

**2nd AMENDED DECLARATION OF PROTECTIVE COVENANT AGREEMENTS, RESTRICTIONS AND CONDITIONS AFFECTING THE REAL PROPERTY KNOWN AS HERITAGE GROVE SUBDIVISION**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR HERITAGE GROVE SUBDIVISION, ("Declaration") 'is made this 22nd day of July, 2016 by MJC HOLDINGS LLC, a Utah Limited Liability Company ("Developer/Builder").

**RECITALS**

1. Developer is the owner of the following described real property located in Tooele County, Utah: Lots 101 through 124 inclusive of Heritage Grove Subdivision, according to the official plat thereof recorded as Entry No. 414091 recorded June, 15, 2015 in the Office of the Tooele County Recorder (collectively, the "Lots", or, individually, a "Lot").

Tax Parcel No's. 19-009-0-0Lot#101-124

2. On August 28, 2002, the prior owner caused to be filed in the County Recorder's Office of Tooele County the "Declaration of Restrictive Covenants, Conditions, and Restrictions of Heritage Grove Subdivision, as Entry No. 186517, in Book 775, at Page 379.
3. On October 29th, 2015, MJC Holdings caused to be filed in the County Recorder's Office of Tooele the "Amended Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Heritage Grove Subdivision" as Entry No.420669 ,in Book 19 , at Page 9. Lots 101-124.
4. The Developer/Builder, as the new successor and sole owner of the property (except for those purchasers listed on Exhibit A, who have given consent to this amended Declaration), now desires to revoke the foregoing Declaration and record this AMENDED DECLARATION OF

PROTECTIVE COVENANT AGREEMENTS, RESTRICTIONS AND CONDITIONS AFFECTING THE REAL PROPERTY KNOWN AS HERITAGE GROVE SUBDIVISION.

5. From the date of recording forward, the Declaration identified in Recital 2 and 3 is hereby revoked and of no further force and effect with the current document completely replacing the same.
6. It is the desire and intention of the Developer/Builder to sell the above-described and to subject the Lots to mutually beneficial restrictions under a general plan of improvement for the benefit of all the Lots in the subdivision and the future owners of such Lots;

NOW, THEREFORE, the Developer/Builder hereby declares that all of the Lots described above shall be conveyed, hypothecated, or encumbered, leased, rented, 'used, occupied, and improved subject to the following covenants and conditions of this Declaration, all of which are declared and agreed to in furtherance of a plan for improvement and sale of the Lots described above and are established and agreed upon for the purpose of enhancing and protecting the value, desirability, and attractiveness of the subdivision and the Lots. All of the covenants, restrictions, agreements, and conditions set forth herein shall encumber the land and shall be binding on all parties now or hereafter having or acquiring any right, title, or interest in the above-described Lots or any part hereof.

**1. LAND USE AND BUILDING TYPE.** No Lot shall be used for anything other than private residential purposes. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one detached single-family dwelling (individually, a "dwelling" or, collectively, "dwellings") not to exceed two (2) stories in height and an attached garage for not fewer than two (2) cars nor more than four (4) cars. Nothing herein shall be deemed to prevent the use of the Lots for development, marketing and 'sales by Developer/Builder from a model home or sales trailer located on the Lots.

**2. ARCHITECTURAL DESIGN CONTROL.** No dwelling, other structure, or improvement shall be erected, placed, or altered on any Lot until the construction plans and specifications and a plan showing the location of the dwelling, other structure, or improvement have been approved by the Architectural Control Committee as to quality of workmanship, materials, harmony of external design and colors with existing structures and improvements, and as to location with respect to topography and finished grade elevation.

No pre-existing building or structure of any kind shall be moved from any other location and placed upon any Lot, nor shall any dwelling, other structure, or improvement be permitted to remain incomplete for a period in excess of one (1) year from the date construction with respect to such dwelling, other structure, or improvement was commenced, except with the prior written approval of the Architectural Control Committee.

All construction shall be comprised of new materials, except that used brick may be used with the prior written approval of the Architectural Control Committee.

All of the exterior wall surfaces of each dwelling or other structure within the subdivision shall consist of brick, wood, cement fiberboard, rock, stucco, or a combination of such materials. Front of home to include a 3' wainscot of stone or brick minimum. All roofs in the subdivision shall be of construction grade asphalt shingles or better. All roofs shall have a pitch of 4-12 or greater (rise over run shall be 4-12 or greater). Other materials may be used with the prior written approval of the Architectural Control Committee.

**3. STORM WATER MATTERS.** All dwellings must be built in accordance with the existing laws and ordinances.

**4. DWELLING QUALITY AND SIZE.** The following minimum finished square foot living area requirements shall apply to each dwelling. Living areas shall be calculated exclusive of garages, one-story open porches, and basements.

One-Story Dwellings (Ramblers): The minimum square foot living area of a one-story dwelling shall not be less than 1,550 square feet.

Two-Story Dwellings: The combined living area of any dwelling which consists of two (2) stories above curb level shall not be less than 1,800 square feet.

Split-Level Dwellings: The combined living area of the ground level and the adjoining levels of any split-level dwelling shall not be less than 1,450 square feet.

If four (4) feet or more of foundation is above finished grade, then the level qualifies as a 'story.' For the purposes of this Declaration, the basement area shall not be considered a story. The purpose of this Declaration is to assure that all dwellings shall be of a quality of workmanship and materials.

**5. FENCES.** No fence on any Lot may be constructed without the prior written approval of the Architectural Control Committee, which approval may be granted or withheld in the sole and absolute discretion of the Architectural Control Committee. Any fence which is ultimately approved by the Architectural Control Committee must also be in conformity with the following requirements:

Material: Fences or walls shall be constructed of wood, brick, wrought iron, vinyl, or stone. No fence or wall shall be constructed of chain link, wire mesh, slump block (painted or unpainted), or concrete block unless first approved by the Architectural Control Committee in writing. In the sole discretion of the Architectural Control Committee, chain link fencing may, but not necessarily, be permitted, under the following condition: (a) along the back property lot line of a Lot, provided that such back lot line is adjacent to non-residential property. Approval of chain link fencing, if any such approval is granted, must be obtained in writing from the Architectural Control Committee prior to installation.

Height: Fences, walls, and hedges shall not exceed six (6) feet above grade in height. Location: Unless approved by the Architectural Control Committee in writing, no hedge more than three feet high and no fence or wall shall be erected, placed, altered, or permitted to remain on any Lot which is closer to the

front street than the front of the residential dwelling on said Lot. Where a hedge, fence, or wall is located along the boundary line between two adjoining Lots, such hedge, fence, or wall shall not be closer to the front street than the front of whichever of the residential dwelling on the two adjoining Lots is nearer to the street. Nothing herein shall be deemed to prevent the use of fences by Developer/Builder around its model homes.

Corner Lots: The Lot owner shall maintain all required corner sight distances, as specified by Grantsville City, and keep the area free of all obstructions, landscaping, and/or improvements that would hamper traffic safety.

**6. SETBACK LINES.** Unless a written exception is granted by both the Architectural Control Committee (which exception may be granted or denied in the sole discretion of such Architectural Control Committee) and Grantsville City, all setback lines, side yards, and back yards shall be in accordance with Grantsville City ordinances.

**7. HEIGHT RESTRICTIONS.** No dwelling shall exceed thirty (30) feet in height, nor shall any dwelling be less than twelve (12) feet in height. No accessory structures (if any, and as and if approved by the Architectural Control Committee) shall exceed fifteen (15) feet in height, nor shall any accessory structures be less than six (6) feet in height.

**8. EASEMENTS.** Easements for drainage, landscaping, maintenance, and/or installation and maintenance of utilities are reserved on front and back lot lines and on some side lot lines as shown on the recorded plat relating to the subdivision (the "plat"). Within these easements no dwelling, other structure, improvement, landscaping, or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities. The easement area of each Lot and all improvements located on or in such easement area shall be maintained continuously by the owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

**10. DRAINAGE.** No Lot shall be graded and no dwelling, other structure, Improvement, 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 adjoining land, or in the event it becomes necessary to change the established drainage over a Lot, adequate provision shall be made for proper drainage. Any fence or wall, if any, approved by the Architectural Control Committee and then erected along the side or rear property line of any Lot shall contain "weep holes" or shall be otherwise constructed so as not to prevent the flow of surface water from adjoining land where such flow is in accord with the established drainage. The slope control areas of each Lot and all improvements relating to such areas shall be maintained continuously by the owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

**11. NUISANCES.** No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance to the other Lot owners in the

subdivision. The Lot owner acknowledges that some agricultural uses may continue to be employed adjacent to, or in the vicinity of their Lot, and agree that said uses shall continue without objection.

**12. USE OF OTHER STRUCTURES AS RESIDENCE.** No trailer, basement, tent, shack, garage, barn, or any structure of a temporary character shall be used on any Lot at any time as a residence either temporarily or permanently. Developer/Builder may use a sales/construction trailer on the Lots during the "build-out" period.

**13. SIGNS.** No sign of any kind shall be displayed to the public view on any Lot, except one sign of not more than five (5) square feet advertising the property for sale or rent, or signs used by Developer/Builder to advertise the Lot and the dwelling during the construction and sales period, and such additional signage as may be approved by Developer/Builder.

**14. ANIMALS.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot except that dogs, cats, or other household pets may be kept provided that (a) they are not kept, bred, or maintained for any commercial purpose, and (b) they do not become an annoyance or nuisance to the neighborhood. All household pets shall be kept confined to the owner's Lot at all times, or in the event they are taken off of the owner's premises, shall be leashed and under the control of the owner at all times. It shall be the owner's responsibility to clean up any fecal deposits generated by the owner's pets and remove them to a sanitary disposal location. Maximum # of household pets in accordance with Grantsville City Ordinance.

**15. GARBAGE AND REFUSE DISPOSAL.** No Lot shall be used or maintained as a dumping ground for trash, rubbish, garbage, or other waste. Trash, rubbish, garbage, and other waste shall not be kept except in sanitary containers. All containers or other equipment for the storage or disposal of such material shall at all times be kept in a clean and sanitary condition.

**16. EXCAVATIONS AND COMPLETING IMPROVEMENTS.** No excavation shall be made on any Lot except in connection with the erection, alteration, or repair of a dwelling, other structure, or improvement thereon. When excavation or the erection, alteration, or repair of a dwelling, other structure, or improvement has once begun, the work must be executed diligently and completed within a reasonable time, and comply with the provisions of Paragraph 3, hereinabove.

**17. ROOFTOP ANTENNAS.** No television, ham radio, citizen band or radio antenna, satellite dishes (over 36" in diameter), or other similar electronic receiving or sending device shall be permitted upon the rooftop or side of any dwelling, other structure, improvement, or elsewhere if exposed to the view of any other Lot, unless previously approved by the Architectural Control Committee in writing. In no case will any such receiving or sending antenna or other device be allowed to interfere with the peace and quiet enjoyment of any Lot owner's premises or home entertainment facilities or equipment.

**18. OFF-SITE IMPROVEMENTS.** Before taking title to or possession of any Lot, the purchaser thereof (individually, a "purchaser" or, collectively, "purchasers") shall inspect the then existing off-site

improvements. Except for deficiencies or defects specified by a purchaser to the Developer/Builder before ownership is taken, no purchaser shall have the right to assert or require that the Developer/Builder has further obligations or responsibilities as to the installation of off-site improvements, and purchaser hereby releases the Developer/Builder from such further obligations or responsibility.

If the off-site improvements are not complete at the time ownership of a Lot is taken by a purchaser, the Developer/Builder will, upon completion of the uncompleted off-site improvements, give written notice of completion to the purchaser and, unless such purchaser notifies the Developer/Builder of any deficiencies within seven (7) days after the date of receipt of such notice, the off-site improvements shall be deemed acceptable to the purchaser, and the Developer/Builder will be released from any further obligations or responsibilities as to the installation of the previously incomplete off-site improvements.

Any damages by the Lot owner to Grantsville City improvements including, but not limited to, sidewalks, curb and gutter, asphalt, water meter and irrigation services, trees and landscaping installed by the Developer/Builder and warranted under the Subdivision Agreement between the City and Developer/Builder, shall be promptly repaired and/or replaced upon written notice from the Developer/Builder.

in the event, and after a reasonable period of time to effect said repairs as established in the sole discretion of the Architectural Control Committee and Developer/Builder, the Developer/Builder and/or Architectural Control Committee may undertake to complete any and all required repairs and assess the costs thereof to the Lot owner and file a lien or encumbrance against said Lot owner, or take any legal action necessary to recover all costs associated with said repairs, including all legal fees incurred.

**19. CONDITION UPON TRANSFER OF TITLE:** Upon transfer of title from Developer/Builder to a purchaser, such purchaser shall assume full responsibility for accepting the applicable Lot in its then 'AS IS,' 'WHERE IS,' and 'WITH ALL FAULTS' condition, and to make an inspection of all matters relating to such Lot prior to closing including, but not limited to, the following: (1) Sewer; (2) Water; (3) Gas; (4) Electric; (5) Cable; (6) Curb and Gutter; (7) Sidewalks; (8) Grading; (9) Landscaping; (10) Others as applicable.

Consistent with the foregoing, after the closing of the purchase and sale of the applicable Lot, the purchaser thereof shall be responsible for the maintenance, upkeep, and repair of all site improvement fixtures (collectively, "site improvement fixtures") at any time located upon such purchaser's Lot including, but in no event limited to, electrical power, gas, cable, telephone utility connections and lines, water and other meters and covers, valve boxes for secondary water, sidewalks, driveway aprons, curbs and gutters, land drains, sewer lines and developer provided landscaping. Consequently, subsequent to the closing of the Lot, the purchaser thereof shall be solely responsible in the event of the malfunction of, discovery of defects relating to, or damage to, the site improvement fixtures, regardless of whether such matters result from inherent defects, the acts or omissions of third party contractors, subcontractors, vendors, and other third parties, or from any other cause. In no event shall

Developer/Builder have responsibility for any maintenance, upkeep, repair, or other matters, duties, or responsibilities in any way associated with the site improvement fixtures which arise or become known subsequent to the closing of the purchaser's purchase of a Lot.

**20. LANDSCAPING.** Simultaneous with the construction of a dwelling upon a Lot, and with such work being completed no later than one (1) year subsequent to the occupancy of such dwelling, the Lot owner shall hydro-seed or sod landscape a minimum of the lots front yard in a manner acceptable to the Architectural Control Committee in its sole discretion. A minimum of One street Tree of the same type shall be planted upon parking strips of the same street in order to give an appearance of uniformity. The Architectural Control Committee shall have authority to specify and limit the type and placement of trees and other foliage to preclude and minimize the creation of obstructions to drainage systems and for other reasonable purposes. All trees, lawns, shrubs, or other plantings shall be properly nurtured and maintained or replaced at the Lot owner's expense upon request of the Architectural Control Committee.

**21. ARCHITECTURAL CONTROL COMMITTEE.** The Architectural Control Committee (the "Architectural Control Committee") shall consist of three (3) members, being selected by the Developer/Builder. Any communication to the Architectural Control Committee shall be addressed to: Architectural Control Committee of Heritage Grove Subdivision. c/o P.O. Box 532, Farmington UT 84025 unless and until the address is changed by written notice to the Lot owners from either the Developer/Builder or the Architectural Control Committee. Upon the failure of Developer/Builder to fill any vacancies in the Architectural Control Committee, the remaining members of such committee may do so by a majority vote of their number. So long as it retains the right to select the members of the Architectural Control Committee, Developer/Builder may, at its sole discretion, remove members thereof and fill vacancies. Said rights of appointment and removal shall, however, be subject to the right of the then record owners of a eighty-five percent majority of the Lots, through a written instrument filed with the Developer/Builder, to change any member of the Architectural Control Committee, except that the Architectural Control Committee shall have at least two (2) members selected by the Developer/Builder so long as the Developer/Builder so desires. A majority of the members of the Architectural Control Committee may designate a representative to act for it, neither the members of the Architectural Control Committee nor any of their designated representatives shall be entitled to any compensation for services performed in such capacity, nor shall they incur any liability for their decisions.

The Architectural Control Committee's approval or disapproval on any matter required hereunder shall be in writing. In the event that the Architectural Control Committee or its designated representative fails to approve or disapprove plans and specifications with respect to any dwelling, structure, landscaping, or other improvement within thirty (30) days after plans and specifications have been submitted to it, or in the event that no suit to enjoin construction has been commenced before the completion of any such dwelling, structure, landscaping, or other improvement, approval shall be deemed to have been granted. As of the date of this Declaration, the Architectural Control Committee shall be composed of Mark J.

Cummings, Joshua Cummings, and a third person to be designated, from time to time, by agreement between said Mark J. Cummings and Joshua Cummings.

**22. REPAIR OF BUILDINGS AND IMPROVEMENTS.** No dwelling, other structure, or improvement upon any Lot shall be permitted to fall into disrepair, and each such dwelling, other structure, or improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished by the Lot owner.

**23. TERM OF DECLARATION.** The protective covenants, agreements, restrictions, and conditions set forth in this Declaration are to run with the land permanently, except that they may be changed, modified, replaced, or canceled, in whole or in part, by a duly recorded instrument signed by the then owners of record of a majority of the Lots.

**24. INCORPORATION OF RECITALS.** The recitals set forth at the beginning of this Declaration are incorporated herein by this reference.

**25. SEVERABILITY.** invalidation of any one of the covenants, agreements, restrictions, terms, or conditions contained herein, whether by judgment, court order, or other cause, shall in no way affect any of the other covenants, agreements, restrictions, terms, or conditions hereof, all of which shall remain in full force and effect,

**26. FHA/VA.** To the extent any of the provisions set forth in this Declaration violate the regulations of the Federal Housing Administration or the Veteran's Administration; such provisions shall be deemed automatically amended to the extent necessary to comply with such regulations.

**27. HOLD HARMLESS.** The Lot owner hereby agrees to indemnify and hold harmless all members of the Architectural Control Committee and its designated representative's based upon approval or disapproval of plans and specifications with respect to any dwelling, structure, landscaping, or other improvement; and Lot owner understands that the Architectural Control Committee is not entitled to any compensation for services performed in such capacity, nor shall they incur any liability for their decisions.

**28. OUTDOOR LIGHTING.** Each dwelling shall be equipped with and maintain front yard lighting equal to 1000 Lumens. Light fixtures shall either be attached to the dwelling or yard lamp post.



THIS DECLARATION is made this 22nd day of July, 2016.

DECLARANT:

MJC Holdings, LLC

A Utah Limited Liability Company

By: [Signature]

Mark J. Cummings, Manager

STATE OF Utah)

COUNTY OF Davis)

*This Declaration is made this 26 day  
of August, 2016  
MSC Holdings LLC*

*X [Signature]*

*Mark J Cummings*

*AUG 19 2016*

*MARK J. Cummings*

On the 22nd day of July, 2016 personally appeared before me, Mark J. Cummings, whose identity is personally known to me on the basis of satisfactory evidence, and who, being by me duly affirmed did say that he is the Manager of MJC Holdings, LLC, a Utah Limited Liability Company, and that said document was signed by him in behalf of said corporation by authority of bylaws and said Mark J. Cummings acknowledged to me that said Limited Liability Company executed the same.

My commission expires: 5-30-2020

[Signature]

NOTARY PUBLIC

Residing at: Ogden Utah



EXHIBIT A  
LIST OF PURCHASERS

**As of the date of the recording of this Amended Declaration, the following have purchased lots within the subdivision and have given written consent to the recording of this Amended Declaration and agree to be bound by its terms;**

**Lot 104 – Wise Homes, LLC**

**Lot 114 – Wise Homes, LLC**

August 15th, 2016

The undersigned agrees to the proposed changes to the October 22nd, 2015 Amended Declaration of Protective Covenant Agreements, Restrictions and Conditions Affecting Real Property Known as Heritage Grove Subdivision. This instrument will be recorded with the changes.

Wise Homes, LLC, David Millward – Manager

Signature

STATE OF Utah)

COUNTY OF Garfield



On the 15th day of August, 2016 personally appeared before me, David Millward, whose identity is personally known to me on the basis of satisfactory evidence, and who, being by me duly affirmed did say that he is the owner of Lot 114, and that said document was signed by himself or in behalf of Wise Homes, LLC.

My commission expires: 2/1/2018

Marta R. Hansen

NOTARY PUBLIC

THIS DECLARATION is made this 15th day of August, 2016.

DECLARANT:

\_\_\_\_\_

By: \_\_\_\_\_

STATE OF Utah)

COUNTY OF DAVIS

On the 15th day of August, 2016 personally appeared before me, Mark J Cummings, whose identity is personally known to me on the basis of satisfactory evidence, and who, being by me duly affirmed did say that he is the <sup>owner</sup> ~~owner~~ of MSC Holdings LLC and that said document was signed by himself or in behalf of MSC Holdings LLC.

My commission expires: 12-3-16

Vickie Smith

NOTARY PUBLIC

