

After recording return to:
Sierra Homes Construction Inc.
470 North 2450 West
Tremonton, UT. 84337

Ent 1130062 Bk 1859 Pg 465
Date: 31-Jul-2015 11:30 AM Fee \$32.00
Cache County, UT
Michael Gleed, Rec. - Filed By SA
For NORTHERN TITLE COMPANY

MOUNTAIN GATE ESTATES HOA RESTRICTIVE COVENANTS (Amended)

DECLARATION OF PROTECTIVE COVENANTS, AGREEMENTS, RESTRICTIONS AND CONDITIONS AFFECTING REAL PROPERTY

The undersigned, Sierra Homes Construction Inc. , (“Declarant”) being the owner in fee simple of that certain real property in Cache County, State of Utah, known as Mountain Gate Phase II and Phase III, a subdivision, as shown in the plat thereof recorded in the office of the Cache County Recorder on July 21, 2008 as filing numbers 976417 and 976418, as Index No.’s 2008-2335 and 2008-2336 in the File of Plats (“the Property”), hereby submits the Property, together with the buildings, and all improvements, easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the Property, to the protective easements, covenants, conditions and restrictions described in this Declaration.

I. GENERAL TERMS

1. MUTUAL AND RECIPROCAL BENEFITS, ETC.

All of said restrictions, conditions, covenants and agreements in this Declaration shall be made for the direct and mutual reciprocal benefit of each and every building lot subdivided or created on the Property (“Lot”) and shall be intended to create mutual and equitable servitude upon said Lots of each other Lot created on the Property, and to create reciprocal rights and obligations between the respective Owners of all of the Lots so created and to create privity of contract and estate between the grantees of said Lots, their heirs, successors and assigns, and operate as covenants running with the land for the benefit of all other Lots in the Property.

2. ACCEPTANCE OF RESTRICTIONS

All purchasers of Lots, by acceptance of contracts or deeds for any Lot or Lots shown thereon, or any portion thereof shall be conclusively deemed to have

consented and agreed to all restrictions, conditions, covenants and arrangements set forth herein, and agree to follow these covenants fully.

3. TERM

This Declaration will take effect upon recording in the office of the Cache County Recorder. This Declaration runs with and binds the Property for an initial term ending January 1, 2018, after which time it will be automatically extended for successive periods of ten (10) years each, unless terminated by the vote of at least sixty-five percent (65%) of all Owners.

4. AMENDMENTS

For the first thirty (30) years after the recording of this Declaration, this Declaration may be amended on the vote of at least sixty-five percent (65%) of all Owners, provided, however, that no amendment may be made to this Declaration without the written consent of Declarant so long as Declarant retains the ownership of three (3) or more Lots and no more than two (2) years has passed from the date of completion of all construction on all phases of the Subdivision.

5. EASEMENTS

Easements and Rights of Way shall be reserved to the undersigned, successors and assigns, in and over said real property, for the erection, construction and maintenance and operation therein or thereon of drainage pipes or conduits and pipes, conduits, poles, wires and other means of conveying to and from said Lots, gas, electricity, power, water, telephone and telegraph services, and sewage as are shown on said plat map and the undersigned, its successors and assigns, shall have the right to reserve any further necessary easements in contracts and deed, to any or all of the Lots shown on said map. No structure of any kind shall be erected over any such easements, except upon written permission of the undersigned, their successors or assigns.

6. RE-SUBDIVISION OF SITE

None of said Lots may be re-subdivided except that the undersigned, its successors or assigns, may divide any of said Lots so as to increase the size of adjoining Lots; or where one or more of said Lots is, in the opinion of the undersigned, its successors or assigns, of any such size and character that it may be divided into two or more Lots which will each be similar to the other Lots in said tract, and adequate size and character to permit development similar to that on each other Lots, then such a Lot or Lots may be divided by the undersigned, its successors or assigns.

7. VOTING

As used in this Declaration, "vote of the Owners" means that one vote pertains to each Lot. "Lot" means any of the separately numbered, individually described lots on the Property as designated on the Plat and intended for single family residential use. "Owner" means the person who is the owner of record of a fee or undivided fee interest in a Lot. Votes may be exercised in person or by proxy at a meeting of the members of the Mountain Gate Estates HOA, or by written consent to an action; and the action resulting from such vote is to be evidenced by a written instrument signed and acknowledged by such Owner(s) whose vote resulted in the action, and recorded in the office of the County of Recorder of Cache County, Utah.

II. RESTRICTIONS ON IMPROVEMENTS

1. INTENT OF RESTRICTIONS ON IMPROVEMENTS

It is the intent of these covenants to restrict the design, materials used, and the landscaping of improvements only to the extent necessary to ensure quality in external appearance and maintain property values on a long-term basis.

2. ARCHITECTURAL REVIEW COMMITTEE

(a) Declarant hereby appoints an Architectural Review Committee ("ARC"), which shall initially consist of Sierra Homes Construction Inc. The functions of the ARC will be to review and approve improvement plans of Owners, consistent with the intent of this Declaration. No structures, residences, outbuildings, tennis courts, swimming pools, walls, fences, hardscaping or other improvements shall be constructed upon any Lot without following the ARC review process.

(b) The purpose of the ARC is to determine that the structures are in conformity and harmony in external design with the existing structures and development in the area consistent with this Declaration, and as to location of buildings with respect to topography and finish ground elevations. For these reasons the ARC is given the general power to review building designs generally and may specifically disapprove of a design because of a lack of general harmony with the development of the area. In the event such disapproval occurs it must be in writing and specifically state the basis of the disagreement.

(c) Vacancies in the ARC shall be filled by a vote of the Owners at the time the vacancy occurs. In the event of a vacancy, the ARC shall notify the Lot Owners in writing of such vacancy. A period of thirty (30) days from the mailing of such notification will be allotted to solicit nominations to fill the vacancy. Lot owners will then be notified of all nominations and a written vote will be conducted. The nominee with the largest number of respondent votes will fill the vacated position.

3. REVIEW PROCESS

a. Preliminary Submission: The submission to the ARC is not required but is recommended. This submission should include a rough layout drawn to scale, showing proposed improvements, including but not limited to building design and location, driveways, outbuildings and patios. The architecture at this stage could be conceptual, showing elevations and floor plans with basic dimensions. Information as to colors and materials to be used could also be included. If the proposed improvements are not satisfactory to the ARC, a meeting with the Owner and/or his designer will be called to discuss possible changes for the final submission.

b. Final Submission: This submission is required and must be a detailed description of the proposed improvements. This site plan should be drawn to scale of at least 1"=20', should show proposed grading at no more than two foot intervals with spot elevations for clarifications when necessary, should give detailed and accurate information regarding colors and materials to be used. If no action is taken by the ARC within twenty-five (25) days of the date of the final submission, the Owners will have the right to proceed with the construction as proposed, provided that they notify the ARC of their intent in writing.

c. ARC's Right to Stop Construction: The ARC reserves the right to stop construction on any residence which does not conform to the approved drawing bearing its approval.

4. COMPLETION OF RESIDENCE

Completion of residence: Erection of a residence must be completed within one year period from beginning date of construction. Once the construction of any residence or structure other than fencing is commenced, work thereon must progress diligently and must be completed within 12 months.

III. SPECIFIC RESTRICTIONS

1. TYPE OF STRUCTURES.

No building other than one single family dwelling and appropriate out buildings shall be erected on any of said Lots. Any structures constructed on any of said lots shall be used only as a single family dwelling or appurtenant out buildings. The undersigned can allow churches and schools.

2. ARCHITECTURAL CONTROLS AND USE RESTRICTIONS

a. Private Residences: Said Lots shall be used for private residences only.

b. Roofs: All roofing shall be split cedar shakes, wood shingles, asphalt shingles, or tile roofs. Tin roofs or other metal roofs will only be approved with special written permission of the ARC and may only then be used for accent purposes. The pitch on

roofs shall meet or exceed 6:12 on two level homes except with special written permission. The pitch on roofs of single level homes shall meet or exceed 8:12 except with special written permission.

c. Design: All residences shall incorporate 360 degree design elements.

d. Siding: The exterior shall be constructed of a durable material aesthetically compatible with the building style. A minimum of 30% of the above-grade siding shall be comprised of stone or brick.

e. Residence Size: The residence to be built shall be of a minimum size of 1150 square feet. The minimum size square feet calculation shall be made by determining the number of square feet of living space above grade.

f. Garages: Each residence shall be constructed with an attached garage with a minimum of 500 square feet. Additional detached garages are permissible, but must be constructed of like materials to the dwelling and be of similar architecture and elevation. Car ports are not permissible.

g. Outbuildings: Outbuildings must be subjected to the same Architectural Review process as the dwelling and be aesthetically compatible with the building style. Metal structures, including workshops and sheds, of any size or function are not permitted.

h. Fencing: Location and composition of any fences must be submitted to the ARC as described above before construction may begin. Once fence construction has begun, fence must be fully completed within sixty (60) days. Fence materials may be vinyl, wood, brick or black chain link. Fencing that extends towards the front of the dwelling past the front elevation will generally not be permitted.

i. Landscaping: All landscaping must be completed within eighteen months after construction of the residence is completed, weather permitting. If completion is delayed by weather, Owner must submit an extension notification to the ARC. Landscaping plans must be submitted to the ARC under similar process as above prior to the commencement of work. Landscaping shall incorporate natural materials and vegetation wherever practical and shall provide that 33% of the unused portion of the lot (that portion not used for the house, driveway and sidewalk) consist of low-water usage xeriscaping plants and materials. Swimming pools must be completely enclosed or gated with a fence no less than 60" high.

j. Signs: No signs shall be displayed on any of said Lots except as follows: the name and profession of any professional may be displayed at any dwelling house upon a sign not exceeding 200 square inches in size. Said sign may be displayed for no more than ninety (90) days after initial placement. There may also be displayed a sign of the same size advertising the fact that said parcel or said dwelling is for sale or to let or to lease during the period the property is offered for sale or lease.

k. Standards: The ARC reserves the right to disapprove of designs, depictions, colors, statues or any other landscaping elements, etc., which are unusual or which may detract from the ongoing family neighborhood image of the area.

l. Car Repairs: No car under repair or needing repair or which would be considered a junk vehicle or salvage vehicle shall be kept outside of an enclosed garage. In this determination, a vehicle which is unregistered or which has not been moved for fifteen (15) days or more shall be presumptively prohibited. The ARC has discretion to determine which of said automobiles are junk or salvage and to direct either their removal or relocation inside garages.

m. Animals: The animal ordinance of Hyde Park City is hereby incorporated as a part of these covenants and a failure to follow the same shall be considered a breach hereof. There shall be no barking dogs.

n. Street Trees: Each lot owner shall install and maintain two (2) street trees installed in a line along the street. The ARC will designate a uniform tree for planting.

o. Excavation: No excavation for stone, gravel or earth shall be made on a Lot, unless such excavation is made in connection with the erection of a building or structure thereon.

p. Insurance: Every Owner must obtain standard homeowner's insurance, at the Owner's own expense, covering damage to the structures on the Lot.

3. MAINTENANCE OF LOT

Each Owner must maintain, at the own expense of Owner, the Owner's Lot (including the planting strip between the sidewalk and the street), including weed control on the Owner's unimproved Lot, and the buildings, outbuildings, fences, landscaping, and other improvements on the Owner's Lot, so as to preserve a well kept appearance, as so as not to adversely affect the value of any other Lot in the Subdivision.

IV. HOME OWNERS' ASSOCIATION

1. MEMBERSHIP

Every person or entity who is a record owner of a fee simple or undivided fee simple interest in any Lot which is the subject of this Declaration shall be a member of the Association, provided however that any such persons or entity who holds such interest merely as a security for the performance of an obligation shall not be a member.

2. VOTING RIGHTS

The Association shall have one class of voting memberships which shall be made up of all Lot owners, including the Declarant, and shall be entitled to one vote for each Lot owned.

3. BOARD OF DIRECTORS

A board of directors, made up of three of the Lot owners, shall be established for the purpose of directing the affairs of the Association. All decisions will be based on a majority vote.

a. COMPOSITION OF BOARD OF DIRECTORS. The Board shall be composed of three (3) members. At the first regular owners meeting two (2) Committee members shall be elected for two-year terms and one member for a one-year term. At each annual owners meeting thereafter any vacant seat on the Committee shall be filled with a member elected for a two year term. Only Lot

owners and agents of owners other than individuals shall be eligible for Committee membership. At the annual meeting the percentage of undivided ownership interest appurtenant to a Lot may be voted in favor of as many candidates for committee membership as there are seats on the committee to be filled. Notwithstanding the foregoing limitations, until the first annual meeting of the owners the Declarant shall hold all offices and all seats on the owners Committee and may act as the Manager of the project. In the event a Committee seat becomes vacant for any cause the remaining Committee members shall elect a replacement to sit on the Committee until the expiration of the term for which the member being replaced was elected. A member shall serve on the Committee until his successor is elected and qualifies. Members of the Committee shall not receive a salary for serving on the Committee but shall not be precluded from serving the Development in another capacity and receiving compensation therefore.

b. COMMITTEE OFFICERS AND AGENTS. The Committee shall perform its functions through those members who are elected as officers by the Committee and through such agents or employees as the Committee may appoint. Any Committee officer, agent or employee may at any time be removed with or without cause by the vote of majority of the Committee members. The officers of the Committee, and their respective powers and functions, shall be as follows:

(1) President. The President shall be the chief executive of the Association and shall exercise general supervision over the property and affairs of the project. He or she shall sign in behalf of the project all conveyances, mortgages and contracts of material importance to his business, and shall do and perform all acts and things which the Association may require of him or her. He or she shall receive no compensation for services as president of the project or for acting in that capacity. The President shall be invited to attend meetings of each special committee, and shall be in each case, where he or she may desire such status, an ex officio member of each committee.

(2) Vice President. In the event of the President's absence or inability to act, the Vice President shall have the powers of the President. He or she shall perform such other duties as the Association Committee may direct. The Vice President shall receive no compensation for services in such capacity.

(3) Secretary. The Secretary shall keep the minutes of meetings of the Committee and of the Lot Owners, and such books and records as any resolution of the Management Committee may require him or her to keep. He or she shall be the custodian of the records of the development, as are normally kept by a secretary. He or she shall perform such other services as the Association may direct, but shall receive no compensation for services in such capacity. An Assistant Secretary may be elected who shall in the event of the Secretary's absence or inability to act, perform the duties and functions of the Secretary.

(4) Treasurer. The Treasurer shall have the custody and control of the funds available to the project, subject to the direction of the Association Committee. He or she shall, when requested by the President, report the state of finances of the Project at each Annual Meeting of the Lot owners and at any meeting of the Management Committee as required, but shall receive no compensation for services in such capacity. The office of Vice President and Treasurer, or of Secretary and Treasurer may be held by the same person. The Treasurer and one other member of the Association Committee must sign all checks.

c. Committee Meetings. A regular meeting of the Committee shall be held immediately after the adjournment of each annual owners meeting. Other regular meetings shall be held at regular intervals at such time and place as the Committee may provide. No notice need be given of regular Committee meetings. Special Committee meetings shall be held whenever called by the President or by any two (2) members of the Committee. Either oral or written notice of special meetings shall, unless a waiver of such notice is signed by all members, be given to each Committee member at least twenty-four (24) hours before the time fixed for the meeting. Any meeting attended by all Committee members shall be valid for all purposes. A quorum for the transaction of business at any Committee meeting shall consist of a majority of all members then in office.

d. Manager. The Committee may carry out through a project manager any of its functions which are properly the subject of delegation. Any Manager so engaged shall be an independent contractor and not an agent or employee of the Committee, shall be responsible for serving the project for the benefit of the Committee and the Lot Owners, and shall, to the extent permitted by law and the terms of the agreement with the Committee, be authorized to perform any of the functions or acts required of or permitted to be performed by the Management Committee itself. The Manager may be paid a reasonable compensation for services rendered.

e. Owners Meetings. The regular meeting of the Unit Owners shall be held at (time) on the (designated day i.e. *1st Thursday, 2nd Wednesday, etc.) in (designated month) 200_, and on the (designated day) in (designated month) of each succeeding year. The place of meeting shall be at a location in Cache County, State of Utah, specified in the notice of meeting. At least ten (10) but not more than thirty (30) days before the date of the regular meeting a written notice thereof shall be personally delivered or mailed postage prepaid to each person who appears as an owner, at the latest address for such persons appearing, in the records of the Committee at the time of delivery or mailing. Such notice shall state the time, place, and general purpose of the meeting.

Ent 1130062 Bk 1859 Pg 472

V. COVENANT FOR MAINTENACE ASSESSMENTS

1. CREATION OF LIEN AND PERSONAL OBLIGATION OF ASSESSMENT

The Declarant, for each Lot owned within the subject property, hereby covenants, and each owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, cost, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Unit owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

2. PURPOSE OF ASSESSMENTS

The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the properties and for the improvement and maintenance of the Common Areas and Limited Common Areas including the yard lawn care, the infrastructure, not under City control, of the subject property, all subject utilities and insurance on the common property and any common facilities.

3. MAXIMUM ANNUAL ASSESSMENT

Until January 1, 2009, the maximum annual assessment shall be Two Hundred Dollars (\$200.00) per Lot, pro-rated through 2008, payable monthly.

a. From and after January 1, 2009, the maximum annual assessment may be increased each year not more than 5% above the maximum assessment for the previous year without the vote of the membership.

b. From and after January 1, 2009, the maximum annual assessment may be increased above 5% by a vote of two-thirds (2/3) of the voting members, at a meeting duly called for this purpose.

4. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS

In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common area and other areas of responsibility of the Association within each of the Lots therein, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the members of the Association.

5. NOTICE OF ANY ACTION AUTHORIZED UNDER SECTION 3 AND 4.

Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60

days in advance of the meeting. A required vote of two-thirds (2/3) will be required to authorize any work as described above.

6. UNIFORM RATE OF ASSESSMENT

Both annual and special assessments must be fixed at a uniform rate for all Lots within the Association and may be collected on a monthly basis.

7. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS: DUE DATES

The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Lot. The first annual assessment shall be prorated according to the number of months remaining in the calendar year.

8. EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of fourteen percent (14%) per annum. The Association may bring an action at law against the Lot owner personally obligated to pay the same, or foreclose the lien against the property. No Lot owner may waive or otherwise escape liability for the assessments provide for herein by non-use of the assessed areas.

9. SUBORDINATION OF THE LIEN TO MORTGAGES

The lien of the assessments provided for herein shall be subordinate to the lien of the first mortgage. Sale for transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure of any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Unit from liability for any assessments thereafter becoming due or from the lien thereof. Unit owners agree that they have waived and will not claim any homestead exemption if proceedings supplementary to obtaining judgment are required to collect said amounts.

10. PAYMENT FOR MANAGEMENT OF ASSOCIATION

Committee members shall be reimbursed for all expenses (materials and postage) reasonably incurred in connections with committee business.

11. INSURANCE

The Management Committee may secure and at all times maintain as a commons expense the following insurance coverage:

1. A policy or policies insuring the Committee, the Manager, the Lot Owners against any liability incident to the ownership, use or operation of the

Common Areas which may arise among themselves, to the public, or to any invitees or tenants of the Development or of the Lot Owners.

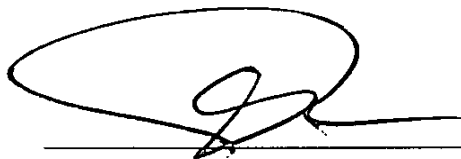
2. Limits of liability under such insurance shall be not less than \$500,000.00 for any one person injured, \$1,000,000.00 for all persons injured in any one accident, and \$20,000.00 for property damage resulting from one occurrence. Such policies shall be issued on a comprehensive liability basis and shall provide a cross-liability endorsement pursuant to which the rights of the named insured's as between themselves are not prejudiced.

The following additional provisions shall apply with respect to insurance:

- a. In addition to the insurance described above, the Committee may secure and at all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with PUD projects similar to the construction, nature and use of this project.
- b. All policies shall be written by a company holding a rating of "AA" or better from Best's Insurance Reports.
- c. The Committee shall have the authority to adjust losses.
- d. Insurance secured and maintained by the Committee shall not be brought into contribution with insurance held by the individual Lot Owners or their mortgagees.
- e. Each policy of insurance obtained by the Committee shall, if reasonably possible, provide: A waiver of the insurer's subrogation rights with respect to the Committee, the Manager, the Lot Owners, and their invitees; that it cannot be canceled, suspended, or invalidated due to the conduct of the Manager or of any member, officer, or employee of the Committee without a prior written demand that the defect be cured; that any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Lot Owners.
- f. Lots Not Insured by Association. The Committee shall have no duty or responsibility to procure or maintain any fire, liability, extend coverage or other insurance covering any Lots and associated infrastructure and acts and events thereon.

DATED: July 30, 2015

Ent 1130062 Bk 1859 Pg 475

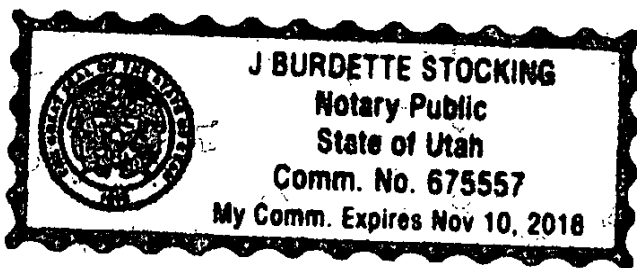


Sierra Homes Construction Inc.
Jay Stocking, President

ACKNOWLEDGMENT

STATE OF UTAH)
 :SS.
County of Cache)

On July 30, 2015, personally appeared before me Jay Stocking, who being by me duly sworn, did acknowledge to me that he executed this document.



J Burdette Stocking

Notary Public