

DECLARATION
OF
COVENANTS,
CONDITIONS
AND
RESTRICTIONS
FOR
MOUNTAIN PARK ESTATES
HOMEOWNER'S ASSOCIATION

SPANISH FORK CITY
UTAH COUNTY, UTAH

DATED: 17 DECEMBER 2004

AMMENDED

Entirely Replacing Original C. C. & R's - Dated: 6/30/1995
RECORDED: ENT 43347 BK 3715 PG 357 DTD 7 JULY 1995

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**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
MOUNTAIN PARK ESTATES
HOMEOWNER'S ASSOCIATION
SPANISH FORK, UTAH**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MOUNTAIN PARK ESTATES, is made and executed this seventeenth (17) day of December 2004 by the Board of Trustees of said Association.

RECITAL:

The Association includes all of Lots 1 through 72 MOUNTAIN PARK ESTATES, according to the Official Plat thereof on file and of record in the Utah County Recorder's Office located in Provo, Utah County, Utah.

DECLARATION:

WE HEREBY DECLARE that all the Lots within the Subdivision shall be sold, conveyed, encumbered, leased, used, occupied and improved subject to these protective covenants, conditions, restrictions and equitable servitude set forth in this Declaration, all of which are created for the mutual benefit of the Owners of the Lots. It is the intention in imposing these covenants, conditions and restrictions to create a generally uniform pattern of appearance, to protect and enhance the property values and aesthetic values of the Lots by eliminating inconsistent uses or improvements, all for the mutual protection and benefit of the Owners of the Lots. The Covenants, Conditions and Restrictions are intended to, and shall in all cases run with the title of the land, and be binding upon the successors, assigns, heirs, lien holders, and any other person holding any interest in the Lots, and shall inure to the benefit of all other Lots in the Subdivision. The Covenants, Conditions and Restrictions shall be binding upon any Owner of a Lot within the Subdivision.

COVENANTS, CONDITIONS AND RESTRICTIONS:

ARTICLE II - DEFINITIONS

1. Unless the context clearly requires the application of a more general meaning the following terms, when used in this Declaration, shall have the following meanings:

- 1.1 **“Additional Property”** shall mean the balance of the Entire Property not included within recorded Plats.
- 1.2 **“Architectural Standards”** shall mean the Standards which shall apply to structures and other improvements on any Lot within the Sub-division.
- 1.3 **“Association”** (and/or the **“Declarant”**) shall mean the Mountain Park Estates Homeowners Association, whether incorporated or not, and as the context requires, the officers and directors of that Association.
- 1.4 **“City”** shall mean Spanish Fork City, Utah and its appropriate departments, officials and boards.
- 1.5 **“Declaration”** shall mean this Declaration of Covenants, Conditions and Restrictions, together with any subsequent amendments or additions. The Subdivision Plats for Mountain Park Estates, and the easements and other matters shown on such Plat, are also incorporated into this Declaration by reference.
- 1.6 **“Dwelling”** shall mean the single family residence built on any Lot, including the attached garage.
- 1.7 **“Entire Property”** shall have the meaning set forth in the recitals.
- 1.8 **“Family”** shall mean one household of persons related to each other by blood, adoption or marriage, or one group of not more than five people not related living together as a unit who maintain a common household.
- 1.9 **“Improvement”** shall mean any major or drastic alterations or additions to all structures and appurtenances of every type and kind, including but not limited to buildings, dwellings, garages, storage buildings, walkways, retaining walls, sprinklers, pipes, driveways, fences, landscaping, pools, decks, stairs, poles, lighting, signs, satellite dishes or other antennas, and any mechanical equipment located on the exterior of any building.
- 1.10 **“Lot”** shall mean any numbered Lot shown on any official plat of all or a portion of the Subdivision.
- 1.11 **“Owner”** shall mean the person or persons having title to any Lot. Owner shall mean the person holding fee simple title and buyers under any contract for deed, but shall exclude any person or entity holding title for purposes of securing performance of an obligation, including the trustee and/or beneficiary under a Deed of Trust or a mortgage.

- 1.12 **“Person”** shall mean a natural person or any legal entity with a right to hold title to real property in its own name in the State of Utah. ENT 141220:2004 PG 6 of 18
- 1.13 **“Plat”** shall mean an official ownership plat of any phase of the Mountain Park Estates Subdivision as approved by Utah County and recorded in the office of the County Recorder, as it may be amended from time to time.
- 1.14 **“Property”** shall have the meaning set forth in the recitals.
- 1.15 **“Subdivision”** shall mean all of the Mountain Park Estates Subdivision and all Lots, and other property within the Subdivision as shown on the Plats covering the Entire Property.
- 1.16 **“Subdivision Improvements”** shall mean all subdivision improvements to be installed outside of the boundaries of Lots or within easements as identified on the Plats that are necessary to provide public road access and utility service to the Lots, and including other construction work required to comply with any conditions of the City or County or other governmental agencies to the approval of the Subdivision or any Plat thereof.
- 1.17 **“Trustees”** shall mean the duly elected and acting Board of Trustees of the Mountain Park Estates Subdivision Homeowners Association, whether incorporated or not.

ARTICLE II - RESTRICTIONS ON ALL LOTS

2. The following restrictions on use apply to all Lots within the Subdivision:

- 2.1 **Zoning regulations.** The lawfully enacted zoning regulations of Spanish Fork City and any building, fire, and health codes are in full force and effect in the Subdivision, and no Lot may be occupied in a manner that is in violation of any such statutes, laws or ordinances.
- 2.2 **No Mining Uses.** The property within the Subdivision shall be used for residential purposes only.
- 2.3 **No Business or Commercial Uses.** No portion of the Subdivision may be used for any commercial business use, provided, however, that nothing in this provision is intended to prevent the use by any Owner of his Lot for a home occupation, such as in house day care, piano lessons or the like, which may be approved by the city. No home occupation will be permitted, however, which requires any employees outside of the Owner's immediate family or household. Any and all home occupations must comply with local zoning, licensing and tax regulations. **No permanent establishment of retail sales** of any kind may be made in the Subdivision. [See Article IV. 7.3 below]
- 2.4 **Restrictions on Signs.** (a.) The Subdivision may be identified by the permanent signs which have been or will be constructed as part of the entry structure.

(b.) No signs will be permitted on any Lot or within the Subdivision, except for traffic control signs and street identifying signs placed by the City, and temporary signs announcing community events or meetings, election posters or warning signs of some immediate danger.

(c.) Signs indicating the Lot is *For Sale* may be placed in accordance with City sign regulations, and no such sign may exceed six square feet.

(d.) No permanent, unusual or extraordinary signs may be installed.

2.5 **Livestock, Poultry and Pets.** 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 they are not kept, bred or maintained for any commercial purposes) and they are restricted to the owner's control; provided further that no more than a reasonable number of such household pets shall be kept on any Lot. "Control" for the above purposes shall only mean on a leash or lead, within a vehicle, within the residence of the owner, or within the fenced confines on the premises of the owner. Fierce, dangerous or vicious animals, or animals that cause or create a nuisance by barking or other offensive activity which disturbs the peace and tranquillity of others shall not be permitted.

2.6 **Underground Utilities.** All gas, electrical, telephone, television and any other utility lines in the Subdivision are to be underground, including lines within any Lot which serve installations entirely within that Lot. No propane tanks or oil tanks may be installed on any Lot.

2.7 **Service Yards.** There shall be no service yards, or storage yards. Clothes lines as well as exterior mechanical equipment must be screened in a manner so they are not visible or unsightly from the adjoining Lots or from the street.

2.8 **Maintenance of Property.** All Lots, and the Improvements on them, shall be maintained in a clean, sanitary, attractive, and marketable condition at all times. No Owner shall permit or allow his Lot or the Improvements on it to fall into disrepair.

2.9 **No Noxious or Offensive Activity.** No noxious or offensive activity shall be carried out on any Lot, including the creation of loud or offensive noises or odors that detract from the reasonable enjoyment of nearby Lot Owners.

2.10 **No Hazardous Activity.** No activity may be conducted on any lot that is, or would be considered by a reasonable person to be unreasonably dangerous or hazardous, which would cause the cancellation of conventional homeowners insurance policy. This includes, without limitation, the storage of caustic, toxic, flammable, explosive or hazardous materials in excess of those reasonable and customary for household uses, the discharge of firearms or fireworks (except as specified by city and county regulations) and setting open fires other than properly supervised and contained barbecues.

2.11 **No Unsightliness.** No unsightliness is permitted on any Lot. This shall include, without limitation, the open storage of any building materials; open storage or parking of farm or construction equipment, large trucks (larger than pick-up trucks) and inoperable motor

vehicles. Not permitted are accumulations of lawn, plant, shrub or tree clippings or trimmings; accumulations of any debris or waste materials; or household refuse or garbage except as stored in garbage containers with lids. Garbage cans are not to be stored in front yards. Accumulation of any other materials, vehicles, or equipment on the Lot must be stored in a manner that is not visible from any other Lot or public street.

- 2.12 **Recreational Equipment.** Recreational equipment such as boats, motor homes, trailers, fifth wheelers, ATVs, camper shells, etc., may be stored in side or back yards. Such equipment or vehicles may not be parked or stored in front yards, in front driveways or on the street, except temporarily, which shall not exceed a seventy-two hours time limit, for loading or unloading or for cleaning.
- 2.13 **No Annoying Lights.** No outdoor lighting shall be permitted except for lighting that is designed to aim downward and limit the field of light to the confines of the Lot on which it is installed. This shall not apply to street lighting maintained by the City. Lighted tennis courts are prohibited.
- 2.14 **No Annoying Sounds.** No amplified speakers or other noise making devices may be used or maintained on any Lot which create noises that might be unreasonably or annoyingly loud to owners of adjoining Lots, except those used for security or fire alarms.
- 2.15 **No Fuel Storage.** No fuel oil, kerosene, gasoline, propane, or other fixed fuel storage tanks may be installed or maintained on the property. Dwellings shall be heated with natural gas, solar, or electric heat.
- 2.16 **Kennels.** No kennel or dog run may be placed closer than 40 feet to any Dwelling other than that of the Owner of the kennel. Kennels must not be visible from adjoining property or from the public street.
- 2.17 **No Transient Lodging Uses.** The Lots are to be used for residential housing purposes only, and shall not be rented in whole or in part for transient lodging purposes, boarding houses, "bed and breakfasts", or other such uses for providing accommodations to and for travelers. No lease of any Dwelling on a Lot shall be for a period less than 30 days. No Dwelling on a Lot shall be subjected to time interval ownership.
- 2.18 **No Re-Subdivision.** No Lot may be re-subdivided to permit any additional Dwelling units within the Subdivision.

ARTICLE III - ARCHITECTURAL STANDARDS

3. It is the intention and purpose of these covenants, conditions and restrictions to impose architectural standards on the Improvements to any Lot of a type and nature that result in buildings which are architecturally compatible in terms of lot coverage, proportion, materials, colors and general appearance, while at the same time allowing for appropriate diversity in style and design. To accomplish this goal the Board of Trustees is empowered to oversee and enforce the Architectural Design Standards set forth in this Declaration.

3.1 **Architectural Standards.** Architectural Standards approval and compliance will be determined by any three or more members of the Board of Trustees.

3.2 **Approval Required.** No Improvements of any kind, including but without limitation to the construction of any dwelling, garage, out-building, shed, parking area, driveway, tennis court, walkway, or other hard surfaced area in excess of 100 square feet, swimming pools, outdoor hot tubs or spas, fences, walls, curbs, poles, or any other permanent structure may be constructed, erected, or installed in the Subdivision and no excavation, grading, filling, draining, or drastic changes in landscaping shall be made without the advanced, written consent of the Trustees. Approval will be sought in the following manner:

(a) **Plans Submitted.** Plans for any new or additional structures must be submitted for review. The plans should be in sufficient detail to show location on the Lot, drawings of the elevations, showing windows, doors, pitches, and other exterior elements; a list or samples of roofing, siding, and including color samples; fences walkways, decks, patios, landscaping, and any other detail which would help in understanding the project.

(b) **Review Fee.** The applicant may be required to pay a review fee in an amount necessary to cover the costs of review, including any and all cost of a professional review, if needed. The amount of this fee is to be determined upon submission of plans by the Board of Trustees.

(c) **Review.** Within 15 days from receipt of a submission, the Trustees will review the plans and make a determination whether or not the plans comply with the conditions expected and imposed by this Declaration. If they do not, the plans will be rejected. If they are in compliance, they will approve them. They may also approve the plans subject to specific changes, modifications, or conditions. Upon approval, the Trustees and the Owner will each sign a copy of the plans, one goes to the Owner and one shall be held in the Association File. No Construction that is not in strict compliance with the approved plans will be permitted.

(d) **Written Record.** The Trustees will maintain a written record of its actions, and maintain in its files a copy of all plans approved or rejected for a period of **five (5) years**. The Trustees will also provide evidence of this approval for the City if requested by the Owner.

(e) **Failure to Act.** If the Trustees have not approved or rejected any submission within forty-five (45) days after payment of the review fee, if required, and submission of complete plans, the submission is deemed to have been disapproved.

- 3.3 **Variances.** Variances to the design standards contained in this Declaration may be granted when strict application would create an unforeseen or unreasonable hardship to the Owner of any Lot. The Trustees cannot grant any variance that has the effect of modifying applicable zoning or building code regulations. The burden of obtaining a variance is entirely on the applicant.
- 3.4 **Professional Review.** The Trustees may engage the services of an architect or civil or structural engineer to assist in its review of any proposed improvements. The Trustees may from time to time appoint an architect or other professional to handle this function or they may elect to perform the review function themselves.
- 3.5 **Trustees Not Liable.** The Trustees shall not be liable to the applicant for any damages, or to the Owners of any Lots within the Subdivision for their actions, inactions, or approval or disapproval of any set of plans submitted for review. In the absence of bad faith or malicious actions, the Owners shall have no claim against the Trustees as a result of the performance or failure to perform the duties created by this Declaration. Each Owner has the right to enforce these covenants against every other Owner, and may seek independent redress if it believes the Trustees have acted improperly.
- 3.6 **Limitations on Review.** The review is limited to those matters expressly granted in this Declaration. The Trustees shall have no authority over the enforcement of building codes, zoning ordinances, or other statutes, laws, or ordinances affecting the development, use or improvement of real property and shall have no liability to any Owner whose plans were approved in a manner that included any such violation. Corrections or changes in plans to bring them into conformity with applicable codes must be approved by the Trustees prior to construction.
- 3.7 **Penalty for Failure to File Plans.** The Trustees are authorized to retain legal counsel and to instigate legal proceedings against any Lot owner, contractor, or any other person or entity who proceeds with construction, including any improvements on any lot in the subdivision without first applying for and receiving approval of the Trustees or their designated professional reviewer. The Trustees may give ten (10) days written notice of such failure to file plans and then may proceed with **any and all legal remedies**. The Trustees are authorized to assess all legal fees and associated costs of obtaining compliance against the lot and/or lot owner. The Board of Trustees may file notice of lien for the costs involved against the lot and may take any and all action deemed appropriate to enforce this provision of the covenant, including foreclosure of the lien.

ARCHITECTURAL RESTRICTIONS ON IMPROVEMENTS

4. All improvements on any Lot shall be subject to the following restrictions and architectural design standards:

- 4.1 **Number of Dwellings.** Only one Dwelling on any Lot. No other habitable structure will be permitted on any Lot.
- 4.2 **Antennas, Satellite Dishes and Solar Panels.** All antennas must be or placed so as to minimize visual impact and so as to comply with applicable safety regulations. These conditions apply only to antennas that the member may legally use, all other antennas are prohibited. Solar panels will be permitted if they lie flat against the roof and may not differ in pitch or color from the roof surface on which they are mounted.
- 4.3 **Driveways.** Every garage shall be serviced by a concrete driveway, which shall be of sufficient width and depth so as to park two vehicles side by side completely out of the street right of way.
- 4.4 **Fences.** [See Article V, Section 5.3, on page 11 (below)]

ARTICLE V - LANDSCAPE STANDARDS

5. It is the intent of the Declaration to require appropriate landscaping of Lots, and to encourage the use of appropriate plant materials. The use and Improvement of each Lot is subject to the following Landscape Standards:

- 5.1 **Landscaping required.** As soon as practical, but in no event later than the summer following the completion of construction, or not later than 18 months from the date of occupancy, whichever first occurs, each Owner is required to fully landscape his Lot. The Owner may plant lawns and gardens, flowers and shrubs, trees or other ornamental plants or replace natural species or use ornamental rocks.
- 5.2 **Sprinkler Systems.** All landscaped and lawn areas should be watered with a sprinkler system such as a permanent, underground, automatic system or a "drip" system or a force propelled sprinkler system.
- 5.3 **Fences.** Fencing of Lots along the Lot line shall be permitted in the Subdivision. The area that may be fenced shall be limited to the side yards and the rear yards of the Lots. No fencing shall occur in the front yard of any Lot without the express written approval of the Board of Trustees. Approved fence types include vinyl, cedar wood or redwood. Fences should be standard six feet high.

ARTICLE VI - HOMEOWNERS ASSOCIATION

6. These Covenants have been created for the Mountain Park Estates Homeowners Association, a Utah non-profit corporation. The Association shall be comprised of the Owners of Lots within the Mountain Park Estates Subdivision, and is established to perform the following functions and exercise the following rights and powers for the benefit of the Owners and the enforcement of these covenants. Membership in the Association is deemed an appurtenance to the Lot, and is transferable only in conjunction with the transfer of the title to the Lot. The Association shall have and exercise, as necessary, the following powers:

- 6.1 **Enforcement Powers.** The Association shall have the power to enforce these covenants by actions in law or equity brought in its own name, the power to retain professional services needed for the enforcement of these covenants and to incur expenses for that purpose. The officers of the Association shall have the authority to compromise claims and litigation on behalf of the Association resulting from the enforcement of these Covenants. In the event that the Trustees of the Association initiate legal action against a specific lot owner or owners to enforce these covenants, and the Association prevails in a court of law, then the Trustees of the Association shall have the right to assess the costs of litigation against the lot or lots in question. The Trustees of the Association may file a "Notice of Lien" against such lot or lots with the amount involved to carry interest at the current rate for judgements until paid. The Trustees are further authorized to take whatever reasonable action is necessary to obtain payment including, but not limited to, foreclosure of the lien. The Trustees of the Association shall have the exclusive right to initiate enforcement actions in the name of the Association, however this shall not limit the individual rights of Lot Owners to personally enforce these Covenants in their own name. The Association may appear and represent the interests of the Subdivision at all public meetings concerning zoning, variances, or other matters of general application and interest to the Owners. Owners may also appear individually.
- 6.2 **Maintenance of Association Property.** The Association will be responsible for the maintenance of the entry sign structure, the pool and playground area, and any other property presently owned or acquired in the future by the Association. The Association shall have the authority to assess its members for the costs of said maintenance and for restoring any damage to any such property owned by the Association.
- 6.3 **Assessments.** The Association has the power to levy assessments against each lot as necessary to carry out these functions. All assessments will be equal on all Lots. Assessments will be made annually to meet the anticipated and recurring costs, expenses, and other expenditures of the Association including, but not limited to, the costs of maintenance, acquisition, repair and replacement of capital facilities, liability insurance, any water for irrigation of areas within the control of the Association, reimbursement of expenses incurred by the Trustees in performance of their obligations, the costs of complying with and enforcing rights under these covenants, and working capital, capital improvements and contingency reserves. Notice of the assessment and the proposed amount of the annual assessment will be given in advance along with the notice of the annual meeting of the Association, provided that the amount of the proposed assessment may be increased or decreased at the meeting in which it is approved by the Owners. A "late fee" can be applied to past due payments. The Association may also levy special

assessments to cover unanticipated expenses or shortfalls. No special assessments will be levied without approval of a majority of a quorum of the Owners in attendance in person or by proxy at a meeting called for that purpose.

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- 6.4 **Assessments Constitute Lien, Mortgagee Protection.** Any validly imposed assessment by the Association shall constitute a lien against the Lot in the Subdivision. The Association shall have the right to foreclose on that lien under the procedures available for the foreclosure of mortgages in the State of Utah when any assessment remains unpaid for a period of more than ninety (90) days from the date the assessment was levied. Alternatively, if the lien is not foreclosed upon, it may be renewed from year to year by recording a new notice of the lien, together with accumulated interest at the maximum legal rate allowed by law. The lien of the Association against any Lot shall have priority from the date that the first Notice of Lien on a specific Lot is recorded in the office of the County Recorder, and is subordinate to any previously recorded liens or encumbrances filed against that Lot, specifically including any purchase money mortgage or trust deed. Notwithstanding the lien rights of the Association, the obligation to any assessments is a personal obligation of the Owner of each Lot, and the Association may proceed to collect against the Owner, or the prior Owner of any Lot (in the event of a sale) without any obligation to first take recourse against the Lot and Improvements to which the lien has attached. No Mortgagee or Beneficiary under a Trust Deed who takes title by foreclosure or non-judicial sale, or accepts in deed in lieu of foreclosure or non-judicial sale, shall be held liable for the unpaid assessment of the Owner whose Lot was acquired by the Mortgagee or Beneficiary under a Trust Deed.
- 6.5 **Statement of Account.** Any Owner may request the Association to provide a statement of his account to any lender or prospective buyer of that Lot showing the assessments to be paid in full, or the amount of any past due assessments. The Buyer or Lender for whom such statement was prepared will be entitled to rely on its accuracy, and will not be held liable for any amounts not shown on the statement. The Association may charge a transfer fee for providing such statements and for changing its records to reflect the name of the new Owner. Those individuals selling and those buying subject to these Covenants agree to share that cost equally.
- 6.6 **Indemnity of Association Trustees and Officers.** The Association will indemnify (protect against any loss or damage, and to legally exempt from penalties or liabilities incurred by) the officers, agents and trustees of the Association against any and all claims arising against them personally which are a result of the good faith exercise of the powers, duties and responsibilities of their office under this Declaration.
- 6.7 **Elections.** Unless otherwise provided in the By-Laws of the Association, the elections for members of the Board of Trustees, or any other matter which is presented to the Association, Lot owners shall be entitled to cast one (1) vote per each Lot they own. In the case of a Lot with multiple Owners, those Owners will need to agree among themselves how the one (1) vote applicable to that Lot will be cast, and if no agreement can be reached, no vote will be received from that Lot. Any of the multiple Owners appearing at the meeting in person or by proxy is deemed to be acting with proper authority for all the other Owners of that Lot unless the other Owners are also present or have filed written objections to that Owner's representation of the other Owners of the Lot in question.

- 6.8 **Notice of Election, Notice of Meetings.** Unless otherwise provided in the By-Laws of the Association, notice of any meeting for the election of members to the Board of Trustees or any other purpose shall be sent to the Owners at their last known address (which may be determined from the most recent property tax assessment if no other address is known). Notice will be mailed not less than 30 days, nor more than 60 days in advance of the date of the meeting. Any notice will state the purpose of the meeting, and the time, date and place of the meeting. At any such meeting, a **quorum** will exist if the Owners of 51% of Lots are present. Those present at the meeting may vote to "continue" the meeting to any date within 30 days. Notice of the continued meeting will be given by mail or delivered in person to the Owners, and at the subsequent continued meeting, a **quorum** will consist of those members present. The Chairperson of the Board of Trustees will give notice of any meetings and will "chair" all meetings of the Owners.
- 6.9 **Special Meetings.** When warranted, a special meeting of the Owners may be called as provided in the By-Laws. No business may be conducted at a special meeting without a full quorum of the Owners (of 51% of the Lots) being present in person or by written proxy.
- 6.10 **Number of Trustees, Terms of Office and Officers.** As provided for in the By-Laws of the Association, the number of Trustees shall be not less than three (3) nor more than thirteen (13) members who shall be elected to two (2) year terms on a rotating offset schedule (see below) at the annual meeting and they shall hold office until their successors have been duly elected and qualified and hold their first meeting. Trustees may serve consecutive terms of office. The Trustees will meet as soon as practical to determine and select the Officers from among the Trustees.

Election Rotation Schedule:

Group I - Consists of four (4) board members elected in 2003, 2005, 2007, etc.

Group II - Consists of three (3) board members elected in 2004, 2006, 2008, etc.

ARTICLE VII - OWNERS' MAINTENACE OBLIGATIONS

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7. It is the obligation of each owner to maintain his or her Lot at all times in order to preserve and enhance the enjoyment of the Subdivision:

- 7.1 **Duty to Maintain.** It is the obligation of the Owner of each Lot to maintain his or her Lot and the Improvements to the lot in a good state of repair and in an attractive, safe, and healthy condition.
- 7.2 **Repair by the Association.** In the event that an Owner permits his Lot or Improvements to fall into a state of disrepair that is dangerous, unsafe, unsanitary, or unsightly condition or fails to comply with any other covenant or restriction in violation of this Declaration, the Association may give written notice to the Owner describing the condition(s) complained of and demanding that the Owner correct the condition within 30 days. Owner may appeal to the Board for an extension of time, if needed. If the Owner fails to take corrective action, the Association shall have the right, but not the obligation, to enter upon the offending Owner's Lot and take corrective action to abate the condition. All costs of abatement shall be charged to the Owner, who agrees to promptly pay the reasonable costs of any work performed under this provision. In addition, each Owner hereby grants to the Association a lien on the Lot and any Improvements to secure repayment of any sums advanced pursuant to this section, which lien may be foreclosed at any time by the Association in the manner prescribed in Utah for the foreclosure of mortgages. Alternatively, without requiring foreclosure, the Association may seek collection of sums advance directly from the Owner of the Lot in question. Unpaid amounts will bear interest from the date advanced at the lawful judgement rate under applicable law.
- 7.3 **Alterations of Exterior Appearances.** Exterior alterations, improvements or remodeling, whether structural or in appearance, such as drastic changes in landscaping, paint color or materials will NOT be made without the advance consent and written approval of the Board of Trustees.
- 7.4 **Repair Following Damage.** In the event of a loss or damage to the Improvements, the Owner will be entitled to reconstruct the Improvements as they existed prior to the damage or loss without review by the Board of Trustees. Alterations or deviations from the original plans will require review. Nothing in this Declaration is intended to prevent an Owner who has suffered property damage or loss from taking temporary measures to secure the property and prevent further damage, or to prevent injury or dangerous conditions following loss or damage, before re-construction begins. Such temporary measures may be taken without the consent or approval of the Trustees, provided that any such measures must be of a temporary nature, and repair or re-construction must begin as soon as circumstances will permit. No damaged structure will be permitted to remain on any Lot for more than 90 days without repairs commencing, and any damaged structure which does remain unrepaired after 90 days following the occurrence of damage is deemed a nuisance which may be abated by the Association.

ARTICLE VIII - GENERAL PROVISIONS

8. The Covenants, Conditions, and Restrictions contained in this Declaration may be enforced as follows :

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- 8.1 **Violation Deemed a Nuisance.** Any violation of the Covenants which is permitted to remain on the property is deemed a nuisance, and is subject to abatement by the Association or by any other Owner.
- 8.2 **Remedies.**
- (a) Any single or continuing violation of the Covenants contained in this Declaration may be enjoined in an action brought by any other Owner, or by the Association in its own name.
 - (b) Nothing in this Declaration shall be construed as limiting the rights and remedies that may exist at common law or under applicable federal, state, county or local laws and ordinances for the abatement of nuisances, health and safety, or other matters. These Covenants are to be construed as being in addition to those remedies available at law.
 - (c) The remedies available under this Declaration and at law or equity generally are not to be considered as exclusive, but rather as cumulative.
 - (d) The **failure to take enforcement action shall not be construed as a waiver** of the Covenants contained in this Declaration in the future or against other similar violations.
- 8.3 **Severability.** Each of the Covenants contained in this Declaration shall be independent of the others, and in the event that any one is found to be invalid, unenforceable, or illegal by a court of competent jurisdiction, the remaining Covenants shall remain in full force and effect.
- 8.4 **Limited Liability.** Neither the Trustees, nor its individual members, or any Owner shall have personal liability to any other Owner for actions or inactions taken under these Covenants, provided that any such actions or inactions are the result of the good faith exercise of their judgement or authority, under these Covenants, and without malice.
- 8.5 **Amendments.** At any time while this Declaration is in effect, the Owners of 65% of the Lots may amend the provisions of this Declaration. Any amendment must be in writing and be approved by 65% of the Owners at the time of the amendment. No such amendment will be binding upon the holder (i.e., bank, loan institution or otherwise) of any mortgage or trust deed unless the holder joins in the amendment.

- 8.6 **Constructive Notice** Every person who owns, occupies, or acquires any right, title or interest in any Lot in the Subdivision is conclusively deemed to have notice of this Declaration and its contents, and to have consented to the application and enforcement of each of the Covenants, Conditions, and Restrictions against his Lot, whether or not there is any reference to this Declaration in the instrument by which he acquires his interest in any Lot.
- 8.7 **Notices.** All notices under this Declaration are deemed effective 72 hours after mailing, whether delivery is proved or not, provided that any mailed notices must have postage prepaid and be sent to the last known address of the party to receive notice. Notices delivered by hand are effective upon delivery.
- 8.8 **Liberal Interpretation.** The provisions of this Declaration shall be interpreted liberally to further the goal of creating a uniform plan for the Subdivision. Paragraph headings are inserted for convenience only and shall not be considered in interpretation of the provisions. Singular will include plural, and gender is intended to include masculine, feminine and neuter as well.
- 8.9 **Mortgagees Protection Provision.** The breach of any of the foregoing covenants shall not defeat or render invalid the lien of any mortgage or deed of trust lien on the Entire Property that is made in good faith and for value; provided, however, that all of the covenants contained herein shall be binding upon and effective against any owner of a Lot whose title thereto is acquired by foreclosure, trustee's sale or other foreclosure proceeding, from and after the date of such foreclosure, trustee's sale or other foreclosure proceedings.

Executed on the date shown below.

Mountain Park Estates Homeowners Association

By: *Victor L. Hansen*
Victor L. Hansen, President

STATE OF UTAH
County of Utah

On the 15 day of Dec., 2004, personally appeared before me, Victor L. Hansen, who being by me duly sworn, did say that he is the President of Mountain Park Estates Homeowners Association, and that the within and foregoing instrument was signed on behalf of said association by authority of a resolution of its board of directors and said Victor L. Hansen duly acknowledged to me that said association executed the same.

Glenna Gottfredson
NOTARY PUBLIC
Residing at: Spanish Fork Utah

My Commission Expires:

Dec. 28, 2006

