

After Recording Return To:
EM Harmony Development LLC
1754 E Cedar Trails Way
Eagle Mountain, Utah 84005

**FIRST AMENDMENT
TO
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
HARMONY HOMEOWNERS ASSOCIATION, INC.**

THIS FIRST AMENDMENT to the Declaration of Covenants, Conditions, and Restrictions for Harmony Homeowners Association, Inc. (the “**First Amendment**”) is made and executed by EM Harmony Development LLC, a Utah limited liability company, (the “**Declarant**”) and joined by Monte Vista Ranch, L.C., a Utah limited liability company (the “**Founder**”) pursuant to the provisions of the Utah Community Associations Act, Title 57, Chapter 8a, as amended, Utah Code Ann. (the “**Associations Act**”), and the provisions of that certain Declaration described in the Recitals below.

RECITALS:

A. Harmony Homeowners Association, Inc. (the “**Association**”) is an association of unit owners governing that certain real property described in **Exhibit A** and incorporated herein by this reference (the “**District Property**”).

B. Declarant, is the owner in fee simple of more than sixty-seven percent (67%) of the real property incorporated within the District Property described in Exhibit A.

C. On September 27, 2018, Declarant recorded with the office of the County Recorder for Utah County, State of Utah, a Declaration of Covenants, Conditions, and Restrictions for Harmony Homeowners Association, Inc. as Entry No. 93086:2018 (the “**Declaration**”), which Declaration governs the District Property.

D. The Declarant has reserved certain rights in the Declaration, including the right to amend the Declaration pursuant to Article 13, Section 13.1 of the Declaration and Declarant hereby exercises its right to amend the Declaration.

NOW, THEREFORE, the above and foregoing recitals are incorporated herein and made a part of this First Amendment; for and in consideration of the mutual provisions contained in this First Amendment, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Declaration is hereby further amended as follows:

1. Dispute Resolution; Mandatory Binding Arbitration.

Declarant hereby amends and replaces Section 14.7, Mediation and Right to Cure, in its entirety with the following mandatory dispute resolution provisions:

14.7. Dispute Resolution; Mandatory Binding Arbitration.

14.7.1. Statement of Intent. Prior to purchasing a Unit, every Owner is capable of obtaining an inspection and is permitted to perform, or pay someone else to perform, an inspection on any Unit that Owner is purchasing or any other aspect of the Project, including without limitation, the Common Areas. Moreover, if any written warranty has been provided, it identifies the only items that are warranted by the Declarant and/or Builder. Having had the ability to inspect prior to purchasing a Unit, having received a written warranty if any warranty is provided, and having paid market price for a Unit, in the condition it and the Common Areas are in at the time of purchase, it is acknowledged that it is unfair and improper to later seek to have the Declarant, Builder, and/or any subcontractor performing work in the Project change, upgrade, or add additional work to the Project outside of any express warranty obligation. Moreover, the Owners (by purchasing a Unit) and the Declarant and Builder acknowledge and agree that litigation is an undesirable method of resolving disputes and conflicts in that it can be slow, expensive, uncertain, and can often negatively impact the sale value and ability to obtain financing for the purchase (or refinancing) of Units for years, unfairly prejudicing those Owners who must or want to sell or refinance their Unit during any period when litigation is pending. For this reason, the Owners, by purchasing a Unit, the Declarant, and the Builder covenant and agree that all claims and disputes relating to the Project or the Units, or relating to the Common Areas, shall not be pursued through court action, but shall be asserted and resolved only through the specific alternative dispute resolution mechanisms described below, and only after full disclosure, satisfaction of the notice and right to cure requirements, and knowing approval of the Owners, as set forth in the provisions of this Section 14.7 (including the subsections below). In addition, the Association and the Owners agree that they take ownership and possession of the Units and Common Areas AS IS, with no warranties of any kind except as otherwise required as a matter of law. The Declarant and Builder specifically disclaims any and all warranties of merchantability, fitness for a particular use, or of habitability, to the full extent allowed by law.

14.7.2. Binding Arbitration for All Disputes. To the fullest extent permitted by law, all claims and disputes of any kind that any Owner or the Association may have involving the Declarant and Builder, or any agent, contractor, employee, executing officer, manager, affiliate or owner of the Declarant and Builder, or any engineer or contractor involved in the design or construction of the Project, which arise from or are in any way related to a Building, Unit, or other Improvement on a Lot, Common Areas, or any other Improvement on or component of the Project (a “**Dispute**”), shall be submitted to final and binding arbitration. Binding arbitration shall be the sole remedy for resolving claims and disputes between or involving the Declarant and any Owner or between or involving the Declarant, Builder, and the Association. Arbitration proceedings, however, shall not be commenced unless the Pre-Arbitration Requirements set forth in Section 14.7.3 below have been

satisfied in full. Without in any way limiting the foregoing, Disputes subject to binding arbitration shall include the following:

- a. Any allegation that a condition in any of the Buildings or Units or the Common Areas, or other Improvements in the Project, is or involves a construction defect;
- b. Any disagreement as to whether an alleged construction defect has been corrected;
- c. Any disagreement about whether any warranties, including implied warranties, are applicable to the subject matter of any Dispute;
- d. Any disagreement as to the enforceability of any warranties alleged to be applicable to the subject matter of any Dispute;
- e. Any disagreement about whether any warranty alleged to be applicable to the subject matter of any Dispute has been breached;
- f. Any alleged violations of consumer protection, the Act, the implied warranties of habitability or other common law doctrines or claims, unfair trade practice, or other statutes or laws;
- g. Any allegation of negligence, strict liability, fraud, and/or breach of duty of good faith, and all other claims arising in equity or from common law;
- h. Any allegation that any condition existing in the Project or created by the Declarant and/or Builder (or any of its contractors), including construction-related noise, dust, and traffic, is a nuisance, a defect, or a breach of any implied warranties of habitability or other implied warranties;
- i. Any disagreement concerning the scope of issues or claims that should be submitted to binding arbitration;
- j. Any disagreement concerning the timeliness of performance of any act to be performed by Declarant and/or Builder or any of its contractors;
- k. Any disagreement as to the payment or reimbursement of any fees associated with binding arbitration;
- l. Any disagreement or dispute regarding management of the Association, or regarding reserve studies or funding of Association expenses; and
- m. Any other claim or disagreement arising out of or relating to the sale, design, or construction of any of Improvement or Units, Common Areas, Limited Common Areas, off-site improvements, management of the Association, or other claims regarding the Project.

14.7.3. Pre-Arbitration Requirements. An Owner or the Association may only pursue a claim against the Declarant, Builder, or any contractors hired by Declarant and/or Builder in arbitration after all of the following efforts of dispute resolution have been completed: (1) Right to Cure: the claimant (e.g. the Owner or the Association) shall provide to the Declarant and/or Builder a written Notice of Claim (defined below) and permit the Declarant and/or Builder one hundred twenty (120) days to cure or resolve the claim or defect or to try to get the appropriate contractor to cure or resolve the claim or defect, prior to initiating any formal arbitration proceedings; and (2) Mediation: if the dispute is not resolved within the 120-day Right to Cure period, the parties shall participate in formal mediation with a mutually-acceptable third-party mediator in an effort to resolve the Dispute prior to taking further action or commencing arbitration. If additional, different, or modified claims, damages, calculations, supporting information, or descriptions are added, provided to, or asserted against the Declarant and/or Builder that were not included in any previously submitted Notice of Claim, the Right to Cure period provided for in this Section shall immediately apply again and any pending action or proceedings, including any mediation or arbitration, shall be stayed during the 120-day cure period.

a. “Notice of Claim” shall mean and include the following information: (1) an explanation of the nature of the claim, (2) a specific breakdown and calculation of any alleged damages, (3) a specific description of the claim along with any supporting opinions, information, or factual evidence upon which the claim is based, (4) photographs of any alleged defective condition, if applicable, (5) samples of any alleged defective conditions or materials, if reasonably available, (6) an explanation of the efforts taken to avoid, mitigate, or minimize the claim or any alleged damages arising therefrom, and (7) the names, phone numbers, and address of each person providing factual information, legal or factual analysis, or legal or factual opinions related to the claim.

14.7.4. Member Approval; Legal Opinion; Arbitration. If a claim or dispute has not been resolved after satisfying and complying with the above-described “Pre-Arbitration Requirements,” then the claimant (Owner or Association) shall have the right to proceed with binding arbitration; however, the Association shall not pursue or commence binding arbitration unless such action is first approved by at least sixty-six percent (66%) of the Total Votes of the Association after the Association has obtained a written opinion from legal counsel advising the Association of the likelihood of success on the merits of the claims, the anticipated costs and legal fees, the anticipated expert witness fees, and the likelihood of recovery if the Association prevails. The written opinion from legal counsel, addressing these topics, must be provided to all Owners before the formal vote on whether to proceed with binding arbitration. The binding arbitration shall be conducted by a mutually-acceptable arbitrator (preferably a former judge), or, if an arbitrator cannot be mutually selected, then by a member of the National Panel of Construction ADR Specialists promulgated by Construction Dispute Resolution Services, LLC (“**CDRS**”). The binding arbitration shall be conducted according to the rules and procedures set forth in the Arbitration Rules and Procedures promulgated by CDRS. The award of the arbitrator shall be final and may be entered as a judgment by any court of competent jurisdiction.

14.7.5. Fees and Costs of Arbitration. Each party shall bear its own attorney fees and costs (including expert witness costs) for the arbitration. The arbitration filing fee and other arbitration fees shall be divided and paid equally as between the parties. The arbitrator shall not award attorney fees, expert witness fees or arbitration costs to the prevailing party.

14.7.6. No Waiver of Arbitration Right. If any Owner, the Association, or the Declarant and/or Builder files a proceeding in any court to resolve any Dispute, such action shall not constitute a waiver of the right of such party, or a bar to the right of any other party, to seek arbitration or to insist on compliance with the requirements set forth in this Section 14.7. If any such court action is filed, then the court in such action shall, upon motion of any party to the proceeding, stay the proceeding before it and direct that such Dispute be arbitrated in accordance with the terms set forth herein, including, without limitation, compliance with the Pre-Arbitration Requirements set forth above.

14.7.7. Waiver of Subrogation. The Association and each Owner waives any and all rights to subrogation against the Declarant, Builder and any, contractor, and engineer in the Project. This waiver shall be broadly construed and applied to waive, among other things, any attempt by any insurer of any Owner or of the Association from pursuing or exercising any subrogation rights, whether arising by contract, common law, or otherwise, against the Declarant, Builder, the Project engineer, contractors of the Declarant and the Builder, and their officers, employees, owners, and representatives. To the full extent permitted by law, the Association and Owners hereby release Declarant, the Project engineer, and Builder, and their respective officers, employees, owners, contractors, insurers, and representatives from any and all liability to the Association and all Owners, and anyone claiming through or under them by way of subrogation or otherwise, for any loss, injury, or damage to property, caused by fire or any other casualty or event, even if such fire or other casualty shall have been caused by the fault or negligence of Declarant or Builder, their officers, employees, owners, and representatives. The Association and each Owner agrees that all policies of insurance shall contain a clause or endorsement to the effect that this release and waiver of subrogation shall not adversely affect or impair such policies or prejudice the right of the Association or any Owner to recover thereunder. The Association and all Owners shall indemnify and defend the Declarant, the Builder, and any of their officers, employees, owners, contractors, or representatives from any claims barred or released by this provision, including but not limited to any claim brought under any right of subrogation.

14.7.8. This Section 14.7 shall not affect the Association's rights in Section 14.14 to enter into litigation for the collection of assessments, the enforcement of the governing documents (including fines or curative measures) or to defend itself against matters not described in this Section 14.7.

2. Litigation. Declarant hereby amends Section 14.14., Litigation, of the Declaration to provide that the Owner approval requirement for the Association to be involved in litigation shall be sixty-six percent (66%) of the voting rights of the Association, not eighty percent (80%). Notwithstanding the preceding sentence, the Association shall not be required to obtain any Owner

approval, by vote or otherwise, to file suit to enforce and collect unpaid assessments. The Board is authorized to pursue such actions when deemed appropriate by the Board.

3. Reservation of Declarant's Rights.

Pursuant to the Declaration, all Declarant's rights concerning the District Property reserved to the Declarant in the Declaration are hereby reserved to Declarant, or any successors, assigns, or transferees with respect to the District Property. The exercise of Declarant's rights concerning the District Property shall be governed by the same terms, provisions and limitations set forth in the Declaration regarding the exercise of Declarant's rights.

4. No Waiver.

No failure or delay on the part of Declarant in exercising any right, power, or remedy under the Declaration or the other Governing Documents in connection with the District Property shall operate as a waiver thereof.

5. Declaration Remains in Effect.

This First Amendment shall be considered supplemental to the Declaration and, when recorded, shall be binding upon the entire District Property and all persons and entities having an interest therein or in any Lot or Unit. Except as expressly amended by the foregoing, and notwithstanding anything contained in the Declaration to the contrary, which provisions, if any, are hereby amended to be consistent with this First Amendment, the Declaration shall remain in full force and effect and shall not be canceled, suspended, or otherwise abrogated by the recording of this First Amendment. In the event of any conflict between the provisions of the Declaration and the provisions of this First Amendment, the provisions of this First Amendment shall govern and control.

6. Effective Date.

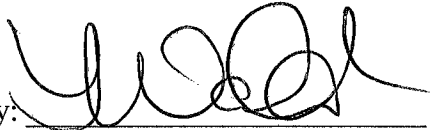
This First Amendment shall be effective as of the date of its recordation in the real property records of the Official Records of Utah County, Utah.

7. Authority.

Declarant hereby certifies that Declarant may execute this First Amendment with the consent of the Founder as provided in Article 13, Section 13.1 of the Declaration.

[Signatures appear on following page.]

Founder:
Monte Vista Ranch, L.C.
By: MVR Management LLC,
Its Manager

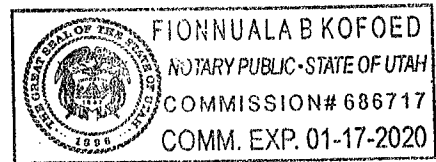
By: 
Title: Tiffany A. Walden, Manager

STATE OF UTAH
COUNTY OF UTAH

On this 11 day of April, in the year 2019, before me FIONNIALA B. KOFOED, a notary public, personally appeared Tiffany A. Walden, in her capacity as Manager of MVR Management LLC, the Manager of Monte Vista Ranch LC, proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged she executed the same.

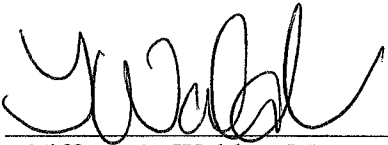

NOTARY PUBLIC

My Commission Expires: 1/17/2020

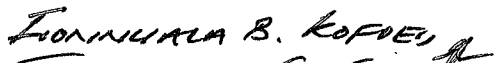
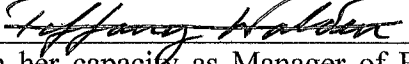


IN WITNESS WHEREOF, this Second Amendment is hereby executed this 11th day of April, 2019.

Declarant:
EM Harmony LLC
Its Manager

By: 
Title: Tiffany A. Walden, Manager

STATE OF UTAH
COUNTY OF UTAH

On this 11 day of April, in the year 2019, before me , a notary public, personally appeared , in her capacity as Manager of EM Harmony LLC, proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged she executed the same.


NOTARY PUBLIC

My Commission Expires: 1/17/2020



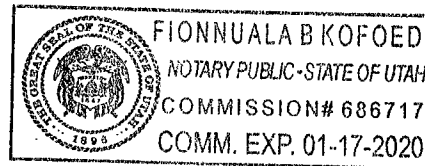
Association:
By: Harmony Homeowners Association, Inc.

By: *Christine E. Giordano*
Title: Christine E. Giordano, Secretary

STATE OF UTAH
COUNTY OF UTAH

On this 11 day of April, in the year 2019, before me *Fionnuala B. Kofoed*, a notary public, personally appeared Christine E. Giordano, in her capacity as Secretary of Harmony Homeowners Association, Inc., proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged she executed the same.

Fionnuala B. Kofoed
NOTARY PUBLIC



Association:
By: Harmony Homeowners Association, Inc.

By: Angie C. Poulsen
Title: Angie C. Ferre, President
Poulsen

STATE OF UTAH
COUNTY OF UTAH

On this 11 day of April, in the year 2019, before me FIONNUALA B. KOFOED, a notary public, personally appeared Angie C. Ferre, in her capacity as President of Harmony Homeowners Association, Inc., proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged she executed the same.

Fionnuala B. Kofoed
NOTARY PUBLIC

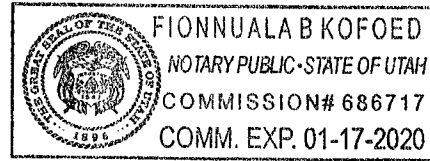


EXHIBIT A**District Property Legal Description:**

BEGINNING AT A POINT LOCATED SOUTH 00°27'29" WEST 1883.86 FEET ALONG SECTION LINE AND EAST 1324.30 FEET FROM THE NORTHWEST QUARTER CORNER OF SECTION 13, TOWNSHIP 6 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN;

THENCE EAST, A DISTANCE OF 881.13 FEET; THENCE SOUTH 00°27'45" WEST, A DISTANCE OF 439.78 FEET; THENCE SOUTH 89°59'23" EAST, A DISTANCE OF 319.59 FEET; THENCE ALONG THE ARC OF A 26.00 FEET CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 89°32'17" FOR 40.63 FEET (CHORD BEARS NORTH 45°14'28" EAST 36.62 FEET); THENCE SOUTH 89°32'15" EAST, A DISTANCE OF 4.62 FEET; THENCE SOUTH 00°27'45" WEST, A DISTANCE OF 103.00 FEET; THENCE NORTH 89°32'15" WEST, A DISTANCE OF 4.63 FEET; THENCE ALONG THE ARC OF A 26.00 FEET CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 90°27'43" FOR 41.05 FEET (CHORD BEARS NORTH 44°45'32" WEST 36.92 FEET); THENCE NORTH 89°59'23" WEST, A DISTANCE OF 319.17 FEET; THENCE SOUTH 00°26'22" WEST, A DISTANCE OF 116.99 FEET; THENCE NORTH 89°59'23" WEST, A DISTANCE OF 107.15 FEET; THENCE SOUTH 81°38'40" WEST, A DISTANCE OF 51.55 FEET; THENCE NORTH 89°59'23" WEST, A DISTANCE OF 689.00 FEET; THENCE NORTH 62°35'11" WEST, A DISTANCE OF 164.93 FEET; THENCE NORTH 64°04'39" WEST, A DISTANCE OF 51.16 FEET; THENCE NORTH 59°31'43" WEST, A DISTANCE OF 120.00 FEET; THENCE NORTH 30°28'17" EAST, A DISTANCE OF 121.36 FEET; THENCE NORTH 27°58'06" EAST, A DISTANCE OF 51.00 FEET; THENCE NORTH 26°29'10" EAST, A DISTANCE OF 221.06 FEET; THENCE NORTH 37°19'15" EAST, A DISTANCE OF 136.37 FEET TO THE POINT OF BEGINNING.

CONTAINING 641,461 SQUARE FEET OR 14.7259 ACRES, MORE OR LESS.
BASIS OF BEARING = UTAH STATE PLANE COORDINATE SYSTEM OF 1983, CENTRAL ZONE.