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**WHEN RECORDED RETURN TO:**

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LuAnn Adams, Box Elder County Recorder  
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0047 thru 0068;  
03-146-0067, 0068, 0069;

**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
for Eagle Crest Single Family Homes Planned Unit Development**

This Declaration of Covenants, Conditions and Restrictions is made as of June 29, 2001, by Eagle Crest Realty Company, LLC, a Utah limited liability company ("Declarant I"), and Eagle View Realty Company, LLC, a Utah limited liability company ("Declarant II"). Declarant I and Declarant II are sometimes referred to herein as "Declarants."

**WITNESSETH**

WHEREAS, Declarant I owns fee simple title to that certain real property situated in Box Elder County, Utah, described on Exhibit "A" attached hereto (the "Eagle Crest Property"); and

WHEREAS, Declarant II owns fee simple title to that certain real property situated in Box Elder County, Utah, described on Exhibit "B" attached hereto (the "Eagle View Property," together with the Eagle Crest Property sometimes referred to collectively as the "Property" or the "Subdivision");

WHEREAS, Declarants desire to establish a general plan for the improvement and development of the Property as an attractive, exclusive residential development for the purpose of enhancing and protecting the desirability and attractiveness of the Property and the quality of life within the Property, and, in furtherance of that plan, to subject the Property to the covenants, conditions, restrictions, reservations, easements, liens and charges hereinafter set forth; and

WHEREAS, Declarants desire and intend to hold, own and convey the Eagle View Property and the Eagle Crest Property, as the case may be, subject to the covenants, conditions and restrictions set forth herein.

NOW, THEREFORE, in consideration of the premises, Declarants hereby submit the Property to the provisions of this Declaration and declare, covenant and agree that the Property and each part thereof shall be held, encumbered, occupied, built on and otherwise used, improved, maintained, leased, sold, occupied and otherwise transferred subject to the following covenants, conditions, restrictions, reservations, easements, liens and charges, which shall (i) attach to and run with the land, (ii) be binding on the Property and all owners, lessees and other parties having, acquiring or otherwise at any time possessing any right, title or interest in or to the Property or any part thereof, or the right to use or occupy the Property or any part thereof, (iii) inure to the benefit of said owners, lessees and other parties, and (iv) be for the purpose of establishing a general plan

for the improvement and development of the Property as an attractive and exclusive residential development.

## ARTICLE I

### Definitions

In addition to the terms defined elsewhere herein, the following terms are defined for purposes of this Declaration:

- 1.1. Architectural Control Committee means the committee established pursuant to Article VII hereof.
- 1.2. Assessable Property means any Lot except that no Lot owned by either of the Declarants shall be Assessable Property unless improved with a completed and occupied building.
- 1.3. Association means the Eagle Crest Single Family Homes Association.
- 1.4. Bylaws means the Bylaws adopted by the Association for the purpose of regulating the affairs of the Association, as the same may be amended from time to time, a copy of which is attached hereto as Exhibit "C."
- 1.5. Common Areas means all property designated on the Plat as Common Areas which are created by the Declarants or by the Association for the common benefit of all Owners.
- 1.6. Declaration means this Declaration of Covenants, Conditions and Restrictions.
- 1.7. Landscape Easement means those areas designated on the Plat as the Homeowner's Association Easement in which the Association has retained an easement to approve and control landscaping for the benefit of all Lot Owners.
- 1.8. Living Unit means a structure which is designed and intended for use and occupancy as a single-family residence, together with all improvements located on or with respect to the Lot concerned which are used in connection with such residence.
- 1.9. Lot means any one of the separately numbered and individually described lots described on the Plat (i) which is intended to be owned individually, rather than by the Association, and (ii) which is intended to be used as the site of a single Living Unit.
- 1.10 Eagle View Lot means any Lot located within the Eagle View Property.
- 1.11 Eagle Crest Lot means any Lot located within the Eagle Crest Property.
- 1.12. Owner means the Person or Persons who are vested with record title of a Lot, and whose interest in the Lot is held in fee simple, according to the records of the County Recorder of Box Elder County, Utah; provided, however, Owner shall not include a Person who holds an interest in a Lot merely as security for the performance of an obligation. Declarant I shall be

considered the record Owner of any Eagle Crest Lot prior to its initial conveyance by Declarant I. Declarant II shall be considered the record Owner of any Eagle View Lot prior to its initial conveyance by Declarant II.

1.13 Eagle View Owner means Owner of any Eagle View Lot.

1.14 Eagle Crest Owner means Owner of any Eagle Crest Lot.

1.15. Board means the Board of Directors of the Association elected pursuant to the Bylaws and serving as the management body of the Association.

1.16. Plat means the record of survey map of the Property of record with the Box Elder County, Utah, Recorder, a true and correct copy of which is attached hereto as Exhibit "D." Plat shall also refer to any additional plat which may be recorded with any Supplemental Declaration. The Plat is hereby incorporated into, and made an integral part of, this Declaration and all requirements and specifications set forth on the Plat are deemed included in this Declaration.

1.17. Private Streets means all of the undedicated roads and streets within the Subdivision as designated upon the Plat, which shall be owned by Declarant I or Declarant II, as the case may be, and over which Declarant I or Declarant II, as the case may be, shall grant an easement for ingress and egress for pedestrian and vehicular traffic and for utilities for the use, in common, of the Owners and their respective guests and invitees, subject to the limitations and reservations set forth herein.

1.18 Sewer Easement means any area of real property within the Eagle View Property, designated as a Sewer Easement on the Plat in which Declarant II and the Association have retained an easement for the installation, repair and maintenance of sanitary sewer lines, and drainage facilities as needed to serve the Eagle View Property, and for landscaping purposes for the benefit of the Association and all Eagle View Property Lot Owners.

1.19 Utility Easements means a blanket easement between the Declarants, the Association and such utility companies as may be designated by the Declarants or the Association, upon, across, over and under any area of real property within the Subdivision for ingress to, egress from, and the installation, replacement, repair and maintainance of all utility and service lines and systems, including, but not limited to water, sewer, gas, and electricity as such utilities are installed in connection with the development of the Subdivision.

1.20. Visible from Neighboring Property means (i) an object that is or would be visible from any neighboring property (including neighboring Lots) to any person six feet tall, who is standing on any part of such neighboring property that is actually at the same elevation as the base of the object; or (ii) an object that any Declarant or the Board otherwise reasonably determines, in their sole discretion, is located within 500 feet of any neighboring property and is, in substantial part, more than six feet higher than the base of that object, and should be deemed to be "Visible From Neighboring Property" for the purposes set forth herein.

1.21. Member means every person who holds a membership in the Association.

1.22. Mortgage means any mortgage, deed of trust, or other security instrument creating a security interest in real property.

1.23. Mortgagee means any person named as mortgagee or a mortgage, beneficiary of a deed of trust, or secured party in connection with a security interest described in Section 1.17 hereof.

ARTICLE II

Membership and Voting Rights  
Board of Directors

2.1. Membership. Membership in the Association shall at all times consist exclusively of the Owners and each Owner shall be a member of the Association so long as he shall be an Owner and such membership shall automatically terminate when he ceases to be an Owner. Upon the transfer of an ownership interest in a Lot, the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association.

2.2. Voting. The Association shall have two (2) classes of voting membership.

Class A. Class A Members shall be all Owners (including the Declarants, after the Turnover Date). Class A Members shall be entitled to one (1) vote for each Lot owned. Fractional votes shall not be allowed.

Class B. The Class B Members shall be the Declarants, who each shall be entitled to three (3) votes for each of their Lots they respectively own. The Declarants, as Class B Members, shall have the right to control the Association to the extent of having the exclusive right (either directly or through a person designated by both of the Declarants) to elect, appoint and remove the members of the Board and the officers of the Association until the Turnover Date (as hereinafter defined). The special control rights of the Declarants, as Class B Members, shall cease and terminate upon the earlier of the following (the "Turnover Date"):

- (a) The date ninety (90) days after the conveyance by the Declarants of seventy-five percent (75%) of the Lots to Owners (other than Declarants or an affiliate of any Declarant);
- (b) The date four (4) years after the Declarants (or any successors) have ceased to offer Lots for sale in the ordinary course of business;
- (c) The date which is the third (3rd) anniversary of the first conveyance of any Lot, by any Declarant to an Owner other than Declarant I or Declarant II; or
- (d) Both Declarants (as long as two Declarants are Class B Members) notify the Board in writing that the Class B is extinguished.

Upon the Turnover Date, the Declarants shall retain the voting rights of Class A Members even though the special voting and control rights of the Class B Members have ceased

and terminated. The Declarants, in the case when two Declarants are Members, or one Declarant, in the case when only one Declarant is a Member, may voluntarily surrender the right to elect, appoint and remove the members of the Board and the officers prior to the Turnover Date, but, in that event Declarants, or Declarant, as the case may be, may require that specified actions of the Association or the Board taken prior to the Turnover Date, as described in a recorded instrument executed by Declarants, be approved by both Declarants, as long as two Declarants are Members, or by one Declarant, as long as there is one Declarant, before they become effective. Upon the Turnover Date, the process of transferring control of the Association from the Declarants (or Declarant, if only one Declarant remains a Member of the Association) to the Owners shall commence and be completed within a reasonable period of time. This process shall include the Owners' election of the Board of Directors and shall be considered completed on the date of the initial meeting of the Board of Directors elected by the Owners. The Owners' election of the initial Board of Directors may be conducted at a regular or special meeting of the Association or by a mailed balloting procedure, within thirty (30) days following the Turnover Date.

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

2.4. Record of Ownership. Every Owner shall promptly cause to be duly filed of record the document evidencing the conveyance to him of his Lot (or in the case of a contract buyer, a copy of the sales contract). Each Owner shall file a copy of such conveyance document (or contract) with the Board with a transfer fee of \$25.00.

2.5. Board of Directors. The governing body of the Association shall be the Board of Directors elected pursuant to the Bylaws. Cumulative voting shall apply for the purpose of electing members of the Board. The Board shall consist of not less than three (3) members and not more than five (5) members. Except as otherwise provided in this Declaration, the Bylaws, or Association Rules, the Board may act in all instances on behalf of the Association. The Board shall act to adopt the Bylaws and to appoint a new agent for service of process at the time the Association is organized, and the Board may, as it deems appropriate, adopt, amend and repeal Association Rules.

(a) Qualification of Directors. Except for Board members elected or appointed by Declarants, each Director shall be an Owner or the spouse of an Owner (or if an Owner is a corporation, partnership, limited liability company, or trust, a Director may be an officer, partner, member, manager, trustee or beneficiary of such Owner). If a Director shall cease to meet such qualifications during his term, he will thereupon cease to be a Director and his place on the Board shall be deemed vacant.

(b) Action by Owners. Except as specifically provided herein, the Board may not act on behalf of the Association to amend or terminate this Declaration, to elect members of the Board (except in filling vacancies in its membership for the unexpired

portion of any term), or to determine the qualifications, powers and duties or terms of the members of the Board of Trustees.

(c) Annual Meeting. The Association shall hold an annual meeting as provided in the Bylaws.

(d) Availability of Documents. The Association will maintain current copies of this Declaration, the Articles, Bylaws, and Association Rules concerning the Subdivision and the Association's own books, records, and financial statements available for inspection, upon request, during normal business hours by any Owner or Mortgagee (or any insurer or guarantor of a Mortgagee).

(e) Managing Agent. The Board may contract with a professional management agent to assist the Board in the management of the Association and may delegate such of its powers and duties to the management agent as it deems appropriate; provided, however, that only the Board shall have the right to approve Association budgets, to impose a special Assessment and to authorize foreclosure of an Assessment lien.

### ARTICLE III

#### Property Rights in Private Streets

3.1. Easement Over Private Streets. Owners shall have a right and easement of use of the Private Streets for purposes of ingress to and egress from all Lots in the Subdivision, and for connection to all utilities situated in the Private Streets. Such right and easement shall be appurtenant to and shall pass with title to the Property and in no event shall be separated therefrom. Owners may delegate the foregoing right and easement of use to any family member, tenant, lessee or contract purchaser who resides on the Property, as the case may be.

3.2. Limit On Scope of Easement Over Private Streets. The rights and easements of use granted in Section 3.1 hereof are strictly limited to benefit the Property. Said rights and easements (including, without limitation, the right to connect to utilities situated in the Private Streets) shall be non-exclusive, but shall not be extended to benefit any other property without the prior written consent of both of the Declarants, and any attempt to extend the scope of said rights and easements of use without such Declarants' prior written consent shall be void and of no force or effect.

3.3. Transfer of Title. Declarants may, at their option, convey to the Association title to the Private Streets, and upon such conveyance the Association agrees to accept title thereto.

3.4. Limitation on Easement. A Member's right and easement of use and enjoyment concerning the Private Streets shall be further subject to the following:

(i) The right of the Board to approve and designate the point of access from a Lot to the Private Streets in accordance with the requirements of Article VII hereof.

(ii) The right of Elder Box County and any other governmental or quasi-governmental body having jurisdiction over the Property to access and rights of ingress and egress over and across any Private Streets for purposes of providing police and fire protection, transporting school children, and providing any other governmental or municipal service, provided such access is limited to providing services that benefit the Property; and

(iii) The right of the Association to dedicate or transfer all or any part of the utilities situated in the Private Streets, including any sewer, water and storm drain trunk lines, to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association and the Declarants. Any such dedication or transfer must, however, be approved by the Declarants and by two-thirds of the vote of each class of the Members present in person or by proxy at a meeting duly called for that purpose.

#### ARTICLE IV

##### Assessments

4.1. Personal Obligation and Lien. Each Owner, by owning and acquiring any interest in any Lot, shall be deemed to agree to pay to the Association the monthly and special assessments described in this Article. Said assessments shall be a charge on and shall be a continuing lien upon the Lot as the case may be, against which each such assessment is made or cost relates. Each assessment shall be the personal obligation of the person who is the Owner of the Lot at the time the assessment is delinquent or the cost is incurred, but such personal obligation shall not be deemed to limit or discharge the lien upon the land, which shall run with and attach to the land and be a burden thereon. As used herein, said assessment shall include costs (including, but not limited to, reasonable attorneys' fees) of enforcing the provisions of this Declaration and of the collection of assessments and costs referred to herein, together with interest on such assessments and costs from the date due until paid at the rate of eighteen percent (18 %) per annum or five percent (5%) per annum greater than the prime rate, whichever is greater. If a Lot is owned jointly, whether by joint tenancy or tenancy in common, all joint tenants or tenants in common shall be jointly and severally liable for such assessments and costs. The Eagle Crest Owners shall pay the costs incurred by the Association in maintaining all landscaping of the Eagle Crest Lots (the "Landscape Assessments"). The Landscape Assessments shall be a lien upon the Eagle Crest Property in the same manner as the assessments described elsewhere in this Declaration. All Owners shall pay the costs incurred by the Association in maintaining, repairing, and improving the Utility Easements (the "Utility Easements Assessments"). All Owners shall pay the costs incurred by the Association in maintaining, repairing, and performing snow removal on the Private Streets, and maintaining or repairing any utilities underneath the Private Streets, and for payment of all insurance and real property taxes with respect to the Private Streets (collectively the "Private Street Assessments"). The Private Street Assessments and Utility Easements Assessments shall be a lien upon the Property in the same manner as the assessments described elsewhere in this Declaration. The Eagle View Property Owners shall pay the Sewer Easement Assessment (defined later), as provided in Section 4.10 of this Declaration. The Sewer Easement Assessment shall be a lien upon the Eagle View Property in the same manner as the assessments described elsewhere in this Declaration. Each Owner shall, by acquiring or in any way becoming vested with his interest in a Lot, be deemed to covenant and agree to pay to the Association the other monthly and special assessments

described in this Article. All such amounts shall be, constitute, and remain: (i) a charge and continuing lien upon the property with respect to which such assessment is made; and (ii) the personal obligation of the person who is the owner of such property at the time the assessment falls due. Owners may not exempt themselves or their property from liability for payment of assessments by waiver of their rights concerning the Private Streets, the Landscape Easement, the Utility Easements, and the Sewer Easement or by abandonment of their property. In a voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all such unpaid assessments, late payment fees, interest and costs of collection, including reasonable attorneys fees, which shall be a charge on the land at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

4.2. Purpose of Assessments. Assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety, and welfare of residents of the Property, and maintaining, insuring and repairing the Private Streets and performing the Association's other duties hereunder. The use made by the Association of funds obtained from assessments may include, but is not limited to, payment of the cost of taxes and insurance on the Private Streets; lighting all or portions of the Private Streets; maintenance, repair and improvement of the Private Streets, and the costs of maintaining, repairing and providing utilities service in the Private Streets; establishing and funding a reserve to cover major repair or replacement of improvements within the Private Streets; maintenance, repair and improvements of the Landscape Easement to the extent undertaken by the Association; maintenance, repair, improvements and landscape of the Sewer Easement; maintenance, repair and improvement of the Common Areas; and any expenses necessary or desirable to enable the Association to perform or fulfill its obligations, functions or purposes under this Declaration or the Association's Articles of Incorporation, if applicable.

4.3. Special Assessments. The Association may levy special assessments for the purpose of defraying, in whole or in part: (i) any expense or expenses not reasonably capable of being fully paid with funds generated by monthly assessments; or (ii) the cost of any construction, reconstruction or unexpectedly required repair or replacement in connection with the Private Streets. Any such special assessments must be assented to by not less than a majority of the Members other than the Declarants (or if the two class voting structure is still in effect as provided herein, a majority of the votes of each class of Members), who are present in person or represented by proxy and are entitled to cast at a meeting duly called for that purpose.

4.4. Reimbursement Assessment on Specific Lot. In addition to the monthly assessment and any special assessment authorized hereunder, the Board may levy at any time special assessments on each Lot as to which the Association shall incur any expense for maintenance or repair work performed, or enforcement action taken, pursuant hereto (the "Reimbursement Assessment"). The aggregate amount of any such Reimbursement Assessments shall be determined by the cost of such improvements, repairs, maintenance or enforcement action, including all overhead and administrative costs and attorney's fees, and shall be allocated among the Lots on which such improvements, repairs, maintenance or enforcement action are constructed or taken.

4.5. Rate of Assessment. All amounts assessed to the Owners shall be assessed equally to such Owners, except that the Eagle Crest Property Owners shall not pay the Sewer Easement

Assessments, and the Eagle View Owners shall not pay the Landscape Assessments, except as otherwise provided in Section 6.4(c).

4.6. Monthly Assessment Due Dates. The obligations with respect to the monthly assessments provided for in the Declaration shall commence as to each Lot on (i) the date a deed is delivered to the purchaser of a Lot, (ii) if the sale is by way of a contract of sale, on the date the contract is executed by the parties thereto, or (iii) the date of occupancy, whichever first occurs. The first monthly assessment shall be adjusted according to the number of days remaining in the month in which the obligation with respect to the assessments begins. At least fifteen days prior to the effective date of any change in the amount of the monthly assessment, the Association shall give each Owner written notice of the amount and the first due date of the assessment concerned. All assessments hereunder, including, without limitation, the Private Street Assessments and the Sewer Easement Assessments, shall be delinquent if not paid within thirty days from the date of the notice of assessment.

4.7. Certificate Regarding Payment. Upon the request of any Owner or prospective purchaser or encumbrancer of a Lot the Association shall issue a certificate stating whether or not all assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who in good faith rely thereon.

4.8. Effect of Non-Payment: Remedies. Any assessment not paid when due shall, together with the interest and costs of collection described herein be, constitute and remain a continuing lien on the property affected thereby.

4.9. Tax Collection by County Authorized. It is recognized that under the Declaration the Association will be obligated to pay property taxes on the Private Streets to Box Elder County. It is further recognized that each Owner will be required to reimburse the Association for his pro rata share of such taxes paid as set forth herein. Notwithstanding anything to the contrary contained in the Declaration, Elder Box County shall be authorized to collect such pro rata share of taxes directly from each such Owner by inclusion of said share with the tax levied on each Lot.

4.10 Sewer Easement Assessment. The Association will levy assessments for the purpose of defraying the cost of any maintenance, construction, alteration, repair, improvement, or replacement in connection with the Sewer Easement ("Sewer Easement Assessment"). Each Eagle View Property Owner, by owning and acquiring any interest in any Eagle View Lot, shall be deemed to agree to pay to the Association a Sewer Easement Assessment in an amount not exceeding fifteen dollars (\$15) a month for a period of five (5) years.

4.11 Assessable Property. Each Declarant is entirely exempt from Assessment with respect to the Lots it owns, for so long as the Declarant owns the same, unless such Lots are improved with a completed and occupied building. Any unimproved portion of a Lot owned by any Declarant shall remain exempt from Assessment. A Lot shall first become Assessable Property after the same is conveyed by Declarant I or Declarant II, as the case may be, to the initial Owner hereof, other than Declarants, and except in the case of an improved and occupied Lot, as stated, a Lot shall not be Assessable Property while owned, or reacquired, by either of the Declarants. For

the purposes of this Section, a Living Unit or other building shall be deemed completed when a certificate of occupancy has been issued by the appropriate governmental agency.

In no event shall either of the Declarants be required to contribute toward any assessments that are past due as of the Turnover Date.

## ARTICLE V

### Duties and Powers of the Association

5.1. Duties of the Association. Without limiting any other duties which may be imposed upon the Association by this Declaration, the Association shall have the right to perform each and every one of the following for the benefit of the Owners and the maintenance and improvement of the Property:

- (a) The Association shall accept all Owners as Members of the Association.
- (b) The Association shall accept title to the Private Streets if conveyed to it by Declarant.
- (c) The Association shall have the right, but shall not be obligated, to install, maintain and replace landscaping on all Eagle View Lots within the Landscape Easement. Each Eagle View Owner shall have an obligation to provide adequate water to sustain all landscaping on his Lot. The Association shall be solely responsible for the maintenance of all landscaping on all Eagle Crest Lots within the Landscape Easement
- (d) In the event that the need for maintenance or repair of Private Streets, the Utility Easements, the Sewer Easement, or the Landscape Easement as specified herein is caused by any Owner or any other third party, or any Eagle View Owner fails to maintain the landscaping on the portion of the Landscape Easement located on his Lot, the Board may cause such repairs to be made by the Association and the cost of such maintenance or repair (and administrative expenses equal to ten percent of such costs) shall be added to and become part of the Reimbursement Assessment (as set forth in Section 4.4) to which such Lot is subject.
- (e) The Association shall obtain and maintain in force the policies of insurance required by the provisions of this Declaration.
- (f) The Association may employ a responsible corporation, partnership, firm, person or other entity as the managing agent to manage and control the Private Streets, subject at all times to direction by the Board, with such administrative functions and powers as shall be delegated to the managing agent by the Board. The compensation of the managing agent shall be specified by the Board.

5.2. Powers and Authority of the Association. The Association shall have the power to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration, including the power to levy and collect

assessments as hereinafter provided. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

(a) The Association shall have the power and authority at any time and from time to time and without liability to any Owner for trespass, damage or otherwise, to enter upon any Lot for the purpose of maintaining and repairing such Lot or any improvement thereon if for any reason the Owner fails to maintain and repair such Lot or improvement, or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such Lot in violation of Article VI of this Declaration. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration or any rules and regulations promulgated by the Board, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration and such rules and regulations.

(b) The Association shall have the power and authority to pay and discharge any and all liens placed upon any Private Streets on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation or administration (provided that any contract for goods or services having a term of more than one year shall state that it may be terminated by either party at the end of the first year or at any time thereafter upon no less than ninety days written notice) and, to obtain, contract and pay for, or to otherwise provide for:

- i. Construction, maintenance and repair of landscaping in the Landscape Easement, the Sewer Easement, and the Utility Easements, on such terms and conditions as the Board shall deem appropriate.
- ii. such insurance policies or bonds as the Board may deem appropriate for the protection or benefit of Declarants, the Association, the members of the Board and the Owners;
- iii. Such utility services, including (without limitation) water, sewer, trash removal, snow removal, electrical, telephone and gas services, as the Board may from time to time deem desirable;
- iv. The services of architects, engineers, attorneys and certified public accountants and such other professional or nonprofessional services as the Board may deem desirable;
- v. Fire, police and such other protection services as the Board may deem desirable for the benefit of the Owners or any of the Property; and
- vi. Such materials, supplies, furniture, equipment, services and labor as the Board may deem necessary.

5.3. Association Rules. The Board from time to time and subject to the provisions of this Declaration, may adopt, amend, repeal and enforce rules and regulations governing, among other things: (a) the use of the Private Streets; (b) the use of the Utility Easements and Sewer Easement; (c) the collection and disposal of refuse; (d) the maintenance of animals on the Property; (e) the use of Living Units for business or rental purposes; (f) the use of the Landscape Easement; and (g) other matters concerning the use and enjoyment of the Property and the conduct of residents. The Board may also adopt additional architectural guidelines for the construction of Living Units. Rules and regulations and/or architectural guidelines adopted by the Board may be enforced in accordance with the provisions of Section 6.16.

5.4. Limitation of Liability. No member of the Board acting in good faith shall be personally liable to any other person for any error or omission of the Association, its representatives and employees, the Board or any committee of the Board.

5.5. Insurance. The Association shall secure and at all times maintain insurance coverage with such coverage and limits as shall be determined from time to time by the Board, against such risks as are or hereafter may be customarily insured against in connection with developments similar to the Property in construction, nature and use. The Association shall have the authority to adjust losses. Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners or their Mortgagees.

## ARTICLE VI

### Use Restrictions

6.1. Use of Common Area. The Private Streets shall be used only in a manner consistent with their community nature and with the use restrictions applicable to Lots and Living Units. The Utility Easements and the Sewer Easement shall be improved and used only for such uses as shall be determined by the Board for the benefit of members of the Association, following consultation with the Architectural Control Committee.

6.2. Use of Lots and Living Units. All Lots are intended to be improved with Living Units and are restricted to such use. Each Living Unit shall be used only as a single-family residence. No Lot or Living Unit shall be used, occupied, or altered in violation of law, so as to jeopardize the support of any other Living Unit or to create a nuisance or interfere with the rights of any Owner.

### 6.3. Building Features and Materials.

(a) Building Location. Each building shall be located such that:

(i) No Living Unit or other improvement on any Lot shall be located outside the building envelope area for such Lot determined by the Architectural Control Committee, in accordance with the provisions of Article V11.

(ii) Nothing herein shall be construed as permitting the construction of any building within the area of the Landscape Easement, the Sewer Easement and the Utility Easements, except as provided in Section 7.4 hereof.

(iii) All buildings, structures, facilities and improvements shall be constructed within the building envelope for each Lot, as identified on the Plat, and shall be subject to the approval of the Architectural Control Committee. The removal or alteration of all native trees and vegetation on each Lot shall be subject to the prior written approval of the Architectural Control Committee as set forth in Article VII hereof.

(b) Garages. Garages must be fully enclosed and are subject to the approval of the Architectural Control Committee.

(c) Exterior Building Wall Materials. Brick, stone, stucco, vinyl and wood are permitted for the exteriors of Living Units and accessory buildings, provided that all colors for all Living Units and accessory buildings shall be approved by the Architectural Control Committee. The use of any other materials for such buildings shall require the prior approval of the Architectural Control Committee.

(d) Roof, Soffit and Facia. Roof, soffit and facia material shall be restricted to materials approved by the Architectural Control Committee. The use and design of roof, soffit and facia materials are subject to the approval of the Architectural Control Committee.

(e) Accessory Structures. Patio structures, trellises, sunshades, gazebos and any other appurtenant buildings shall be constructed of materials consistent with the colors, textures and materials approved for the dwelling and shall be integral to the architecture of the house and subject to the approval of the Architectural Control Committee.

(f) Chimneys. Chimneys of approved exterior materials may not exceed the height required by appropriate governmental agencies. Exposed metal flues are not acceptable, with the exception of copper.

(g) Mailboxes. Mailboxes shall be provided and maintained by each Owner. Mailbox location, height, design and color will be provided by the Architectural Control Committee subject to the approval of the United States Post Office.

(h) Fences and Walls. Fencing must be approved by the Architectural Control Committee prior to the installation. Fencing and walls shall be masonry, stone, wood, vinyl or black wrought iron only. Fencing and walls are to be color coordinated with the approved dwelling colors. Fences which are to be located within fifty feet of any Private Street shall be required to be approved in writing by the Architectural Control Committee. No Fence may exceed six feet in height without the prior approval of the Architectural Control Committee.

(i) Paving. Driveway and other flat paved areas may be concrete, exposed aggregate concrete, stamped concrete, asphalt, quarry tile, brick, or paving blocks.

Unimproved driveways are not permitted without the prior written approval of the Architectural Control Committee.

(j) Solar Equipment. Solar panels are to be integrated into roof design. Panels and frames must be copper or compatible with roof colors and all equipment must be screened so as not to be Visible from Neighboring Property.

(k) Antennas. All antennas are restricted to the attic or interior of the residence. It is mandatory that all homes be pre-wired for cable reception. Satellite dish antennas shall be allowed provided they are located in such areas as may be designated by the Architectural Control Committee. In no event shall satellite dish antennas be visible from the building envelope as shown on the Plat of any adjoining Lot.

(l) Skylights. Skylights are subject to the approval of the Architectural Control Committee.

(m) Pools, Spas, Fountains, Gamecourts. Pools, spas, fountains and gamecourts shall be approved by the Architectural Control Committee and shall be located to reasonably minimize impacting adjacent properties with light or sound. Pool heaters and pumps may not be Visible from Neighboring Property and must be sound insulated from neighboring houses. Nothing herein shall be construed as permitting the construction of skateboard areas and/or ramps, which structures shall be prohibited. All exterior lighting shall be designed to minimize the effect of such lighting on other Lots.

(n) Sheet Metal, Flashing and Vents. All sheet metal, flashing, vents and pipes must be colored to match the material to which they are attached or from which they project, with the exception of copper.

(o) Mechanical Equipment. All air conditioning, heating equipment, swamp coolers and soft water tanks must be screened from view so as not to be Visible from Neighboring Property or Private Streets, and shall be insulated for sound attenuation. Air conditioning units and swamp coolers are subject to the approval of the Architectural Control Committee and are not permitted on roofs or through windows unless they are not Visible from Neighboring Property.

(p) Gas and Electric Meters. Meter locations are to be designed into the architecture of the dwelling and shall not be Visible from Neighboring Property.

(q) Landscaping. All vegetation on Lots shall be maintained in the present, natural state or, at the Owner's option, enhanced by landscaping with trees, lawns, shrubs or other plantings which shall be properly nurtured and maintained or replaced at the Owner's expense, subject to the approval of the Architectural Control Committee. Any Lot area disturbed by construction will be reclaimed with natural vegetation or landscaping planted with trees, lawns, shrubs or other plantings which will be properly nurtured and maintained at the Owner's expense. Reclamation and/or landscaping must be commenced within one month of the date a Living Unit is ready for occupancy (or by the next succeeding April 30 of the following year if a Living Unit is ready for occupancy between

October 15 and February 15), and must be materially completed within six months from the date the Living Unit is approved for occupancy.

(r) Landscape Site Preparation Guidelines. All clearing, stripping of soil and grading shall be subject to the approval of the Architectural Control Committee.

(s) County and Other Approval. Approval of any improvements by the Architectural Control Committee does not waive the requirement for any other required public agency review or permit approval process. By approving plans, the Architectural Control Committee takes no responsibility for plan conformity to any other criteria other than the requirements of this Declaration and any architectural guidelines.

(t) Building Permit. An owner may apply for a building permit from the County at any time after final approval of the Owner's plans has been given by the Architectural Control Committee; provided, however, the plans submitted to the County shall not differ in any way from the plans approved by the Architectural Control Committee. If the plans submitted to the County differ in any way from the plans approved by the Architectural Control Committee, all approvals of the Architectural Control Committee shall be deemed automatically revoked.

#### 6.4. Landscape Maintenance.

(a) Landscape Easement. As more particularly set forth on the Plat, the Association shall retain an easement for landscape and aesthetic purposes on each Lot within the Landscape Easement.

(b) Landscape Maintenance on Eagle Crest Property. All Eagle Crest Lots within the Landscape Easement shall be maintained by the Association and not by the Owners thereof. The Association shall have the right of access to all areas within the Landscape Easement as is necessary for such landscape maintenance.

(c) Landscape Maintenance on Eagle View Property. Each Eagle View Owner shall be responsible at his own cost and expense to maintain and water all trees and other landscaping which naturally grow upon the area of such easement, which Declarant II may have installed upon such area during development of the Subdivision or which is installed by the Eagle View Owner (or predecessor) after approval by the Architectural Control Committee in accordance with the requirements of Article VII hereof. All trees, shrubs and other vegetation to be installed upon such Landscape Easement shall be approved by the Architectural Control Committee prior to installation. The addition to, modification of, or removal of trees and other vegetation, without the prior approval of the Architectural Control Committee, shall be deemed a violation of the requirements of each Eagle View Owner to maintain such areas and the Architectural Control Committee shall have the right to require each Eagle View Owner to restore such area to its prior approved condition at the sole cost of the Eagle View Owner. In the event any Eagle View Owner fails to restore such area as required herein, the Association shall have the right to restore the same and the cost of such restoration together with administrative expenses equal to ten percent of such costs, shall be added to and become part of the Reimbursement Assessment (as set

forth in Section 4.4) to which such Lot is subject. The provisions of this Section relating to the removal of trees and shrubs shall not be applicable or binding upon either of the Declarants with respect to the initial clearing, grading and landscaping of the Property, including the development of Private Streets and the installation of utilities serving the Subdivision.

6.5 Sewer Easement. As more particularly set forth on the Plat, Declarant II shall retain an easement for the installation, repair and maintenance of sanitary sewer lines, drainage facilities and such other sewer facilities as needed to serve the Eagle View Property (the "Sewer Facilities"). Declarant II shall be responsible for installing all of the Sewer Facilities as needed to serve the Eagle View Property. The Association shall be responsible for repairing and maintaining the Sewer Facilities and maintaining all landscaping in connection with the Sewer Easement. Declarant II may, at its option, convey to the Association title to the Sewer Easement, and upon such conveyance the Association agrees to accept title hereto.

6.6 Utility Easements. There is hereby created a blanket easement between Declarants, the Association, and such utility companies as may be designated by the Declarants or the Association upon, across, over and under each area of real property within the Subdivision for ingress to, egress from, and the installation, replacement, repair and maintenance of all utility and service lines and systems, including, but not limited to water, sewer, gas, and electricity as such utilities are installed in connection with the development of the Subdivision. Pursuant to this easement, the Declarants or a providing utility or service company may install and maintain facilities and equipment on the Property and affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of buildings on the Lots. This easement shall not extend under or encroach upon structures built prior to such utilities being installed, and it shall not permit utility installations under slabs or foundations of structures, unless approved by the Owner thereof. Declarants shall have the right to abandon the easement reserved by this Section 6.6, in whole or in part, at any time and without prior notice.

6.7 Pets. No horse, cow, pig, sheep, goat or other animal, bird, fowl, poultry or livestock of any kind shall be maintained on any Lot or Parcel, unless they are generally recognized house or yard pets, and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes ("Permitted Pet"). No Permitted Pet shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of a Permitted Pet shall be maintained so as to be Visible From Neighboring Property, unless approved in advance, in writing, by the Architectural Review Committee. Upon the written request of any Owner, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular animal, bird, fowl, poultry, or livestock is a generally recognized house or yard pet, whether such a pet is a nuisance, and whether the number of animals or birds on any such property is reasonable. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions contained herein.

6.8 Private Streets. The Private Streets shall be improved and used only for the following purposes:

(i) Non-exclusive vehicular and pedestrian access to and from and movement within the Subdivision and to the Adjacent Property, subject to the terms and restrictions set forth herein, space for temporary vehicular parking and provision of utilities for the Subdivision and Adjacent Property.

(ii) Such other uses as shall be determined from time to time by the Board for the benefit of members of the Association, following consultation with the Architectural Control Committee.

6.9. Insurance. No use shall be made of any Living Unit which shall cause the improvements within the Subdivision or other part thereof to be uninsurable against loss by fire or other perils included in insurance contracts, or cause such insurance to be canceled or suspended, or cause any company issuing such insurance to refuse renewal thereof. Each Owner shall be responsible for securing insurance presently known as homeowners special form coverage.

6.10. Machinery and Equipment. No machinery or equipment of any kind shall be placed, used, operated or maintained in or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of a Living Unit or appurtenant structures.

6.11. Maintenance and Repair. No Living Unit, building, structure (including interiors thereof), or landscaping upon any Lot shall be permitted to fall into disrepair and, subject to the requirements herein as to approval by the Architectural Control Committee, each such building, structure, or landscaping at all times shall be kept in good condition and as appropriate, adequately painted or otherwise finished by the Owner. Such obligation shall extend, but shall not be limited, to the painting, repair, replacement and care of roofs, gutters, downspouts, and exterior building surfaces.

6.12. Nuisances. No rubbish or debris of any kind shall be placed or permitted by a Owner upon or adjacent to any Lots, so as to render such Lot or portion thereof unsanitary, unsightly, offensive, or detrimental to other Owners. No Living Unit or Lot shall be used in such a manner as to obstruct or interfere with the enjoyment of occupants of other Living Units or Lots. Without limiting any of the foregoing, no exterior speakers, horns whistles, bells or other sound devices (except security devices used exclusively for security purposes) shall be located or placed on Lots or in Living Units.

6.13. Right of Entry. During reasonable hours, any member of the Architectural Control Committee or any member of the Board, or any officer or authorized representative or any of them, shall have the right to enter upon and inspect any building site or Lot, and the improvements thereof, to ascertain whether or not the provisions of this Declaration and the rules and regulations of the Board or of the Association have been or are being complied with.

6.14. Signs. No signs whatsoever (including, but not limited to, commercial, political and similar signs) which are Visible From Neighboring Property shall be erected or maintained on any Lot except:

- (a) Signs required by legal proceedings.

(b) Identification signs for individual residences which have been approved by the Architectural Review Committee;

(c) Signs (including "for sale" and "for lease" signs) the nature, number, and location of which have been approved in advance and in writing by the Architectural Review Committee.

(d) Signs of builders on any Lot approved from time to time by both Declarants, if both Declarants are Members of the Association, as to number, size, colors, design, message content, location and type.

(e) Such other signs, which are in conformance with the requirements of Box Elder County or the applicable municipality and which have been approved in writing by the Architectural Review Committee as to size, colors, design, message content and location.

6.15. Trash Containers and Collection. All garbage and trash shall be placed and kept in covered containers of a type and style which shall be approved by the Architectural Control Committee. Such containers shall not be Visible From Neighboring Property except to make them available for collection and then only for the shortest time necessary to effect such collection. Each Owner must at all times and at his expense provide garbage cans and plastic liners therefor.

6.16. Enforcement of Land Use Restrictions. The following persons shall have the right to exercise or seek any remedy at law or in equity to enforce strict compliance with this Declaration:

- (a) Any Declarant, so long as it has any interest in any of the Property;
- (b) Any Owner;
- (c) The Board; or
- (d) The Association.

The prevailing party in an action for the enforcement of any provisions of this Declaration shall be entitled to collect court costs and reasonable attorney's fees.

6.17. Development Easements for Declarants and Declarants' Exemption. Nothing contained in this Declaration shall be construed to prevent the erection, construction or maintenance by any Declarant, or its duly authorized agents, or by developers on portions of the Property designated and approved by both of the Declarants, of structures, improvements, sales offices, model units or signs necessary or convenient to the development or sale of property within the Property. Until all Living Units have been sold by the Declarants, there are hereby reserved to each of the Declarants, together with the right to grant and transfer the same to others, including Declarants' sales agents, representatives and assigns, easements and rights upon, across, over, under and through the Property for construction, display (including the use of the Living Units as models), maintenance, sales and exhibit purposes (including the use of signs and other advertising devices) in connection with the erection, remodeling and sale or lease of Living Units within the

Subdivision; provided, however, that no such use by Declarants or their agents shall otherwise restrict Owners in the reasonable use and enjoyment of their Living Units. The Declarants may jointly designate certain Lots or Living Units as sales or administrative offices, and the Declarants jointly shall have the right to transfer the designation of a sales and administrative office from one Lot or Living Unit to another within the Property. The Declarants may also jointly designate and use certain Lots as a parking area or parking lot, and Declarants may jointly allow developers to enjoy similar rights by so providing in writing.

6.18 Recreational Vehicles. No boats, trailers, large trucks and commercial vehicles belonging to Owners or other residents of the Property shall be Visible from Neighboring Property or the building and accessory building envelopes of adjoining property as shown on the Plat, or the Private Streets, and Owners shall use reasonable efforts to conceal all such vehicles. No motor vehicle of any kind shall be repaired, constructed or reconstructed upon any Lot or Private Street that is visible from any Private Street or that is Visible from Neighboring Property, except emergency repairs to vehicles. Any motor or recreational vehicle must be kept in an enclosed garage.

## ARTICLE VII

### Architectural Control

7.1. Architectural Control Committee. The Board shall appoint a three-member Architectural Control Committee, the function of which shall be to insure that all improvements and landscaping within the Property harmonize with existing surroundings and structures. The Board may decide, in its discretion, to serve as the Architectural Control Committee. The Architectural Control Committee need not be composed of Owners. The initial members of the Architectural Control Committee shall be Matt Petersen, Craig Wood, and Curtis Bashaw.

7.2. Submission to Architectural Control Committee. No Living Unit, accessory building or structure or addition to a Living Unit and no landscape additions and changes shall be constructed or maintained, and no alteration, repainting, or refurbishing of the exterior of any Living Unit, nor of any court enclosure, except as herein otherwise mentioned, shall be performed, unless complete plans and specifications therefor have first been submitted to and approved by the Architectural Control Committee. All such plans and specifications shall be consistent with architectural guidelines which shall be from time to time adopted by the Board.

7.3. Standard. In deciding whether to approve or disapprove plans and specifications submitted to it, the Architectural Control Committee shall use its best judgment to insure that all improvements, construction, landscaping and alterations on Lots within the Property conform to and harmonize with existing surroundings and structures and that such proposed improvements enhance the value and aesthetics of the Subdivision.

7.4. Approval Procedure. Any plans and specifications submitted to the Architectural Control Committee shall be submitted on a form provided by the Architectural Control Committee and in triplicate. A preliminary review of design drawings will be required with a final review to be made of working drawings. Upon completion of each review, one set of plans will be retained by the Association, one set will be retained by the reviewing architect (if any) and the remaining set of plans will be returned to the Owner. The architectural review fees (made payable to the

Association) are required with the submittal of plans and specifications and shall not exceed \$500.00 for architectural, landscaping, fencing and lighting drawings. The Architectural Control Committee may, in the exercise of its reasonable discretion, modify the architectural review fees from time to time. All plans and specifications shall be approved or disapproved in writing within thirty days after submission. The decision of a majority of the Architectural Control Committee on any matter shall be deemed the decision of the Architectural Control Committee. In the event the Architectural Control Committee fails to take any action within such period it shall be deemed to have approved the material submitted.

7.5. Bond/Security Deposit. The Architectural Control Committee will require that each Owner post a bond, cash security deposit or irrevocable letter of credit in a form satisfactory to the Architectural Control Committee, in an amount not to exceed \$5,000.00, in favor of the Association, as a condition to approving any proposed work or improvement. No person shall commence any work or improvement until any and all such bonds, security deposits and letters or credit have been properly posted with the Architectural Control Committee. The deposit is intended to assure the proper clean-up of dirt and debris and the repair of any damage to the landscaping, streets or other property within the Subdivision, caused by the Owner or his agents in the construction of improvements.

7.6. Address for Submittal. Plans and specifications for the construction and installation of any and all improvements within the Subdivision shall be submitted and approved by the Architectural Control Committee (prior to submittal to any required governmental agency) at the following address, or at such other address as may be designated from time to time by the Architectural Control Committee:

416 East 850 South  
Brigham City, Utah 84302

7.7. Construction.

(a) Once begun, any improvements, construction, landscaping, or alterations approved by the Committee shall be diligently prosecuted to completion: The construction of all structures on any Lot shall be completed within a period of eighteen months following commencement of construction, unless the Architectural Control Committee, in its sole discretion, extends said period by written notice.

(b) Owners and builders shall clean up all trash and debris on the construction site at the end of each week. Trash and debris shall be removed from each construction site at least once a week to a dumping location off-site of the Subdivision. Lightweight material, packaging and other items shall be covered or weighted down to prevent wind from blowing such materials off the construction site. Owners and builders are prohibited from dumping, burying or burning trash anywhere on the Subdivision. During the construction period, each construction site shall be kept neat and debris shall be promptly removed from the Public Streets, Lots, open spaces and driveways.

(c) Each Owner and builder shall be responsible for providing adequate sanitary facilities for his construction personnel. Portable toilets or similar temporary toilet

facilities shall be located only on the site itself in areas approved by the Architectural Control Committee, and shall not be Visible From Neighboring Property.

(d) Construction crews shall not park on, or otherwise use, other Lots or any open space. All construction vehicles and machinery shall be parked only in areas designated by the Architectural Control Committee.

7.8. Liability for Damages. The Architectural Control Committee shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by it with respect to any request made pursuant to this Article VII. The Architectural Control Committee shall have no liability or responsibility for any representations made to any Owner or prospective owner by any third parties.

7.9. Construction Exception for Declarants. Notwithstanding anything in this Declaration to the contrary, each of the Declarants shall have the right, without any approval from the Association, the Architectural Control Committee, or Owners to complete construction of any and all of the Living Units and Common Area improvements. Further, the provisions of this Article VII shall not apply to any alteration which is carried out by any Declarant on the Property and which occurs at any time during the seven year period following the date on which this Declaration is filed for record in the office of the County Recorder of Box Elder County, Utah.

7.10. Variance. The Architectural Control Committee may, in its discretion, grant variances from the restrictions set forth herein, provided that the party requesting such variance obtains all necessary permits and variances, if any, from any governmental authority having jurisdiction thereof.

## ARTICLE VIII

### Rights of Mortgagees

8.1 Notices of Mortgagees. A Mortgagee shall not be entitled to receive any notice which this Declaration requires the Association to deliver to Mortgagees for notice, approval or consent regarding a proposed action or otherwise, unless and until such Mortgagee, or its mortgage servicing contractor, has delivered to the Association a written notice stating that such Mortgagee is the holder of a loan encumbering any part of the real property within the Subdivision and setting forth the information described in Section 8.6. Notwithstanding the foregoing, if any right of a Mortgagee under this Declaration is conditioned on a specific written request to the Association, in addition to having delivered the notice provided in this Section a Mortgagee must also make such request in writing delivered to the Association. Except as provided in this Section, a Mortgagee's rights pursuant to this Declaration, including, without limitation, the priority of any mortgage lien over the lien of Assessments levied by the Association hereunder shall not be affected by the failure to deliver a notice or request to the Association.

8.2 Priority of Mortgagees. No breach of the Restrictions herein contained, nor the enforcement of any lien provision herein, shall affect, impair, defeat or render invalid the lien or charge of any Mortgagee made in good faith and for value encumbering any part of real property

within the Subdivision, but all of said Restrictions shall be binding upon and effective against any Owner whose title to a Unit is derived through foreclosure or trustee's sale, or otherwise.

### 8.3 Relationship with Assessment Liens.

(a) The lien provided for in Article 4 for the payment of Assessments shall be subordinate to the lien of any Mortgagee which was recorded prior to the date any such Assessment becomes due.

(b) If any Unit which is subject to a monetary lien created by this Declaration is also subject to the lien of a Mortgagee, then: (i) the foreclosure of any lien created by this Declaration shall not operate to affect or impair the lien of such Mortgagee; and (ii) the foreclosure of the lien of a Mortgagee or the sale under a power of sale included in a mortgage or deed of trust shall not operate to affect or impair the lien hereof, except that any person who obtains an interest thereafter shall take title free of any lien created by this Declaration for any Assessments which became due after the recordation of the mortgage or deed of trust, or any personal obligation for such charges, but such person shall remain subject to the lien hereof for all charges that shall accrue subsequent to such foreclosure.

(c) Without limiting the provisions of subsection (b) of this Section, any Mortgagee who obtains title to a Unit by reason of any foreclosure, or deed or assignment in lieu of foreclosure, or any Person who obtains title at a private or judicial foreclosure sale, shall take title to such Unit free of any lien or claim for unpaid Assessments against such Unit which accrued prior to the time such Mortgagee or purchaser takes title to such Unit, except for liens or claims for a share of such Assessments resulting from a pro rata reallocation of such Assessments to all Lots including the mortgaged Lot.

(d) Nothing in this Section shall be construed as releasing any Person from his personal obligation to pay for any Assessments levied pursuant to this Declaration during the period such Person is an Owner.

8.4 Required Mortgagee Approval. Except upon the prior written approval of sixty-seven percent (67%) of all Mortgagees (based on one vote for each Mortgagee) which have provided notice to the Association as described in Section 8.1 and Section 8.6, based on one vote for each Lot encumbered by a loan, neither the Association nor the Board shall be entitled by action or inaction to do any of the following:

(a) Except as specifically provided by this Declaration, amend any provisions governing the following:

(i) voting rights;

(ii) increases in Assessments that raise the previously assessed amount by more than twenty-five percent (25%), Assessment liens, or the priority of Assessment liens;

(iii) reductions in reserves for maintenance, repair and replacement of Common Areas;

- (iv) responsibility for maintenance and repairs;
- (v) reallocation of interests in the Common Areas, or rights to their use;
- (vi) redefinition of any Lot boundaries;
- (vii) hazard or fidelity insurance requirements;
- (viii) convertibility of Living Units into Common Areas or vice versa;
- (ix) expansion or contraction of the Subdivision, or the addition, annexation, or withdrawal of property to or from the Subdivision;
- (x) imposition of any restrictions on the leasing of Units;
- (xi) imposition of any restrictions on an Owner's right to sell or transfer his or her Unit;
- (xii) restoration or repair of the Subdivision (after damage or partial condemnation) in a manner other than that specified in the Declaration, Articles of Incorporation or Bylaws;
- (xiii) any provision that expressly benefits Mortgagees (including their insurers or guarantors).

Any Mortgagee who receives, by certified or registered mail, a written request, with a return receipt requested, to approve a change and who does not return a negative response within thirty (30) days shall be deemed to have approved such request.

8.5 Other Rights of Mortgagees. Any Mortgagee (and such Mortgagee's insurer or guarantor) shall, upon written request to the Association, be entitled:

(a) To inspect current copies of this Declaration (and any amendments), the Association's Articles, Bylaws, Association Rules, and other books and records of the Association during normal business hours; and

(b) To receive an annual financial statement of the Association within ninety (90) days following the end of the Association's fiscal year.

8.6 Notices of Action. Upon written request to the Association identifying the name and address of the Mortgagee (and the name and address of the Mortgagee's insurer or guarantor, if desired) and the Living Unit Number or address, any such Mortgagee (or any such insurer or guarantor) will be entitled to timely written notice of:

(a) Any condemnation or casualty loss which affects a material portion of the Property or any Lot on which there is a first lien held by such Mortgagee;

(b) Any delinquency in the payment of Assessments or charges owed by an Owner of a Living Unit subject to the lien of a Mortgagee, which remains uncured for a period of sixty (60) days;

(c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and

(d) Any proposed action by the Owners or the Association which would amount to a material change in the Declaration as identified in Section 8.4 hereof.

#### 8.7 Right to Cure.

(a) Any Mortgagee shall be entitled to cure any delinquency of the Owner of the Living Unit encumbered by a lien of said Mortgagee in the payment of Assessments of which the Mortgagee has received notice under Section 8.6(b) above. In that event, the Mortgagee shall be entitled to obtain a release from the lien imposed or perfected by reason of such delinquency.

(b) Any bank or other lending institution that has a lien on all or a portion of the Common Areas may pay taxes or other charges which are in default and which may or have become a charge against all or any portion of the Common Areas, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Areas. Should such a bank or other lending institution make such a payment, it shall be owed immediate reimbursement from the Association.

### SECTION IX

#### Amendments

9.1. Amendments by Declarants Prior to First Sale. Except as provided elsewhere in this Declaration, prior to the conveyance of the first Lot to an Owner other than Declarant I or Declarant II, this Declaration and any amendments thereto may be amended or revoked by the execution by both of the Declarants of an instrument amending or revoking the same.

9.2. Amendments by Declarants After First Sale. Except as provided elsewhere in this Declaration, both Declarants (without obtaining the approval of Owners, the Association, or existing Mortgagees) may jointly amend or modify this Declaration in the exercise of their rights set forth in this Declaration. Also, notwithstanding anything herein to the contrary, both Declarants jointly shall have the right (without obtaining the approval of the Owners, the Association, or existing Mortgagees) to amend this Declaration until the Turnover Date (as defined in Section 2.2 of the Declaration), if such amendment is required solely: (a) to comply with applicable law or to correct any error or inconsistency of the Declaration and if such amendment does not adversely affect the rights of any Owner or Mortgagee, or (b) to comply with the rules or guidelines, in effect from time to time, of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments (including, without limitation, the Veterans Administration, Federal Housing Administration, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or any similar agency). If such amendment bears recitation that it is recorded based on such technical error or the requirements of any of the foregoing agencies, such amendment shall not require approval of any Owners or Mortgagees.

9.3. General Amendment Requirements. Except as permitted by Section 9.1, Section 9.2, and subject to the provisions of Section 8 hereof, any amendment hereto shall require (i) the affirmative vote of at least two-thirds of all Class A membership votes, which Members are present in person or represented by proxy and are entitled to cast at a meeting duly called for such purpose; and (ii) so long as the Class B membership exists, the written consent of both Declarants, so long as both Declarants are Members of the Association; or if only one Declarant is a Member of the Association, the written consent of such Declarant. Without limiting the generality of the foregoing, no amendment to Section 3.2 hereof may be made without the written consent of both Declarants, so long as both Declarants are Members of the Association; or, so long only one Declarant is a Member of the Association, of such Declarant. Written notice setting forth the purpose of the meeting and the substance of the amendment proposed shall be sent to all Members at least ten but not more than thirty days prior to the meeting date. Prior to the Turnover Date, this Declaration shall not be amended without prior written consent of both Declarants.

9.4. Protection of Declarants' Rights. An amendment shall not terminate or decrease any unexpired development rights of any Declarant or period of control of any Declarant unless such Declarant approves or consents in writing.

9.5. Execution of Amendments. Any amendment authorized pursuant to this Declaration shall be accomplished through the recordation of an instrument executed by the Board and by the Declarants if the Class B Membership then exists. In such instrument the Board shall certify that the vote required by this Section for amendment has occurred. An amendment or revocation which only requires the execution of an instrument by Declarants as hereinabove provided shall be effective when executed by both Declarants and when recorded in the office of the County Recorder of Box Elder County, Utah. An amendment which requires the affirmative written assent or vote of the Owners, as hereinabove provided shall be effective when executed by the Board, who shall certify that the amendment has been so approved, and the Declarants, if the Declarants' consent is also required, and when the amendment has been recorded in the office of the County Recorder of Box Elder County, Utah.

9.6. Mortgagees' Approval. Subject to the foregoing, any provision of this Declaration which expressly requires the approval of a specified percentage of the Mortgagees for action to be taken under said provision can be amended only with the affirmative written consent or vote of not less than the same percentage of the Mortgagees; provided that in the event approval is requested in writing from a Mortgagee with respect to a proposed amendment and a negative response is not returned within thirty (30) days following the mortgagee's receipt of the request, by certified or registered mail, with a return receipt requested, the mortgagee shall be deemed to have approved the proposed amendment.

## SECTION X

### Miscellaneous

10.1. Notices. Any notice required or permitted to be given to any Owner or Member under the provisions of this Declaration shall be deemed to have been properly furnished if mailed, postage prepaid, to the person who appears as a Member or Owner, at the latest address for such person appearing in the records of the Association at the time of mailing.

10.2. Consent in Lieu of Voting. In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Members entitled to cast at least the stated percentage of all membership votes outstanding in connection with the Class of membership considered. The following additional provisions shall govern any application of this Section 10.2:

(a) All necessary consents must be obtained prior to the expiration of ninety days after the first consent is given by any Member.

(b) The total number of votes required for authorization or approval under this Section shall be determined as of the date on which the last consent is signed.

(c) Except as provided in the following sentence, any change in ownership of a Lot which occurs after consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose. A change in ownership which would otherwise result in an increase in the total number of Class A votes outstanding shall, however, be effective in that regard and shall entitle the new Owner to give or withhold his consent.

(d) Unless the consent of all Members whose memberships are appurtenant to the same Lot are obtained, the consent of none of such Members shall be effective.

10.3. Declarants' Rights Assignable. All or any portion of the rights of any Declarant under this Declaration or in any way relating to the Property may be assigned.

10.4. Dissolution. Subject to the restrictions set forth in Article VIII of this Declaration pertaining to mortgagee protection, the Association may be dissolved by the affirmative assent in writing of two-thirds of the votes of each class of membership. Upon dissolution of the Association all of its assets may be dedicated or transferred to an appropriate public agency or authority to be used for purposes similar to those provided for in this Declaration. In the event such dedication or transfer is not made or is not accepted, the Association's assets shall be transferred to a non-profit corporation, trust, or other entity to be used for such similar purposes, and each Owner shall continue to be obligated to make assessment payments for the maintenance and upkeep of the Private Streets, the Sewer Easement and the Utility Easements, on a pro rata basis which conforms substantially with the assessment procedure, terms and conditions set forth in Article IV of this Declaration.

10.5. Declarants' Covenant to Construct Common Areas. Declarants hereby covenant to construct and complete all Private Streets, indicated on the Plat within two years of the filing of this Declaration in the office of the County Recorder of Box Elder County, Utah.

10.6. Enforcement by County. If the Association fails to maintain the Private Streets, Box Elder County shall have the right, but not the obligation, upon giving the Association thirty days notice in writing, to perform the necessary maintenance and management with the same right

to lien the Lots and collect the costs thereof against the Owners as the Association has under this Declaration.

10.7. Interpretation. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall not affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include the other gender. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

10.8. Incorporation. At any time the Board may, at its discretion, incorporate the Association as a non-profit corporation, and may execute and file such documents and instruments as are necessary in connection therewith.

10.9. Effective Date. This Declaration and any amendment hereof shall take effect upon its being filed for record in the office of the County Recorder of Box Elder County, Utah.

10.10. Lease Provision. Any Owner may lease his Lot and such buildings as are situated thereon; provided, however, that any lease agreement between a Owner and a Lessee must be in writing, and must provide, among other things, that:

(a) The terms of the lease shall in all respects be subject to the provisions of this Declaration; and

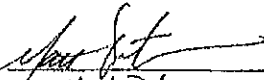
(b) Any failure by the Lessee to comply with the terms of such documents shall constitute a default under the lease.

10.11. Assignment. Upon the assignment from any Declarant, at its sole option, to the Association, of such Declarant's rights and obligations hereunder, such Declarant thereafter shall be relieved from any further liability or obligation hereunder.

IN WITNESS WHEREOF, Declarants have executed this Declaration as of this 3rd day of July, 2001.

**DECLARANT I:**

**EAGLE CREST REALTY COMPANY, L.L.C.,**  
a Utah limited liability company

By:   
Name: Matt Petersen  
Its: Manager

**DECLARANT II:**

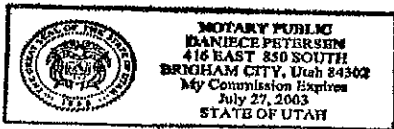
EAGLE VIEW REALTY COMPANY, L.L.C.,  
a Utah limited liability company

By: [Signature]  
Name: Matt Petersen  
Its: Manager

STATE OF Utah )  
 ) ss.  
COUNTY OF Box Elder )

On this, the 3rd day of July, 2001, before me, the undersigned officer, personally appeared Matt Petersen the manager of EAGLE CREST REALTY COMPANY, L.L.C., a Utah limited liability company, and that he, being authorized so to do, executed the foregoing instrument for the purpose therein contained and in the capacity therein stated.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

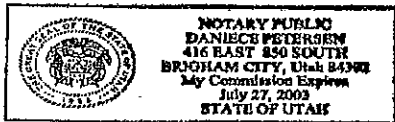


[Signature]  
Notary Public

STATE OF Utah )  
 ) ss.  
COUNTY OF Box Elder )

On this, the 3rd day of July, 2001, before me, the undersigned officer, personally appeared Matt Petersen the manager of EAGLE VIEW REALTY COMPANY, L.L.C., a Utah limited liability company, and that he, being authorized so to do, executed the foregoing instrument for the purpose therein contained and in the capacity therein stated.

IN WITNESS WHEREOF I hereunto set my hand and official seal.



[Signature]  
Notary Public

EXHIBIT "A"

Legal Description of Eagle Crest Property

A PART OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 9 NORTH, RANGE 2 WEST, OF THE SALT LAKE BASE AND MERIDIAN.

BEGINNING AT A POINT ON THE NORTH LINE OF 950 SOUTH STREET, SAID POINT OF BEGINNING LOCATED S 89°46'00" E 181.25 FEET ALONG THE CENTERLINE OF 950 SOUTH STREET AND N 00°14'00" E 30.00 FEET FROM A MONUMENT MARKING THE CENTERLINE INTERSECTION OF 500 EAST STREET AND 950 SOUTH STREET IN BRIGHAM INTERMOUNTAIN DEVELOPMENT, PLAT B, SAID POINT OF BEGINNING ALSO LOCATED N 00°14'00" E 60.00 FEET AND N 89°46'00" W 252.58' ALONG THE NORTH LINE OF 950 SOUTH STREET FROM THE SW CORNER OF EAGLECREST TOWNHOMES, A PLANNED RESIDENTIAL UNIT DEVELOPMENT, SAID POINT OF BEGINNING ALSO LOCATED S 00°00'00" W 1821.99' AND N 89°46'00" W 252.58' ALONG THE NORTH LINE OF 950 SOUTH STREET FROM THE NORTHEAST CORNER OF SAID SECTION 25;

AND RUNNING THENCE N 89°46'00" E 95.00 FEET ALONG THE NORTH LINE OF 950 SOUTH STREET; THENCE 39.27 FEET ALONG THE ARC OF A 25.00 FOOT RADIUS CURVE TO THE RIGHT, LONG CHORD BEARS N 44°48'00" W 35.36 FEET; THENCE N 00°14'00" E 373.51 FEET ALONG THE EAST LINE OF 500 EAST STREET; THENCE S 89°46'00" E 39.02 FEET; THENCE S 39°46'00" E 125.98 FEET; THENCE S 00°14'00" W 300.00 FEET TO THE POINT OF BEGINNING. CONTAINING 1.00 ACRES AND 6 LOTS.

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A PART OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 9 NORTH, RANGE 2 WEST, S.L.B. & M.

BEGINNING AT A POINT LOCATED S 88°24'04" E 2.00 FEET FROM THE SOUTHEAST CORNER OF LOT 33, PARTIAL AMENDMENT TO BRIGHAM INTERMOUNTAIN DEVELOPMENT PLAT A, SAID POINT OF BEGINNING LOCATED ON THE EAST LINE OF SAID PARTIAL AMENDMENT TO BRIGHAM INTERMOUNTAIN DEVELOPMENT PLAT 1; AND RUNNING THENCE S 00°14' W 820.43 FEET ALONG THE EAST LINE OF SAID PARTIAL AMENDMENT TO BRIGHAM INTERMOUNTAIN DEVELOPMENT PLAT A TO THE NORTH LINE OF 850 SOUTH STREET; THENCE ALONG SAID NORTH LINE OF 850 SOUTH STREET N 89°46'00" W 208.77 FEET; THENCE NORTHWESTERLY ALONG THE ARC OF 30 FOOT RADIUS CURVE TO THE RIGHT 46.38 FEET (CHORD BEARS N 45°28'37" W 41.90 FEET); THENCE NORTHERLY ALONG THE ARC OF A 294.16 FOOT RADIUS CURVE TO THE RIGHT A DISTANCE OF 7.34 FEET (CHORD BEARS N 0°28'22" W 7.34 FEET); THENCE ALONG THE EAST LINE OF 400 EAST N 0°14'30" E 623.69 FEET; THENCE NORTHEASTERLY ALONG THE ARC OF A 175.31 FOOT RADIUS CURVE TO THE RIGHT A DISTANCE OF 141.84 FEET (CHORD BEARS N 25°25'13" E); THENCE NORTHEASTERLY ALONG THE ARC OF A 230.00 FOOT RADIUS CURVE TO THE LEFT A DISTANCE OF 48.54 FEET (CHORD BEARS N 40°33'09" E 48.45 FEET) TO THE SOUTHWEST CORNER OF LOT 33 OF PARTIAL AMENDMENT TO BRIGHAM INTERMOUNTAIN DEVELOPMENT PLAT A; THENCE ALONG THE SOUTH LINE OF SAID LOT 33 S 88°24'04" E 153.12 FEET TOT HE POINT OF BEGINNING. CONTAINING 4.40 ACRES AND 34 LOTS.

BASIS OF BEARING IS THE CENTERLINE OF 700 SOUTH FROM MAIN STREET TO 400 EAST STREET WHICH BEARS S 88°24'04" E AND THAT STRAIGHT SECTION OF 400 EAST STREET WHICH LIES BETWEEN 750 SOUTH STREET AND 850 SOUTH STREET WHICH BEARS S 0°14'30" W.

**EXHIBIT "B"****Legal Description of Eagle View Property**

That certain real property located in Box Elder County, Utah, and more particularly described as follows:

A PART OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 9 NORTH, RANGE 2 WEST, OF THE SALT LAKE BASE AND MERIDIAN.

BEGINNING AT A POINT ON THE WEST LINE OF 500 EAST STREET, SAID POINT OF BEGINNING LOCATED SOUTH 00°00'00" WEST 1884.04 FEET AND SOUTH 90°00'00" WEST 354.91 FEET FROM THE NORTHEAST CORNER OF SAID SECTION 25;  
AND RUNNING THENCE NORTHWESTERLY TO THE LEFT ALONG THE ARC OF A 10.54 RADIUS CURVE A DISTANCE OF 12.24 FEET, CHORD BEARS NORTH 16°43'19" WEST 11.57 FEET; THENCE NORTH WESTERLY TO THE LEFT ALONG THE ARC OF A 39.00 FOOT RADIUS CURVE A DISTANCE OF 22.85 FEET, CHORD BEARS NORTH 72°59'01" WEST 22.52 FEET; THENCE SOUTH 89°46'00" WEST 279.99 FEET TO THE EAST LINE OF 450 EAST STREET; THENCE ALONG SAID EAST LINE THE FOLLOWING FOUR COURSES: NORTH 00°14'00" EAST 76.22 FEET; TO THE RIGHT ALONG THE ARC OF A 289.06 FOOT RADIUS CURVE A DISTANCE OF 90.81 FEET, CHORD BEARS NORTH 09°14'01" EAST 90.43 FEET; TO THE LEFT ALONG THE ARC OF A 345.00 FOOT RADIUS CURVE A DISTANCE OF 108.38 FEET, CHORD BEARS NORTH 09°14'02" EAST 107.94 FEET; NORTH 00°14'00" EAST 74.50 FEET; THENCE NORTHEASTERLY TO THE RIGHT ALONG THE ARC OF A 25.00 FOOT RADIUS CURVE A DISTANCE OF 39.77 FEET, CHORD BEARS NORTH 44°39'30" EAST 35.71 FEET; THENCE ALONG THE SOUTH LINE OF 900 SOUTH STREET SOUTH 89°46'00" EAST 271.13 FEET; THENCE TO THE RIGHT ALONG THE ARC OF A 25.00 FOOT RADIUS CURVE A DISTANCE OF 39.27 FEET, CHORD BEARS SOUTH 44°46'00" EAST 35.36 FEET; THENCE ALONG THE WEST LINE OF 500 EAST STREET THE FOLLOWING THREE COURSES: SOUTH 00°14'00" WEST 276.31 FEET; TO THE LEFT ALONG THE ARC OF A 76.35 FOOT RADIUS CURVE A DISTANCE OF 59.56 FEET, CHORD BEARS SOUTH 22°34'47" WEST 58.06 FEET; TO THE RIGHT ALONG THE ARC OF A 136.23 FOOT RADIUS CURVE A DISTANCE OF 43.21 FEET, CHORD BEARS SOUTH 36°19'11" WEST 43.03 FEET TO THE POINT OF BEGINNING. CONTAINING 2.843 ACRES AND 20 LOTS.

BASIS OF BEARING IN THE CENTERLINE OF 700 SOUTH FROM MAIN STREET TO 400 EAST WHICH BEARS S 88°24'04" E AND THE CENTERLINE OF 900 SOUTH STREET BETWEEN 450 EAST AND 500 EAST STREETS WHICH BEARS S 89°46'00" E.

**BYLAWS  
OF  
EAGLE CREST SINGLE FAMILY HOMES ASSOCIATION**

**1. ARTICLES OF INCORPORATION**

1.1. Articles. Any reference herein made to this Association's Articles will be deemed to refer to its Articles of Incorporation and all amendments thereto at any given time on file with the Utah Division of Corporations and Commercial Code, together with any and all certificates theretofore filed by the corporation with the Utah Division of Corporations and Commercial Code.

1.2. Seniority. The Articles will in all respects be considered senior and superior to these Bylaws with any inconsistency to be resolved in favor of the Articles, and with these Bylaws to be deemed automatically amended from time to time to eliminate any such inconsistency which may then exist.

**2. DECLARATION**

2.1. Declaration. Reference is made to that certain DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS for Eagle Crest Single Family Homes Planned Unit Development, recorded in the official records of the County Recorder of Box Elder County, Utah (the "Declaration"). All capitalized terms as used in these Bylaws shall have the same meanings as set forth in the Declaration. The Declaration, as it may be amended or supplemented from time to time, is incorporated herein by reference.

**3. MEMBERSHIP**

3.1. Annual Meetings. Each annual meeting of the Owners shall be held in Brigham City, Utah, on the first Tuesday of February of each year at the principal office of the Association, or on such other day during the first calendar quarter of each year and/or at such other place as may be fixed by the Board of Directors and set out in the notice of the meeting; provided, however, that whenever such date falls on a legal holiday, the meeting shall be held on the next succeeding business day. Notwithstanding the requirement for an annual meeting of the Owners, the Board of Directors may be elected by mail ballot.

3.2. Special Meetings. Special meetings of the Owners may be held at such places and at such times as may be fixed by the Board of Directors whenever called in writing by the President, a majority of the Board of Directors or by the Owners holding twenty percent (20%) or more of the total votes entitled to be cast by all Owners.

3.3. Notices. Each member of the corporation shall be notified by the Secretary by written notice not less than ten (10) days nor more than sixty (60) days before the date of the annual meeting, stating the place, day and hour of the meeting. Special meetings may be called in like manner after ten (10) days' notice, but any such notice also shall designate the

purpose of the meeting and the items on the agenda (including the general nature of any proposed amendment to the Declaration, Articles, or Bylaws, and any proposal to remove a director or officer). Notices may be hand-delivered or sent prepaid by United States Mail. In all such cases the date of hand-delivery or the date of mailing of the notices shall be considered the date such notices were given. Notices need only be given to Owners appearing as such on the books of the Association at the time of the delivery or mailing of the notices.

3.4. Waiver. No call or notice of any meeting of the Owners shall be necessary if waiver of call and notice is signed by all the Owners pursuant to Section 16-6-32 of the Utah Code Annotated, or any amendment thereto. Attendance by any Owner at a meeting shall constitute a waiver of notice to said meeting.

3.5. Quorum. At any regular or special meeting of the Owners, the Owners holding more than twenty-five per cent (25%) of the total votes, represented in person or by proxy, entitled to be cast by all members shall constitute a quorum for the transaction of business. A quorum shall be necessary to elect directors and transact any other business. In the absence of a quorum, a majority of the Owners present, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At any such adjourned meeting at which a quorum shall be present any business may be transacted which might have been transacted at the meeting as originally notified.

3.6. Qualification. Membership shall be limited to every Owner. The foregoing does not include persons or entities who hold an interest merely as security for the performance of an obligation.

3.7. Voting. The Association shall have two (2) classes of voting membership.

Class A. Class A Members shall be all Owners (including the Declarants, after the Turnover Date). Class A Members shall be entitled to one (1) vote for each Lot owned. Fractional votes shall not be allowed.

Class B. The Class B Members shall be the Declarants, who each shall be entitled to three (3) votes for each of their Lots they respectively own. The Declarants, as Class B Members, shall have the right to control the Association to the extent of having the exclusive right (either directly or through a person designated by both of the Declarants) to elect, appoint and remove the members of the Board and the officers of the Association until the Turnover Date (as hereinafter defined). The special control rights of the Declarants, as Class B Members, shall cease and terminate upon the earlier of the following (the "Turnover Date"):

- (a) The date ninety (90) days after the conveyance by the Declarants of seventy-five percent (75%) of the Lots to Owners (other than Declarants or an affiliate of any Declarant);
- (b) The date four (4) years after the Declarants (or any successors) have ceased to offer Lots for sale in the ordinary course of business;

- (c) The date which is the third (3rd) anniversary of the first conveyance of any Lot, by any Declarant to an Owner other than Declarant I or Declarant II; or
- (d) Both Declarants (as long as two Declarants are Class B Members) notify the Board in writing that the Class B is extinguished.

Upon the Turnover Date, the Declarants shall retain the voting rights of Class A Members even though the special voting and control rights of the Class B Members have ceased and terminated. The Declarants, in the case when two Declarants are Members, or one Declarant, in the case when only one Declarant is a Member, may voluntarily surrender the right to elect, appoint and remove the members of the Board and the officers prior to the Turnover Date, but, in that event Declarants, or Declarant, as the case may be, may require that specified actions of the Association or the Board taken prior to the Turnover Date, as described in a recorded instrument executed by Declarants, be approved by both Declarants, as long as two Declarants are Members, or by one Declarant, as long as there is one Declarant, before they become effective. Upon the Turnover Date, the process of transferring control of the Association from the Declarants (or Declarant, if only one Declarant remains a Member of the Association) to the Owners shall commence and be completed within a reasonable period of time. This process shall include the Owners' election of the Board of Directors and shall be considered completed on the date of the initial meeting of the Board of Directors elected by the Owners. The Owners' election of the initial Board of Directors may be conducted at a regular or special meeting of the Association or by a mailed balloting procedure, within thirty (30) days following the Turnover Date.

3.8. Proxies. Any Owner entitled to vote may vote by proxy at any meeting of the members (and at any adjournment thereof) which is specified in such proxy, provided that his or her proxy is executed in writing by such Owner or his or her duly authorized attorney in fact. No proxy shall be valid after twelve (12) months from the date of its execution, unless such proxy specifically provides that it is coupled with an interest and is irrevocable. The burden of proving the validity of any undated, irrevocable or otherwise contested proxy at a meeting of the Owners will rest with the person seeking to exercise the same. A telegram or cablegram appearing to have been transmitted by an Owner or by his duly authorized attorney in fact may be accepted as a sufficiently written and executed proxy.

3.9. Election Inspectors. The Board, in advance of any meeting of the Owners, may appoint an election inspector or inspectors to act at such meeting (and at any adjournment thereof). If an election inspector or inspectors are not so appointed, the chairman of the meeting may, or upon request of any person entitled to vote at the meeting will, make such appointment. If any person appointed as an inspector fails to appear or to act, a substitute may be appointed by the chairman of the meeting. If appointed, the election inspector or inspectors (acting through a majority of them if there be more than one) will determine the Owners entitled to vote, the authenticity, validity and effect of proxies and the number of Owners represented at the meeting in person and by proxy; they will receive and count votes, ballots and consents and announce the results thereof; they will hear and determine all challenges and questions pertaining to proxies and voting; and, in general, they will perform such acts as may be proper to conduct elections and voting with complete fairness to all Owners.

3.10. Organization and Conduct of Meetings. Each meeting of the Owners will be called to order and thereafter chaired by the chairman of the Board if there is one; or, if not, or if the chairman of the Board is absent or so requests, then by the President; or if both the chairman of the Board and the President are unavailable, then by such other officer of the Association or such Owner as may be appointed by the board of directors. The Association's secretary will act as secretary of each meeting of the Owners; in his or her absence the chairman of the meeting may appoint any person (whether an Owner or not) to act as secretary for the meeting. After calling a meeting to order, the chairman thereof may require the registration of all Owners intending to vote in person and the filing of all proxies with the election inspector or inspectors, if one or more have been appointed (or, if not, with the secretary of the meeting). After the announced time for such filing of proxies has ended, no further proxies or changes, substitutions or revocations of proxies will be accepted. If directors are to be elected, a tabulation of the proxies so filed will, if any person entitled to vote in such election so requests, be announced at the meeting (or adjournment thereof) prior to the closing of election polls. Absent a showing of bad faith on his part, the chairman of a meeting will, among other things, have absolute authority to fix the period of time allowed for the registration of Owners and the filing of proxies, to determine the order of business to be conducted at such meeting and to establish reasonable rules for expediting the business of the meeting (including any informal or question and answer portions thereof).

3.11. Irregularities. All informalities and/or irregularities in calls, notices of meetings and in the manner of voting, credentials, and methods of ascertaining those present shall be deemed waived if no objection is made at the meeting.

#### 4. DIRECTORS

4.1. Management. The control and management of the Planned Unit Development, affairs and business of the Association shall be vested in a Board of Directors of not less than three (3) nor more than five (5) members. Except for Board members jointly designated by Declarants, each Director shall be an Owner or spouse of an Owner (or if an Owner is a corporation, director, partnership, or trust, a Director may be an officer, partner, trustee or beneficiary of such Owner). Until the Turnover Date, the Board of Directors shall consist of three (3) members, all of whom the Declarants shall jointly appoint, remove, and replace at such times as both Declarants deem fit to do so. Within a reasonable time following the Turnover Date, the Board shall call a special meeting at which the voting members shall elect not less than three (3) nor more than five (5) Directors, or the Board shall conduct the election by mail ballot. The majority of the Directors first elected following the Turnover Date shall be elected to serve a term of two (2) years, and a minimum of one (1) of the Directors shall be elected to serve a term of one (1) year. Upon the expiration of the initial term of office of each such Director elected subsequent to the Turnover Date, a successor shall be elected to serve a term of two (2) years. Thereafter, all Directors shall be elected to serve two (2) year terms. The Board of Directors will have the power to increase or decrease its size within the aforesaid limits and to fill any vacancies which may occur in its membership, whether resulting from an increase in the size of the Board or otherwise, and such appointed Board members shall hold office until the next annual meeting of the Owners.

4.2. Powers and Duties. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law, the Declaration, the Articles or these Bylaws directed to be exercised and done by the Owners. The powers of the Board of Directors shall include but not be limited to the following:

- (a) To provide the necessary management and accounting and other services required in connection with operation and maintenance of the Planned Unit Development;
- (b) To enforce liens against Units in the event of default by an Owner in payment of money under the Declaration, and to enforce any other provisions thereof;
- (c) To authorize in their discretion refunds of excess Assessments; and
- (d) To enforce such Association Rules pertaining to use and occupancy of the Units, Common Areas, the Private Roads, and the Sewer Easement, as may be adopted by the Association and which are consistent with these Bylaws, the Articles and the Declaration.

4.3. Election and Term of Office. Except as provided in Sections 4.1 and 4.8, the Directors shall be elected annually at the annual meeting of members to serve two (2) year terms and shall hold office until their successors have been duly elected and qualified and hold their first meeting.

4.4. Quorum. A quorum for the transaction of business at any meeting of the Directors shall consist of a majority of the Board of Directors then in office.

4.5. Annual and Regular Meetings. An annual meeting of the Directors shall be held within ten (10) days after the adjournment of, and at the place of, the annual meeting of the members. Additional regular meetings of the Directors may be held without notice at regular intervals at such places and at such times as the Board of Directors may from time to time by resolution provide.

4.6. Special Meetings. Special meetings of the Board of Directors shall be held at such times and places as may be designated by the Board of Directors whenever such meetings are called orally or in writing by the President or a majority of the Board. Notices of special meetings shall be given by the Secretary to each Director, orally or in writing, at least three (3) days before the time fixed for the meeting. Such notices shall advise each Director of the time, place and general purpose of the meeting, and shall be delivered personally, or shall be given by telephone or telegram, or, if sent by mail, such three (3) days' notice shall be deemed to have been given if the notice is postmarked at least five (5) days before the date of the meeting. By unanimous consent of the Directors, special meetings of the Board may be held at any time without call or notice, or waiver of call and notice.

4.7. Unanimous Consent. Any action which could be taken by the Directors at a duly convened annual or special meeting of the Board may be taken without a meeting if all of

the Directors consent thereto in writing. Such consent shall have the same effect as a unanimous vote of the Directors.

4.8. Removal of Directors. All directors shall be subject to removal at any time by the affirmative vote of the majority of shareholders at a properly called meeting of the shareholders for such purpose.

4.9. Vacancies. In the event of the death, resignation, or discharge of a Director for any reason, such vacancy shall be filled by vote of the majority of the Directors present at a properly called meeting of the Board of Directors, and the Director elected to fill such a vacancy shall complete the term of office of the Director so replaced.

4.10. Expenses. No Director shall receive compensation for any service he may render to the Association as a Director. However, any Director may be reimbursed for his actual expenses incurred in the performance of his duties.

## 5. OFFICERS

5.1. Designation of Officers. The Directors shall elect the officers of the Association at an annual meeting of the Directors; provided, however, that elections of additional officers may be held at any other meeting of the Board of Directors specifically called for such purpose. The officers of the corporation shall consist of a President, Vice President, Secretary and Treasurer, any two of which offices, other than President and Secretary, may be held by one person. The Board of Directors may also appoint one or more Assistant Secretaries and Assistant Treasurers, which officers shall have authority to perform such duties as may be prescribed by the Board of Directors or the President. The elected or appointed officers of the Association must be Owners.

5.2. President. The President shall be the chief executive of the Association. He shall preside at all meetings of the Board of Directors; shall be ex officio a member of all standing or special committees; shall have general charge of the activities of the Association; shall sign on behalf of the Association all contracts and other written instruments to be executed by the Association or shall delegate authority to sign such contracts and written instruments as agent for the Association; shall execute, certify and record amendments to the Declaration on behalf of the Association; and shall see that all resolutions of the Board are carried into effect. He shall do and perform such other acts and duties as may be required of him by the Board of Directors, but his authority shall be subject to the control and direction of the Board of Directors at all times.

5.3. Vice President. The Vice President, in the absence or disability of the President, shall perform the duties and exercise the powers of the President (except the execution, certification and recordation of amendments to the Declaration which shall be performed personally by the President) and shall perform such other duties as the Board of Directors shall prescribe.

5.4. Secretary. The Secretary shall keep a permanent and complete record of all proceedings of each meeting of the Owners and each meeting of the Board of Directors; shall

give or cause to be given, when required, notice of all meetings of the Owners and/or the Board of Directors; shall keep an accurate list of all members of the Association and their addresses; shall execute, certify and record amendments to the Declaration on behalf of the Association; shall furnish copies of the minutes of the meetings of the Board of Directors of the Association after each such meeting; and shall perform such other duties as may be prescribed by the Board of Directors or the President. An Assistant Secretary, or Executive Secretary, if appointed, shall, in the event of the Secretary's absence or inability to act, perform the duties and functions of the Secretary (except the execution, certification and recordation of amendments to the Declaration which shall be performed personally by the Secretary).

5.5. Treasurer. The Treasurer shall have custody of the Association's funds and shall keep or cause to be kept full and accurate accounts of receipts and disbursements, and shall deposit or cause to be deposited all monies and other valuable effects in the name and to the credit of the Association in such depositories as may be designated by the Board of Directors. He shall disburse the funds of the Association as may be ordered by the Board, demanding proper vouchers for such disbursements. He shall prepare and submit or cause to be prepared and submitted a written financial report at each annual meeting of the Owners, and shall render to the President an account of all his transactions as Treasurer and such additional reports of the financial condition of the Association as the Board may require. The Treasurer may be required to furnish a surety bond in an amount determined by the Board, the premium of which shall be paid by the Association. An Assistant Treasurer, if appointed, shall, in the event of the Treasurer's absence or inability to act, perform the duties and functions of Treasurer.

5.6. Other Employees. The Board of Directors may engage the services of such other employees and professionals, including but not limited to an Executive Secretary and/or Manager, attorneys, accountants and contractors, as may from time to time be deemed necessary or advisable to accomplish the objects, purposes and duties of the Association.

5.7. Removal of Officers; Vacancies. All officers, agents and employees shall be subject to removal at any time by the affirmative vote of the majority of the members of the Board of Directors then in office. Any vacancy caused by removal, resignation, death or for any other reason whatsoever may be filled by the Board of Directors as the Board may deem appropriate.

5.8. Committees. The Board of Directors shall from time to time appoint committees as deemed appropriate in carrying out its purpose.

5.9. Compensation. The President, Vice President, Secretary and Treasurer shall not receive any compensation for their services rendered to the Association as such officers. However, such officers may be reimbursed for their actual expenses incurred in the performance of their duties. The Board of Directors may fix and pay such compensation for other officers or employees of the Association as the Board deems proper.

5.10. Certification of Amendments. In accordance with the Declaration, any amendment to the Declaration which requires affirmative written assent or vote of the Owners shall be executed, certified, and recorded on behalf of the Association by the President and Secretary of the Association.

## 6. ASSESSMENTS

6.1. Monthly Assessment Due Dates. The obligations with respect to the monthly assessments provided for herein shall commence as to each Lot on (i) the date a deed is delivered to the purchaser of a Lot, (ii) if the sale is by way of a contract of sale, on the date the contract is executed by the parties thereto, or (iii) the date of occupancy, whichever first occurs. The first monthly assessment shall be adjusted according to the number of days remaining in the month in which the obligation with respect to the assessments begins. At least fifteen days prior to the effective date of any change in the amount of the monthly assessment, the Association shall give each Owner written notice of the amount and the first due date of the assessment concerned. All assessments hereunder, including, without limitation, the Private Street Assessments, the Sewer Easement Assessment, the Utility Easements Assessments, and the Landscape Assessments shall be delinquent if not paid within thirty days from the date of the notice of assessment.

6.2. Special Assessments. In addition to regular Assessments, the Board may levy special Assessments and capital improvement Assessments as provided in the Declaration.

6.3. No Offsets. All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in the Declaration.

6.4. Non-Payment of Assessments. Any Assessment which is not paid within thirty (30) days after it becomes due shall be delinquent. Whenever an Assessment is delinquent, the Association may, at its option, invoke any or all of the sanctions provided for herein in order to compel its prompt payment:

(a) Collection Charge. If any Assessment is delinquent, the Owner shall be obligated to pay a collection charge equal to ten percent (10%) of the delinquent Assessment to compensate the Association for the expense of handling the delinquency of the Assessment.

(b) Interest. If any Assessment is delinquent, the Assessment shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum or such other rate as may be established by the Board of Directors pursuant to a duly adopted resolution or Association Rule.

(c) Enforcement of Lien. The Association may proceed as authorized in the Declaration to enforce the lien securing the Assessment.

(d) Suspension of Rights. The Association may suspend the Owner's right (i) to vote on any matter at regular or special meetings of the Association, and (ii) to use all or any portion of the Common Areas and Private Streets for the entire period during which an Assessment or other amount due to the Association remains delinquent.

6.5. Assessable Property. Declarant is entirely exempt from Assessment with respect to the Lots it owns, for so long as Declarant owns the same, unless such Lots are improved with a completed and occupied building. Any unimproved portion of a Lot owned by Declarant shall remain exempt from Assessment. A Lot shall first become Assessable Property after the same is conveyed by Declarant to the initial Owner hereof, other than Declarant, and except in the case of an improved and occupied Lot, as stated, a Lot shall not be Assessable Property while owned, or reacquired, by Declarant. For the purposes of this Section, a Living Unit or other building shall be deemed completed when a certificate of occupancy has been issued by the appropriate governmental agency.

## 7. AMENDMENTS TO BYLAWS

Prior to the Turnover Date, the Board, at any regular or special meeting, shall have the power to make, amend, and repeal the Bylaws by vote of a majority of the Board, provided that written notice of intention to make, amend or repeal the Bylaws in whole or in part shall have been given in the notice of the meeting. From and after the Turnover Date, at a regular or special meeting, the Members shall have the power to make, amend, and repeal the Bylaws by vote of a majority of the Members, provided that written notice of intention to make, amend, or repeal the Bylaws in whole or in part shall have been given in the notice of the meeting. These Bylaws may not be amended in a manner which is inconsistent with or conflicts with the terms of the Declaration, or Articles of Incorporation of the Association, and in the event of any such amendment which is inconsistent or conflicts, the amendment shall be considered void.

## 8. FISCAL MANAGEMENT

8.1. Fiscal Year. The fiscal year of the Association shall be January 1 through December 31. The commencement date of the fiscal year herein established shall be subject to change by the Board should corporate practice subsequently dictate.

8.2. Books of Account. Books of account of the Association shall be kept under the direction of the Treasurer on a consistent basis in accordance with good accounting practices.

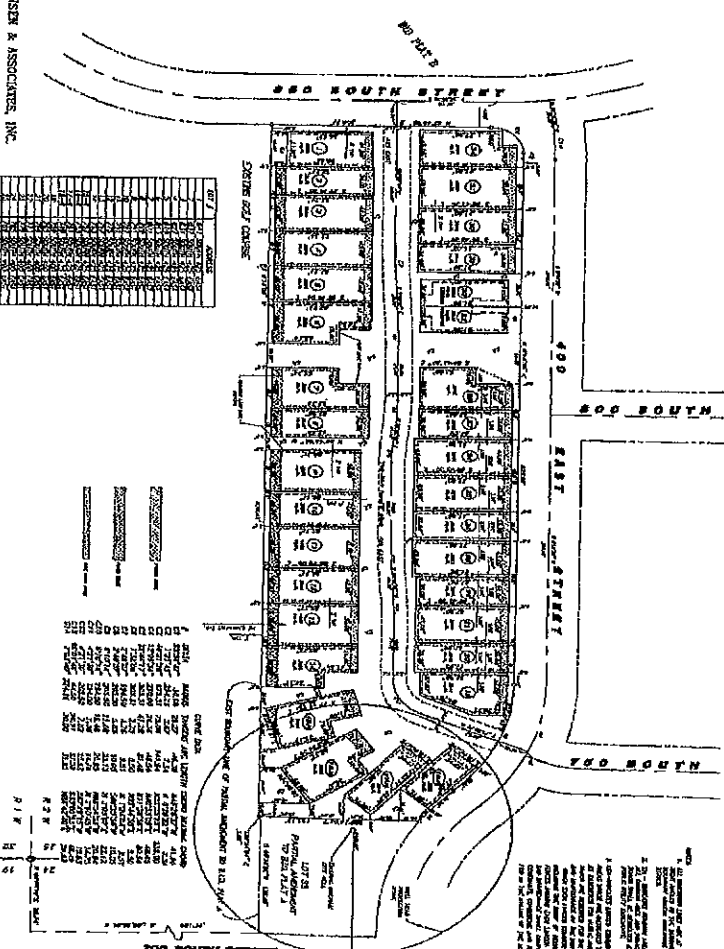
8.3. Contracts. Unless otherwise provided herein or by the Board, all contracts shall be executed on behalf of the Association by either the President or Vice President and may be countersigned by either the Secretary or the Assistant Secretary.

## 9. CONSTRUCTION

Any discrepancies or conflicts between the provisions of the Utah Code Annotated, the Declaration, the Articles and Bylaws, and the Association Rules shall, unless otherwise provided, be resolved by giving priority first to the statutes, second to the Declaration, third to the Articles, fourth to the Bylaws, and fifth to the Association Rules.

Exhibit "B"

**PARTIAL ALIENMENT OF  
EAGLE CREST TOWNHOMES - PHASE III  
A PLANNED UNIT DEVELOPMENT  
A PART OF THE NORTHWEST QUARTER SECTION 25, 18N, 29W, 2  
OF THE SALT LAKE BASIN AND MOUNTAIN,  
BRISCAID CITY, BOX EIGHT COBBIN, UTAH  
APRIL, 2003**

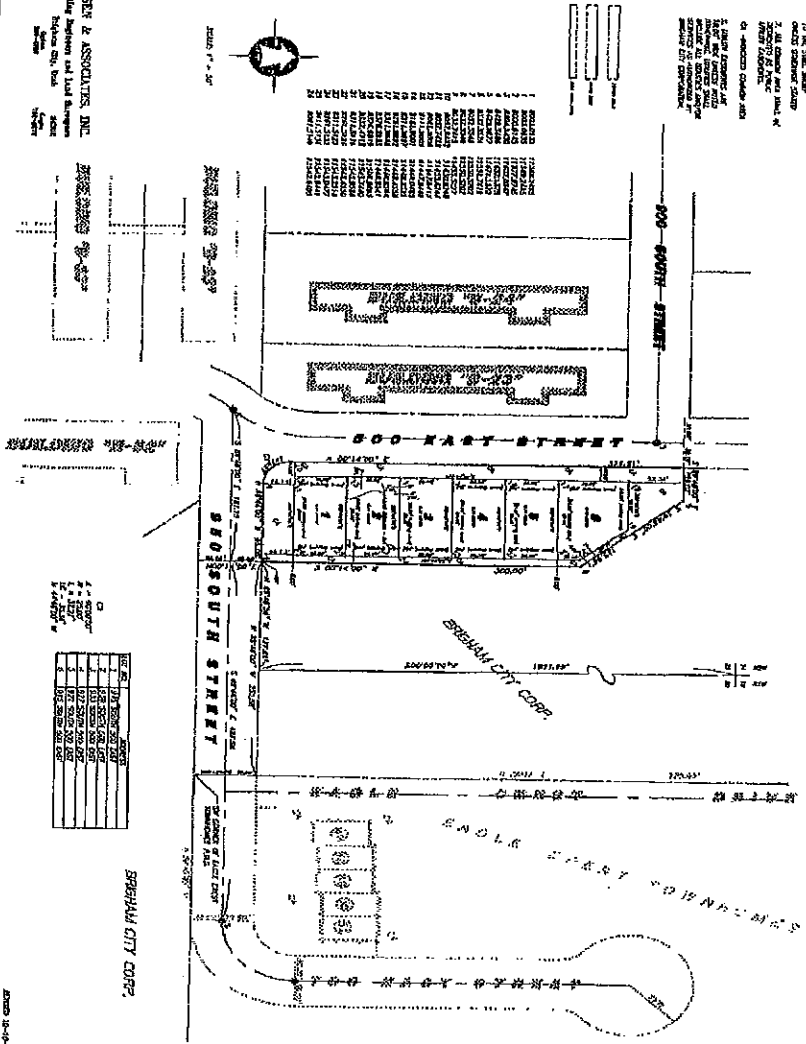


<p><b>PLANNING COMMISSION APPROVAL</b></p> <p>APPROVED BY: _____ DATE: _____</p> <p>APPROVED BY THE BOARD OF THE CITY OF _____ DATE: _____</p>	<p><b>OWNER'S CERTIFICATE</b></p> <p>I, _____, owner of the above described property, do hereby certify that the above described property is a part of the _____ and that the same is being offered for sale in accordance with the provisions of the _____.</p>	<p><b>OWNER'S CERTIFICATE</b></p> <p>I, _____, owner of the above described property, do hereby certify that the above described property is a part of the _____ and that the same is being offered for sale in accordance with the provisions of the _____.</p>	<p><b>APPROVAL AND ACCEPTANCE</b></p> <p>APPROVED BY: _____ DATE: _____</p> <p>APPROVED BY THE BOARD OF THE CITY OF _____ DATE: _____</p>	<p><b>OWNER'S CERTIFICATE</b></p> <p>I, _____, owner of the above described property, do hereby certify that the above described property is a part of the _____ and that the same is being offered for sale in accordance with the provisions of the _____.</p>
<p><b>PLANNING COMMISSION APPROVAL</b></p> <p>APPROVED BY: _____ DATE: _____</p> <p>APPROVED BY THE BOARD OF THE CITY OF _____ DATE: _____</p>	<p><b>OWNER'S CERTIFICATE</b></p> <p>I, _____, owner of the above described property, do hereby certify that the above described property is a part of the _____ and that the same is being offered for sale in accordance with the provisions of the _____.</p>	<p><b>OWNER'S CERTIFICATE</b></p> <p>I, _____, owner of the above described property, do hereby certify that the above described property is a part of the _____ and that the same is being offered for sale in accordance with the provisions of the _____.</p>	<p><b>APPROVAL AND ACCEPTANCE</b></p> <p>APPROVED BY: _____ DATE: _____</p> <p>APPROVED BY THE BOARD OF THE CITY OF _____ DATE: _____</p>	<p><b>OWNER'S CERTIFICATE</b></p> <p>I, _____, owner of the above described property, do hereby certify that the above described property is a part of the _____ and that the same is being offered for sale in accordance with the provisions of the _____.</p>
<p><b>PLANNING COMMISSION APPROVAL</b></p> <p>APPROVED BY: _____ DATE: _____</p> <p>APPROVED BY THE BOARD OF THE CITY OF _____ DATE: _____</p>	<p><b>OWNER'S CERTIFICATE</b></p> <p>I, _____, owner of the above described property, do hereby certify that the above described property is a part of the _____ and that the same is being offered for sale in accordance with the provisions of the _____.</p>	<p><b>OWNER'S CERTIFICATE</b></p> <p>I, _____, owner of the above described property, do hereby certify that the above described property is a part of the _____ and that the same is being offered for sale in accordance with the provisions of the _____.</p>	<p><b>APPROVAL AND ACCEPTANCE</b></p> <p>APPROVED BY: _____ DATE: _____</p> <p>APPROVED BY THE BOARD OF THE CITY OF _____ DATE: _____</p>	<p><b>OWNER'S CERTIFICATE</b></p> <p>I, _____, owner of the above described property, do hereby certify that the above described property is a part of the _____ and that the same is being offered for sale in accordance with the provisions of the _____.</p>
<p><b>PLANNING COMMISSION APPROVAL</b></p> <p>APPROVED BY: _____ DATE: _____</p> <p>APPROVED BY THE BOARD OF THE CITY OF _____ DATE: _____</p>	<p><b>OWNER'S CERTIFICATE</b></p> <p>I, _____, owner of the above described property, do hereby certify that the above described property is a part of the _____ and that the same is being offered for sale in accordance with the provisions of the _____.</p>	<p><b>OWNER'S CERTIFICATE</b></p> <p>I, _____, owner of the above described property, do hereby certify that the above described property is a part of the _____ and that the same is being offered for sale in accordance with the provisions of the _____.</p>	<p><b>APPROVAL AND ACCEPTANCE</b></p> <p>APPROVED BY: _____ DATE: _____</p> <p>APPROVED BY THE BOARD OF THE CITY OF _____ DATE: _____</p>	<p><b>OWNER'S CERTIFICATE</b></p> <p>I, _____, owner of the above described property, do hereby certify that the above described property is a part of the _____ and that the same is being offered for sale in accordance with the provisions of the _____.</p>

Exhibit 11 B11

**FINAL PLAN OF AMENDED EAGLE CREST TOWNHOMES - PHASE II**  
 A PLANNED UNIT DEVELOPMENT  
 A PART OF THE NORTHEAST QUARTER SECTION 25, 19N, 27W  
 OF THE SALT LAKE BASIN AND UTAH  
 BOROUGH CITY, BOX ELDER COUNTY, UTAH

NOTES:  
 1. ALL IMPROVEMENTS SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE UTAH ZONING ORDINANCES AND THE UTAH SUBDIVISION ACT.  
 2. ALL DISTANCES ARE IN FEET AND DECIMALS THEREOF.  
 3. ALL DISTANCES ARE TO BE MEASURED ALONG THE CENTERLINE OF THE ROAD OR THE CENTERLINE OF THE LOT.  
 4. ALL DISTANCES ARE TO BE MEASURED TO THE CENTERLINE OF THE ROAD OR THE CENTERLINE OF THE LOT.  
 5. ALL DISTANCES ARE TO BE MEASURED TO THE CENTERLINE OF THE ROAD OR THE CENTERLINE OF THE LOT.



**COUNTY SUPERVISOR'S CERTIFICATE**  
 I, COUNTY SUPERVISOR, DO HEREBY CERTIFY THAT THE ABOVE DESCRIBED PLANNED UNIT DEVELOPMENT IS IN ACCORDANCE WITH THE ZONING ORDINANCES AND THE SUBDIVISION ACT OF THE STATE OF UTAH, AND THAT THE SAME HAS BEEN APPROVED BY THE PLANNING COMMISSION AND THE COUNTY BOARD OF HEALTH.

**PLANNING COMMISSION APPROVAL**  
 APPROVED: \_\_\_\_\_ DATE: \_\_\_\_\_

**COUNTY RECORDER'S NO.** \_\_\_\_\_

**APPROVAL AS TO FORM**  
 APPROVED: \_\_\_\_\_ DATE: \_\_\_\_\_

**OWNER'S CERTIFICATE**  
 I, THE OWNER, DO HEREBY CERTIFY THAT THE ABOVE DESCRIBED PLANNED UNIT DEVELOPMENT IS IN ACCORDANCE WITH THE ZONING ORDINANCES AND THE SUBDIVISION ACT OF THE STATE OF UTAH, AND THAT THE SAME HAS BEEN APPROVED BY THE PLANNING COMMISSION AND THE COUNTY BOARD OF HEALTH.

**APPROVAL AND ACCEPTANCE**  
 APPROVED: \_\_\_\_\_ DATE: \_\_\_\_\_

**CORPORATE ACKNOWLEDGEMENT**  
 I, THE PRESIDENT, DO HEREBY CERTIFY THAT THE ABOVE DESCRIBED PLANNED UNIT DEVELOPMENT IS IN ACCORDANCE WITH THE ZONING ORDINANCES AND THE SUBDIVISION ACT OF THE STATE OF UTAH, AND THAT THE SAME HAS BEEN APPROVED BY THE PLANNING COMMISSION AND THE COUNTY BOARD OF HEALTH.

**OWNER'S DECLARATION**  
 I, THE OWNER, DO HEREBY CERTIFY THAT THE ABOVE DESCRIBED PLANNED UNIT DEVELOPMENT IS IN ACCORDANCE WITH THE ZONING ORDINANCES AND THE SUBDIVISION ACT OF THE STATE OF UTAH, AND THAT THE SAME HAS BEEN APPROVED BY THE PLANNING COMMISSION AND THE COUNTY BOARD OF HEALTH.

**REPLACEMENT DISCRETION**  
 I, THE OWNER, DO HEREBY CERTIFY THAT THE ABOVE DESCRIBED PLANNED UNIT DEVELOPMENT IS IN ACCORDANCE WITH THE ZONING ORDINANCES AND THE SUBDIVISION ACT OF THE STATE OF UTAH, AND THAT THE SAME HAS BEEN APPROVED BY THE PLANNING COMMISSION AND THE COUNTY BOARD OF HEALTH.

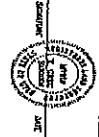
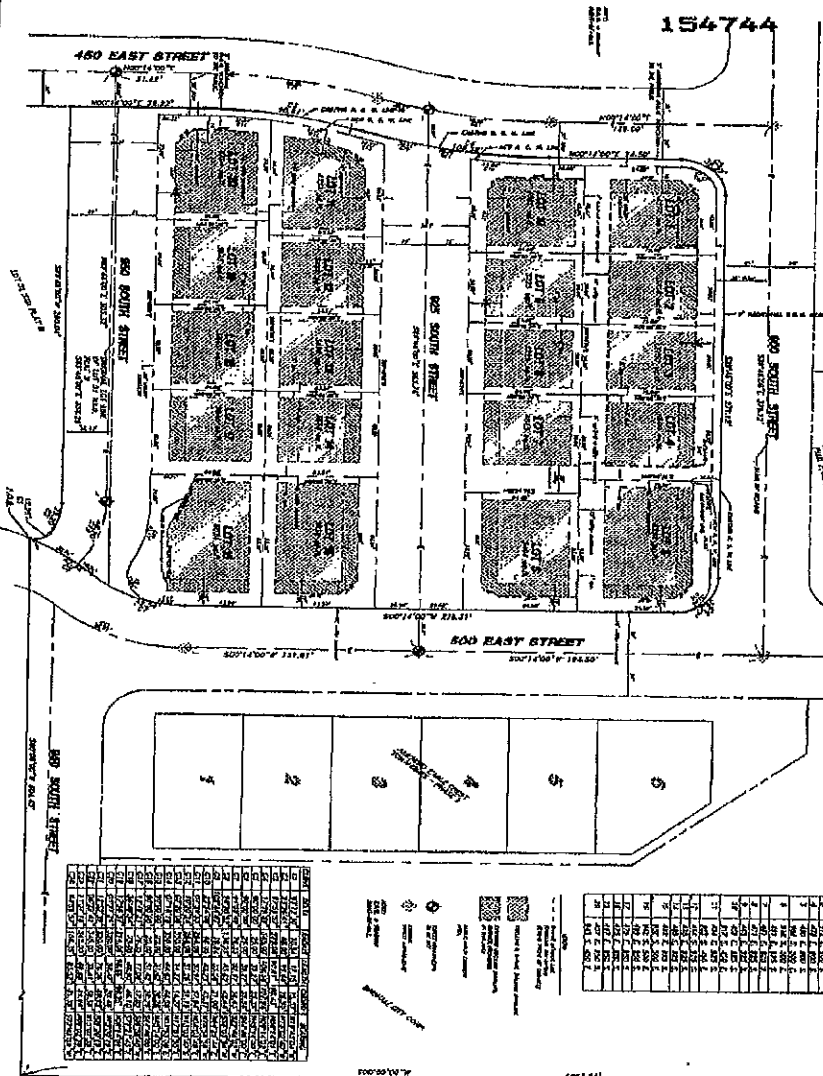


Exhibit "B"

**EAGLE VIEW SUBDIVISION - P.U.D. PHASE III**  
**A PLANNED UNIT DEVELOPMENT**  
 A PART OF THE NORTHEAST QUARTER SECTION 25, T3N, R2W  
 OF THE SIXTH LEXE EAST AND NORTON  
 SHERMAN CDTL. SAN EDUO COUNTY, WYOM.



LOT	ACRES	AREA	PERCENTAGE
1	0.10	4356	1.00
2	0.10	4356	1.00
3	0.10	4356	1.00
4	0.10	4356	1.00
5	0.10	4356	1.00
6	0.10	4356	1.00
7	0.10	4356	1.00
8	0.10	4356	1.00
9	0.10	4356	1.00
10	0.10	4356	1.00
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97	0.10	4356	1.00
98	0.10	4356	1.00
99	0.10	4356	1.00
100	0.10	4356	1.00

**COUNTY SURVEYOR'S CERTIFICATE**  
 I HEREBY CERTIFY THAT THE ABOVE DESCRIBED PLANNED UNIT DEVELOPMENT IS IN ACCORDANCE WITH THE PLANNED UNIT DEVELOPMENT ACT AND THE SUBDIVISION ACT OF THE STATE OF WYOMING.

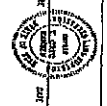
**PLANNING COMMISSION APPROVAL**  
 APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, AT THE \_\_\_\_\_ MEETING OF THE PLANNING COMMISSION.

**COUNTY RECORDER'S NO.**  
 STATE OF WYOMING, COUNTY OF \_\_\_\_\_, DISTRICT OF \_\_\_\_\_, RECORDER'S NO. \_\_\_\_\_.

**APPROVAL AND ACCEPTANCE**  
 I HEREBY CERTIFY THAT THE ABOVE DESCRIBED PLANNED UNIT DEVELOPMENT IS IN ACCORDANCE WITH THE PLANNED UNIT DEVELOPMENT ACT AND THE SUBDIVISION ACT OF THE STATE OF WYOMING.

**OWNER'S DECLARATION**  
 I, the undersigned, being the owner of the above described land, do hereby certify that the above described land is being offered for sale or lease to the public and that the above described land is being offered for sale or lease to the public in accordance with the provisions of the Planned Unit Development Act and the Subdivision Act of the State of Wyoming.

**OWNER'S DECLARATION**  
 I, the undersigned, being the owner of the above described land, do hereby certify that the above described land is being offered for sale or lease to the public and that the above described land is being offered for sale or lease to the public in accordance with the provisions of the Planned Unit Development Act and the Subdivision Act of the State of Wyoming.



**ARTICLES OF INCORPORATION  
OF  
EAGLE CREST SINGLE FAMILY HOMES  
ASSOCIATION**

---

The undersigned, whose address appears opposite his name below, acting as incorporator pursuant to the Utah Nonprofit Corporation and Cooperative Association Act, hereby forms a nonprofit corporation under the laws of the State of Utah, and for that purpose does hereby adopt the following Articles of Incorporation:

**ARTICLE 1.  
Name**

The name of this corporation shall be EAGLE CREST SINGLE FAMILY HOMES ASSOCIATION (the "Association").

**ARTICLE 2.  
Duration**

The Association shall exist perpetually.

**ARTICLE 3.  
Business and Purpose**

Section 3.1. This Association is formed as a nonprofit corporation to serve as the governing body for every "Owner" of a "Living Unit", as those terms are defined in that certain DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS for Eagle Crest Single Family Homes Planned Unit Development, recorded in the official records of the County Recorder of Box Elder County, Utah (the "Declaration"). All capitalized terms as used in these Articles of Incorporation shall have the same meanings as set forth in the Declaration.

As provided in and pursuant to the Declaration, this Association shall, to the extent permitted by applicable law, serve as the governing body for all of the Owners for the performance of such duties and functions, and the exercise of such rights, as are given and assigned to it by said Declaration, as the same may hereafter be amended.

Section 3.2. Notwithstanding anything herein contained to the contrary, no part of the activities of the Association shall be devoted to carrying on propaganda or otherwise attempting to influence legislation and the Association shall make no gift, donation or contribution to any institution or organization engaged in such activities. No part of the net earnings of the Association shall inure to the benefit of any private member or individual (other than by acquiring, constructing, or providing management, maintenance, and care of the Common Areas, the Private Roads and the Sewer Easement, and other than by a rebate of excess Assessments).

Section 3.3. In the conduct of its business, this Association, to the extent authorized by its Board of Directors and in accordance with the provisions of the Declaration, shall be empowered to do all things that a private person or individual might do under the laws of the State of Utah, including but not limited to the following:

- (a) To accept such properties, improvements, rights, and interests as may be conveyed, leased, assigned, or transferred to this Association and to assume such obligations and duties as may be contained in any lease assigned or transferred to this Association;
- (b) To maintain and otherwise manage all of the Common Areas, the Private Roads, the Sewer Easement, the Utility Easements, including all facilities, and landscaping thereon, and all other property acquired by the Association; to pay all taxes and assessments, if any, which may properly be levied against the Property other than taxes separately assessed to the Living Units; to repair, rehabilitate, and restore the Property; to insure the Property against such risks as the Board of Directors shall determine or as provided by the Declaration; to levy and collect Assessments as the Board of Directors shall determine in accordance with the Declaration and the Bylaws of this Association; and to impose liens against Living Units in order to secure the payment of obligations due from the Owners thereof, and to collect, sue, foreclose, or otherwise enforce, compromise, release, satisfy, and discharge such obligations, demands and liens in accordance with the Declaration;
- (c) To do all things necessary to carry out and enforce the terms and provisions of the Declaration, and to do all things and acts, including the payment of all maintenance, operating and other costs, which in the sole discretion of the Board of Directors shall be deemed to be in the best interest of the members of this Association or for the peace, comfort, safety, or general welfare of the Owners, all in accordance with the Declaration;
- (d) To enter into management agreements with third parties authorizing such parties to carry on any activities which might legally be carried on by the Association and delegated by the Association to third parties;
- (e) To develop, construct, purchase, lease, own, improve, maintain, operate and hold real and personal property of every kind and description as is reasonably necessary for the objects of the Association; to sell, convey and lease such property; and to mortgage, assign, and pledge or otherwise encumber such property;
- (f) To borrow money and to issue notes, bonds and other evidences of indebtedness in furtherance of any or all of the objects and purposes of this Association and to secure the same by mortgage, trust deed, pledge or other lien on or security interest in property of this Association;
- (g) To enter into, perform, and carry out leases and contracts of any kind necessary to, in connection with, or incidental to the accomplishment of any one or more of the objects and purposes of this Association;

- (h) To lend or invest its working capital and reserves with or without security;
- (i) To act as surety or guarantor, agent, trustee, broker, or in any other capacity when appropriate to the fulfillment and furtherance of its objects and purposes;
- (j) To adopt, amend, and repeal reasonable Association Rules;
- (k) To do all other acts and things authorized in the Declaration, as amended or supplemented from time to time, but not explicitly set out above;
- (l) To sue and be sued; and
- (m) In general to do and perform such acts and things and to transact such business in connection with the foregoing objects and purposes as may be necessary and to do any and all things which a natural person could do or which now or hereafter may be authorized by law.

Section 3.4. The character of business which the Association initially intends to conduct in the State of Utah is the operation of an owners' association to provide for the management, maintenance and care of the Planned Unit Development for the benefit of the members of the Association.

**ARTICLE 4.  
Place of Business**

The known principal place of business and office for the transaction of business of this Association shall be located at 416 East 850 South, Brigham City, Utah 84032.

**ARTICLE 5.  
Membership**

Section 5.1. The Association shall be a non-stock corporation and shall be owned by its members, and no dividends or pecuniary profits shall be paid to its members. Membership in the Association shall be limited to the Owners. The Owners shall not include persons or entities who hold an interest merely as security for the performance of an obligation. An Owner shall automatically be a member of the Association and shall remain a member of the Association until such time as his ownership ceases for any reason, at which time his membership in said Association shall automatically cease. The membership of an Owner shall be appurtenant to and may not be separated from the fee ownership of a Living Unit.

Section 5.2. No certificates of membership shall be issued and membership shall be evidenced by an official list of said members, which list shall be kept by the Secretary of the Association. The membership held by any Owner shall not be transferred, pledged or alienated in any way, except upon the conveyance of a Living Unit, and then only to the purchaser of such Living Unit. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association.

Section 5.3. Voting. The Association shall have two (2) classes of voting membership.

Class A. Class A Members shall be all Owners (including the Declarants, after the Turnover Date). Class A Members shall be entitled to one (1) vote for each Lot owned. Fractional votes shall not be allowed.

Class B. The Class B Members shall be the Declarants, who each shall be entitled to three (3) votes for each of their Lots they respectively own. The Declarants, as Class B Members, shall have the right to control the Association to the extent of having the exclusive right (either directly or through a person designated by both of the Declarants) to elect, appoint and remove the members of the Board and the officers of the Association until the Turnover Date (as hereinafter defined). The special control rights of the Declarants, as Class B Members, shall cease and terminate upon the earlier of the following (the "Turnover Date"):

- (a) The date ninety (90) days after the conveyance by the Declarants of seventy-five percent (75%) of the Lots to Owners (other than Declarants or an affiliate of any Declarant);
- (b) The date four (4) years after the Declarants (or any successors) have ceased to offer Lots for sale in the ordinary course of business;
- (c) The date which is the third (3rd) anniversary of the first conveyance of any Lot, by any Declarant to an Owner other than Declarant I or Declarant II; or
- (d) Both Declarants (as long as two Declarants are Class B Members) notify the Board in writing that the Class B is extinguished.

Upon the Turnover Date, the Declarants shall retain the voting rights of Class A Members even though the special voting and control rights of the Class B Members have ceased and terminated. The Declarants, in the case when two Declarants are Members, or one Declarant, in the case when only one Declarant is a Member, may voluntarily surrender the right to elect, appoint and remove the members of the Board and the officers prior to the Turnover Date, but, in that event Declarants, or Declarant, as the case may be, may require that specified actions of the Association or the Board taken prior to the Turnover Date, as described in a recorded instrument executed by Declarants, be approved by both Declarants, as long as two Declarants are Members, or by one Declarant, as long as there is one Declarant, before they become effective. Upon the Turnover Date, the process of transferring control of the Association from the Declarants (or Declarant, if only one Declarant remains a Member of the Association) to the Owners shall commence and be completed within a reasonable period of time. This process shall include the Owners' election of the Board of Directors and shall be considered completed on the date of the initial meeting of the Board of Directors elected by the Owners. The Owners' election of the initial Board of Directors may be conducted at a regular or special meeting of the Association or by a mailed balloting procedure, within thirty (30) days following the Turnover Date.

**ARTICLE 6.**  
**Board of Directors**

The control and management of the affairs of this Association shall be vested in a Board of Directors of not less than three (3) nor more than five (5) members. The number of directors constituting the initial Board of Directors is three (3) and the names and addresses of the persons who are to serve as directors beginning with the incorporation of this Association and until the first annual election of Directors or until their successors shall be duly elected and qualified are:

- (1) Matt Petersen  
416 East 850 South  
Brigham City, Utah 84302
- (2) Craig D. Wood  
416 East 850 South  
Brigham City, Utah 84302
- (3) Curtis Bashaw  
416 East 850 South  
Brigham City, Utah 84302

The method of election, term of office, and removal and filling of vacancies shall be as set forth in the Bylaws.

**ARTICLE 7.**  
**Private Property**

The Owners, directors, and officers of this Association shall not be liable for the debts of this Association, and the private property of the Owners, directors and officers of this Association shall be forever exempt from corporate debts of any kind whatsoever, provided, however, that nothing herein contained shall limit or restrict any liability, obligation or responsibility of the Owners hereof to each other or to this Association as are set forth in the Declaration.

**ARTICLE 8.**  
**Registered Agent**

This Association does hereby appoint Matt Petersen, located at 416 East 850 South, Brigham City, Utah 84032, its lawful registered agent in and for the State of Utah for and on behalf of said Association, in any of the courts in said State of Utah, such service of process or notice, or the acceptance thereof, by said agent endorsed thereon to have the same force and effect as if served upon an officer of the Association. The foregoing appointment may be revoked at any time by filing a statement in accordance with Section 16-6-25.2 of the Utah Code Annotated, or any amendment thereto.

**ARTICLE 9.  
Indemnification**

The Association shall indemnify any and all of its present or former directors, officers, employees, or agents to the maximum extent permitted by applicable law. Without limiting the generality of the foregoing, the Association shall indemnify any and all of its directors and officers, or former directors and officers, against expenses incurred by them, including legal fees, or judgments or penalties rendered or levied against any such persons in a legal action brought against any such person for actions or omissions alleged to have been committed by any such person while acting within the scope of his employment as a director or officer of the Association, provided that the Board of Directors shall determine in good faith that such person did not act, fail to act or refuse to act willfully or with gross negligence or with fraudulent or criminal intent in regard to the matter involved in the action or omission. In addition, the Association shall obtain director's and officer's liability insurance for officers and directors of the Association as provided in the Declaration.

**ARTICLE 10.  
Director Liability**

A director of the Association shall not be personally liable to the Association or its members for monetary damages for breach of fiduciary duty as a director, except for liability for any of the following:

- (a) Any breach of the director's duty of loyalty to the Association or its members;
- (b) Acts or omissions which are not in good faith or which involve intentional misconduct or a knowing violation of law;
- (c) A violation of Utah Code Annotated Section 16-6-42 (which prohibits distribution of income to members);
- (d) Any transaction from which the director derived an improper personal benefit; or
- (e) A violation of the laws of Utah with respect to fiduciary duties and obligations of directors (including without limitation such duties as may be listed under the Utah Revised Business Corporations Act, or any amendment thereto).

Any repeal or modification of the foregoing paragraph shall not adversely affect any right or protection of a director of the Association existing hereunder with respect to any act or omission occurring prior to or at the time of such repeal or modification.

**ARTICLE 11.  
Amendments**

These Articles may be amended by following the procedure set forth in Section 16-6-50 of the Utah Code Annotated, or any amendment thereto.


IN WITNESS WHEREOF, I the undersigned incorporator, have hereunto signed my name this 3rd day of July, 2001.

Name

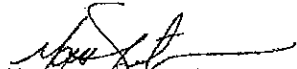
Address

Matt Petersen

416 East 850 South  
Brigham City, Utah 84302

  
\_\_\_\_\_  
Matt Petersen

I, Matt Petersen, do hereby acknowledge and accept my appointment as Registered Agent of Eagle Crest Single Family Homes Association.

  
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Matt Petersen