 19, any Dwelling may be leased or Non-Owner Occupied.

. 15.2 **Permitted Rules.** The Board of Directors may adopt Rules requiring:

(a) Reporting and procedural requirements related to Non-Owner Occupied Dwellings and the Occupants of those Dwellings other than those found in this Article, including requiring informational forms to be filled out by Owners and/or residents identifying Non-Owner Occupants, vehicles, phone numbers, etc.

(b) Other reasonable administrative provisions consistent with and as it deems

appropriate to enforce the requirements of this Declaration.

- 15.3 Requirements for Leasing and Non-Owner Occupancy.** The Owners of all Dwellings must comply with the following provisions:
- (a) Any lease or agreement for otherwise allowable Non-Owner Occupancy must be in writing, must be for an initial term of at least six (6) months, and shall provide as a term of the agreement that the resident shall comply with the Declaration, the Bylaws, and the Rules, and that any failure to comply shall be a default under the lease or agreement. If a lease or agreement for Non-Owner Occupancy (whether in writing or not) does not include these provisions, they shall nonetheless be deemed to be part of the lease or agreement and binding on the Owner and the resident.
 - (b) If required in the Rules or requested by the Board, a copy of any lease or other agreement for Non-Owner Occupancy shall be delivered to the Association within the time period provided for in the Rules or by the Board.
 - (c) A Non-Owner Occupant may not occupy any Dwelling for transient, short-term (less than six months), hotel, resort, vacation, or seasonal use (whether for pay or not).
 - (d) No Owner may lease less than the entire Dwelling unless the Owner resides in the Dwelling.
 - (e) Except as a guest of an Owner, daily and weekly occupancy by Non-Owner Occupants is prohibited (whether for pay or not).
 - (f) Any Lots that are Non-Owner Occupied at the time this Declaration is recorded with the County Recorder's office shall be grandfathered and allowed to remain Non-Owner Occupied, subject to the provisions herein, until such time as the ownership of the Lot is conveyed or the Lot becomes Owner-Occupied. All grandfathered Lots must conform to the provisions in this Article.
- 15.4 Joint and Several Liability of Owner and Non-Owner Occupants.** The Owner of a Dwelling shall be responsible for the Occupant's or any guest's compliance with the Declaration, Bylaws, and Rules. In addition to any other remedy for non-compliance with this Declaration, after reasonable notice, the Association shall have the right to initiate an action and obtain a forcible entry and unlawful detainer order from the court, or similar action, with the purpose of removing the offending Non-Owner Occupant. The Association, the Board, and any Manager shall not have any liability for any action taken pursuant to this subparagraph and the Owner shall indemnify and pay the defense costs of the Association, the Board, and any Manager arising from any claim related to any action taken in good faith by any of them pursuant to this subparagraph.

**ARTICLE 16:
GENERAL PROVISIONS**

- 16.1 Enforcement.** The Association or any Owner shall have the right to enforce, by proceedings at law or in equity, all Terms and Conditions including the right to prevent the violation of any such Terms and Conditions and the right to recover damages and other sums, including attorney fees, for such violation.
- 16.2 No Liability of Officials.** To the fullest extent permitted by applicable law, neither the Board of Directors nor any officer of the Association shall be liable to any Owner or the

Association for any damage, loss, or prejudice suffered or claimed on account of any decision, approval or disapproval, course of action, act, omission, error, or negligence.

- . 16.3 **Use of Funds Collected by the Association.** All funds collected by the Association, including Assessments and contributions to the Association paid by the Owners, if any, shall be held by the Association in a fiduciary capacity to be expended in their entirety for nonprofit purposes of the Association in managing, maintaining, caring for, and preserving the Common Area and for other permitted purposes as set forth in this Declaration.
- . 16.4 **Conflicting Provisions.** In the case of any conflict between this Declaration and the Bylaws, or the Rules, this Declaration shall control. In the case of any conflict between this Declaration and the Act, to the extent the Act does not legally allow this Declaration to contain provisions contrary to the Act, the Act shall control and this Declaration shall be deemed modified accordingly. Notwithstanding the above, this Declaration shall be deemed modified only to the extent necessary to come into compliance with the Act.
- . 16.5 **Consent, Power of Attorney, and Waiver.** By acceptance of a deed, lease, or other conveyance of an interest in a Lot, each Owner or Occupant consents to the rights reserved to the Association in this Declaration, including but not limited to the right to prepare, execute, file, process, and record necessary and appropriate documents and other items to establish and grant easements and to make necessary and appropriate amendments of this Declaration, the Plat, and the Bylaws. By such acceptance, each Owner or Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same; and such acceptance shall be deemed an appointment of the Association, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on such Owner's or Occupant's behalf; and such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Association's reserved rights as set forth in this Declaration and shall not be affected by the disability of any such Owner or Occupant.
- . 16.6 **Security.** The Association shall in no way be considered an insurer, guarantor, or provider of security from criminal conduct within or relating to the Project, including any Common Area and Facilities that the Association may have an obligation to maintain. The Association shall not be held liable for any loss or damage by reason of criminal conduct arising for any reason including any failure to provide security or any ineffectiveness of security measures undertaken. Each and every Owner or Person entering the Project acknowledges that the Association has no duty to any Owner or Occupant related to security or criminal conduct and expressly acknowledges that no duty is owed to anyone such as that of a landlord or retail business. By purchasing a Lot in this Association and/or residing in this Association, Owners and Occupants agree that the Association and the Board of Directors are not insurers of the safety or well-being of Owners or Occupants or of their personal property as it relates to criminal conduct, and that each Owner or Occupant specifically waives any such claim and assumes all risks for loss or damage to Persons or property resulting from criminal conduct, to the extent any

such damages are not covered by insurance.

16.7 **No Representations and Warranties.** EACH OWNER AND OCCUPANT UNDERSTANDS, AGREES, AND ACKNOWLEDGES THROUGH TAKING TITLE OR RESIDING IN THE PROJECT THAT THE ASSOCIATION AND THE BOARD OF DIRECTORS HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND RELATED TO THE PROJECT AND THAT EACH OWNER OR OCCUPANT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE PROJECT.

IN WITNESS THEREOF, the undersigned officer of the Association hereby certifies that this Second Amended Declaration was duly approved by at least sixty-seven percent (67%) of the total votes of the Association. This SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AGREEMENTS & RESTRICTIONS FOR MOUNTAIN VISTAS CLSUTER SUBDIVISION is executed as of the day and year written below.

DATED as of the 7th day of October, 2022.

MOUNTAIN VISTAS HOMEOWNERS ASSOCIATION

Gregory A. Brown

By: Gregory A. Brown

Its: Mountain Vistas HOA President

STATE OF UTAH)
) ss.
COUNTY OF DAVIS)

On the 7th day of October 2022, personally appeared before me Gregory A. Brown who by me being duly sworn, did say that she/he is an authorized representative of Mountain Vistas Homeowners Association and that the foregoing instrument is signed and executed by authority of the consent of its members.

Notary Public *Abby Knighton*

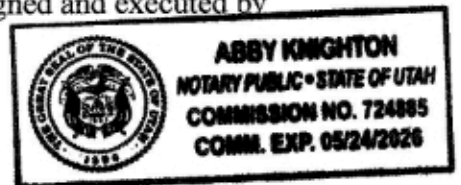


EXHIBIT A

LEGAL DESCRIPTION

All of Mountain Vistas Phase 1A Cluster Subdivision, as shown on the Plat recorded in the office of the Davis County Recorder.

Lot 1, Lots 4 through 25, Lots 54 through 77, and Lots 80 through 88, and Common Areas 1-4.

Parcel No. 11-493-0001;

Parcel No. 11-493-0004 through 11-493-0025;

Parcel No. 11-493-0054 through 11-493-0077; and,

Parcel No. 11-493-0080 through 11-493-0092.

All of Mountain Vistas Phase 1A Cluster Subdivision Amended, as shown on the Plat recorded in the office of the Davis County Recorder.

Lots 301 and 302.

Parcel No. 11-509-0301 and 11-509-0302.

All of Mountain Vistas Phase 1A Cluster Subdivision Second Amended, as shown on the Plat recorded in the office of the Davis County Recorder.

Lot 3-A.

Parcel No. 11-789-0003.

All of Mountain Vistas Phase 1A Cluster Subdivision Third Amended, as shown on the Plat recorded in the office of the Davis County Recorder.

Lot 2-A.

Parcel No. 11-895-0003.

All of Mountain Vistas Phase 1B Cluster Subdivision, as shown on the Plat recorded in the office of the Davis County Recorder.

Lots 28 through 53 and Common Areas 5-6.

Parcel No. 11-494-0028 through 11-494-0055.

All of Mountain Vistas Phase 2A Cluster Subdivision, as shown on the Plat recorded in the office of the Davis County Recorder.

Lots 89 through 133 and Common Areas 1-2.

Parcel No. 11-534-0089 through 11-534-0135.

All of Mountain Vistas Phase 2B Cluster Subdivision, as shown on the Plat recorded in the office of the Davis County Recorder.

Lots 134 through 169 and Common Area.

Parcel No 11-550-0134 through 11-550-0170.

The following Lots within the Mountain Vistas Phase 3 Subdivision, as shown on the Plat recorded in the office of the Davis County Recorder:

Lots 305 through 308, Lots 310 through 317, and Lots 319 through 323.

Parcel No. 08-357-0305 through 08-357-0308;

Parcel No. 08-357-0310 through 08-357-0317; and

Parcel No. 08-357-0319 through 08-357-0323

All of Mountain Vistas Phase 4 Cluster Subdivision, as shown on the Plat recorded in the office of the Davis County Recorder.

Lots 26-A and 27-A

Parcel No. 11-680-0026 and 11-680-0027

All of Mountain Vistas Phase 5 Subdivision, as shown on the Plat recorded in the office of the Davis County Recorder.

Lot 1

Parcel No. 08-512-0001

All of Mountain Vistas Phase 6 Subdivision, as shown on the Plat recorded in the office of the Davis County Recorder.

Lots 601 and 602.

Parcel No. 08-536-0601 through 08-536-0602.

EXHIBIT B
BYLAWS FOR MOUNTAIN VISTAS
HOMEOWNERS ASSOCIATION

BY-LAWS OF THE MOUNTAIN VISTAS HOMEOWNERS ASSOCIATION

ARTICLE I - OFFICES

- 1.1** The initial principal offices of the Corporation in the State of Utah shall be located at 220 South 200 East, Suite 330, Salt Lake City, UT 84111.

ARTICLE II - MEETINGS

- 2.1 ANNUAL MEETINGS.** The annual meeting of the members shall be held during the month of January of each year beginning with the year 2002, for the purpose of electing Directors and for the transaction of such other business as may come before the meeting. In the event that such annual meeting is omitted by oversight or otherwise during the month provided for, the Directors shall cause a meeting in lieu thereof to be held as soon thereafter as may be convenient, and any business transacted or elections held at such meeting shall be as valid as if transacted during the month in which the annual meeting was to be called. If the election of Directors shall not be held during the month designated herein for the holding of the annual meeting of members or at any adjournment of any meeting so called, such subsequent meetings shall be called in the same manner as is provided for the calling of the annual meeting of the members. Such meeting may also be called without the required advance notice if the quorum of members calling such meeting shall obtain from the members of the foundation, written waiver of notice of such meetings, and such waiver shall be attached to the minutes of the annual members' meeting so called, in the corporate minute book.
- 2.2 SPECIAL MEETINGS.** Special meetings of the Members may be called at any time by the President or by a majority of a quorum of the Board of Directors, or upon written request of the Members representing at least fifty percent (50%) of the total membership.
- 2.3 NOTICE OF MEETINGS.** Notice of all Members' meetings, annual or special, shall be given by personal delivery mail or telegram and shall be given not less than fifteen (15) days nor more than sixty (60) days before the time of the meeting and shall set forth the place, date, and hour of the meeting, and the nature of the business to be undertaken. Notices shall be given by, or at the direction of, the secretary or person authorized to call the meeting, and shall be transmitted to each Member. Notices shall be addressed to the Member's address last appearing on the books of the Foundation or supplied by the Member. Mailed notices shall be deemed received seventy-two (72) hours after they are mailed by standard mail; notice by telegram shall be deemed received twenty-four (24) hours after they are sent. Notices to Members may also be personally delivered and shall be deemed received upon delivery to any occupant of the Member's residence.
- 2.4 QUORUM.** The presence at any meeting in person or by proxy of fifty percent (50%) of the Members constitutes a quorum. If any meeting cannot be held because a quorum is not present, a majority of those present, either in person or by proxy, may adjourn the meeting for a period of not more than three (3) business days to acquire the proxy or presence of a quorum of Members. If the required quorum cannot be obtained, another meeting may be called subject to the notice requirement and the required quorum at the subsequently noticed meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. Any meeting of the Members at which a quorum is present may be adjourned for any reasons to a time not less than forty-eight (48) hours nor more than thirty (30) days from the time of such meeting by Members representing a majority of the votes present either in person or by proxy. If after the adjournment a new date is fixed for the adjourned meeting, notice of the time and place of the adjourned meeting shall be given to Members in the manner prescribed for regular meetings.
- 2.5 PROXIES.** At all meetings of Members each Member may be present in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy is revocable and automatically terminates eleven (11) months from the date of its execution unless otherwise provided in the proxy, and in all cases, such proxy shall terminate three (3) years from its date.

- 2.6 ORDER OF BUSINESS.** The order of business of all meetings of the Members shall be as follows:
- a. Call to Order, Roll Call;
 - b. Proof of Notice of Meeting or Waiver of Notice;
 - c. Reading and Approval of Minutes of Preceding Meeting;
 - d. Review Follow-Up from Prior Meetings;
 - e. Reports of Board of Directors and Officers;
 - f. Election of Members of the Board of Directors (if any are to be elected);
 - g. Unfinished Business; and
 - h. General Business

- 2.7 WAIVER OF NOTICE.** Whenever any notice is required to be given by these Bylaws, or by the Certificate of Incorporation of this Corporation, or by any of the Corporation laws of the State of Utah, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated herein, shall be deemed equivalent thereto.

ARTICLE III - BOARD OF DIRECTORS

- 3.1 GENERAL POWERS.** Its Board of Directors shall manage the business and the affairs of the Corporation.
- 3.2 ELECTION OF BOARD OF DIRECTORS.** The Board of Directors shall be chosen by ballot at the annual meeting of members or at any meeting held in place thereof, as provided by law.
- 3.3 BOARD OF DIRECTORS AND OFFICERS.** The Board of Directors and Officers shall conduct the affairs of the Association as the board may elect or appoint in accordance with these articles and bylaws of the Association and in accordance with the recorded CC&R's, as the same may be amended from time to time. The initial Board shall be composed of three (3) directors. The number of Directors shall be not less than three (3), or more than seven (7) Directors. Each Director shall hold office until the next annual meeting of members or until his successor shall have been duly elected and qualified.
- 3.4 POWERS OF DIRECTORS.** The Board of Directors shall have the responsibility for the entire management of the business of this Corporation in the management and control of the property, business and affairs of the Corporation, the Board of Directors is vested with all of the powers possessed by the Corporation itself insofar as this delegation of authority is not inconsistent with the laws of the State of Utah and with the Certificate of Incorporation or with these Bylaws.
- 3.5 MEETING OF DIRECTORS.** Regular meetings of the Board of Directors may be determined by vote, and if so determined, no notice thereof need be given. Meetings of the Board of Directors may be held by telephone. Special meetings of the Board of Directors may be held at any time or any place within or without the State of Utah whenever called by the President, Vice-President, Treasurer, Secretary and Assistant Secretary or two (2) Directors, notice thereof being given to each Director by the Secretary or an Assistant Secretary or by the officer calling the meeting, or by delivering the same to him personally or telegraphing the same to him at his residence or business address not later than forty-eight (48) hours prior to the date on which the meeting is to be held. In case of emergency, the chairman of the Board of Directors or the resident may prescribe a shorter notice to be given personally or by telegraphing each Director at his residence or business address. Such special meeting shall be held at such time and place as the notice thereof or waiver shall specify. The Board of Directors shall appoint the officers of the Corporation after its election by the members, and a meeting may be held without notice for this purpose immediately after the annual meeting of members and at the same place. In this, the Board shall appoint a president, and other officers, who shall be known as the Management Committee, who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association; the Board may also appoint various committees to assist with these duties.
- 3.6 QUORUM OF DIRECTORS.** A majority of the members of the Board of Directors as constituted for the time being shall constitute a quorum for the transaction of business, but a lesser number not less than two (2) may adjourn any meeting and the meeting may be held as adjourned without further notice. When a quorum is present at any meeting, the majority of the members present thereat shall decide any question brought before such meeting except as otherwise provided by law or by these Bylaws.

- 3.7 VACANCIES.** Any vacancy occurring in the Board of Directors may be filled by an affirmative vote of the majority of the remaining Directors though not less than a quorum of the Board of Directors, unless otherwise provided by law or by the Certificate of Incorporation. A Director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office.
- 3.8 COMPENSATION.** By resolution of the Board of Directors, Directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors. No such payment shall preclude any Director from serving the Corporation in any other capacity and receiving compensation therefore.
- 3.9 PRESUMPTION OF ASSENT.** A Director of the Corporation who is present at a meeting of the Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent of such action with the person acting as Secretary of the meeting, or the adjournment thereof, or shall forward such dissent by registered mail to the Secretary of the Corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of such action.
- 3.10 FORMAL ACTION BY DIRECTORS.** Unless otherwise provided by law, any action required to be taken at a meeting of the Board of Directors or any other action which may be taken at a meeting of the Board of Directors may be taken without a meeting if a consent in writing, setting forth the action so taken shall be signed by all the Directors entitled to vote with respect to the subject matter thereof.
- 3.11 PERSONAL LIABILITY.** Neither Mountain Vistas LLC or its members, nor any director of the Board or committee member of the Association shall be personally liable to any Owner, Member, or to any other person, including the Association, for any damage, loss, claim or prejudice suffered or claimed on account of any act, omission to act, or performed intentionally and with malice.

ARTICLE IV - OFFICERS

- 4.1 OFFICERS OF THE CORPORATION.** The officers of this Corporation shall be a President, a Vice-President or Vice-Presidents, as the case may be, a Secretary, and an Assistant Secretary, if so required, and a Treasurer. The Board of Directors who, when present, shall preside at all meetings of the Officers. The Officers of the Corporation shall have other such powers as the Board of Directors may, from time to time, prescribe.
- 4.2 ELIGIBILITY OF OFFICERS.** The President and chairman of the Board of Directors need not be members but shall be Directors of the Corporation. The Vice-President or Vice-Presidents, Secretary and/or Assistant Secretary, Treasurer, and such other officers as may be elected or appointed, need not be members or Directors of the Corporation. Any person may hold more than one office provided the duties thereof can be consistently performed by the same person; provided, however, that no person shall, at any time, hold the three (3) offices of President, Vice-President and Secretary-Treasurer.
- 4.3 ADDITIONAL OFFICERS AND AGENTS.** The Board of Directors at its discretion, may appoint a General Manager, one or more Assistant Treasurers and one or more Assistant Secretaries and such other officers or agents as may be deemed advisable and prescribe the duties thereof.
- 4.4 ELECTION AND TERM OF OFFICE.** The officers of the Corporation to be appointed by the Board of Directors shall be appointed annually by the Board of Directors at the first meeting of the Board of Directors held after each annual meeting of the members. If the appointment of officers shall not be held at such meeting, such appointment shall be held as soon thereafter as may be convenient. Each officer shall hold the office until his successor shall have been duly appointed and shall have qualified or until his death or until he resigns or is removed in the manner hereafter provided.
- 4.5 PRESIDENT.** The President shall be the chief executive officer of the Corporation and, when present, shall preside at all Association meetings of the members unless a member of the Board of Directors is present. The President shall also sign all bonds, deeds, mortgages, extension agreements, modification of mortgage agreements, leases and contracts of the Corporation. He shall perform all the duties commonly incident to his office and shall perform such other duties as the Board of Directors shall designate from time to time.

- 4.6 VICE PRESIDENT OR VICE PRESIDENT(S).** Except as specifically limited by vote of the Board of Directors, any Vice-President shall perform the duties and have the powers of the President during the absence or disability of the President and shall have the power to sign all bonds, deeds and contracts of the Corporation. He shall perform such other duties and have such other powers as the Board of Directors shall, from time to time, designate.
- 4.7 SECRETARY OR ASSISTANT SECRETARY.** The Secretary shall keep accurate minutes of all meetings of the members of the Board of Directors and shall perform such other duties and have such other powers, as the Board of Directors shall, from time to time, so designate.
- 4.8 TREASURER.** The Treasurer, subject to the order of the Board of Directors, shall have the care and custody of the money, funds, valuable papers, and documents of the Corporation (other than his own bond, if any, which shall be in the custody of the President), and shall have and exercise, under the supervision of the Board of Directors, all the powers and duties commonly incident to his office and shall give bond in such form and with such sureties as shall be required by the Board of Directors. He shall deposit all funds of the Corporation in such bank or banks, trust company or trust companies, or with such firm or firms doing a banking business as the Directors shall, from time to time, so designate. The Treasurer may endorse for deposit or collection all checks and notes payable to Corporation or to its order, and may accept drafts on behalf of the Corporation. He shall keep accurate books of account of the Corporation's transactions which shall be the property of the Corporation and, together with all property in his possession, shall be subject at all times to the inspection and control of the Board of Directors.
- Such officer(s) shall sign all checks, drafts, notes or other obligations for the payment of money or agent(s) as the Board of Directors shall, by general or special resolution, direct. The Board of Directors may also in its discretion, require by general or special resolution, that checks, drafts, notes and other obligations for the payment of money shall be countersigned or registered as a condition to their validity by such officer(s) or agent(s) as shall be directed in such resolution.
- 4.9 RESIGNATIONS AND REMOVALS.** Any Director or officer of the Corporation may resign at any time by giving written notice to the Corporation, to the Board of Directors, or to the Chairman of the Board, or to the President or Secretary of the Corporation. Any such resignation shall take effect at the time specified therein or, if the time is not specified therein, upon its acceptance by the Board of Directors.
- 4.10 VACANCIES.** If the office of any Director or Officer or other agent becomes vacant by reason of death, resignation, removal, and disqualification or otherwise, the Directors may, by vote of a majority of a quorum, choose a successor or successors who shall hold office for the unexpired term. The Association members may fill vacancies in the Board of Directors, at a meeting called for this purpose, by vote of a simple majority of the members present and those represented by proxy. Vacancies resulting from an increase in the number of Directors may be filled in the same manner.
- 4.11 SALARIES.** The Board of Directors shall fix the salaries of the officers from time to time, and no officer shall be prevented from receiving such salary by reason of the fact that he is also a Director of the Corporation.
- 4.12 MANAGEMENT COMMITTEE.** The Board of Directors, as previously outlined, shall appoint the officers of the Corporation after its election by the members. These officers shall be known as the Management Committee, and shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association; the Board may also appoint various committees to assist with these duties.

ARTICLE V - CONTRACTS, LOANS, CHECKS AND DEPOSITS

- 5.1 CONTRACTS.** The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name and on behalf of the Corporation, and such authority may be general or confined to specific instances.
- 5.2 LOANS.** No loans shall be contracted on behalf of the Corporation and no evidence of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

- 5.3 CHECKS, DRAFTS, ETC.** Checks, drafts or other orders for payment of money, notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or officers, agent or agents of the Corporation, and in such manner as shall, from time to time, be determined by a resolution of the Board of Directors.
- 5.4 DEPOSITS.** Funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors may, in its sole discretion, select.
- 5.5 CONFLICTS.** Nothing contained in this Article shall, in any way conflict, or in any way otherwise, hamper the duties and obligations as set forth for the Treasurer of the Corporation.

ARTICLE VI - WAIVER OF NOTICE

- 6.1** Unless otherwise provided by law, whenever any notice is required to be given to any member, or Director of the Corporation under the provisions of these Bylaws or under the Certificate of Incorporation, a waiver of notice thereof in writing, signed by the person(s) entitled to such notice, whether before or after stated therein, shall be deemed equivalent to the giving of such notice.

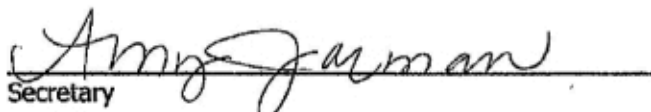
ARTICLE VII - MISCELLANEOUS

- 7.1** The Board of Directors shall have the power to fix, and from time to time, change the fiscal year of the Corporation. Unless otherwise fixed by the Board of Directors, the calendar year shall be the fiscal year.
- 7.2** The Board of Directors shall, at all times, keep themselves informed and take such steps and necessary actions as a reasonable, prudent man would do to serve the best interest of the Corporation.

ARTICLE VIII - AMENDMENTS

- 8.1** The Bylaws of the Corporation, regardless of whether made by the members or by the Board of Directors, may be amended, added to or replaced by a vote of not less than a majority of the members. Each member shall have one vote.

The foregoing Bylaws were originally adopted by Mountain Vistas Homeowners Association, Inc., at a meeting of the Incorporators of said Corporation held on the 23rd day of August, 2001; and were refilled without change with the Amended and Restated Declaration.


Secretary


President

1/10/08
Date