

12796554  
6/22/2018 10:15:00 AM \$50.00  
Book - 10686 Pg - 5356-5371  
ADAM GARDINER  
Recorder, Salt Lake County, UT  
SUTHERLAND TITLE  
BY: eCASH, DEPUTY - EF 16 P.

**When Recorded Mail to:**

Mountain Vista Development, Inc.  
668 East 12225 South  
Suite 201  
Draper, UT 84020

**FIRST AMENDMENT AND RESTATEMENT TO THE  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE  
MAJESTIC ELMS COURT**

This First Amendment to the Declaration of Covenants, Conditions and Restrictions for Majestic Elms Court (which is also known as Majestic Elms Place) is made pursuant to the Utah Community Association Act, U.C.A. § 57-8a-101, *et seq.* and is entered into this 21 day of May, 2018, by Mountain Vista Development, Inc., the developer of Majestic Elms Court and “Declarant” hereunder and does hereby revoke, amend, and restate the Declaration of Covenants, Conditions, and Restrictions for the Majestic Elms Court that is dated April 19, 2012 and which was recorded on February 9, 2016 in Salt Lake County, Utah as Entry No. 12219261.

**RECITALS**

- A. Declarant is the developer of certain property located in Salt Lake County, State of Utah, which is more particularly described as follows:

See **Exhibit A** attached hereto.

- B. The property herein described has been platted and developed under the name of “MAJESTIC ELMS PLACE” and which was formerly known under the previous Declaration of Covenants, Conditions and Restrictions as Majestic Elms Court, said official plat having been or to be recorded in the Office of the Salt Lake County Recorder, State of Utah.
- C. Declarant has deemed it desirable, for the efficient preservation of the values and amenities in the real property described above (the “Property”), to Amend and Restate the previously recorded Declaration of Covenants, Conditions and Restrictions for Majestic Elms Court, which was dated April 19, 2012 and which was recorded in Salt Lake County, Utah on February 9, 2016 as Entry No. 12219261.
- D. Declarant has deemed it desirable, for the efficient preservation of the values and amenities in the Property, to create a nonprofit corporation under the Utah Revised Nonprofit Corporation Act to which should be delegated and assigned the powers of administering and enforcing the covenants and restrictions contained in this document and collecting and disbursing the assessments and charges hereinafter created, and to do and perform all other duties and exercise all other powers delegated to it herein, in its Bylaws, Articles of Incorporation or in any other way legally delegated to the

corporation, which said corporation is sometimes hereafter referred to as the Majestic Elms Place Homeowners Association or the "Association."

- E. Declarant has caused or shall cause such Association to be created, the members of which shall be the respective owners of the various units, and a proportional share of any portion of the real property in the subdivision held in common. Each Owner of a unit shall be a member of the Association as provided in the Articles of Incorporation, Bylaws and herein.
- F. Declarant will develop and convey all of the units, as herein defined, pursuant to a general plan for the Property and subject to certain protective covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges, all running with the Property and the units as hereinafter set forth.
- G. Declarant hereby declares that all of the Property and the units shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved, subject to the following easements, restrictions, covenants, conditions and equitable servitudes, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Property and units, in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Property, or any portion thereof. The covenants, conditions, restrictions, reservations, easements and equitable servitudes set forth herein shall run with the Property and each Unit thereon and shall be binding upon all persons having any right, title or interest in the Property and shall inure to the benefit of every portion of the Property and any interest therein; and shall inure to the benefit of and be binding upon Declarant, its successors in interest and each Owner and his respective successors in interest; and may be enforced by an Owner and his successors in interest and/or by the Association, and/or by City of South Salt Lake, if applicable.
- H. Notwithstanding the foregoing, no provision of this Declaration shall be construed as to prevent or limit the Declarant's rights to complete development of the Property and construction of improvements therein, nor the Declarant's right to maintain model homes, construction, sales or leasing offices or similar facilities on any portion of the Property owned by the Declarant, nor Declarant's right to post signs incidental to construction, sales or leasing and so long as said signs conform to the City of South Salt Lake sign ordinance.

#### **DECLARATION**

Declarant declares that all of the Property described below shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, conditions, reservations, assessments, charges, and liens, and to the Plat Map recorded concurrently. This is for the purpose of protecting the value and desirability of said Property. This Declaration and the Official Plat Map shall be construed as covenants of equitable servitude which shall run with the land and shall be binding on all parties having any right, title or interest in the described property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

The Property is located in the City of South Salt Lake, Salt Lake County, State of Utah, and is more particularly described as follows:

See **Exhibit A** attached hereto and incorporated with this reference

## **ARTICLE I DEFINITIONS AND GENERAL TERMS**

The following definitions control in this Declaration. Words and phrases not defined in this Article shall be given their ordinary meaning.

1. "Board of Trustees" means and refers to the governing board of the Association.
2. "Common Areas" means and refers to all real property (including the improvements thereon) which is set forth as Common Areas on the Official Plat Map and to which the Declarant grants all owners and the association an easement of access, ingress and egress and maintenance, and all real property owned by the Association or hereafter acquired for the common use and enjoyment of the Members and not dedicated for the general public located in Salt Lake County, State of Utah.
3. "Conveyance" means and refers to an actual conveyance of fee title to any Unit to any owner by warranty deed or other document of title, and shall not mean the mere execution of an installment sales contract.
4. "Declarant" means and refers to Mountain Vista Development, Inc., its successors and assigns, if such successors or assigns shall acquire more than one (1) undeveloped Unit from Declarant for the purpose of development.
5. "Declaration" means and refers to this Amended and Restated Declaration of Covenants, Conditions and Restrictions applicable to the Property recorded in the Office of the Recorder of Salt Lake County, State of Utah, and any amendments thereto.
6. "Family" means persons related by blood marriage, by legal adoption, or by operation of law.
7. "Homeowners Association" or "Association" means and refers to the owners of the Units comprising Majestic Elms Place.
8. "Living Unit" or "Unit" means a single-family dwelling, with or without walls, or roofs in common with other single-family dwellings. When the term "Unit" is used it includes fee title to the real property lying directly beneath the single-family dwelling, within Unit boundary lines. This however, is not all the Units in some instances as there may be Unit boundary outside the Unit walls. Townhome shall mean and is synonymous with the term "Unit".
9. "Member" means and refers to every person or entity holding membership in the Association.

10. "Mortgagee" means and refers to any person named as a first mortgagee or beneficiary, owner or holder of a first deed of trust.

11. "Owner" or "Unit Owner" means and refers to the record owner, whether one or more persons or entities, of a fee simple title to any Unit which is a part of the Property, including contract purchasers, but excluding those having an interest merely as security for the performance of an obligation.

12. "Plat" or "Plat Map" mean and refer to "Majestic Elms Place" as recorded in the Office of the County Recorder of Salt Lake County, State of Utah, and as the same may hereafter be modified, amended, supplemented, or expanded in accordance with the provisions of this Declaration or supplements to this Declaration which may occur in conjunction with the expansion of the Project as provided herein.

13. "Property," "Properties" and "Projects" mean and refer to that certain real property herein before described and such additions thereto as may hereafter be subject to this Declaration or any supplements to this Declaration which occur in conjunction with an expansion of the Project as provided herein.

14. "Building" means and refers to a multi-family dwelling unit constructed on a Unit.

15. "Utilities" means and refers to public utilities, including, but not limited to, sewer, water, drainage, natural gas, telephone, electricity, and cable television. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Unit situated upon the Property but, notwithstanding any applicable theory of mortgage or trust deed, shall not mean or refer to the mortgagee or other lender unless and until such mortgagee or lender has acquired title pursuant to foreclosure or Trustee's sale, or any proceeding in lieu of foreclosure.

## ARTICLE II GENERAL RIGHTS AND RESTRICTIONS

1. Owners' Easements of Enjoyment to Common Areas. Every Unit Owner shall have a right and easement of use and enjoyment including, but not limited to, the right of ingress and egress to and from his Unit and in and to the Common Areas, which easement is appurtenant to and passes with title to every Unit, subject to the right of the Association, in accordance with its Articles, By-Laws and this Declaration.

2. Delegation of Use. Any Owner may designate, in accordance with the Bylaws, his right of enjoyment to the Common Areas to the members of his family, his tenants, guests or contract purchasers who reside on the Property. All such use by family members, tenants, tract purchasers or guests shall be subject to this Declaration, including all supplements and amendments thereto, the Bylaws, and the Rules and Regulations. Any damage caused to the Common Areas or property owned by the Association by a Member or by a person who has been delegated the right to use and enjoy such Common Areas by an Owner shall create a debt to the Association. Debts

owed to the Association as a result of damage to the Common Areas shall be an assessment charged to the Unit Owner as provided in this Declaration.

3. Easement to Common Areas. Declarant covenants that it will on or prior to completion of all construction, convey to the Association and owners the necessary access and use easements to all Common Areas within said phase and set forth on the Official Plat Map. By this Declaration, Declarant hereby grants said easements. Declarant further agrees that it will discharge all liens and encumbrances on said Common Areas on or before the sale and closing of the last Unit in the Project, except for (i) any state of facts an accurate survey may show, (ii) covenants, restrictions, easements, encumbrances and liens created by or pursuant to this Declaration, and (iii) easements and rights-of-way of record.

4. Limitation of Homeowners Association. The Association shall not be entitled to take any of the following actions unless at least two-thirds (2/3) of Unit Owners shall have first given their prior written approval:

- a. To act, or by omitting to act, to seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Areas owned, directly or indirectly, by the Association for the benefit of the Units.
- b. The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Areas is not a transfer within the meaning of this clause.
- c. To act, or by omitting to act, to change, waive, or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of Units or Living Units, the exterior maintenance of the Units or Living Units, the maintenance of the Common Areas, or the upkeep of the Common Areas.
- d. To fail to maintain fire and extended coverage on insurable Common Areas on a current replacement cost basis in an amount equal to at least one hundred percent (100%) of the insurable value (based on current replacement cost).
- e. To use hazard insurance proceeds for losses to any Common Areas for other than the repair, replacement, or reconstruction of the Common Areas.
- f. To purchase additional adjacent land as Common Areas.

Except that nothing contained herein shall be construed to limit or prohibit the right of the Declarant from entering into management agreements with property managers for the purpose of managing, enhancing and promoting the property rights of Owners consistent with the spirit and intent of this Declaration. Said agreements shall be binding on the Association.

5. Encroachments. If any portion of a Living Unit constructed, or if any portion of a Living Unit reconstructed so as to substantially duplicate the Living Unit originally constructed, encroaches upon the Common Areas or other Units, as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the development, or due to the installation of necessary items or appurtenances to the living unit including, but not limited to, patios, heating/cooling units, eaves, etc., a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists.

6. Fee Conveyed. Each Unit shall be conveyed as a separately designated and legally described freehold estate, the Owner taking title in fee simple, subject to the terms, conditions, and provisions hereof. Each Unit is owned in fee simple by the Owner.

7. Signs. No signs shall be displayed on any of the Units except for one "For Sale" or "For Lease" sign not exceeding twenty-four (24) inches by thirty-six (36) inches when required for the purpose of advertising such sale or lease. All signs must comply with the City of South Salt Lake Sign Ordinance.

8. Private Residences. The Units contained within the Property shall be used for private residences only, and no structure shall be moved from any place on said premises without prior written approval of the Association. No offensive, noisy or illegal trade, calling, or transaction shall be done, suffered, or permitted upon the land conveyed. No part of said premises shall be used or occupied injuriously to affect the use, occupation, or value of the adjoining or adjacent premises for residential purposes, or the neighborhood wherein said premises are situated.

9. Excavation. No excavation for stone, gravel, or earth shall be made on the Property unless such excavation is made for the purpose of the erection of a building or structure thereon.

10. Rubbish. No rubbish, debris, or waste products shall be stored or allowed to accumulate on the units except such as is kept in the municipal waste containers and emptied according to the municipal garbage collection schedule.

11. Repair and Storage of Personal Property. Personal property of the Owner in the process of being repaired shall not be left in the visible site of neighbors unless such repairs occur within the confines of the Owners' garage. Recreational vehicles of the Owner, which include but are not limited to boats, snowmobiles, motor homes, and campers, shall be Placed behind or along side the dwelling in a manner that no portion of the said equipment shall extend beyond the front exposure of the residence or said equipment may be stored in a covered garage or carport. There will be no tent type patios or garage extensions. No curbside Placing or storage of recreational or sports vehicles, including campers and trailers shall be allowed. No owner or tenant of any Unit may use or Place in the designated visitor Placing at the Property; should any owner or tenant of any unit utilize any of the designated visitor Placing at the Property. The Association may have vehicles towed that are improperly Placed.

12. Easements and Rights of Way. Such easements and rights of way shall be reserved to the Declarant, and City of South Salt Lake, their successors and assigns, in and over said Property, for the erection, construction, maintenance, and operation therein, of drainage and all other utility pipes, of conduits, poles, wires, and other means of providing to and from Units contained within the Properties, gas, electricity, power, water, telephone, and telegraph services, cable television, sewage and other necessities for the convenience of the Owners of the Units contained within the Properties, as may be shown on the Final Plat Map of the Property, and Declarant, its successors and assigns, shall have the right to reserve any further necessary easements for said purposes in contracts and deeds to any or all of the said units contained within the Properties. No structure of any kind shall be erected over any such easements except upon written permission of the Declarant, its successors and assigns, City of South Salt Lake, the

Majestic Elms Place Homeowners Association, Inc., and except as may be required by the company or entity furnishing utilities.

13. Resubdivision of Site. None of said Units may be resubdivided except that Unit Owners, their successors or assigns, may convey away any part of said units so as to increase the size of adjoining units; but in no event shall the number of units within the subdivision be increased, nor applicable zoning or other laws be violated.

### **ARTICLE III VOTING RIGHTS**

1. Vote Distribution. The Association shall have the following two classes of voting membership:

- a. Class A. Class A Members shall be all the Owners. Class A Members shall be entitled to one vote for each Unit which the interest required for Membership, in the Association is held. In no event, however, shall more than one Class A vote exist with respect to any Unit.
- b. Class B. The Class "B" Member shall be the Declarant. The Class B member is entitled to six (6) votes for each Unit, as platted, that is owned by Declarant. The Class "B" Member shall be entitled, at its sole discretion, to amend the Articles of Incorporation, and, in addition, shall be entitled to appoint a majority of the members of the Board of Directors during the Class "B" Control Period, as defined herein. The Class "B" Control Period be from the recordation of this document continuously until terminated; shall terminate upon the earlier of:
  - i. When the total number of votes held by all Class A Members equals the total number of votes held by the Class B Member; or
  - ii. The expiration of eight (8) years after the date on which the Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

2. Multiple Ownership. In the event there is more than one Owner of a particular Unit, the vote relating to such Unit shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any-of such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Unit concerned, unless an objection is immediately made by another Owner of the same Unit. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever, other than to determine whether a quorum exists.

3. Loss of Voting rights. In the event that a Member fails to pay any assessments when due, that Member's voting rights shall be suspended until all assessments are paid in full, together with any late fees and accrued costs and interest.

### **ARTICLE IV PARTY WALLS**

1. General Rules of Law to Apply. Each wall which is built as a part of the original construction upon the Properties and placed on the dividing line between the Units shall constitute a party wall, and, to the extent not inconsistent with the provisions of this article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

2. Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, then, to the extent said destruction or damage is not covered by insurance and repaired out of the proceeds of the same, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

4. Weatherproofing. Notwithstanding any other provision of this article, an Owner who by negligent or willful actions causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements to the extent that said protection is not covered by insurance and paid for out of the proceeds of the same.

5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this article shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

## ARTICLE V EXTERIOR MAINTENANCE

1. Exterior Maintenance by Owner. Each Owner shall be responsible for maintenance to the exterior of the Townhome owned and adjacent and appurtenant to the Unit. The Directors shall, however, in the default of the Owner to perform maintenance which is the Owner's responsibility, and after a two-thirds (2/3) vote, and after ten (10) days written notice (which notice shall not be required in the event of emergency or threat to life, health, Property or safety), provide exterior maintenance upon each Townhome and Unit, and area adjacent and appurtenant thereto. The cost of such maintenance shall be assessed against the Unit and/or Townhome.

2. Exterior Maintenance by Association. The Association shall be responsible for maintenance upon the Common Area, which is not adjacent to any Unit, and the area of any Unit outside the walls of the Townhome which is of the same character as surrounding Common Area. The cost of such maintenance shall be a common expense.

3. Access at Reasonable Hours. For the sole purpose of performing the maintenance required by this article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Unit or Common Area at reasonable hours.



4. Alteration of Certain Maintenance Duties by Rule. The duty of maintenance for the area of a Unit outside the walls of the Townhome, and the areas adjacent and appurtenant to the Townhomes may be altered by Rule of the Association.

## **ARTICLE VI COVENANT FOR ASSESSMENTS**

1. Creation of Assessment Obligation. Each Owner of any Unit 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 to the Association (1) Annual Assessments for Common Expenses, (2) Special Assessments, (3) Corrective Assessments, and (4) any other amount or assessment levied by the Board pursuant to this Declaration; all such assessments to be established and collected as provided in this Declaration. The Association shall not levy or collect any Annual Assessment, Special Assessment or Corrective Assessment that exceeds an estimated amount necessary for the purpose or purposes for which it is levied. All such assessments, together with interest, costs and reasonable attorneys' fees for the collection thereof, shall be charge on the Unit and shall be a continuing lien upon the Unit against which such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, if applicable, shall also be and remain the personal obligation of the Person who was the Owner of such property at the time when the assessment fell due. This personal obligation cannot be avoided by abandonment of a Unit or by an offer to waive use of the Common Area. The personal obligation for delinquent assessments liability shall not pass to any new Owner ("Purchaser") successors in title unless expressly assumed by such Purchaser. For the purpose of assessment, the term "Owner" shall exclude the Declarant, provided that the Declarant or its assigns shall have the obligation to subsidize the Association until control of the Association passes to the Owners. Subsidization shall be defined as the payment of the reasonable cash needs of the Association for ordinary and necessary maintenance expenses (not including reserves or capital replacement). The determination of the reasonable cash needs for ordinary and necessary maintenance expenses shall be within the sole discretion of the Board and Declarant shall have no liability to the Association if subsequent Boards shall disagree with the determination of the Board which made such determination. In no event, however, shall the subsidy exceed the monthly assessments.

2. Purpose of Annual and Special Assessments. The Annual and Special Assessments levied by the Association shall be used exclusively to promote the common health, safety, benefit and welfare of the Owners and for the improvement and maintenance of the Common Area, including establishing and funding a reserve to cover major repair or replacement of Improvements within the common Area and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under this Declaration or its Articles.

3. Annual Assessments. Annual Assessments shall be used to satisfy Common Expenses of the Association, as provided herein and in the Bylaws. There will be no assessments on lots upon which a dwelling unit has not been constructed. The Annual Assessment shall be based upon the Budget prepared by the Board. The Common Expenses of the Association, and therefore the Annual Assessment, may increase because of, among other reasons, Common Facilities constructed in the sole discretion of Declarant.

4. Special Assessments. In addition to the Annual Assessment, a Special Assessment can be assessed to pay the costs of any one or more of the following:

- a. Approved by Board. Special Assessments for the following extraordinary expenses can be levied by the Board without Member approval:
  - i. An extraordinary expense required by an order of a court;
  - ii. An extraordinary expense necessary to repair or maintain the Common Area or any portion thereof for which the Association is responsible where a threat to personal safety on the Common Area is discovered. Prior to the imposition or collection of a Special Assessment pursuant to this subsection, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was necessary and was not or could not have been reasonably foreseen in the budgeting process. The resolution shall be distributed to the Members with the notice of Assessment; and
  - iii. Taxes payable to Salt Lake County.
- b. Approved by Association. Special projects which must be assented to by more than fifty percent (50%) of all votes which Members represented in person, by proxy, or ballot are entitled to cast at a meeting duly called and held for such purpose pursuant to the Bylaws involve:
  - i. the replacement or improvement of the Common Area or Improvement thereon; and
  - ii. an extraordinary expense necessary to repair or maintain the Common Area or any portion thereof for which the Association is responsible.

5. Uniform Rate of Assessment. Annual Assessments and Special Assessments imposed pursuant to this Declaration shall be assessed equally and uniformly against all Owners and their Units, except that unimproved Units shall not pay any Annual Assessment for the unimproved Units.

6. Date of Commencement of Annual Assessments. The Board shall authorize and levy the amount of the Annual Assessment upon each Unit, as provided herein, by a majority vote of the Board. Annual Assessments shall commence on all Unit on the first day of the first calendar month following the first Close of Escrow for the sale of a Unit in the Properties. The first Annual Assessment shall be adjusted according to the number of months remaining in the Fiscal Year as set forth in the Bylaws. The Board shall fix the amount of the Annual Assessment against each Unit at least thirty (30) days in advance of each Annual Assessment period. Written notice of any change in the amount of any Annual Assessment shall be sent to every owner subject thereto, not less than thirty (30) days prior to the effective date of such change. The due dates shall be established by the Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association, setting forth whether the assessments on a specified Unit have been paid. A properly executed certificate

of the Association as to the status of assessments against a Unit is binding upon the Association as of the date of its issuance.

7. Corrective Assessments. In addition to the Annual Assessment and any Special Assessments, the Association may levy Corrective Assessments against a particular Owner and his Unit to pay the following: costs directly attributable to, or reimbursable by, that Owner, equal to the costs incurred by the Association for corrective action, performed pursuant to the provisions of this Declaration, plus interest and other charges on such Corrective Assessments. The Board shall deliver a Notice of Noncompliance by the Board and Right to Hearing to the Owner upon whom it intends to levy a Corrective Assessment. Corrective Assessments shall be due and payable within (45) days following delivery of Notice of Board Adjudication and shall bear interest thereafter at the rate of eighteen percent (18%) per annum until paid in full.

8. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments herein:

- a. All portions of the Properties dedicated to and accepted by a local public authority; and
- b. Declarant's unfinished lots within the Subdivision; finished lots for this purpose shall mean lots where structures have been completed and for which a certificate of occupancy has issued; and
- c. The Common Area owned by the Association in fee.

9. Notice of Members Meetings. Quorum Requirements. Before any Special Assessment is levied, the Board shall deliver a Notice of Members Meeting. The quorum required for any action authorized by this Article shall be as follows: at the first meeting called, the presence of Members or of proxies entitled to cast ten percent (10%) of all outstanding votes shall constitute a quorum. If a quorum is not present at any meeting another meeting may be called by the Board issuing a Notice of Members Meeting at which a quorum shall be one-half of the quorum which was required at such preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following such preceding meeting at which a quorum was not present.

10. Additional Assessments. In addition to the annual assessments, special assessments, and corrective assessments, the Association shall levy such additional assessments as may be necessary from time to time for the purpose of repairing and restoring the damage or disruption resulting to streets or other Common from the activities of the Town of Springdale in maintaining, repairing or replacing the Town's utility lines and facilities thereon. It is acknowledged that the ownership of said utility lines, underground or otherwise, is in the Town up to and including the meters for individual units, and that they are installed and shall be maintained to Town specifications.

11. Preparation of Budget. The Board shall prepare a Budget to be presented to the Members at the annual meetings of the Members held as provided in the Bylaws.

12. Reserve Fund. The Board shall, on behalf of the Association, cause to be funded through Annual Assessments or other periodic assessments an adequate reserve to cover the cost of reasonably predictable and necessary major repairs and replacement to the Common Areas.

## ARTICLE VII INSURANCE

1. INSURANCE ON UNITS AND BUILDINGS. THE ASSOCIATION SHALL HAVE NO DUTY OR RESPONSIBILITY TO PROCURE OR MAINTAIN ANY FIRE, LIABILITY, FLOOD, EARTHQUAKE OR SIMILAR CASUALTY COVERAGE FOR A UNIT OR BUILDING, OR FOR THE CONTENTS OF ANY UNIT. THE ASSOCIATION ALSO SHALL HAVE NO DUTY TO INSURE AGAINST ANY NEGLIGENT ACTS OR EVENTS OCCURRING AT OR ON A LOT OR IN A HOME.

2. Insurance as Common Expense. Funds for insurance to be maintained by the Association shall be provided for from annual assessments as allowed in this Declaration.

3. Required Insurances. The Association shall secure and at all times maintain the following insurance coverages:

- a. Multi-Peril Coverage. A multi-peril type policy covering the Common Areas and facilities. Such policy shall provide coverage against loss or damage by the standard extended coverage endorsement, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, fire, earthquake, hailstorm, water damage, and such other risks as customarily are covered with respect to projects similar to this Project in its construction, location, and use. As a minimum, such policy shall provide coverage on a replacement cost basis in an amount not less than that necessary to comply with any co-insurance percentage specified in the policy, but not less than 100% of the full insurable value (based upon replacement cost). Such policy shall include an "agreed amount endorsement" or its equivalent, a "demolition endorsement" or its equivalent, an "increased cost of construction endorsement" or its equivalent, and a "contingent liability from operation of building laws endorsement" or its equivalent.
- b. Broad-Form Public Liability Coverage. A comprehensive policy insuring the Owners, the Association, its trustees, officers, agents and employees against all damage or injury caused by their negligence to the public, invitees, tenants or Owners on the Common Areas. Limits of the liability under such coverage shall not be less than \$1,000,000 for all claims for personal injury or property damage, or both, arising out of a single occurrence. Such policy or policies shall be issued on a comprehensive liability basis, shall provide that cross-insurers as between themselves are not prejudiced, and shall contain "a severability of interest" clause or endorsement to preclude the insurer from denying the claim of an Owner in the development because of negligent acts of the Association or others.

## ARTICLE VIII GENERAL PROVISIONS

1. Enforcement. The Association, or Declarant or its successors in interest, or any Owner shall have the right to sue for damages, or to enforce by any proceeding injunctive or otherwise,

at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, Bylaws, or Articles of Incorporation. Specifically, the aggrieved party may seek to recover damages and for injunctive relief Failure by the Association to enforce any covenant or restriction therein contained shall in no event be deemed a waiver of the right to do so thereafter. The prevailing party to any action brought to enforce the terms of this Declaration or any supplements or amendments thereto shall be entitled to costs and reasonable attorney fees.

2. Severability, Construction and Validity of Restrictions. All of said conditions, covenants and restrictions contained in this Declaration shall be construed together, but if it shall at any time be held that anyone of said conditions, covenants or restrictions, or any part thereof, is invalid, or for any reason becomes unenforceable, no other condition, covenant or restriction, or any part thereof, shall be thereby affected or impaired; and Declarant and Lot Owners, their successors, heirs or assigns shall be bound by each article, section, subsection, paragraph, sentence, clause and phrase of this Declaration irrespective of the fact that any article, section, subsection, paragraph, sentence, clause or phrase be declared invalid or inoperative or for any reason become unenforceable.

3. Duration. The covenants, conditions and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representative, heirs, successors, and assigns for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended for successive periods often (10) years.

4. Gender and Grammar. The singular wherever used in this Declaration shall be construed to mean the plural when applicable and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

5. Conflicts. In case of any conflict between this Declaration, as the same may be amended from time to time, and the Articles of Incorporation and the Bylaws of the Association, as they may be amended from time to time, the provisions of this Declaration shall be controlling.

6. Amendment. Except as otherwise provided herein, this Declaration may be amended by an instrument signed by not less than sixty-seven percent (67%) of the votes of the Association (including both Class A and Class B). Prior to any material amendment to this Declaration, written notice shall be sent to all holders of first mortgage liens, setting forth said amendment and advising them of the date that the Members will vote on said amendment.

7. South Salt Lake. The City of South Salt Lake has approved that the Association shall maintain, repair, and otherwise manage the pump and the pipeline that supplies secondary irrigation water to the Majestic Elms Court. Each Owner shall be responsible to install filters and backflow valves for their units. The Association shall be authorized to collect a required monthly fee or assessment for the payment of the water assessment from the City of South Salt Lake. The following standard shall be fulfilled and shall be recorded on the face of the Final Plat: "The City of South Salt Lake shall have the right, but not the duty, to require, and if necessary,

perform, at the Association's expense, landscaping, maintenance and snow removal services within the common areas if the Association fails adequately to perform such. In the event the City of South Salt Lake exercises this right, the City shall be entitled to recover any associated costs and attorney's fees."

8. Manager. The Association may carry out through a Manager any of its functions which are properly the subject of delegation. Any Manager so engaged may be an independent contractor or an agent or employee of the Association. Such Manager shall be responsible for managing the Properties for the benefit of the Association and the Owners, and shall, to the extent permitted by law and the terms of a management agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself.

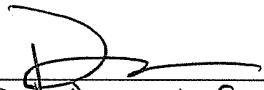
9. Terms of Management Agreement. Any agreement for professional management of the Development, or any other contract providing for services of the Declarant, sponsor, or builder, may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of termination fee on not more than ninety (90) but not less than thirty (30) days written notice.

10. Rules and Regulations. The Board shall have the authority to promulgate and adopt Rules and Regulations as the Board deems necessary or desirable (i) to aid it in administering the affairs of the Association, (ii) to insure that the Properties are maintained and used in a manner consistent with the interests of the Owners, (iii) to regulate the use of the Common Areas and to regulate the personal conduct of the Members and their guests thereon, and (iv) to establish penalties and fines for the infractions of any Rules and Regulations, this Declaration, or the Bylaws. Fines levied may be assessed as a Corrective Assessment against the Lot or Condominium.

11. Assignment of Declarant Powers. Any and all rights and powers of the Declarant herein contained may be delegated, transferred, or assigned. In the event of any such transfer of Declarant rights, the Declarant shall have assigned all of its rights herein and shall be relieved from and after the date of such transfer of all liability and obligations hereunder, and the Successor Declarant(s) shall have all the rights and obligations of Declarant contained herein.

IN WITNESS WHEREOF, Declarant executed this Declaration on the day and year first written above.

**DECLARANT:**  
MOUNTAIN VISTA DEVELOPMENT,  
INC.

  
By: Derek K. Ellis  
Its: V.P. Inmate



**Exhibit A**

**Beginning at a point 114.78 feet North 00°08'40" East from the Southeast corner of the North half of Lot7, Block 17, Ten Acre Plat "A", Big Field Survey; thence South 89°53'00" West 565.52 feet; thence North 0°07'00" West 39.66 feet; thence North45°19'14" West 28.11 feet; thence North 89°43'00" East 191.80 feet; thence South 0°06'00" West 3.99 feet; thence North 89°43'00" East 394.00 feet; thence South 00°06'00" West 57.38 feet to the point of beginning.**

**Units 1 through 10, inclusive, contained within MAJESTIC ELMS PLACE P.U.D., as the same is identified in the Record of Survey map recorded in Salt Lake County, Utah, on November 8, 2013, as Entry No. 11756549, in Book 213P of Plats, at Page 233, of official records. TOGETHER WITH a non-exclusive easement of use and enjoyment in and to the projects common areas and facilities as defined and provided for in said map.**

**Unit 1 Tax Parcel No.: 13-31-102-039  
Unit 2 Tax Parcel No.: 13-31-102-038  
Unit 3 Tax Parcel No.: 13-31-102-040  
Unit 4 Tax Parcel No.: 13-31-102-041  
Unit 5 Tax Parcel No.: 13-31-102-042  
Unit 6 Tax Parcel No.: 13-31-102-043  
Unit 7 Tax Parcel No.: 13-31-102-044  
Unit 8 Tax Parcel No.: 13-31-102-0345  
Unit 9 Tax Parcel No.: 13-31-102-046  
Unit 10 Tax Parcel No.: 13-31-102-047  
Common Area Tax Parcel No.: 16-31-102-048**