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SHERYL L. WHITE, DAVIS CNTY RECORDER
2001 AUG 23 1:38 PM FEE 136.00 DEP LM
REC'D FOR MOUNTAIN VISTAS LLC

AFTER RECORDING PLEASE MAIL COPIES TO:

MOUNTAIN VISTAS LLC
c/o SYMPHONY DEVELOPMENT CORP.
Attn: Mike Flood

~~220 South 200 East Suite #330~~ *526 No. 900 WEST*
~~Salt Lake City, UT 84111~~ *North Salt Lake, UT 84054*

SBH Kaysville LLC
c/o Smith Brubaker Haacke
Attn: Eldon Haacke
2231 East Murray-Holladay Rd. #200
Salt Lake City, UT 84117

RETURNED
AUG 23 2001

*Lots 1 thru 26 +
54 thru 88 + Common Areas 1 thru 4
Mountain Vistas Phase 1A Cluster Subd
11-493-0001 thru 0026, 0054 thru 0092

Lot 27 thru 53 + Common Areas 5 + 6
Mountain Vistas Phase 1B Cluster Subd
11-494-0027 thru 0055*

MOUNTAIN VISTAS PHASES 1A & 1B
CLUSTER SUBDIVISION
Kaysville, Utah
A Residential Subdivision Development

**DECLARATION OF COVENANTS, CONDITIONS, AGREEMENTS &
RESTRICTIONS AND HOMEOWNERS ASSOCIATION BY-LAWS**

MOUNTAIN VISTAS LLC
a Utah limited liability partnership
DEVELOPER

**DECLARATION OF COVENANTS, CONDITIONS, AGREEMENTS AND RESTRICTIONS
AFFECTING THE REAL PROPERTY KNOWN AS**

Mountain Vistas Phases 1A & 1B Cluster Subdivision

THIS DECLARATION is made this _____ day of _____, 2001, by Symphony Development Corp. & SBH Kaysville LLC, Members of Mountain Vistas LLC, hereinafter referred to as "Declarant".

WITNESSTH

WHEREAS, the Declarant, a Utah Limited Liability Corporation and record owner of real property more particularly described as follows:

All of Lots 1 through 26 and 54 through 88, inclusive, and common areas, as Mountain Vistas Phase 1A Cluster Subdivision, and also all of Lots 27 through 53, inclusive and common areas, as Mountain Vistas Phases 1B Cluster Subdivision, situated in the City of Kaysville, in the County of Davis, in the State of Utah, according to the official plat thereof recorded as Entry No. 1684109, 1684108, in Book 2878, Page 483, 482, in the office of the Davis County Recorder; hereinafter referred to as "Property".

WHEREAS, it is the desire and intention of the Declarant to subdivide and sell the Property described above and to subject the Property to mutually beneficial restrictions under a general plan of improvement for the benefit of all the Property in the subdivision and the future owners of said Property;

WHEREAS, the Homeowners Association of Mountain Vistas Subdivision (also known as Mountain Vistas Homeowners Association), hereinafter referred to as the "Association", has been or will be incorporated as a Utah non-profit corporation to act as a homeowners' association with the powers of managing, maintaining the property, administering and enforcing the covenants, conditions and restrictions, and assessing and collecting for, on a monthly basis, a prorated share of the cost for maintaining and repairing any and all common areas on the Property as described herein, and administering and performing such other acts as are provided for or set forth in this Declaration of Covenants, Conditions, Agreements and Restrictions for Mountain Vistas (this "Declaration") or which generally benefit its members or the Property.

THEREFORE, to further the general purposes herein expressed, Declarant, for itself, its successors and assigns, hereby declares that all of the Property shall at all times, be owned, held, used and occupied subject to the provisions of this Declaration and to the covenants, conditions and restrictions herein contained.

The following additional words, phrases or terms used in this Declaration shall have the following meanings:

- **"Board" or "Association Board"** shall mean the Board of Directors of the Association.
- **"Lots"** shall mean any area of real property within Mountain Vistas designated as an individual lot.
- **"Member"** shall mean any person holding a membership in the Association.
- **"Owner"** (when so capitalized) shall mean the record holder of legal title to the fee simple interest in any lot. If there is more than one record holder of legal title to a lot, each record holder shall be an "Owner."

NOW, THEREFORE, Declarant hereby declares, for the purpose of protecting the value and desirability of the Property, that all of the Lots shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which shall run with the Lots, and be binding on all parties having any right, title or interest in the Lots or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I – ASSOCIATION

- 1.1 FORMATION OF ASSOCIATION:** The Association shall be a Utah non-profit corporation charged with the duties and invested with the powers prescribed by law and set forth in its articles of incorporation, its bylaws, and this Declaration. Neither the articles nor bylaws of the Association shall, for any reason be amended, changed or otherwise interpreted so as to be inconsistent with this Declaration.
- 1.2 BOARD OF DIRECTORS AND OFFICERS:** The Board and such Officers shall conduct the affairs of the Association as the board may elect or appoint in accordance with the articles and bylaws of the Association as the same may be amended from time to time. The initial Board shall be composed of three (3) directors. 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.
- 1.3 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 II – ASSOCIATION MEMBERSHIP AND VOTING

- 2.1 MEMBERS:** Every Owner of a Lot shall be a Member of the Association and, all such persons shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership to an Owner's lot and any such transfer shall automatically transfer the membership appurtenant to said Lot to the new Owner thereof.
- 2.2 VOTING:** Each Member shall be entitled to one vote for each Lot owned in accordance with the provisions hereof. When more than one Member owns any lot, the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any lot. The Association shall have no votes as to Lots owned by it.
- 2.3 NO CUMULATIVE VOTING.** In any election of the members of the Board, the Owner or Owners of a given Lot shall collectively have one vote for each Director position to be elected. The candidate receiving the highest number of votes for a given Director position shall be deemed elected. Cumulative voting shall not be allowed in the election of members of the Board or for any other purposes.

ARTICLE III – RIGHTS AND POWERS OF ASSOCIATION

- 3.1 ASSOCIATION'S RIGHTS:** In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in its articles and bylaws.
- 3.2 RIGHTS OF ENFORCEMENT:** The Association, as the agent and representative of the members, shall have the right to enforce the covenants set forth in this Declaration. The Association, the Declarant or any Owner shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations now or hereafter imposed by the provisions of the Declaration. In addition, the Association and the Declarant shall have the right to enforce at law or in equity, all liens and charges now or hereafter imposed by the provisions of this Declaration. If the Association, Declarant or any Owner prevails in any proceeding at the Association, the Declarant or such Owner, as applicable, is entitled to judgment against the breaching Owner or Member for all costs and reasonable attorney's fees associated with the action. Failure by the Association or the Declarant to enforce any covenants or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Neither the Declarant, the Architectural Control Committee (individually or collectively), 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.

3.3 IMPROPER MAINTENANCE AND LIENS: In the event any portion of any lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of surrounding Lots or in the event any portion of a Lot is being used in a manner which violates this Declaration, or in the event any Owner is failing to perform any of its obligations under this Declaration or the architectural guidelines and standards of the Design Review Committee, the Board may give notice thereof to the offending Owner that unless corrective action is taken within fourteen days, the Board may cause such action to be taken at said Owner's costs. If at the expiration of said fourteen-day period of time the required corrective action has not been taken the Board shall be authorized and empowered to cause such action to be taken, and the cost thereof shall be assessed against such Owner.

If the assessed cost is not paid by such Owner within thirty days, the amount of the cost plus interest, collection costs and reasonable attorney's fees, constitutes a lien upon the Owner's lot and upon the recording of notice of the lien by the Board, it is a lien upon the Owner's lot in priority position to all other liens and encumbrances, recorded or unrecorded, except (1) tax and special assessment liens on the Owner's lot in favor of any assessing unit or special improvement district, and (2) encumbrances on the Owner's Lot recorded prior to the date such notice is recorded.

The Board in cases of extreme hardship may release any such lien if it received other security for the payment of the delinquent costs, which it deems sufficient to protect the interests of the Association.

In the event the Homeowners Association does not maintain the common facilities and improvements as proposed and indicated at the time of subdivision, the City may, at its option, do or contract to have done the required maintenance, maintain liability insurance and pay general property taxes, and recover the costs incident thereto by means of a lien against the involved properties of the members of the Homeowners Association.

3.4 BY-LAWS: These provisions allow for the establishment of by-laws which enable a duly elected Board with a majority vote (of legal lot owners of the Property) to assess monies to the legal lot owners of the Property for the installation, maintenance and upkeep of improvements for the common good of the property owners herein. The Board may amend said by-laws from time to time with majority vote of said lot owners. The Board shall be comprised of a minimum of three and a maximum of seven legal lot owners of the Property. The Declarant shall be exempt from any lot fees approved and assessed by the Board.

3.5 OWNERSHIP, TAXATION & MAINTAINENCE OF COMMON AREA:

- a. **Ownership:** At the time of initial recording of these covenants, conditions, agreements & restrictions, the Declarant owns the common areas. Declarant will in due time deed said common areas to other Owner or Owners, which may include the Association.
- b. **Taxation:** Taxes for common areas within Mountain Vistas Phases 1A & 1B Cluster Subdivision shall be assessed equally to each property owner. Prorations shall be observed if ownership changes at any time during the tax year.
- c. **Maintenance:** All responsibilities for the maintenance of and/or costs associated with the maintenance of common amenities associated with or found within the common areas shall be paid for by Association through the means of collection prescribed herein.

- d. **Monument Easements:** Lots #1 & 88 shall have at the time of plat recording, a Monument Easement recorded on the street corner providing space for the Mountain Vistas entry monument signs & landscaping. This easement shall run perpetually with the ground allowing for said entry features to remain as part of the common areas in the subdivision. The owner of record for each respective lot shall still own said property and said property owners of record shall pay any and all taxes associated with the property. Maintenance of the landscaping and common area improvements shall be borne by the Association in conjunction with the maintenance of the common areas within the subdivision. The Association shall approve any alteration of said improvements.

ARTICLE IV - ARCHITECTURAL CONTROL COMMITTEE

- 4.1 COMMITTEE MEMBERSHIP:** The initial Architectural Control Committee shall consist of the following five members: Eldon Haacke, and, Scott Brubaker of Smith Brubaker Haacke; Bruce Robinson, Robert Miller, and, Michael Flood, all of Symphony Development Corp. Action by this committee shall be ratified by at least two members. In the event of death or resignation of any member of the committee, the remaining members of the committee shall have full authority to select a successor.
- 4.2 COMMITTEE DUTIES:** The Committee shall have all authority to interpret these covenants. Prior to the commencement of construction, the new owner or builder must submit two sets of plans to include all front, side and rear elevations detailing all exterior materials to be used, floor plans (including scale & dimensions of the structure to be erected), material specifications, and site plan before the review process can commence. A landscaping plan may be required as part of this initial review if the Committee deems it necessary. The Committee will respond with an approval or disapproval as required in these covenants in writing within fourteen (14) calendar days. In the event the Committee or its designated representative fails to approve or disapprove within fourteen (14) calendar days after plans and specifications have been submitted to it, approval will not be required but all related covenants must be fully complied with. Liability for non-compliance with said restrictions and covenants should not be borne by Committee as a result of misrepresentations by applicant or oversights by Committee.

ARTICLE V - RESIDENTIAL AREA COVENANTS

- 5.1 DWELLING—SIZE, QUALITY, EXTERIOR MATERIALS:** The following minimum finished square foot living area requirements shall apply. Living areas shall be calculated exclusive of garages, open porches, and basements. The "ground floor," as herein referred, shall be defined as the first floor with a floor elevation extending above the top back of curb at the driveway approach side of the lot.
- a. **Dwelling Size:**
- One Story Dwellings (Rambler):** The required minimum above ground floor finished space shall be 1650 square feet with a minimum 3-car garage required, and 1900 square feet or more above ground floor finished space with a minimum of 2-car garage required.
- Two Story Dwellings:** The required minimum above ground floor finished space shall be 2000 square feet with a minimum 3-car garage required, and 2250 square feet or more above ground floor finished space with a minimum of 2-car garage required.
- Multi-Level Dwellings:** The required minimum above ground floor finished space shall be 2100 square feet with a minimum 3-car garage required, and 2300 square feet or more above ground floor finished space with a minimum of 2-car garage required.

THE ARCHITECTURAL CONTROL COMMITTEE RESERVES THE RIGHT TO GRANT EXCEPTIONS TO THE ABOVE RESTRICTIONS IN ORDER TO PLACE AN APPROPRIATE HOME ON A SPECIFIC LOT DUE TO SLOPE RESTRICTIONS, LOT IRREGULARITY OR FOR ANY OTHER REASON THEY DEEM APPROPRIATE.

- b. **Dwelling Quality:** All construction shall be comprised of new materials, with exception to the use of used brick with prior written approval of the Architectural Control Committee. 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 which may apply, including without limiting the generality of the foregoing, all zoning and land use ordinances.
- c. **Dwelling Exterior Materials:** The dwelling's front exterior shall have 2 or more large full front facing panels (subject to the discretion of the Architectural Control Committee) of brick or rock and the side exterior walls 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 Architectural Control Committee. Cedar lapboard or other types of wood siding may be allowed by written approval from the Architectural Control Committee. Any of these exterior material requirements may be waived where the historic style will not permit its use. Vinyl or Aluminum siding shall be not allowed except for the soffit, fascia and/or rain gutter areas.

Each dwelling must have at least a 30-year architectural (lamine) asphalt type shingle. The Architectural Control Committee must approve any other variation from this specification.

If the Architectural Control Committee permits detached structures, they are to be constructed of identical exterior materials of the primary structure unless otherwise approved by the Architectural Control Committee. All property owners are required to check with the governing municipality for building code requirements and zoning restrictions.

ALL DWELLING SIZES, FLOOR PLANS AND EXTERIOR MATERIALS MUST BE SUBMITTED TO THE ARCHITECTURAL CONTROL COMMITTEE IN WRITING, AS OUTLINED IN ARTICLE 4.2 OF THESE COVENANTS, AND APPROVALS MUST BE OBTAINED IN WRITING PRIOR TO THE BEGINNING OF CONSTRUCTION ON THE HOME. IF SAID APPROVALS ARE NOT OBTAINED AND CONSTRUCTION BEGINS, OWNER SHALL BE SUBJECT TO A \$1000.00 FINE, AT THE ARCHITECTURAL CONTROL COMMITTEES DISCRETION, PAYABLE TO THE ARCHITECTURAL CONTROL COMMITTEE.

- d. **Curbside Amenities:** Each property owner will be required to install two (2) brick columns at the entrance of the driveway with a lantern (electrical) style light on top. The Architectural Control Committee will determine a design and detail (including brick style and color, lantern style & type, and locations of columns). One of the columns will serve as a location for an address block and mailbox, of which the Architectural Control Committee may specify size and color. No other mailboxes are allowed unless approval is obtained from the Architectural Control Committee. Property owners are required to obtain the specifications for said columns and approval of colors and materials to be used on the columns prior to commencement of construction.

All lanterns will be individually connected to each property owner's individual utility service and all utility costs will be born by the individual property owners. Maintenance costs (including labor and material) of said lighting would be born by the Association. The light is to be kept in working order at all times as to maintain proper and adequate street lighting in the subdivision.

5.2 FENCES, WALLS, AND HEDGES: All fences or walls should be kept to a minimum to encourage the use of the common areas and aesthetics. The use of hedges are encouraged but are required to be in

conformance with the guidelines found in this section as well as any and all landscape requirements found herein. Any fence or wall constructed on any lot shall be approved by the Architectural Control Committee and be constructed in conformity to the following guidelines:

- a. **Material:** All allowed fences or walls shall be of brick, stone, wrought iron, rough-sawn cedar, or vinyl. No fence or walls shall be constructed of chain link, wire mesh, slump block (painted or unpainted) or concrete block unless approved in writing by the Architectural Control Committee.
- b. **Height:** Any fence, wall, hedge, or other similar structure (including without limitation, any "topping" on such structures) shall not be erected in a front yard to a height in excess of three (3) feet, nor shall any such structure 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 line separating Lots, a fence, wall or hedge or similar structure six (6) feet in height may top such retaining wall.
- c. **Location:** Unless approved by the Architectural Control Committee, no fence, wall or hedge more than three (3) feet in height as outlined above, shall be erected, placed, altered, or permitted to remain on any lot closer than four (4) feet back on the residential structure on said lots. Where said hedge, fence or wall is located along the boundary line between two adjoining lots, it shall be erected no more than four (4) feet back on the residential structure that is furthest from the street. Fences bordering the common areas shall be of the same construction and style as determined by the Architectural Control Committee. Fences along corner property boundaries shall not be permitted to be up against the sidewalk. Said fences shall be at least 1 foot from the sidewalk and shall be located on the owners property.

5.3 DRAINAGE: Generally, the side and rear property lines are deemed drainage easements, 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 adjoining land. 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 erected along the side or rear property line of any lot shall contain "weep holes" or shall be otherwise constructed so as to not prevent the flow of surface water from adjoining land where such flow is in accord with the established drainage. The owner of the lot 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.

5.4 USE RESTRICTIONS: The use of the Lots and common areas in the tract are subject to the following use restrictions:

- a. **Land Use.** Each lot shall be used for private residence purposes only, and no pre-existing structure of any kind shall be moved from any other location and placed upon said lot, nor shall any incomplete building be permitted to remain incomplete for a period in excess of one year from the date the building was started, unless approved by the Architectural Control Committee. No Lot shall be subdivided or partitioned.
- b. **Nuisance.** No Owner or resident, or their family members, guests or invitees shall create or maintain a nuisance, or if a nuisance is created, it shall be promptly abated. A nuisance means any condition, activity or behavior which bothers, disturbs or annoys other residents, or interferes with their quiet and peaceful enjoyment of the neighborhood, or the creation or maintenance of any noxious or offensive condition 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, shall not be pursued or undertaken on any part of the Property.

- c. **Temporary Structures.** No Owner or resident shall place upon any part of the Property any temporary structures including but not limited to tents, trailers, or sheds, without the prior written consent of the Committee, although the Developer may install and use temporary structures in the development of the Property and marketing of the Lots or Units.

No structures of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently.

- d. **Out Buildings.** It is understood that out buildings such as swimming pool and dressing facilities may be constructed on any lot as long as they are in conformity with the requirements of this Declaration and are approved by the Architectural Control Committee.
- e. **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 Committee.
- f. **Commercial or Business Use.** No commercial trade or business may be conducted in or from any Lot unless: 1) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the residence; 2) the business activity conforms to all zoning requirements for the Property, and the necessary and required permits and licenses are obtained; 3) the business activity does not involve persons coming onto the Property who do not reside in the Property or door-to-door solicitation of residents of the Property; and 4) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Committee. The terms "trade or business" shall have their ordinary and generally accepted meanings, which shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether such activity is engaged in full or part-time, such activity is intended to or does generate a profit, or a license is required therefore. The leasing of a Dwelling Unit shall not be considered a trade or business within the meaning of this subsection.
- g. **Storage and Parking of Vehicles.** Motor Vehicles in the Property shall be subject to the parking rules and regulations adopted by the Management Committee from time to time. No automobiles, trailers, boats, racks, snowmobiles, motor homes, recreational vehicles or any other type of vehicles shall be stored on driveways for more than 45 days. Such vehicles that are properly licensed and in running condition may be stored on side of the lot if properly screened from view. The Architectural Control Committee must approve the acceptability of the screening structure. Unlicensed vehicles or vehicles that are not in running condition must be stored in garages or at locations off the Property. No motor vehicle or trailer, including but not limited to any car, automobile, truck, van, or any other transportation device of any kind may be parked or stationed in such a manner so as to block access to any Lot, Building or parking space, or to create an obstacle or potentially dangerous situation. No resident shall repair or restore any vehicle of any kind in, on or about any of the common areas or Public Rights of Way, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility. No garage may be altered in such a manner that the number of motor vehicles that may

reasonably be parked therein after the alteration is less than the number of motor vehicles that could have been reasonably parked in the garage as originally designed and constructed.

- h. **Aerials, Antennas, and Satellite Systems.** No television, ham radio, citizen band or radio antenna or other similar electronic receiving or sending device shall be permitted upon the rooftop or side of any home or elsewhere if exposed to the view from any other lot, unless approved by the Management Committee. New digital satellite style "mini-dishes" or the like may be excluded from this provision, but Management Committee approval is still required. 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 neighboring lot owner's premises or home entertainment facilities or equipment.
- i. **Signs.** No sign of any kind shall be displayed to the public view on any lot except one sign of not more than five square feet advertising the property for sale; or signs (of any size) used by a builder to advertise the property during the construction and sales period unless otherwise authorized by the Architectural Control Committee in writing.
- j. **Pets.** No more than two (2) domestic pets per Lot are allowed unless the Management Committee grants a variance in writing. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on or about the property. Residents with pet(s) shall abide by the pet rules and regulations adopted by the Committee from time to time. No pet may be allowed to create a nuisance. The following activities are deemed to be a nuisance: (1) Pets outside a Dwelling Unit and not in a fenced yard or in a cage or on a leash and under the control of the pet owner or his designee at all times; and (2) Pets in violation of the rules and regulations. Pets, which constitute a nuisance, in the sole opinion of the Management Committee, must be removed from the Property.

No dog will be allowed to roam unattended in Mountain Vistas. Dogs shall be kept in the house, a dog run or kennel. All dog runs or kennels shall be screened off and out of the direct view from any street, and should be in the rear yard of the home. At other times, dogs shall be on a leash and under the direct control and supervision of the owner.

- k. **Laws.** Nothing shall be done or kept in, on or about any Lot or common area, or any part thereof, which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.
- l. **Damage or Waste.** No damage to, or waste of, the common area shall be committed by any Owner or any invitee of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by that Owner or an invitee; provided, however, that any invitee of the Declarant shall not under any circumstances be deemed to be an invitee or any other Owner.
- m. **Common Area Structural Alterations.** No structural alteration to the common area or facilities is allowed without the prior written consent of the Association Board.
- n. **Repair of Buildings & Improvements.** No building(s) or improvement(s) upon any lot shall be permitted to fall into disrepair, and each such improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished by the Owner thereof.
- o. **Mail Boxes.** The mailbox location is regulated by the US Postmaster and is restricted by the same. Some restrictions may also be placed by the city as to location due to the fact that there is not a parking strip found on some sides of the road. The Owner is solely responsible to obtain instructions for proper mailbox location from said entities.

- p. **Refuse & Disposal.** No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste shall not be kept except in the sanitary containers provided by the City of Farmington. All containers or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.
- q. **Excavations & Completing Improvements.** No excavation shall be made on any lot except in connection with the erection, alteration, or repair of a dwelling or other improvement thereon. When excavation or the erection, alteration, or repair of a structure or other improvements has once begun, the work must be executed diligently and completed within a reasonable time.

5.5 OFF-SITE IMPROVEMENTS: Before taking title or possession of any Lot, the Purchaser shall inspect the completed offsite improvements. Except for deficiencies or defects specified by the Purchaser to the developer before ownership is taken, purchaser hereby releases the developer from further obligations or responsibility as to the installation of the off-site improvements.

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

CONDITIONS OF ACCEPTANCE: Upon transfer of title from Developer to Purchaser, Purchaser shall assume full responsibility for accepting property 'AS IS' and to make property inspection of the following prior to closing: 1) Sewer; 2) Water; 3) Secondary Water; 4) Gas; 5) Electric; 6) Telephone; 7) Land Drains; 8) Curb & Gutter; 9) Sidewalks; 10) Asphalt roads; 11) Rough Grading; 12) others as applicable

All property owners understand that the Declarant does not own or exercise any control over the water rights from the existing irrigation structures and piping installed throughout the property. All property owners further understand that the Declarant is powerless in seeking to have said water rights assigned.

The Property has been developed as a standard subdivision within Kaysville City and all streets, water, land drain (those found within the public rights-of-way), storm drain improvements and rights-of-way will be dedicated to and maintained by Kaysville City. Kaysville City will also be providing water service and garbage removal.

5.6 LANDSCAPING: Initial landscape requirements are as follows: The owner is to landscape all front and side yards (to the rear of the home) in a manner accepted and approved by the Architectural Control Committee. The owner shall begin landscaping within 3 months of builder's receipt of a Certificate of Occupancy from Kaysville City (weather permitting), or in the event that weather doesn't permit commencement of landscaping to begin the owner shall begin by April 30th. In either case, all of the landscaping requirements referenced herein shall be completed within 6 months of commencement. Initial landscaping of the common areas shall be exempt from these time restrictions.

The Owner must submit two sets of plans to include all front and side landscaping plans detailing all trees, plants, and grass locations; planters, rocks, berms, and retaining locations to be used before the review process can commence. The Committee 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). The Committee will respond with an approval or disapproval as required in these covenants in writing within ten (10) calendar days. In the event the Committee or its designated representative fails to approve or disapprove within ten (10) calendar days after plans and specifications have been submitted to it, approval will not be required but all related covenants must be fully complied with. Liability for non-compliance with said restrictions and covenants should not be borne by Committee as a result of misrepresentations by applicant or oversights by Committee. A landscaping plan may be required sooner if the Architectural Control Committee deems necessary as a part of approving the architectural style of the home as found in Section 5.1 above.

Any trees planted within public rights-of-way shall comply with Kaysville City's Ordinances and Approved Tree Species List (if applicable &/or required). Each owner must plant a minimum of two 2" caliper trees in the front yard or park strip found on the above referenced Kaysville City Approved Tree Species List within the prescribed time allotted to complete the initial landscaping requirements. The Architectural Control Committee shall have 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 or replaced at the Owner's expense upon request of the Architectural Control Committee.

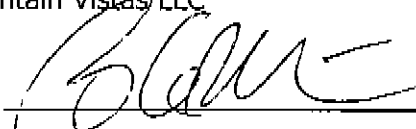
ARTICLE VII - GENERAL PROVISIONS

- 7.1 ENFORCEMENT:** Any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by any Owner to enforce any covenants or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.
- 7.2 SEVERABILITY:** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provision, which shall remain in full force and effect.
- 7.3 AMENDMENT:** Exceptions to the strict interpretation of these guidelines that would cause undo hardship serving no public purpose may be appealed to the Architectural Control Committee. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of forty (40) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended or terminated by a vote of at least seventy-five percent (75%) of the total votes of all Owners, which vote shall be taken at a duly called meeting. Any amendment approved shall be written, signed, and recorded against the Lots.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, have hereunto set their hand this day of 28th August, 2001.

DECLARANT:

Mountain Vistas LLC

By:  _____, BRUCE G. ROBINSON,
C.E.O. of Symphony Development Corp., a Member of Mountain Vistas LLC, and

On the 23RD day of August 2001, 2001, personally appeared before me BRUCE G. ROBINSON, who being by me duly sworn did say that he is the C.E.O. OF SYMPHONY DEVELOPMENT CORP., which corporation is known to me to be a MEMBER of MOUNTAIN VISTAS LLC, that he signed the foregoing instrument by proper authority, both in its capacity as a corporation, and in its capacity as member of said Limited Liability Company and the said BRUCE G. ROBINSON, duly acknowledged to me that said corporation and Limited Liability Company executed the same.



Signed: Jeannie M. Dubois
NOTARY PUBLIC
Residing at 8419 S. Meadow Green
West Jordan, Utah 84088
My commission expires 10/27/02

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

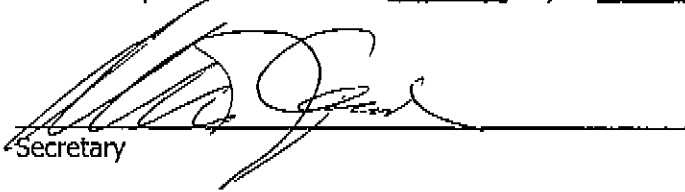
7.1 The Board of Directors shall have the power to fix, and from time to time, change the fiscal year of the Corporation. Unless otherwise fixed by the Board of Directors, the calendar year shall be the fiscal year.

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 adopted by Mountain Vistas Homeowners Association, Inc., at a meeting of the Incorporators of said Corporation held on the 23rd day of August, 2001.


Secretary