

**DECLARATION OF COVENANTS, (C  
AND EASEMENTS FOR MESA VIEWS**

This Declaration of Covenants, Conditions, Restrictions, and Easements is made on the date set forth below by MV at TRE, LLC, a Utah limited liability company (*hereinafter "Declarant"*).

**DECLARATION, INTENT, AND BINDING EFFECT**

Declarant is the record owner of that certain tract of real property located in the City of Toquerville, Washington County, Utah, and more particularly described on Exhibit A attached hereto and incorporated herein (the "Initial Property"). Declarant desires and intends to protect the value and desirability of all the Property in Mesa Views at Trail Ridge Estates subdivision as a harmonious and attractive residential subdivision. Therefore, Declarant hereby declares that all of the Initial Property and any property later annexed to the project or Initial Property shall be held, sold, conveyed and occupied subject to the following covenants, conditions, restrictions, and easements, and to the Plat recorded concurrently. The covenants, conditions, restrictions, and easements in this Declaration and the Plat shall be construed as covenants of equitable servitude; shall run with the Initial Property and any property later annexed and be binding on all parties having any right, title or interest in the Initial Property and any property later annexed or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

Declarant shall have the unilateral right to expand the property subject to these Covenants, Conditions & Restrictions, and any amendments thereto. Such expansion may be accomplished by recording a Supplemental Declaration or annexation amendment in the Office of the Recorder, describing the real property to be annexed and submitting it to the covenants, conditions and restrictions contained herein. Such supplemental declaration or annexation amendment shall not require the consent of property owners. The expansion may be accomplished in stages by successive supplements or in one supplemental expansion.

**ARTICLE 1  
DEFINITIONS AND CONCEPTS**

The following definitions and concepts shall control in this Declaration. Any terms used in this Declaration that are not defined shall have their plain and ordinary meaning.

- 1.1. *"Additional Property"* means and refers to any real property which is adjacent or contiguous to, or otherwise within the vicinity of the Property, whether or not described herein or on the Plat, but generally includes all property described on the Master Plan. When Additional Property is annexed to this Declaration, it shall become part of the Property.
- 1.2. *"Articles"* means and refers to the Articles of Incorporation of Mesa Views at Trail Ridge Estates Owners Association and any amendments or restatements thereto.
- 1.3. *"Association"* means Mesa Views at Trail Ridge Estates Owners Association, a Utah nonprofit corporation, its successors and assigns. The project is not a cooperative.
- 1.4. *"Bylaws"* means and refers to the Bylaws of Mesa Views at Trail Ridge Estates Owners Association. The purpose of the Bylaws is to govern the Association's internal affairs, such as (for purposes of example but not limitation) voting, elections, meetings, and officers. A copy is attached hereto as Exhibit B.

1.5. **"Common Area"** means all real property, including the improvements thereto and facilities thereon, owned or hereafter acquired by the Association for the common use and enjoyment of the Owners. The Common Area is designated on the Plat and generally consists of walking and biking trails, ATV trails, restricted open space, parks, and certain streets and sidewalks within the Subdivision.

1.6. **"Common Expenses"** means the actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of the Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents. Common Expenses shall not include any expenses incurred by the Declarant during the Declarant Control Period for initial development or other original construction costs unless a majority of the Class A Members approve.

1.7. **"Declarant"** means the undersigned and its successors and assigns.

1.8. **"Declaration"** means this instrument and any amendments, restatements, supplements, or annexations thereto, which are recorded in the office of the Washington County Recorder.

1.9. **"Declarant Control Period"** means the period of time i.) during which the Declarant owns at least one lot within the Subdivision or ii.) December 31, 2026, whichever is later; provided however that at any time the Declarant may terminate the Declarant Control Period by executing a written document terminating the Declarant Control Period.

1.10. **"Directors", "Board of Directors", or "Board"** means the governing body of the Association.

1.11. **"Governing Documents"** means, collectively, this Declaration, and any amendments or supplements, thereto, and includes any rules and regulations established pursuant to the Declaration and the Bylaws, as amended, for the Association.

1.12. **"Limited Common Area"** means and refers to a portion of the Common Area which has been designated for the primary or exclusive use of a particular Owner or Owners or a particular phase of the Subdivision. Generally, Limited Common Area, as a portion of Common Area, is owned by the Association but reserved for the use and enjoyment of the Owner or Owners to whose Lot the Limited Common Area is adjacent or appurtenant. Limited Common Area may be designated on the Plat or otherwise established as provided for in this Declaration.

1.13. **"Lot"** means a separately numbered and individually described plot of land shown on the Plat designated as a Lot for private ownership.

1.14. **"Lot Owner"** means and is synonymous with the term "Owner".

1.15. **"Master Plan"** means and refers to the Master Plan for Mesa Views at Trail Ridge Estates, if any, and includes any amendments or supplements thereto.

1.16. **"Member"** means and is synonymous with the terms "Owner" and "Lot Owner".

1.17. **"Owner"** means the entity, person, or group of persons owning fee simple title to any Lot which is within the Property.

1.18. **"Plat"** means the subdivision Plat recorded herewith prepared and certified by a Utah Registered Land Surveyor and any amendments or replacements thereof, or additions thereto, including Phase I and any plats

recorded so long as a declaration annexing the property to the project is recorded as set forth herein.

1.19. **"Property"** means that certain real property hereinbefore described, and such annexations and additions thereto as may hereafter be subjected to this Declaration.

1.20. **"Restricted Common Area"** means and refers to that portion of Common Area set aside from development for preservation in its natural state. Restricted Common Area may be designated on the Plat, the Master Plan, or otherwise established as provided for in this Declaration.

1.21. **"Subdivision"** is synonymous with the term Property.

1.22. **"Common Area Manager"** means any person, firm or company designated by the Association to manage, in whole or in part, the affairs of the Association and the Common Areas and Facilities.

## **ARTICLE 2**

### **PROPERTY RIGHTS**

2.1. **Owners' Acknowledgment and Notice to Purchasers.** All Owners are given notice that use of their Lots is limited by the Governing Documents as they may be amended, expanded, and otherwise modified hereunder: Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Lot be affected by this provision and that the Governing Documents may change from time to time. All purchasers of Lots are on notice that changes may have been adopted by the Declarant or the Owners. Copies of the current Governing Documents may be obtained from the Declarant or from the Washington County, Utah Recorder.

2.2. **Land Use and Building Type.** All Lots, and the homes constructed thereon, shall be used only for Single Family residential purposes. No professional, business or commercial use shall be made of the same, or any portion thereof, provided, however, that the Lot restrictions contained in this section shall not be construed in such a manner as to prohibit an Owner or resident from (a) maintaining a personal professional library therein; (b) keeping personal business or professional records or accounts therein; or (c) handling personal, business or professional telephone calls or correspondence therefrom.

2.3. **Protection of Lot Owners.** Except as may be set forth in this Declaration (either initially or by amendment) or in the initial Governing Documents, no rule or regulation shall: (a) treat similarly situated Lot Owners differently; (b) abridge the rights of Owners to display religious and holiday signs, symbols, and decorations inside their homes, except that the Association may adopt time, place, and manner restrictions with respect to displays visible from outside the structure; (c) interfere with the activities carried on within the confines of homes, to the extent in compliance with local laws and ordinances, except that this Declaration may prohibit activities within homes which are not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create a danger to the health or safety of other Lot Owners, that generate excessive noise or traffic, or that create unsightly conditions visible from outside of the home; or (d) abridge an Owner's existing rights by adopting any rule which would operate retroactively to require an Owner to take any action with respect to his home or Lot that was not previously a violation of provision of the Governing Documents or any established rule or regulation; provided however, that this exemption shall apply only during the period of such Owner's ownership of the Lot, and shall not apply to subsequent Owners who take title to the Lot after adoption of the rule.

**2.4 Lots.**

2.4.1. Lot Sizes. Lot sizes as described on the Plat are considered minimum Lot sizes and no person shall further subdivide any Lot other than as shown on the Plat. Lots may not be combined for construction of a single home.

2.4.2. Care and Maintenance of Lots. Each Owner shall be responsible for maintenance and upkeep of his Lot and shall keep the same free from rubbish, litter and noxious weeds. All structures, landscaping and improvements shall be maintained in good condition and repair at all times. In the event any Owner fails to perform this maintenance in a manner so as not to detract from the appearance of the property, or affect adversely the value or use of any other Lot, the Directors have the right to have maintenance performed on the Lot and the cost of said maintenance shall be added to and become part of the assessment to which such Lot is subject.

2.4.3. Safe Conditions. Without limiting any other provision of this Declaration, each Owner shall maintain and keep such Owner's Lot at all times in a safe, sound and *sanitary* condition and repair and shall correct any condition or refrain from any activity which might endanger the health of or interfere with the safety or reasonable enjoyment of other Owners of their respective Lots.

**2.5. Common Area.**

2.5.1. Ownership. Prior to the expiration of the Declarant Control Period, the Declarant will convey the Association fee simple title to the Common Area, free and clear of all encumbrances and liens, but subject to this Declaration, and easements and rights-of-way of record; *provided, however,* that, during the Declarant Control Period, Declarant may, in its discretion, convey, transfer, sell, assign, or otherwise dedicate all or part of any Common Area to Toquerville City or such other governmental entity or any third party as it deems necessary and appropriate. The Association shall accept the deed of conveyance of the Common Area upon Declarant's presentment of the same.

Rights of Use and Rules and Regulations Concerning the Common Areas. Every Lot Owner shall have a right and easement of use and enjoyment in and to the Common Areas which easement shall be appurtenant to and shall pass with the title to every Lot, subject to the Governing Documents. The Board shall have the right to establish and enforce rules and regulations governing the use of the Common Areas, including but not limited to rights of use, hours of use, and delegation of use. Additional rights to establish rules and regulations governing the Common Areas may be set forth and established elsewhere in the Governing Documents.

2.5.4. Board Rights in Common Areas. The Board shall have the right, for and on behalf of the Association, to:

insure, maintain, and care for the Common Area;

enter into agreements or leases which provide for use of the Common Areas by a similar association in consideration for use of the common areas and facilities of the other association or for cash consideration, or by third parties for cash consideration;

with the approval of at least seventy-five percent (75%) of Lot Owners to sell, exchange,

hypothecate, alienate, mortgage, encumber, dedicate, release or transfer all or part of the Common Areas to any private individual, corporate entity, public agency, authority, or utility;

grant easements for public utilities or other public purposes consistent with the intended use of the Common Areas;

take such steps as are reasonably necessary or desirable to protect the Common Areas against foreclosure; and

take such other actions with respect to the Common Areas which are authorized by or otherwise consistent with the Governing Documents.

2.5.5. Damage. Any damage caused to the Common Area by any Lot Owner and/or their agents, guests or invitees must be repaired by the Lot Owner as soon as possible after such damage is discovered, and in the event of failure of the Owner to make such repairs, the Association may make sum repairs and the expense of sum repair shall be borne by the Lot Owner.

2.5.6. The Association. The Association acting through the Board of Directors may enter into a contract with a Common Area Manager for the management of the Project. The Common Area Manager so engaged shall be responsible for managing the Project for the benefit of the Association and the Owners, and shall, to the extent permitted by law and by the terms of the agreement with the Association, be authorized to perform any of the functions or acts required to be performed by the association itself.

## 2.6. Restricted Common Area.

2.6.1. Description and Purpose. Restricted Common Area is Common Area that contains unique and sensitive natural features that are set aside from development to be preserved in their natural state. The purpose of designating such Common Area as Restricted Common Area is to maintain those unique and sensitive natural features within the Property in their natural state thereby preserving scenic views and elements of Toquerville's rural character, minimizing perceived density, creating compact neighborhoods with direct visual access to open land and space, and reducing erosion and sedimentation by the retention of existing vegetation.

2.6.2. Designation. The Declarant, during the Declarant Control Period, shall have the right to restrict portions of the Common Area, whether owned by Declarant or by the Association, as Restricted Common Area by designating such portions of the Common Area as Restricted Common Area. This designation may be made by: (i) indicating or designating on the Plat or Master Han the Restricted Common Area or (ii) designating, depicting, and/or describing such Restricted Common Area in any supplemental declaration or any exhibit thereto. The Declarant reserves the right to re-designate Restricted Common Area as it deems necessary.

2.6.3. Rights of Use and Rules and Regulations Concerning the Common Areas. No Lot Owner or any other person shall have the right to use or conduct any activity within Restricted Common Area; *provided, however,* that the Board shall have the right to establish and enforce rules and regulations governing the Restricted Common Area, and may take any action necessary to preserve the Restricted Common Area in

its natural state. Costs of maintaining Restricted Common Area shall be Common Expenses.

**2.7. Limited Common Area.**

**2.7.1 Designation.** The Declarant, during the Declarant Control Period, shall have the right to restrict portions of the Common Area, whether owned by Declarant or by the Association, in the nature of an easement for the primary or exclusive use of one or more particular Owner or Owners, by designating such portions of the Common Area as Limited Common Area. This designation may be made by: (z) indicating or designating on the Hat the Limited Common Area appertaining to one or more Lots or (ii) designating, depicting, and/or describing such Limited Common Area in any supplemental declaration or any exhibit thereto. The Declarant reserves the right to re-designate Limited Common Area as it deems necessary.

**2.7.2 Rights of Use and Rules and Regulations Concerning the Limited Common Areas.** Each Lot Owner is hereby granted an irrevocable and exclusive license to use and occupy the Limited Common Areas reserved exclusively for the use of his Lot, subject to the rights of the Declarant and the Board set forth in the Governing Documents. The right of exclusive use and occupancy does not include the right to repair, remodel, erect structures upon or attach any apparatus to without the express written consent of the Board.

**2.7.3 Costs for Maintenance.** All costs associated with maintenance, repair, replacement, and insurance of Limited Common Area shall be, where the Limited Common Area benefits or is reserved for the exclusive use of a particular Owner or Owners, a specific assessment to such Owner(s).

**2.7.4. Board Rights in Limited Common Area.** The Board shall have the same rights with respect to Limited Common Area as it has in the Common Area, as such rights are set forth in the Governing Documents.

**ARTICLE 3**  
**ARCHITECTURAL CONTROLS AND BUILDING STANDARDS**

**3.1. Architectural Control Committee.** There is hereby created an Architectural Control Committee ("ACC") to administer to the provisions of this Article 3. The ACC shall consist of a minimum of two (2) persons during the Declarant Control Period. During the Declarant Control Period, the Declarant shall be entitled to appoint all members of the ACC. Thereafter, the ACC shall consist of at least three (3) persons appointed by the Owners. Persons appointed to the ACC by the Declarant shall serve at the pleasure of the Declarant. Persons appointed to the ACC by the Owners may serve under such terms and conditions as the Owners may designate, by majority vote.

**3.2. Architectural Approval.** No structure, or thing shall be placed, erected, or installed upon any Lot or to any structure and no improvements or other work (including staking, clearing, excavation, grading and other site work, paving, exterior alterations of existing improvements, or planting or removal of landscaping) shall take place within or upon the Property until the plans and specifications showing, without limitation, the nature, kind, shape, height, materials, colors and location of the same shall have submitted to and approved in writing by the ACC in accordance with this Article and any rules and regulations adopted by the ACC pursuant to the authority of this Article. ACC approval shall be required regardless of whether the structure,

building, fence, wall, or thing to be constructed, placed, erected, or installed is new, or an addition, extension or expansion, change or alteration, or re-construction, replacement, re-erection, or re-installation of any of the foregoing.

**3.3. New Construction; Modifications.** Except as otherwise expressly provided for herein, the provisions of this Article are applicable to all new construction as well as any modifications, remodeling, or rebuilding of any existing, destroyed, or damaged structures within or upon the Property.

**3.4. Rules, Regulations, Standards, and Procedures.** The ACC shall establish rules, regulations, standards, guidelines, and procedures to govern the submission, review, and approval of any plans submitted to it for review. In addition, the ACC shall have authority to establish rules and regulations to govern construction activities within the Property. Any rules, regulations, guidelines, and procedures established by the ACC hereunder shall be made available to any Lot Owner upon request by that Lot Owner. Because it is impossible to cover every contingency and because there are some aspects of architectural design that do not lend themselves to being easily articulated, the ACC shall have broad authority and discretion in establishing regulations, standards and guidelines and in reviewing and approving plans submitted to it for review, which authority includes, but is not limited to, establishing timetables for submission of applications and commencement and completion of construction and landscaping. In addition, the ACC shall have authority to establish rules, regulations, standards, and guidelines with respect to any external apparatus, sign, or thing (e.g., satellite dishes, antenna, flag poles, signs, lawn ornaments, etc.) within the Property.

**3.5. Exemptions from ACC Approval.** No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications; *provided however*; that any deviation or change from the originally approved color scheme or plans and specifications shall require ACC approval. Any Owner may remodel, paint or redecorate the interior of his or her home without approval; *provided however*; that modifications to the interior of screened porches, patios, and similar portions of a structure visible from outside the structure shall require ACC approval.

**3.6. Fees; Damage Deposit** The ACC may establish and charge reasonable fees for review of applications and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals. The ACC may establish and require a damage deposit to be submitted with an application for approval. The ACC may draw on the deposit to cover any fines and penalties levied by the ACC; costs and expenses of enforcement of this Article 3 or any of the ACC's rules, regulations, standards, guidelines, and procedures against the Owner; or to cover the cost of damage to any curbs, sidewalks, gutters, driveways, asphalt, etc. caused by construction on the Owner's Lot.

**3.7. Compensation; Reimbursement for ACC Expenses.** Members of the ACC shall not receive any compensation for services rendered. Members shall be entitled to reimbursement from the applicant fees for reasonable expenses incurred by them in connection with the performance of any Committee function or duty.

**3.8. ACC Meetings.** During the Declarant Control Period, the ACC may carry out its duties informally and without notice or record. Thereafter, the ACC may carry out its duties by conducting meetings which are open to other Lot Owners or may perform its reviews and carry out its duties and functions on a less formal basis, provided that it adheres to the requirements of this Article. In the event the ACC holds meetings, it may fix the time and place for its regular meetings and such extraordinary meetings as may be necessary, and shall

keep written minutes of its meetings, which shall be open for review and inspection upon request. The ACC shall, by majority vote, elect one of its members as chairman and one of its members as secretary and the duties of each will be such as usually appertain to such offices. Notice of meetings, if any, shall be given to Owners who have made application to the ACC for approval of plans.

**3.9. Rights of Approval.** The ACC shall have the right to refuse or approve any plans and specifications and shall have the right, in so doing, to trace into consideration the suitability of the proposed building, the materials of which it is to be built, the site upon which it is proposed to be erected, the harmony thereof with the surroundings and the effect of said building, or other structure so planned, on the outlook from adjacent or neighboring property. Decisions of the ACC may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters by the ACC are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements. The ACC shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and such determinations shall not be subject to review so long as made in good faith and in accordance with this Article and with the rules, regulations, standards, guidelines, and procedures adopted by the ACC.

**3.10. Implied Rights; ACC Authority.** The ACC may exercise any right or privilege given to it by this Declaration or its own rules, regulations, standards, guidelines, and procedures, or reasonably implied from or reasonably necessary to effectuate any such right or privilege.

**3.11. Prohibited Structures.** Notwithstanding anything in any rules, regulations, standards, and procedures adopted by the ACC, the following structures shall be prohibited within any part or portion of the Property: dome structures, log homes, pre-manufactured homes, re-located homes, and Earth or Berm homes of any type are not allowed. No structure of a temporary nature, including but not limited to a trailer, bus, basement only residence, motor home, outhouse, tent, shack, garage, shed, or other outbuilding shall be used at any time as a residence either temporarily or permanently, nor shall any such structures be erected or placed on the Property at any time. No old or second-hand structures shall be moved onto any of the Lots. The ACC may, by rule, make this provision more restrictive or comprehensive.

**3.12. Enforcement Authority.** The ACC is vested with authority to enforce any rules, regulations, standards, and procedures it establishes, including, but not limit to, the authority to establish and levy fines and penalties, initiate legal proceedings to enforce its rules, regulations, standards, and procedures, and abate or enjoin any violation thereof, and take any other action authorized by this Declaration.

**3.13. Application to Declarant** Pursuant to UCA 57-8a-217, the Declarant reserves the right to be exempt from the association rules and the rulemaking procedures contained in the governing documents and in UCA 57-8a, and the Declarant is exempt from said rules and procedures. The Declarant shall not be required to comply with the provisions of this Article or any rules, regulations, standards, or procedures established pursuant to the authority of this Article with respect to any of its activities on the Property. The Declarant may, in its discretion, grant to any builder an expedited ACC review process.

**3.14. Non-liability; Waiver, Indemnification.** Rules, regulations, standards, guidelines, and procedures established by the ACC are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Property; they do not create any duty to any person or entity. When the ACC undertakes its review it is not doing so for the purpose of ensuring the structural or mechanical integrity or soundness of approved construction or modifications; ensuring compliance with building codes and other governmental requirements.



or ensuring that all dwellings are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to any Owner, wherever situated within the Property, or to any neighboring property owners. Accordingly, it shall bear no responsibility for ensuring any of the foregoing. The Declarant, the ACC, the Owners, any committee, or member of any of the foregoing and each of their respective officers, directors, partners, members, predecessors, successors, assigns, parents, affiliates, subsidiaries, and the agents and employees of any of them shall not be held liable for, and each Lot Owner, for him or herself and his or her successors, heirs, and assigns, hereby agrees to hold the foregoing harmless for any soil conditions, drainage or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition or quality of work of any contractor or its subcontractors, employees or agents, whether or not Declarant has approved or featured such contractor as a builder within Property; or any injury, damages, or loss arising out of the manner of quality or other circumstances of approved construction on or modifications to any structure.

#### **ARTICLE 4**

#### **USE AND CONDUCT**

4.1. **Rule Making Authority.** Subject to the terms of this Declaration and the Board's duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board shall have the authority to promulgate rules and regulations for the governance of the Property and persons within the Property. These rules of the Association shall be compiled and copies shall be made available by the Directors for inspection and copying at a reasonable cost.

4.2. **Hazardous Activities.** No activities shall be conducted on the Property and no improvements shall be constructed on the Property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon the Property and no open fires shall be lighted or permitted on the Property except in a contained barbecue or fire pit unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace.

4.3. **Motorbikes; ATVs.** All motorcycles, trail bikes, ATVs, three-wheel powered devices, automobiles, and two or four-wheel drive recreational type vehicles are to be operated only by individuals with driver's licenses and only for ingress, egress, and access purposes on established streets and parking areas and on trails designated for such use and, in such cases, only in accordance with the rules and regulations established for such use. Such vehicles are specifically prohibited from all other portions of the Property, and are to be used on said streets only and not for recreational purposes anywhere within the Property.

4.4. **RVs; Boats.** No boats, trailers, buses, motor homes, campers, recreational vehicles, or other such vehicles, shall be parked or stored upon any Lot except within an enclosed garage or on a cement pad or improved gravel pad maintained free and clear of weeds and debris so long as the cement or gravel pad is set back five (5) feet behind the front plane of the house. No such vehicles shall be parked overnight on any street located within the Subdivision. Trailers, motor homes, and trucks over 9,000 pounds GVW are not allowed to be stored upon any vacant Lot or street or road area adjacent to the Property.

4.5. **Inoperable Vehicles.** Motor vehicles that are inoperable shall not be permitted to remain upon any street or Lot, except as obscured from view by the public by an enclosed garage or fence, wall or gate. No

Inoperable motor vehicles shall be permitted to remain upon any road areas adjacent or in any publicly visible spaces within the Subdivision. In the event an inoperable motor vehicle remains upon any Lot or road area for a period exceeding thirty (30) days, the Declarant, or other Lot Owners residing within the Property may remove the inoperable motor vehicle after a ten (10) day written notice. The cost of such removal shall attach to the vehicle and the Lot as a valid lien in favor of the persons, entities, or parties causing such removal. For the purpose of this section, "inoperable motor vehicle" shall mean any motor vehicle that is unable to operate in a normal manner upon the streets under its own power, or is unlicensed or unregistered for a period of more than sixty (60) days.

**4.6. Weed Control.** Each Lot Owner shall, to the extent reasonably feasible, control the growth and proliferation of noxious weeds and flammable materials on his Lot so as to minimize fire and other hazards to surrounding Lots, homes, and surrounding properties, and shall otherwise comply with any applicable ordinances, laws, rules, or regulations pertaining to the removal and/or control of noxious weeds. Noxious weeds shall mean and refer to those plants which are injurious to crops, animals, land, or the public health or may create a fire hazard.

**4.7. Pest Control.** No Lot Owner shall permit anything or condition to exist upon his Lot which would induce, breed, or harbor infectious plant diseases or noxious insects. Each Owner shall perform such pest control activities on his Lot as may be necessary to prevent insects, rodents, and other pests from being present on his Lot.

**4.8. Nuisances.** No noxious or offensive activity shall be carried on upon any Lot, part or portion of the Property, nor shall anything be done thereon which may be or may become an annoyance to the Subdivision.

**4.9. Oil and Mining Operations.** Other than during the Declarant Control Period, when no mining restrictions shall apply to Declarant, No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, part or portion of the Property, nor shall any oil well, gas well, tank, tunnel, mineral excavation or shaft be permitted upon or in any such Lot or portion of the Property.

**4.10. Animals, Livestock, Poultry, and Agriculture.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, part or portion of the Property, provided, however, that dogs, cats, or other domesticated household pets, three (3) or less in total number may be kept in a home constructed on a Lot, provided that they are not kept, bred, or maintained for any commercial purpose. Permitted domesticated pets shall be strictly controlled and kept pursuant to all applicable laws and ordinances and shall be on a leash or inside a fence when outside the Owners home. Owners must take due care to ensure that their pets and animals do not make excessive noises, cause any offensive smell, or create any physical threat to the safety of any other Owner or person within the Subdivision.

**4.11. Garbage and Refuse Disposal.** No Lot or part or portion of the Property shall be used or maintained a dumping ground for rubbish, rubble, trash, garbage or other waste. Such trash, rubbish, rubble, garbage, or other waste as produced within the Property shall be kept in sanitary containers inside a structure except when placed for collection. No rubbish, trash, papers, junk or debris shall be burned upon the Property except that trash may be burned in accordance with applicable laws and ordinances inside homes that are properly equipped with inside incinerator units.

4.12. **Sewage Disposal.** Each home shall be connected to and use the public sewage disposal system. No individual sewage disposal system shall be permitted on any Lot, part or portion of the Property.

4.13. **Leases and Leasing.** Leasing is permitted within the Property. Any lease or rental agreement shall be in writing and shall prove that the terms of the lease shall be subject in all respects to the provisions of this Declaration and any amendments thereto, and that any failure by lessee to comply with the terms of such documents shall be default under the lease. Any lease or rental agreement, whether an initial agreement or any renewal thereof, shall provide for a minimum lease term of not less than twelve (12) months; provided however that the Board shall have the power to allow leases for a term of less than twelve months upon a showing by the Owner that such a lease is required to avoid undue hardship.

4.14 **Lateral and Subjacent Support and Drainage.** Lot Owners shall be responsible for damages which are proximately caused by an Owner's activities which affect the lateral or subjacent support, of adjacent Lot Owners. Lot Owners shall be responsible for all damage proximately caused by drainage from their Lot(s) to adjacent Lot Owners.

4.15 **Slope and Drainage Control.** No structure, planting or other material shall be placed or permitted to remain or other activities undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow of drainage channels. The slope control areas of each Lot and all improvements in them shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible. Lot Owners are solely responsible to see that no nuisance or damage is created by drainage location or flow to any adjacent property.

## **ARTICLE 5**

### **ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

5.1 **Membership.** Each Lot Owner shall be a Member of the Association. Membership in the Association automatically transfers upon conveyance of title to a Lot by the record Owner thereof to another person or entity.

5.2 **Voting Rights; Classes.** The Association has two classes of voting membership, Class A and Class B.

**Class A.** Class A Members include all Lot Owners with the exception of the Declarant, until Declarant's membership converts to Class A membership as provided for herein. Class A Members are entitled to one vote for each Lot owned. When more than one person holds an ownership interest in fee title to any Lot, the group of such persons shall be a Member. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. A vote cast at any Association meeting by any such co-Owners, whether in person or by proxy, is conclusively presumed to be the vote attributable to the Lot concerned unless written objection is made prior to that meeting, or verbal objection is made at that meeting, by another co-Owner of the same Lot. In the event an objection is made, the vote involved shall not be counted for any purpose except to determine whether a quorum exists.

**Class B.** The Class B Member is the Declarant. The Class B member is entitled to five votes for each

Lot owned, however, Declarant's Class B membership status is not dependent or contingent upon Declarant's ownership of any Lot within the Property. Rather, Declarant's Class B membership will cease only upon Declarant's express surrender of Class B membership status, which surrender must be in a written instrument signed by Declarant and recorded in the office of the Washington County Recorder. If the instrument of surrender does not specify the date of surrender of Class B membership, the surrender date shall be the date of recording of the instrument. To ensure that the Declarant, as the developer of the Property, has adequate time and flexibility to ensure the overall success of the development, Declarant has the sole and absolute discretion to determine the date of its surrender. If the Declarant surrenders its Class B membership status while owning Lots within the Property, Declarant's membership status in such Lots shall be converted to Class A.

**5.3 Declarant's Voting Rights in Expansion Area.** In the case of expansion (as provided under this Declaration), the class of voting membership appurtenant to Lots owned by Declarant on any Additional Property annexed to the Property shall be Class B.

**5.4 Change of Corporate Status.** The Association has been set up and established as a non-profit corporation under Utah law. However, the continuing existence and viability of the Association is not vested in its corporate status. During any period in which the Association is not incorporated or otherwise has a change of corporate status (e.g., involuntary dissolution under the Utah Nonprofit Corporation Act for Failure to file for corporate renewal), the Governing Documents of the Association, and the Association, the Board, and all officers and committees operating under the authority of the Governing Documents shall have all rights, power, and authority granted therein, and no Lot Owner may escape or avoid any assessment, charge, lien, rule or other matter contained in the Governing Documents by virtue of such change of corporate of status. In the case of non-incorporation, the Board is authorized, to the extent it deems necessary, and without approval of the Members, to re-incorporate under a same or similar name and such corporation shall be deemed the successor to the Association. In the event the Board does not reincorporate, the Association shall continue to operate and function under the Governing Documents as an unincorporated association.

**5.5 Validity of Votes and Consents.** Any consent or vote given by a Lot Owner on any matter in the Governing Documents shall be valid for a period of ninety days, and shall be binding on any subsequent Owner who takes title of the Lot during that period of time.

## **ARTICLE 6**

### **FINANCES AND OPERATIONS**

**6.1 Creation of Lien and Personal Obligation of Assessment.** The Declarant and each subsequent Owner of any Lot by acceptance of a deed or conveyance therefor, whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to pay to the Association, assessments or charges and interest, costs of collection and reasonable attorney fees, as hereinafter provided. All such amounts shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment or amount is charged. Such assessments and other amounts shall be the personal obligation of (a) the person who was the Owner of such Lot at the time when the assessment fell due and (b) successors-in-title who took title when assessments were delinquent. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area, by abandonment of his Lot, or by any other action or claim against the Association.

**6.2 Purpose of Assessments.** The assessments levied by the Association shall be used by the Association for the improvement, maintenance, repair, and preservation of the Common Area. The assessments must provide for but are not limited to, the payment of taxes on Association property and insurance maintained by

the Association; the payment of the cost of repairing, replacing and maintaining the Common Area; the payment of administrative expenses of the Association; payment of insurance deductible amounts; the establishment of a reserve account for repair, maintenance and replacement of the Common Area; the payment of any professional services deemed necessary and desirable by the Board; and other amounts required that the Board shall determine to be necessary to meet the primary purposes of the Association.

**6.3 Initial Annual Assessments.** The Declarant shall initially establish the amount of the annual assessments. Thereafter, the establishment of annual assessments shall be according to the procedures and requirements of Section 6.4.

**6.4 Annual Assessments; Budgeting.**

**6.4.1 Adoption of Budget.** At least sixty (60) days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for that year, for the purpose of calculating and establishing the annual assessments for the subsequent fiscal year. Annual assessments for Common Expenses shall be based upon the estimated net cash flow requirements of the Association to cover items including, without limitation, the cost of routine maintenance and operation of the Common Area; expenses of management; premiums for insurance coverage as deemed desirable or necessary by the Association; landscaping, care of grounds, and common lighting within the Common Area; routine renovations within the Common Area; wages; common water and utility charges for the Common Area; legal and accounting fees; management fees; expenses and liabilities from a previous assessment period; the supplementing of the reserve fund for general, routine maintenance, repairs, and replacement of the Common Area.

**6.4.2 Notice of Budget and Assessment.** The Board shall send a copy of the final budget, together with notice of the amount of the annual assessment to be levied pursuant to such budget, to each Owner at least thirty (30) days prior to the effective date of such budget. The budget shall automatically become effective unless disapproved in writing by Members representing at least seventy-five percent (75%) of all eligible votes in the Association. Any such petition must be presented to the Board within ten days after notice of the budget and assessment. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provide for special meetings pursuant to the Bylaws. Unless the budget for the assessment is disapproved by the Members as set forth above, the Board is thereafter authorized to levy the assessment as provided for herein.

**6.4.3 Failure or Delay in Adopting Budget.** The failure or delay of the Board to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of an Owner's obligation to pay his allocable share of the Common Expenses and in the event of such failure or delay all Owners shall continue to pay assessments on the same basis as during the last year for which an assessment was made until notified of the amount of the new annual assessment which is due on the first day of the next payment period which beings more than thirty days after such new annual or adjusted budget is adopted and the Owners receive notice as provided herein.

**6.4.4 Automatic Budget Approval.** Notwithstanding the foregoing, if the budget proposed by the Board will increase the annual assessment no more than 5% more than the previous annual assessment, then such budget and corresponding annual assessment shall be automatically approved and effective upon thirty days' notice.

**6.4.5 Adjustment of Budget and Assessment.** The Board may revise the budget and adjust the annual assessment from time to time during the year, subject to the notice requirements and the right of the Members

to disapprove the revised budget as set forth in this Section 6.4.2, *provided, however*, that such an adjustment is exempt from the requirements of Section 6.4.2 if the adjustment would decrease the annual assessment or increase the annual assessment by not more than 3.25%.

**6.5 Special Assessments.** In addition to the annual assessments, the Board may levy in any assessment year a special assessment, applicable to that year only to cover unbudgeted expenses or expenses in excess of those budgeted, including but not limited to defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of Common Area or Limited Common Area and any structures, fixtures and personal property related thereto. Any such special assessment may be levied against all Class A members (excluding Declarant, if Declarant's membership is Class A) if such special assessment is for Common Expenses. Except as otherwise provided in the Declaration, any special assessment shall require the affirmative vote or written consent of a majority of all Class A Members, if a Common Expense. Special assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal years in which the special assessment is approved.

**6.6 Specific Assessments.** The Association shall have the power to levy specific assessments against a particular Lot to: (a) cover costs incurred in bringing such Lot into compliance with the Governing Documents; (b) cover costs incurred which are specific to cover the costs, including overhead and administrative costs, or providing any services to any particular Lots or Limited Common Area; and (c) to cover any costs incurred as a consequences of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees, or guests.

**6.7 Emergency Assessments.** Notwithstanding anything contained in this Declaration, the Board, without Member approval, may levy emergency assessments in response to an emergency situation. Prior to the imposition or collection of any assessment due to an emergency situation, the Board shall pass a resolution containing the written findings as to the necessity of such expenditure and why the expenditure was not or could not have been reasonably foreseen or accurately predicted in the budgeting process and the resolution shall be distributed to the Members with the notice of the emergency assessment. If such expenditure was created by an unbudgeted utility maintenance or similar expense or increase, the assessment created thereby shall be discontinued by the Board by a similar resolution, if such expense is subsequently reduced, or to the extent succeeding annual budget incorporates said increase into the annual assessment. An emergency situation is one in which the Board finds:

6.7.1 An expenditure, in its discretion, required by an order of a court, to defend the Association in litigation, or to settle litigation;

6.7.2 An expenditure necessary to repair or maintain the Property or any part of it for which the Association is responsible where a threat to personal safety on the Property is discovered;

6.7.3 An expenditure necessary to repair, maintain or cover actual Association expenses for the Property or any part of it that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget (for example: increases in utility rates, landscape or maintenance contract services, attorney fees incurred in the defense of litigation, etc.); or

6.7.4 Such other situations in which the Board finds that immediate action is necessary and in the best interests of the Association.

**6.8 Capitalization of Association.** Upon acquisition of record title to a Lot by the first Owner thereof other than Declarant, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association, including for common planning, facilities and infrastructure, community programming, open space, recreation amenities, charitable purposes and association expenses, in an amount equal to 15% of the annual assessment per Lot for that year or in such other amount as the Board may specify which may be a flat rate from year to year approximating 15% of the annual assessment per Lot levied during the first year in which the Association adopts a budget. This amount shall be in addition to, not in lieu of, the annual assessment and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering those expenses set forth herein, including operating expenses and other expenses incurred by the Association pursuant to the Governing Documents.

**6.9 Exempt Property.** The following property subject to this Declaration is exempt from the assessments created herein: (a) all property dedicated to and accepted by any local public authority; (b) all common Area and Limited Common Area; (c) all Lots or other real property owned by Declarant; and (d) any other property declared exempt as set forth in this Declaration or within any Plat.

**6.10 Declarant's Option to Fund Budget Deficits.** During the Declarant Control Period, Declarant may but is not obligated to fund any budget deficit of the Association, including, without limitation, funding any initial capital or operational reserve fund. In the event Declarant funds any budget deficit, it shall not establish any obligation by Declarant to continue to fund any future deficits.

**6.11 Uniform Rate of Assessment.** Except as otherwise authorized in the Governing Documents, assessments must be fixed at a uniform rate for all Lots; *provided, however,* that assessments shall not accrue against the Declarant or Lots owned by the Declarant during the Declarant Control Period.

**6.12 Date of Commencement of Annual Assessments; Due Dates.**

**6.12.1** The assessments provided for herein shall commence to accrue on the first day of the month following conveyance of a Lot to a bona fide purchaser. The first assessment shall be adjusted according to the number of months remaining in the calendar year.

**6.12.2** The Board shall establish the assessment due dates under which assessment shall be paid on a monthly, quarterly, or annual basis.

**6.12.3** The Board shall prepare a roster of Lot Owners in the Subdivision and the assessments applicable thereto at the same time that it shall fix the amount of the assessment. This roster shall be kept by the Secretary of the Association, who shall record payments of assessments and shall allow inspection of the roster by any Lot Owner at reasonable times.

**6.12.4** The Board shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified Lot has been paid. Such



certificates, when properly issued, shall be conclusive evidence of the payment of any assessment or fractional part thereof which is therein shown to have been paid.

**6.13 Effect of Nonpayment of Assessment; Remedies of Association.**

**6.13.1 Interest, Late, and Other Fees.** Any assessment or installment thereof not paid within thirty (30) days after the due date therefor shall be delinquent and shall bear interest from the due date at the rate of twelve percent (12%) per annum (or such lesser rate as the Directors shall set by resolution) until paid. In addition, a late fee for each delinquent installment that shall not exceed twenty percent (20%) of the delinquent installment. There shall be added to the amount of any delinquent assessment the costs and expenses of any action, sale or foreclosure, and reasonable attorney fees incurred in enforcing and collecting said delinquent assessment.

**6.13.2 Remedies.** To enforce payment of the assessment, interest, and late fees, the Directors may, in the name of the Association: (a) bring an action at law against the Owner personally obligated to pay any such delinquent assessment without waiving the lien of assessment; (b) foreclose the lien against the property in accordance with the laws of the State of Utah applicable to the exercise of powers of sale in deeds of trust or to the foreclosure of mortgages, or in any other manner permitted by law; (c) restrict, limit, or totally terminate any or all services performed by the Association in behalf of the delinquent member; (d) suspend the voting rights of the Owner for any period during which any assessment or portion thereof against the Owner's Lot remains unpaid; and/or (e) accelerate all assessment installments that will become due within the subsequent twelve months so that all such assessments for that period become due and payable at once. The acceleration provision in subsection (e) may only be invoked against an Owner who has been delinquent in paying any assessment or installment two or more times within a twelve-month period.

**6.13.3 Power of Sale.** A power of sale is hereby conferred upon the Association that it may exercise. Under the power of sale the Lot of an Owner may be sold in the manner provided by Utah law pertaining to deeds of trust as if said Association were beneficiary under a deed of trust. The Association may designate any person or entity qualified by law to serve as Trustee for purposes of power of sale foreclosure.

**6.14 Subordination of Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage held by an institutional lender. Sale or transfer of any Lot shall not affect the assessment lien.

**6.15 Termination of Lien.** The sale or transfer of any Lot pursuant to foreclosure of a first mortgage or any proceeding in lieu thereof, shall extinguish the assessment lien as to payments which became due prior to such sale or transfer. No sale or transfer, however, shall relieve an Owner from personal liability for assessments coming due after he takes title or from the lien of such later assessments.

**6.16 Books, Records, and Audit.** The Association shall maintain current copies of the Declaration, Articles, Bylaws, any rules and regulations, and other similar documents, as well as its own books, records, and financial statements which shall all be available for inspection by Lot Owners and insurers as well as by holders, insurers and guarantors of first mortgages during or extracting from such documents. A Lot Owner or holder, insurer or guarantor of a first mortgage may obtain an audit of Association records at its own expense so long as the results of the audit are provided to the Association.



**ARTICLE 7**  
**INSURANCE**

**7.1 Casualty Insurance on Insurable Common Area.** The Board shall keep all insurable improvements and fixtures of the Common Area insured against loss or damage by fire for the full insurance replacement cost thereof, and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be written in the name of, and the proceeds thereof shall be payable to, the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are common expenses which shall be included in the regular annual assessments made by the Association. In the event of an insured loss, the deductible shall be treated as a common expense in the same manner as the premiums for the applicable insurance coverage.

**7.2 Replacement or Repair of Property.** In the event of damage to or destruction of any part of the Common Area improvements, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a special assessment against all Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any common assessments made against such Owner.

**7.3 Disbursement of Proceeds.** If the damage or destruction for which the proceeds of insurance policies are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repair or reconstruction to the Common Area shall be retained by and for the benefit of the Association and placed in a capital improvements account. In the event no repair or reconstruction is made, any proceeds remaining after making such settlement as is necessary and appropriate with the affected Owner or Owners and their mortgagee(s) as their interest may appear, shall be retained by and for the benefit of the Association and placed in a capital improvements account.

**7.4 Liability Insurance.** The Board shall obtain a comprehensive police of the public liability insurance covering all the Common Area for personal or bodily injury and property damage that results from the operation, maintenance or use of the Common Areas. Liability insurance policies obtained by the Association shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners.

**7.5 Fidelity Insurance.** The Board may elect to obtain fidelity coverage against dishonest acts on the part of managers, Directors, officers, employees, volunteers, management agents or others responsible for handling funds held and collected for the benefit of the Owners. In procuring fidelity insurance the Directors shall seek a policy which shall (1) name the Association as obligee or beneficiary, (2) be written in an amount not less than the sum (i) three months' operating expenses and (ii) the maximum reserves of the Association which may be on deposit at any time, and (3) contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee."

**7.6 Annual Review of Policies.** The Board shall review all insurance policies at least annually in order to

ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacements of the property which may be damaged or destroyed. The Board may, to the extent it deems necessary to more fully protect and insure the Association and its property, or to otherwise comply with evolving laws and insurance standards, modify the coverage standards set forth in the Article without the necessity of amending this Declaration.

## **ARTICLE 8** **ENFORCEMENT**

**8.1 Violations Deemed a Nuisance.** Every violation of this Declaration or any rule or regulation established pursuant to the authority of this Declaration is deemed a nuisance and is subject to all the remedies provided for the abatement or correction of the violation provided for in this Declaration or by law or equity.

**8.2 Legal Action Authorized.** The Owners, the Declarant or any Lot Owner, shall have the right to enforce, by any proceeding at law or in equity, all provisions of this Declaration or any rule or regulation established pursuant to the authority of this Declaration, including all charges and liens now or hereafter imposed pursuant to the authority of this Declaration, against any person, persons, or entities violating or attempting to violate any provision of this Declaration or any rule or regulation established pursuant to the authority of this Declaration, to restrain or abate or otherwise recover damages for the violation, and against the land to enforce any charge or lien created by this Declaration. In addition to taking legal action, the Declarant and the Owners by majority vote shall have the right to grant variances and stay enforcement proceedings against any Lot Owner on a case-by-case basis when they determine such action is prudent and justified. Notwithstanding the foregoing, no Lot Owner is authorized to initiate legal action over any plan, design, or other matter approved or denied by the ACC.

**8.3 Fines and Penalties.** The Board, by majority vote, may levy a fine or penalty against any Lot Owner who fails to refrain from violating this Declaration or any rule or regulation established pursuant to the authority of this Declaration. The Board may establish time frames and requirements for written notice, hearings, and cure periods for Owners in violation prior to levying such fine or penalty. Any fine or penalty levied hereunder that is not paid within fifteen days (such time period shall be stayed should be Governing Documents require any period to cure or fore notice and hearing) shall be recoverable by the Board in a legal proceeding and shall create a lien against the Owner's Lot in the same manner as an assessment.

**8.4 Attorney Fees and Costs.** The prevailing party in any action to enforce this Declaration or any rule or regulation established pursuant to the authority of this Declaration shall be entitled to an award of reasonable attorney fees, costs, and other litigation expenses incurred in such action.

**8.5 Nonexclusive Remedies.** All the remedies set forth in this Declaration are cumulative and not exclusive to any others provided in the Governing Documents or by law or in equity.

## **ARTICLE 9** **SPECIAL DEVELOPMENT RIGHTS**

**9.1 Intent and Purpose of Special Development Rights.** In addition to any other rights granted or reserved to the Declarant in this Declaration and the other Governing Documents, and notwithstanding any covenants, conditions, restrictions, or other provisions of limitation within this Declaration, the Declarant, as the developer of the Property, is granted special development rights. These combinations of rights maximize the flexibility of the Declarant to adjust the size and mix of the Property to the demands of the marketplace.

both before and after creation of the Subdivision.

**9.2 Expansion of the Property.** The Declarant shall have the right to expand the Property by unilaterally subjecting any Additional Property, in whole, in part, or in phases, to this Declaration during the Declarant Control Period.

**9.2.1 Expansion Procedure.** The Declarant shall indicate its intent to have such Additional Property bound by this Declaration on the plat of such Additional Property and shall record a declaration of annexation or supplemental declaration including and subjecting such Additional Property to this Declaration. Thereafter, such Additional Property shall be considered as part of the Property in all respects, and lots therein shall constitute Lots under this Declaration.

**9.2.2 Use of Expansion Property.** Any Additional Property annexed hereto by the Declarant shall be exclusively for residential single-family dwellings, architecturally compatible to the homes already constructed on the Property. The Declarant shall have the sole discretion as to development of any Additional Property and may include any facilities or amenities thereon that Declarant deems necessary.

**9.3 Withdrawal of Property.** So long as it has the right to expand the Property, Declarant shall have the right to remove any portion of the Property which has not yet been improved with structures from the coverage of this Declaration. The procedure for such withdrawal shall follow the procedure for expansion as provided in this Article.

**9.4 No Obligation to Expand or Develop.** Declarant has no obligation to annex any additional land to the Subdivision or to develop or preserve any portion of additional land in any particular way or according to any particular time schedule.

**9.5 Municipal Zoning and Subdivision Approvals.** The Declarant, during the Declarant Control Period, shall have the unilateral right to further subdivide the Property and to apply for any zoning or subdivision approvals or permits from Toquerville City or any other applicable governmental authority with respect to the Property or any adjacent property owned by Declarant, whether or not such adjacent property is annexed into the Subdivision. This right includes but is not limited to applying for and obtaining zoning permits, subdivision approvals, plat approvals, or approvals to amend the Plat or any plats. Further, to the extent the approval and consent of any Lot Owner is required under State or local law to apply for or obtain any such approval, each Lot Owner hereby waives his or her right to object to any such approval sought by Declarant and shall sign the application or other documents required for such action except for any such approval that would (a) affect title to the Owner's Lot or (b) alter the boundaries of an Owner's Lot.

**9.6 Declarant Business, Marketing, and Sales.** Notwithstanding any provisions to the contrary contained in this Declaration or any other Governing Documents, it shall expressly be permissible for Declarant, or its written designee, to maintain such facilities and conduct such activities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction of homes and sale of Lots during the Declarant Control Period, and upon such portion of the Property including lots, as Declarant deems necessary, including but not limited to, a business office, storage areas, construction yard, signs, model units and sales offices. As part of the overall program of development of the Property into a residential community and to encourage the marketing thereof, the Declarant shall have the right of use of any Lots or any Common Area and facilities thereon, including any Common Area, community buildings, without charge during the sales and construction period to aid in its marketing activities.

**9.7 Additional Development Rights.** The Declarant shall have the unilateral right to (a) dedicate any access roads and streets serving the Property for and to public use, to grant road easements with respect thereto and to allow such street or road to be used by owners of adjacent land; (b) convert any part or portion of the Property to a different regime of residential ownership; (c) create or designate Common Area or Limited Common Area within the Property.

**9.8 Assignment of Declarant's Rights.** Any and all rights and powers of the Declarant contained in this Declaration and other Governing Documents may be delegated, transferred or assigned, in whole or in part, by the Declarant. Declarant's Rights may also be transferred by the sale of all or substantially all of the prior Declarant's interest in the Property.

#### **ARTICLE 10** **EASEMENTS**

The following easements are in addition to those created elsewhere in this Declaration, on the Plat, by any other recorded instrument, or otherwise by law.

**10.1 Utilities.** Utility easements are shown on the Plat. By virtue of such easements, it shall be expressly permissible for all public utilities serving the Property to lay, construct, renew, operate and maintain conduits, cables, pipes, mains, ducts, wires and other necessary equipment on the Property, provided that all such services shall be placed underground, except that said utilities may affix and maintain electrical and/or telephone wires, pipes, circuits and conduits on, above, across and under roofs and exterior wall. Should any utility furnishing a service covered by said easements request a specific easement by separate recordable document, Declarant or the Owners shall have the right to grant such easement on said Property without conflicting with the terms thereof. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation, maintenance or replacement of utilities. Declarant reserves the right to convey to itself and to other adjoining landowners, easements for roadway and utility use in the Common Area, if any, and the right to connect to and use roadways and utilities owned or controlled by the Association or serving the Property.

**10.2 Encroachments.** Each Lot and all Common Area within the Property shall be subject to an easement for encroachments created by construction, settling and overhangs, including but not limited to any fences or walls, or the paving of any streets, sidewalks, or roadways that are designed or constructed by the Declarant or on the Declarant's behalf. Any easement of encroachment shall be to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the person or entity claiming the benefit of such easement.

**10.3 Police, Fire and Ambulance Service.** An easement is hereby granted to all police, fire protection, ambulance services and all similar persons to enter upon the streets and Common Area and Limited Common Area, if any, in the performance of their duties.

**10.4 Easement for Maintenance of Common Area.** An easement is hereby granted to Toquerville City, its officers, agents, and employees and to the Owners and any maintenance company selected by Toquerville City or the Owners for the purpose of maintaining the Common Area.

**10.5 Easement for Declarant.** The Declarant hereby reserves to itself and its successors and assigns easements over, beneath, and through the Property, including over the Common Area, for the purpose of making improvements to and developing the Property, including but not limited to construction, marketing, installation and upkeep of landscaping features, entrance features, project signage, street lights, paths, trails or sidewalks or other facilities or things benefiting the Property. The Declarant reserves to itself the right to make any dedications and to reserve, grant, vacate, or terminate any easements, right-of-ways and licenses as may be reasonably required by any governmental authority or to carry out the intent and design of the Declarant's plan for development of the Property, without compensation therefor.

**10.6 Easement for ACC.** The ACC shall have an easement to go upon Lots to perform inspections to ensure that construction is being undertaken in accordance with plans approved by the ACC.

**10.7 Reservation for Construction.** Declarant hereby reserves for itself and its successors and assigns and for the Association a perpetual easement and right-of-way over, upon, and across the Property for construction, utilities, drainage, and ingress and egress. The location of these easements and rights-of-way may be made certain by Declarant or the Association by instruments recorded in the office of the Washington County Recorder. Declarant further reserves the right to establish from time to time, by dedication or otherwise, utility and other easements, reservations, exceptions and exclusions necessary or convenient for the development, use and operation of any other property of Declarant, as long as such action does not interfere with the occupancy, use, enjoyment, or access to the Property by the Lot Owners.

**10.8 Drainage and Irrigation Easements.** Declarant reserves for itself and its successors and assigns, and for the Association, and its officers, agents, employees, and successors and assigns, an easement to enter on, across, over, in and under any portion of the Property for the purpose of modifying the grade of any drainage channels on the Property to improve the drainage of water. Declarant also reserves the right to use or delegate the use of any irrigation ditches existing on the Property on the date this Declaration is recorded, and declarant reserves for itself and its successors and assigns the right to construct, access and maintain additional irrigation ditches and lines on the Property for the maintenance of the Common Area and for such other purposes as Declarant may from time to time deem appropriate.

**10.9 Association's Right to Grant Easements.** The Association, through the Board, shall have the right to grant such easements over and on the Common Area for use by any property manager, management company, security or courtesy patrol, or other individuals or companies with whom the Board contracts to perform services for the Association.

**10.10 Repair Easements.** Each Lot shall be subject to an easement for access to make repairs upon adjoining Lots and structures; provided however, that: (a) any damage caused by such entry shall be repaired at the expense of the Owner whose property was the subject of the repair work which caused the same; (b) any such entry shall be made only at reasonable times and with as little inconvenience as possible to the Owner of the entered Lot; and (c) in no event shall said easement be deemed to permit entry into the interior portion of any home.

**10.11 Limitation on Easements.** In no event shall any easement granted or reserved herein be construed to or have the effect of permitting entry into the interior portion of any home on any Lot within the Property. Nor shall any easement granted or reserved herein be construed to or have the effect of changing the boundaries or lot lines of any Lot.

**10.12 Easements of Record.** The easements provided for in this Article and elsewhere in this Declaration

shall in no way affect any other recorded easement.

**ARTICLE 11**  
**CONDEMNATION; PARTITION**

11.1 **Condemnation.** Whenever all or any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board and the Declarant during the Declarant Control Period) by any authority having the power of condemnation or eminent domain, each Lot Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as trustee for all Lot Owners to be disbursed as follows:

11.1.1 If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking the Declarant, during the Declarant Control Period, and Members representing at least seventy-five percent (75%) of the total vote of the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available therefor, in accordance with plans approved by the Board.

11.1.2 If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

11.2 **No Partition.** Except as otherwise permitted in this Declaration, the Common Area shall remain undivided and no person or entity shall bring any action for the partition of any portion of the Common Area without the written consent of all Lot Owners.

**ARTICLE 12**  
**AMENDMENT**

12.1 **Amendment by Declarant.** In addition to specific amendment rights granted elsewhere in this Declaration, until termination of the Declarant Control Period, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, Declarant may unilaterally amend this Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on any Lot; (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans to make, purchase, insure, or guarantee mortgage loans on any Lot; (d) to satisfy the requirements of any local, state, or federal governmental agency; or (e) to correct any scrivener's error. However, any such amendment after the Declarant Control Period shall not adversely affect the title to any Lot unless the Owner shall consent in writing.

12.2 **Amendment by Owners.** Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, obtained by written instrument or otherwise, or any combination thereof, of Owners representing at least 67% of the total Lot Owners. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

**12.3 Amendment by Owners During Declarant Control Period.** No amendment made by the Lot Owners during the Declarant Control Period shall be effective unless the Declarant provides its prior express written consent to such amendment, which consent is within Declarant's sole and absolute discretion. Declarant's consent, to be effective, must be provided on the amendment and recorded in the Office of Washington County Recorder.

**12.4 Effective Date.** Unless a later effective date is specified in the amendment, any amendment shall be immediately effective upon recording in the office of the Washington County Recorder a copy of such amendment accompanied by a verified certificate of the Secretary of the Association stating that the required number of consents or votes were obtained and that such consents will be placed on file in the Association's office. In the case of unilateral amendment by Declarant as provided for herein, such amendment shall be immediately effective upon recording in the office of the Washington County Recorder a copy of such amendment signed and verified by the Declarant.

**12.5 Validity.** If any Owner consents to any amendment to this Declaration, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any mortgage or contract between the Owner and a third party will affect the validity of such amendment. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

### **ARTICLE 13** **GENERAL PROVISIONS**

**13.1 Duration of Covenants.** The covenants, conditions, and restrictions contained herein shall run with and bind the land for a period of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each, subject to amendment as herein set forth.

**13.2 Notices.** Any notice required under the provisions of this Declaration to be sent to any Lot Owner shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of such Owner. Unless otherwise indicated by a Lot Owner, the address for notice to Lot Owners shall be the mailing address designated for the Owner's Lot. Notice may also be accomplished by email, text messaging or other electronic means, including the Association's website.

**13.3 Dates and Times.** In computing any period of time prescribed or allowed by the Governing Documents, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday (either federal or Utah state), in which event the period runs until the end of the next day that is not a Saturday, a Sunday, or a legal holiday. The deadline of the last day of the period so computed shall be 5:00 P.M., Mountain Time.

**13.4 Construction and Severability.** All of the terms, provisions, covenants, conditions, and restrictions contained in this Declaration shall be construed together. Invalidation of any one of said terms, provisions, covenants, conditions, or restrictions, or any part thereof, shall not affect the enforceability or applicability any of the remaining terms, provisions, covenants, conditions, and restrictions, or parts thereof.



**13.5 Interpretive Conflicts.** In the event of any conflict between the provisions of any of the Governing Documents, the documents shall control in the following order of authority: (1) the Declaration (2) any rule, regulation, or resolution passed pursuant to the authority of the foregoing documents. In the event of any conflict between the Master Plan and any Plat, the Plat shall control.

**13.6 Gender and Grammar.** The singular, wherever used herein, 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.

**13.7 Waivers.** No provision contained herein shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations that may occur.

**13.8 Topical Headings.** The topical headings contained herein are for convenience only and do not define, limit, or construe the contents of these covenants.

IN WITNESS WHEREOF, the undersigned has hereunto executed this Declaration this 11<sup>th</sup> day of July, 2017.

DECLARANT:

MV at TRE, LLC  
A Utah Limited Liability Company

Nicole Baker  
Nicole Baker, Manager

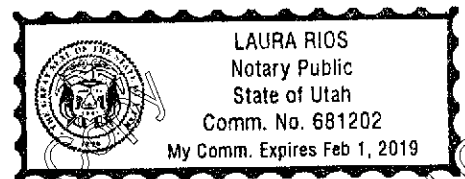
STATE OF UTAH )

: ss.

COUNTY OF WASHINGTON )

On the 11 day of July, 2017 before me personally appeared Nicole Baker, whose identity is personally known to or proved to me on the basis of satisfactory evidence, to be the signer of the foregoing Declaration and that she is a Managing Member of MV at TRE, LLC, a Utah limited liability company, the company that executed the herein instrument and acknowledge the instrument to be the free and voluntary act and deed of the company, by authority of statute, its articles of organization or its operating agreement, for the uses and purposes herein mentioned, and on oath states that she is authorized to execute this instrument on behalf of the company and acknowledged that she executed the same.

[Signature]  
Notary Public





## EXHIBIT A

### MESA VIEWS AT TRAIL RIDGE ESTATES, PHASE 1 DESCRIPTION:

COMMENCING AT THE SOUTHEAST CORNER OF SECTION 11, TOWNSHIP 41 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE AND MERIDIAN; THENCE N00°18'39"W, ALONG THE SECTION LINE, 409.59 FEET; THENCE N90°00'00"E, 8.61 FEET TO THE POINT OF BEGINNING. SAID POINT BEING THE NORTHEASTERLY CORNER OF LOT 43, TRAIL RIDGE ESTATES PHASE 1 "AMENDED AND EXTENDED" SUBDIVISION; THENCE DEPARTING SAID SUBDIVISION AND RUNNING S71°51'14"E, 254.20 FEET; THENCE S41°31'07"E, 211.34 FEET; THENCE S13°09'18"W, 222.19 FEET; THENCE S33°21'35"W, 400.00 FEET; THENCE S56°38'25"E, 110.00 FEET; THENCE S48°09'43"E, 50.55 FEET; THENCE S56°38'25"E, 100.00 FEET; THENCE N33°21'35"E, 24.20 FEET; THENCE S56°38'25"E, 100.00 FEET; THENCE S47°12'25"E, 50.69 FEET; THENCE S56°38'25"E, 150.40 FEET; THENCE S38°51'35"W, 232.51 FEET; THENCE S56°33'26"W, 477.43 FEET; THENCE S86°11'28"W, 110.00 FEET TO A POINT LOCATED ON THE EAST LINE OF GRAND CANYON PARKWAY; THENCE ALONG SAID EAST LINE THE FOLLOWING FIVE (5) COURSES: N03°48'32"W (RECORD BEARING=N02°57'26"W), 164.33 FEET TO A CURVE TO THE LEFT HAVING A RADIUS OF 430.00 FEET, AND A CENTRAL ANGLE OF 25°07'56"; THENCE NORTHERLY ALONG SAID CURVE, 188.62 FEET; THENCE N28°56'29"W (RECORD BEARING=N28°05'23"W), 57.63 FEET TO A CURVE TO THE RIGHT HAVING A RADIUS OF 770.00 FEET, AND A CENTRAL ANGLE OF 16°05'19"; THENCE NORTHERLY ALONG SAID CURVE, 216.21 FEET; THENCE N12°51'10"W (RECORD BEARING=N12°00'04"W), 29.44 FEET TO THE SOUTHWEST CORNER OF LOT 59, OF SAID TRAIL RIDGE ESTATES PHASE 1 "AMENDED AND EXTENDED"; THENCE N77°08'50"E (RECORD BEARING=N77°59'56"E), 120.48 FEET TO THE SOUTHEAST CORNER OF SAID LOT 59; THENCE N01°39'41"W (RECORD BEARING=N00°48'35"W), 113.87 FEET TO THE NORTHEAST CORNER OF SAID LOT 59. SAID POINT ALSO BEING LOCATED ON THE SOUTH LINE OF LOT 57; THENCE N88°20'19"E (RECORD BEARING=N89°11'25"E), ALONG THE SOUTH LINE OF LOT 57 AND LOT 56, 100.52 FEET TO AN ANGLE POINT ON THE SOUTH LINE OF SAID LOT 56; THENCE N48°14'03"E (RECORD BEARING=N49°05'09"E), ALONG THE SOUTHEASTERLY LINE OF SAID LOT 56, 123.56 FEET TO THE COMMON CORNER TO LOTS 55 AND 56; THENCE N02°37'44"E, (RECORD BEARING=N03°28'50"E), 157.17 FEET TO THE COMMON CORNER TO LOTS 54 AND 55; THENCE N08°29'02"E, (RECORD BEARING=N09°20'08"E), ALONG THE EAST LINE OF SAID LOT 54 AND LOT 53, 200.00 FEET TO THE NORTHEAST CORNER OF SAID LOT 53; THENCE N81°30'58"W (RECORD BEARING=N80°39'52"W), ALONG THE NORTH LINE OF SAID LOT 53, 100.00 FEET TO THE NORTHWEST CORNER OF SAID LOT 53. SAID POINT ALSO BEING LOCATED ON THE EASTERLY LINE OF CRATER LAKE WAY; THENCE ALONG SAID STREET LINE THE FOLLOWING THREE (3) COURSES: N08°29'02"E, (RECORD BEARING=N09°20'08"E), 21.13 FEET TO A CURVE TO THE RIGHT HAVING A RADIUS OF 30.00 FEET, AND A CENTRAL ANGLE OF 46°34'03"; THENCE NORTHEASTERLY ALONG SAID CURVE, 24.38 FEET TO A POINT OF REVERSE CURVE TO THE LEFT HAVING A RADIUS OF 50.00 FEET AND A CENTRAL ANGLE OF 108°47'21"; THENCE NORTHERLY ALONG SAID CURVE, 94.94 FEET TO THE SOUTHEAST CORNER OF LOT 45 OF SAID PHASE 1; THENCE N11°40'27"E, (RECORD BEARING=N12°31'33"E), 94.70 FEET TO THE NORTHEASTERLY CORNER OF SAID LOT 45; THENCE N58°20'40"W, RECORD BEARING=N57°29'34"W), 85.54 FEET TO THE NORTHWESTERLY CORNER OF SAID LOT 45. SAID POINT ALSO BEING LOCATED ON THE SOUTHEASTERLY LINE OF SAID LOT 43; THENCE N31°39'20"E, (RECORD BEARING=N32°30'26"E), ALONG SAID LINE, 71.76 FEET TO THE POINT OF BEGINNING, CONTAINING 12.48 ACRES.