

**RESTATED AND AMENDED**

**DECLARATION**

**OF**

**COVENANTS, CONDITIONS AND RESTRICTIONS**

**FOR**

**EAGLE CREST**

**SINGLE FAMILY HOMES**

**PLANNED UNIT DEVELOPMENT**

**May 2017**

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OF  
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This Restated and Amended Declaration of Covenants, Conditions and Restrictions for Eagle Crest Singly Family Homes Planned Unit Development (“Restated Declaration”), is made and executed by and between members of the Eagle Crest Single Family Homes Association, Inc. (“Association”), in accordance with the Association’s governing documents. The members of the Association consist of owners of Lots in Eagle Crest Townhomes Phase II and Phase III (“Eagle Crest” or “Subdivision”), and the owners lots in Eagle View Subdivision – P.U.D. Phase III (“Eagle View”), on the date shown below after being voted on and approved by

**RECITALS**

WHEREAS, the Owners of Lots in Eagle Crest own fee simple title to that certain property situated in Box Elder County, Utah, described on Exhibit “A” attached hereto; and

WHEREAS, the Owners of Lots in Eagle View own fee simple title to that certain property situated in Box Elder County, Utah, described on Exhibit “B” attached hereto; and

WHEREAS, the “Declaration of Covenants, Conditions and Restrictions for Eagle Crest Single Family Homes Planned Unit Development” (“Enabling Declaration”) was recorded in the office of the Box Elder County Recorder on July 3, 2001, as entry number 154744; and

WHEREAS, Eagle Crest and Eagle View are not located adjacent to each another and do not share common elements; and

WHEREAS, the Members, consisting of the Owners of Lots in Eagle Crest and Eagle View, desire to remove the Eagle View lots from the Association; and

WHEREAS, the real property that will continue to be subject of this Restated Declaration shall only be that real property located in Box Elder County, State of Utah, as specifically described in Exhibit “A”, attached hereto and incorporated herein by this reference, including the Common Area that is appurtenant to each Unit as shown on the plat maps for Eagle Crest Townhomes Phases II and II; and

WHEREAS, the purpose and intent of this Restated Declaration is to remove all Eagle View Lots from the Association and to restate, replace and amend the Enabling Declaration, the Bylaws, and any prior amendments to the Enabling Declaration and Bylaws, and to subject all Lots and Lot Owners within Eagle Crest to the covenants, conditions and restrictions set forth in this Restated Declaration.

NOW, THEREFORE, to accomplish the Owners' objectives, this Restated Declaration is hereby adopted. The Enabling Declaration, any amendments to the Enabling Declaration, and the Bylaws attached to the Enabling Declaration, are hereby restated, replaced and amended by this Restated Declaration. It is the intent of the Members and Owners that this Restated Declaration replace all prior governing documents and that this Restated Declaration be the sole set of restrictive covenants governing the Lots, the Common Area and the Association; and

Regardless of any language herein to the contrary, the following are not renounced, rescinded, revoked, replaced or amended: the Plat Maps (as defined herein); the submission and dedication of the real property described in Exhibit "A" to the provisions of the Utah Community Association Act (the "Act") and this Restated Declaration; the incorporation of the Eagle Crest Single Family Homes Association, Inc., as a Utah non-profit corporation, and the Articles of Incorporation on file with the State of Utah; and any other provisions, paragraph, or section that is required to maintain the legal status of Eagle Crest as a Utah community association which, if repealed, would nullify the legal status of Eagle Crest; and

As set forth herein, the Lots within Eagle View shall no longer be subject to the provisions of the Declaration, this Restated Declaration, the Bylaws, or any amendments to these documents, and upon the recording of this Restated Declaration the Lot Owners within Eagle View shall no longer be Members of the Association.

It is hereby declared that Lots within Eagle Crest shall be held, sold, conveyed, leased, rented, encumbered and used, subject to this Restated Declaration and the covenants, restrictions, limitations, and conditions contained herein, all of which shall constitute covenants which run with the land and shall be binding on and be for the benefit of the Association and all Lot Owners of all or any part of Eagle Crest, together with their grantees, successors, heirs, executors, administrators, devisees and assigns, as set forth herein.

The statements set forth in the above recitals are hereby approved and accepted as accurate and shall constitute part of this Restated Declaration.

## **ARTICLE I DEFINITIONS**

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

- 1.1 **“Architectural Control Committee”** means the committee established pursuant to Article X hereof.
- 1.2 **“Association”** means the Eagle Crest Single Family Homes Association, Inc., a Utah nonprofit corporation.
- 1.3 **“Board”** means the Board of Directors of the Association elected pursuant to the Bylaws and serving as the management body of the 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 for the common benefit of all Owners.
- 1.6 **“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.
- 1.7 **“Lot”** means any one of the separately numbered and individually described lots described on the Plat which (i) is intended to be owned individually, rather than by the Association, and (ii) is intended to be used as the site of a single Living Unit.
- 1.8 **“Member”** means those Owners who possess an Ownership interest in a Lot and are this automatically members of the Association. Following the recording of this Restated Declaration, no Owner of a Lot in Eagle View will be a Member of the Association.
- 1.9 **“Mortgage”** means any mortgage, deed of trust, or other security instrument creating a security interest in real property.
- 1.10 **“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 1.09 hereof.
- 1.11 **“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.
- 1.12 **“Plat” or “Plat Map”** means the record of survey maps of Eagle Crest, which are of record with the Box Elder County Recorder, a true and correct copy of which is attached hereto as Exhibit “D.” The Plats are hereby incorporated into and made an integral part of this Restated

Declaration and all requirements and specifications set forth on the Plats are deemed included in this Restated Declaration.

- 1.13 **“Private Streets”** means the undedicated roads and streets within Eagle Crest as designated upon the Plat.
- 1.14 **“Restated Declaration”** means this Restated and Amended Declaration of Covenants, Conditions and Restrictions for Eagle Crest Singly Family Homes Planned Unit Development.
- 1.15 **“Utility Easements”** means a blanket easement between the Association and such utility companies as may be designated by 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 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.
- 1.16 **“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 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.

## ARTICLE II DISCONNECTION AND REMOVAL OF EAGLE VIEW

- 2.1 **Disconnection and Removal.** Eagle View and the Eagle View Lots and Members are hereby disconnected and removed from the Association. Subsequent to the recording of this Restated Declaration, no Lot located within Eagle View shall be subject to the covenants, conditions and restrictions set forth in this Restated Declaration, and no Lot Owner within Eagle View shall be bound by any of the terms or requirements contained therein. Additionally, no relationship or obligation shall exist between the Owner of any Lot within Eagle View and the Association. Except as described in this Article II, the Association shall no longer have power to make decisions or to enforce any covenant or restriction relative to any lot or property within Eagle View.
- 2.2 **No Homeowners Association.** Upon the recording of this Restated Declaration, no entity or association shall exist to manage or care for any real property within Eagle View. The Eagle View Owners shall no longer have access to or receive any services previously provided by the Association and, except as required in Article 2.4 below, the Eagle View Owners shall have no obligation to pay any assessments to the Association.

2.3 **Sewer Easement.** The Enabling Declaration requires the Association to maintain common sewer lines located within a sewer easement at Eagle View. The sewer lines service six (6) Lots. Upon recording of this Restated Declaration, because the Eagle View Owners and Lots will no longer be subject to any restrictive covenants, The Association will have no obligation to make repairs, and no Association will exist to collect assessments or to maintain, repair or replace the sewer lines located within the sewer easement or to perform any maintenance or improvements located within the sewer easement. Consequently, each Lot Owner within Eagle View understands, acknowledges and agrees to the following terms, which terms shall survive the recording of this Restated Declaration:

- a. Each Lot Owner within Eagle View shall be responsible to pay for any and all costs and expenses associated with the maintenance, repair or replacement of any sewer line located on or within the Owner's Lot; and
- b. The six Lots that share a common sewer line within the sewer easement shall be subject to the provisions of the Sewer Maintenance Agreement, attached hereto as Exhibit "E" and incorporated herein by this reference. These six Lot Owners have received from the Association, in consideration for assuming personal responsibility for maintenance of the common sewer line, a payment from the Association in excess of \$2,000.00 each. Each of the six lot owners shall notify subsequent owners of their Lot of the obligations assumed herein and of the consideration received; and
- c. No representations of any kind whatsoever have been made by the Association to the Eagle View Lot Owners regarding any maintenance requirement or lack of maintenance requirement associated with the sewer lines and pipes located within the sewer easement; and
- d. Each Owner of a Lot burdened by the Sewer Easement assumes any and all liabilities, risks and benefits associated in any manner with maintenance or non-maintenance of the Sewer Easement.
- e. The Lot Owners in both Eagle Crest and Eagle View approve of the Sewer Maintenance Agreement attached as Exhibit "E."

2.4 **Delinquent Assessments.** Notwithstanding any language to the contrary contained in this Restated Declaration, if at the time this Restated Declaration is recorded any Lot Owner within Eagle View is delinquent in the payment of any fees or assessment to the Association, the Association shall continue to have the right and authority to collect the delinquent assessment along with any applicable late fees, interest attorney fees and costs of collection, and all the provisions of the Declaration shall be binding and remain in effect against such delinquent Lot Owner until such time as the Association is paid in full. The recording of this Restated Declaration shall in no way impact the Association's right to collect delinquent assessments

from any Lot Owner within Eagle View who is delinquent in the payment of any fees or assessments.

**ARTICLE III  
MEMBERSHIP AND VOTING RIGHTS BOARD OF DIRECTORS**

- 3.1 **Membership.** Membership in the Association shall at all times consist exclusively of Owners and each Owner shall be a member of the Association so long as they are an Owner, and such membership shall automatically terminate when they cease to be an Owner. Upon the transfer of an ownership interest in a Lot, the new Owner succeeding to such ownership interest shall likewise automatically succeed to such membership in the Association.
- 3.2 **Voting.** Each member shall be entitled to one (1) vote for each Lot owned. Fractional votes shall not be allowed.
- 3.3 **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.
- 3.4 **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.
- 3.5 **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 Restated Declaration, the Bylaws, or Association Rules, the Board may act in all instances on behalf of the Association. The Board may, as it deems appropriate, adopt, amend and repeal Association Rules.
- a. **Qualification of Directors.** 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 Restated 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 Directors.

- 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 Restated Declaration, the Articles, Bylaws, and Association Rules concerning the Subdivision and the Association's 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 and to impose a special Assessment.

#### **ARTICLE IV PROPERTY RIGHTS IN PRIVATE STREETS**

- 4.1 **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.
- 4.2 **Limit on Scope of Easement over Private Streets.** The rights and easements of use granted in Section 4.1 hereof are strictly limited to benefit the Subdivision. The rights and easements (including, without limitation, the right to connect to utilities situated in the Private Streets) shall be non-exclusive.
- 4.3 **Limitation on Easement.** A Member's right and easement of use and enjoyment concerning the Private Streets shall be further subject to the following:
  - a. 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 X hereof.
  - b. The right of Box Elder County and any other governmental or quasi-governmental body having jurisdiction over the Property to access and have a right 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

- c. 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. Any such dedication or transfer must, however, be approved by two-thirds of the vote of the Members present in person or by proxy at a meeting duly called for that purpose.

## ARTICLE V ASSESSMENTS

- 5.1 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 attorney fees) of enforcing the provisions of this Restated 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. Except as limited by Article VII below, the Owners shall pay the costs incurred by the Association in maintaining all landscaping of the Lots (the "Landscape Assessments"). The Landscape Assessments shall be a lien upon the Property in the same manner as the assessments described elsewhere in this Restated 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 share equally in the cost of maintaining, repairing or replacing the private streets (including snow removal). Each Owner 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 Restated 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 and the Utility Easements, 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 attorney 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.

- 5.2 **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 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 Restated Declaration or the Association's Articles of Incorporation.
- 5.3 **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 who are present in person or represented by proxy and are entitled to cast at a meeting duly called for that purpose.
- 5.4 **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 fees, and shall be allocated among the Lots on which such improvements, repairs, maintenance or enforcement action are constructed or taken.
- 5.5 **Rate of Assessment.** All amounts assessed to the Owners shall be assessed equally to such Owners.

- 5.6 **Monthly Assessment Due Dates.** The obligations with respect to the monthly assessments provided for in the Restated 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, shall be delinquent if not paid within thirty days from the date of the notice of assessment.
- 5.7 **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.
- 5.8 **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.
- 5.9 **Tax Collection by County Authorized.** It is recognized that under the Restated Declaration the Association may 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 Restated Declaration, Box Elder 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.

## ARTICLE VI DUTIES AND POWERS OF THE ASSOCIATION

- 6.1 **Duties of the Association.** Without limiting any other duties which may be imposed upon the Association by this Restated 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. In the event that the need for maintenance or repair of Private Streets or the Utility Easements as specified herein is caused by any Owner or any other third party, 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 5.4) to which such Lot is subject.

- c. The Association shall obtain and maintain in force the policies of insurance required by the provisions of this Restated Declaration.
- d. 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.

**6.2 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 Restated 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 VIII of this Restated 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 Restated Declaration or any rules and regulations promulgated by the Board, or to enforce by mandatory injunction or otherwise all of the provisions of this Restated 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 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 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.

- 6.3 **Association Rules.** The Board from time to time and subject to the provisions of this Restated 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; (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; and (f) 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 8.15.
- 6.4 **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.
- 6.5 **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.
- 6.6 **Number of Lots.** As shown on the Plats attached as Exhibit "D", Eagle Crest consists of 33 Lots, all of which are part of the Association. Six (6) Lots are within Phase II of Eagle Crest Townhomes, and twenty-seven (27) Lots are within Phase III of Eagle Crest Townhomes. If, (i) within six (6) months of the date this Restated Declaration is recorded in the Box Elder

County Recorder's Office, (ii) the Owner of two adjacent Lots within Eagle Crest complies with the city and county requirements to combine two (2) adjacent Lots into one (1) Lot, and (iii) amends the Plat to lawfully merge two (2) adjacent Lots into one (1) Lot, and (iv) records the Plat within the six (6) month period, then, (v) the number of Lots within the Association and as stated in this Article 6.6 shall automatically be adjusted and reduced to the number of Lots then currently reflected on the Plats for Eagle Crest as recorded at the Box Elder County Recorder's Office without a further vote of the Owners or an amendment to this Restated Declaration.

- 6.7 Merger of Lots.** Subsequent to six (6) months from the date this Restated Declaration is recorded in the Box Elder County Recorder's Office, no Lot may be merged with another Lot unless (1) the Owner desiring to merge a lot first receives approval of the merger by a vote of at least two-thirds of the Members, and (2) an amendment to this Restated Declaration is recorded in the Box Elder County Recorder's Office along with an amended Plat reflecting the merger of the Lots. As a condition of approval the Association may require the request Owner to pay all expenses, cost and fees associated with the merger, including the payment of legal fees incurred in connection with the vote and amendment. The Board does not have authority to approve the merging of Lots. If any two Lots are merged without the owner of the Lots first taking the steps identified above, the Association shall treat the Lots as if they had not been merged, and the Owner of the merged Lot shall be responsible for the same Assessments that were due before the Lots were merged.
- 6.8 Construction on Undeveloped Lots.** If at any time subsequent to the recording of this Restated Declaration, (i) a Living Unit is constructed on a Lot that previously did not contain a Living Unit, and (ii) if the Lot Owner had not been paying all Assessments on the Lot, then (iii) prior to the start of construction of the Living Unit on the Lot, the Lot Owner shall pay to the Association all unpaid Assessments on the Lot for the five (5) years prior to the start of construction.

## ARTICLE VII LANDSCAPE MAINTENANCE

- 7.1 Landscape Maintenance on Eagle Crest Property.** The lawns on all Eagle Crest Lots shall be maintained by the Association, including mowing, aeration, fertilization, and sprinkler repair services. Notwithstanding the forgoing, an Owner may elect to opt out of Association provided mowing services and assume responsibility for mowing their own lots. The Association fees for Owners will reflect the cost of Association provided mowing services provided to each individual Owner. Regardless of the election of any Owner under this provision, the cost of lawn care and landscape maintenance for Eagle Crest common areas will continue to be shared equally among all Owners.

- a. Owners choosing to opt out of Association provided mowing services must deliver written notice of such election to the Association on or before January 31<sup>st</sup> of each year. The yearly election is binding on Owners and Owners' heirs or successors in interest.
- b. Owners assuming responsibility for their own mowing must mow the lawn located within the boundaries of their lot in a manner consistent with other lawns throughout the community.
- c. Owners assuming responsibility for their own mowing must mow their lawns weekly.
- d. If any Owner assuming responsibility for his own mowing fails to mow the lawn on Owner's Lot as set out herein, the Association will send a warning letter to the Owner. If, after the warning letter, an Owner continues to fail to maintain the lawn on the Owner's Lot as set out herein, the Association will assume responsibility for mowing on the Owner's Lot. In that case, Owner's Association fees will be adjusted to reflect the cost of Association provided mowing services provided to the Owner.
- e. Any dispute regarding mowing standards or landscape standards shall be submitted to the Architectural Control Committee or a Landscape Committee established by the Association.
- f. The owner of a Lot who opts out of the Association provided mowing services shall not be required to pay the portion of his or her assessment related to the mowing service, but shall continue to be responsible for all other portions of the Association Assessment related to the Owner's Lot.

## **ARTICLE VIII USE RESTRICTIONS**

- 8.1 **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 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.
- 8.2 **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.

### 8.3 **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 X.
  - (ii) Nothing herein shall be construed as permitting the construction of any building within the area of any Utility Easements, except as provided in Section 10.4 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 X 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.** The Owners of Lots in Eagle Crest Townhomes Phase II shall provide and maintain their own mailboxes. The United States Postal Service has installed community mailboxes in Eagle Crest Townhomes Phase III.



- 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. The Association shall not be responsible for the maintenance, repair or replacement of any fence unless the fence is installed by the Association.
- 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 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.** Except as limited by Article VII above, all vegetation on each Lot shall be properly nurtured and maintained at the Lot Owner's expense. An owner shall receive written approval from the Architectural Control Committee before planting new trees or shrubs or otherwise altering the vegetation on his or her Lot. Any Lot area disturbed by construction on a Living Unit will be reclaimed with landscaping of the same type and location that existed before the construction, although changes to the landscaping may be permitted if approved, in writing by the Architectural Control Committee. Reclamation and/or landscaping must be commenced within one month of the date the construction is completed (or by the next succeeding April 30 of the following year if the construction is completed between October 15 and February 15), and must be materially completed within six months from the date the construction is completed.
  - 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 Restated 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.
- 8.4 **Business Restrictions.** Inasmuch as Eagle Crest is a residential community where neighbors live in close proximity to each other, no business of any kind shall be established, conducted, permitted, operated, or maintained within the Subdivision except the business meets all federal, state and municipal laws, ordinances and licensing requirements, as well as complying with the Association's Restated Declaration, bylaws, rules and regulations. The following are the requirements for home occupation businesses:
- a. Customers, patrons, guests, clients or individuals may come to Lots for business activity on a limited scale (not more than one at a time).

- b. Any vehicles used in the business must comply with any Association parking rules.
- c. No business activities may be conducted between the hours of 9:00 p.m. and 8:00 a.m.
- d. No soliciting shall be permitted.
- e. Deliveries shall be limited to not more than one per day.
- f. The Board may enact additional rules as need to maintain a residential atmosphere and lifestyle.

**8.5 Utility Easements.** There is hereby created a blanket easement between the Association and such utility companies as may be designated by 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, 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.

**8.6 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.

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

- a. Non-exclusive vehicular and pedestrian access to and from and movement within the Subdivision, subject to the terms and restrictions set forth herein. No vehicles may be parked, even temporarily, on 425 East.

- b. 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.
- 8.8 **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.
- 8.9 **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.
- 8.10 **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.
- 8.11 **Nuisances.** No rubbish or debris of any kind shall be placed or permitted by an 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.
- 8.12 **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 Restated Declaration and the rules and regulations of the Board or of the Association have been or are being complied with.
- 8.13 **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. 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.

**8.14 Trash Containers and Collection.** All garbage and trash shall be placed and kept in the trash cans provided by Brigham City. 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.

**8.15 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 Restated Declaration:

- a. Any Owner;
- b. The Board; or
- c. The Association.

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

**8.16 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 IX  
RENTAL RESTRICTIONS**

WHEREAS, the Lot Owners within Eagle Crest desire to preserve and enhance the quality of life within the Subdivision and have purchased their Lots at Eagle Crest for the purpose of using their Lot as an Owner occupied single family residence; and

WHEREAS, the Lot Owners believe the planned unit development living concept was developed to create a real property interest wherein individuals could own their own property and enjoy the benefits that accompany ownership of real property, including the stability associated with real property ownership, both individually and as a neighborhood, as well as the security that comes to a community by having residents who are Owners or renters and are committed to the long-term welfare and good of the community; and

WHEREAS, because the Lot Owners within Eagle Crest own a shared and undivided interest in the Association Common Area, the Common Area should be used and shared in common by those who own an interest in the Common Area and should not be used by those who do not possess an ownership interest in the Common Area, and any Owner who does not live in his Lot relinquishes all rights to use of the Common Area to his tenants; and

WHEREAS, the Lot Owners realize that the value of their Lots are directly related to the ability to sell their Lots, that the ability to sell their Lots is directly related to the ability of prospective borrowers to obtain financing, and that underwriting standards at financial institutions and secondary mortgage markets restrict the percentage of non-Owner occupied Lots that can exist in a planned unit development; and further, when too high a percentage of non-Owner occupied Lots exist in a planned unit development, a buyer will not be able to qualify for favorable and competitive market interest rates and financing terms, thus inhibiting Lot Owners' ability to sell their Lots and depressing the value of all the Lots at Eagle Crest; and

WHEREAS, the Lot Owners have determined through the years of their collective experience that Lot Owners are more responsive to the needs of the Association community, take a greater interest and care of the Common Area, and are generally more respectful of the Association rules; and

THEREFORE, to accomplish the Lot Owners' objectives, the following rental restrictions are adopted.

- 9.1 **Leasing Prohibited.** The leasing of Lots and Living Units within the Subdivision is prohibited unless the leasing is consistent with this Article IX.

- 9.2 **Limited Leasing Permitted.** No Lot or Living Unit may be rented or leased for less than twelve (12) consecutive months. No short term, weekly, weekend, or overnight rentals shall be permitted.
- 9.3 **Twenty Percent Cap.** Not more than twenty percent (20%) of the Lots or Living Units within the Eagle Crest shall be occupied by non-Lot Owners at any one time.
- 9.4 **Board Approval of Leases.** All leases, subleases, assignments or leases, and all renewals of such agreements shall first be submitted to the Board who shall determine compliant with this Article IX.
- 9.5 **Notification to Board.** Any Lot Owner desiring to lease his or her Lot or to have his or her Lot occupied by a non-Lot Owner shall notify the Board in writing of their intent to lease their Lot. The Board shall maintain a list of those Lot Owners who have notified it of an intent to lease their Lot and shall grant permission to Lot Owners to lease their Lot in the same order the Board receives the written notice of intent to lease a Lot from the Lot Owners. No permission shall be granted to lease a Lot until less than twenty percent (20%) of the Lots at Eagle Crest are occupied by a non-Lot Owner.
- 9.6 **Restrictions Not Applicable.** The restrictions contained herein shall not apply:
- a. To a Lot Owner who is a member of the military and is temporarily deployed out of the State of Utah, and by reason of the temporary deployment is required to move from the Lot during the period of temporary military deployment. The Lot Owner who is temporarily deployed may lease their Lot during the period of temporary military deployment. However, if the Lot Owner moves from the Lot due to a permanent change of station (PCS) the rental restrictions shall continue to apply to that Lot and Lot Owner;
  - b. To a parent, grandparent, or child who is a Lot Owner and leases their Lot to a family member who is a parent, grandparent, child, grandchild, or sibling of the Owner;
  - c. To a Lot Owner who moves for a period of less than two years at least 40 miles away from the Lot by reason of being relocated by the Lot Owner's employer, if relocation of the Owner is necessary for purposes of employment;
  - d. To a Lot Owner who moves at least 30 miles away from their Lot due to temporary (less than three years) humanitarian, religious or charitable activity or service and leases their Lot with the intent to return to occupy the Lot when the humanitarian, religious or charitable service has concluded, or
  - e. To a Lot owned by a trust or other entity created for estate planning purposes, if the trust or other estate planning entity was created for the estate of the current Resident of the Lot or the parents, grandparent, child, grandchild, or sibling of the current Resident of the Lot.

f. Lots that are leased under the exceptions contained in this Section 9.6 shall not be counted toward the twenty percent (20%) Lot cap on rental restrictions.

9.7 **Grandfather Clause.** Those Lots that are occupied by non-Lot Owners at the time this Restated Declaration is recorded may continue to be occupied by non-Lot Owners until the Lot Owner sells, conveys or transfers the Lot to another party, occupies the Lot, or an officer, Owner, member, trustee, beneficiary, director, or person holding a similar position of Ownership or control of an entity or trust that holds an Ownership interest in the Lot, transfers the Lot to another party or occupies the Lot.

9.8 **Transfer of Lot.** For purposes of Section 9.7, a transfer occurs when one or more of the following occur:

- a. there is a conveyance, sale, or other transfer of a Lot by deed or contract;
- b. the granting of a life estate in the Lot; or
- c. if the Lot is owned by a limited liability company, corporation, partnership, or other business entity, the sale or transfer of more than 75% of the business entity's share, stock, membership interests, or partnership interests in a 12-month period.

9.9 **Tracking.** The Board shall create by rule or resolution, procedures to determine and track the number of rentals and Lots in Eagle Crest subject to the provisions in this Article IX, and shall ensure consistent administration and enforcement of the rental restrictions.

9.10 **Rental Lot Defined.** As used herein, "Rentals", "Rental Lot" or "Lot" means a Lot or Lot owned by an Owner that is Occupied by one or more individuals while, at the same time, the Lot Owner does not occupy the Lot as the Owner's primary residence.

9.11 **Renting Defined.** As used herein, "Renting" or "Leasing" means a Lot that is owned by an Owner that is Occupied by one or more Non-Owners while no Owner occupies the Lot as the Owner's primary residence. The payment of remuneration to an Owner by a Non-Owner shall not be required to establish that the Non-Owner is Leasing a Lot. Failure of a Non-Owner to pay remuneration of any kind to the Owner shall not be considered when determining if a Lot is a Rental Lot.

9.12 **Non-Owner Defined.** As used herein, "Non-Owner" means an individual or entity that is not an Owner.

9.13 **Occupied Defined.** As used herein, "Occupied" means to reside in the Lot for ten (10) or more days in any thirty (30) day period. A Lot is deemed to be Occupied by a Non-Owner if the Lot is Occupied by someone other than the Lot Owner.



- 9.14 **Single Family Defined.** "Single Family" means, (a) a single person living alone or with the person's children, (b) up to three unrelated persons, or (c) a husband/wife relationship, with or without children.
- 9.15 **Violation.** Any Lot Owner who violates this Article IX in any manner, including but not limited to leasing a Lot without first obtaining written authorization from the Board or by leasing their Lot in violation of the twenty percent (20%) restriction set forth herein, shall be subject to a complaint for damages and/or an injunction and order seeking to terminate the lease in violation of this Article IX. If the Association retains legal counsel to enforce this Article IX, with or without the filing of legal process, the violating Lot Owner shall be liable for all costs and expenses incurred by the Association, including but not limited to attorney fees and court costs incurred by the Board in enforcing the provisions of this Article IX.
- 9.16 **Temporary Defined.** Nothing herein shall prohibit an Owner from permitting a guest or visitor from temporarily residing in his or her Lot, while the Owner is present. As used in this paragraph, "temporarily" mean for a period not exceeding fifteen (15) days in any thirty (30) day period.
- 9.17 **Severability.** The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof.

## ARTICLE X ARCHITECTURAL CONTROL

- 10.1 **Architectural Control Committee.** The Board shall appoint a three-member Architectural Control Committee, the function of which shall be to ensure 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.
- 10.2 **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.
- 10.3 **Standard.** In deciding whether to approve or disapprove plans and specifications submitted to it, the Architectural Control Committee shall use its best judgement to ensure 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.

- 10.4 **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.
- 10.5 **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.
- 10.6 **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 address provided, upon request, by the Board or the Architectural Control Committee:
- 10.7 **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.

10.8 **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 X. The Architectural Control Committee shall have no liability or responsibility for any representations made to any Owner or prospective owner by any third parties.

10.9 **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 XI RIGHTS OF MORTGAGEES

11.1 **Notices of Mortgagees.** A Mortgagee shall not be entitled to receive any notice which this Restated 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 11.6. Notwithstanding the foregoing if any right of a Mortgagee under this Restated 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 Restated 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.

**11.2 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.

**11.3 Relationship with Assessment Liens.**

- a. The lien provided for in Article V 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 Restated Declaration is also subject to the lien of a Mortgagee, then: (i) the foreclosure of any lien created by this Restated 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 Restated 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 Restated Declaration during the period such Person is an Owner.

**11.4 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 11.1 and Section 11.6. 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 Restated 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 Restated 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.

- 11.5 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 Restated 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.

**11.6 Notices of Action.** Upon written request to the Association identifying the name and address of the Mortgagee (and the name and address of the Mortgagees 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 Restated Declaration as identified in Section 11.4 hereof.

**11.7 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 11.6(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.

**ARTICLE XII  
AMENDMENTS**

- 12.1 **General Amendment Requirements.** Subject to the provisions of Section 11 hereof, any amendment hereto shall require the affirmative vote of at least two-thirds of all 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. 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.
- 12.2 **Execution of Amendments.** Any amendment authorized pursuant to this Restated Declaration shall be accomplished through the recordation of an instrument executed by the Board. In such instrument the Board shall certify that the vote required by this Section for amendment has occurred. An amendment shall be effective when executed by the Board, who shall certify that the amendment has been so approved, and when the amendment has been recorded in the office of the County Recorder of Box Elder County, Utah.
- 12.3 **Mortgagees' Approval.** Subject to the foregoing, any provision of this Restated 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.

**ARTICLE XIII  
MISCELLANEOUS**

- 13.1 **Notices.** Any notice required or permitted to be given to any Owner or Member under the provisions of this Restated 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.
- 13.2 **Consent in Lieu of Voting.** In any case in which this Restated 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. The following additional provisions shall govern any application of this Section 13.2:
- 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. 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.
- 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.

13.3 **Dissolution.** Subject to the restrictions set forth in Article XI of this Restated Declaration pertaining to mortgagee protection, the Association may be dissolved by the affirmative assent in writing of two-thirds of the votes. 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 Restated 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 and the Utility Easements, on a pro rata basis which conforms substantially with the assessment procedure, terms and conditions set forth in Article V of this Restated Declaration.

13.4 **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 Restated Declaration.

13.5 **Interpretation.** The captions which precede the Articles and Sections of this Restated 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 Restated Declaration shall not affect the validity or enforceability of the remainder hereof.

13.6 **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.

13.7 **Effective Date.** This Restated 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.

*[Signatures on Following Page]*



**CERTIFICATION**

It is hereby certified that Owners holding at least two-thirds (67%) of the total votes of the Association have voted to approve this Restated Declaration.

IN WITNESS WHEREOF, this 16 day of May, 2017.

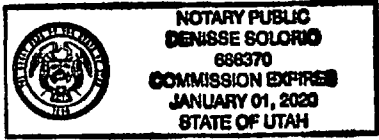
**EAGLE CREST SINGLY FAMILY HOMES ASSOCIATION, INC**

By Stanford Young  
President

STATE OF UTAH            )  
  ss.  
COUNTY OF Cache    )

On the 16 day of May, 2017 personally appeared before me Stanford Young, who by me being duly sworn, did say that he/she is the President of Eagle Crest Singly Family Homes Association, Inc, and that the within and foregoing instrument was signed in behalf of said Association and did duly acknowledged to me that he/she executed the same.

Denisse Solorio  
NOTARY PUBLIC



## **EXHIBIT "A"**

### **LEGAL DESCRIPTION**

#### **EAGLE CREST TOWNHOMES - PHASE II AND PHASE III**

##### **PHASE II**

UNIT 01 EAGLE CREST TOWNHOMES PUD PH 2 AMENDED  
LOT 02 EAGLE CREST TOWNHOMES PUD PH 2 AMENDED  
LOT 03 EAGLE CREST TOWNHOMES PUD PH 2 AMENDED  
LT 04 EAGLE CREST TOWNHOMES PUD PH 02 AMENDED  
LOT 05 EAGLE CREST TOWNHOMES PUD PH 2 AMENDED  
LOT 06 EAGLE CREST TOWNHOMES PUD PH 02 AMENDED

##### **PHASE III**

LOT 1 EAGLE CREST TOWNHOMES PH 3 PUD LOT 1 AMENDMENT  
LOT 3 EAGLE CREST TOWNHOMES PH 3 PUD AMENDED  
LT 04 EAGLE CREST TOWNHOMES PH 03 PUD AMENDED  
LOT 6 EAGLE CREST TOWNHOMES PH 3 PUD AMENDED  
LOT 7 EAGLE CREST TOWNHOMES PH 3 PUD AMENDED  
LOT 8 EAGLE CREST TOWNHOMES PH 3 PUD AMENDED  
LOT 09 EAGLE CREST TOWNHOMES PH 03 PUD AMENDED  
LOT 10 EAGLE CREST TOWNHOMES PH 03 PUD AMENDED  
LOT 11 EAGLE CREST TOWNHOMES PH 03 PUD AMENDED  
LOT 13 EAGLE CREST TOWNHOMES PH 3 PUD AMENDED  
LT 14 EAGLE CREST TOWNHOMES PH 03 PUD AMENDED  
LOT 15R EAGLE CREST TOWNHOMES PH 03 PUD AMENDED  
LOT 16R EAGLE CREST TOWNHOMES PH 3 PUD AMENDED  
LT 17 EAGLE CREST TOWNHOMES PH 03 PUD AMENDED  
LOT 20 EAGLE CREST TOWNHOMES PH 3 PUD AMENDED  
LOT 21 EAGLE CREST TOWNHOMES PH 03 PUD AMENDED  
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LOT 29 EAGLE CREST TOWNHOMES PH 03 PUD AMENDED  
LT 31 EAGLE CREST TOWNHOMES PH 03 PUD AMENDED  
LOT 32 EAGLE CREST TOWNHOMES PH 03 PUD AMENDED  
LOT 33 EAGLE CREST TOWNHOMES PH 03 PUD AMENDED  
LOT 34 EAGLE CREST TOWNHOMES PH 3 PUD AMENDED

**EXHIBIT "B"**

**LEGAL DESCRIPTION**

**EAGLE VIEW SUBDIVISION - P.U.D. PHASE III**

950 S STREET EAGLE VIEW SUB PUD PH 03  
LOT 01 EAGLE VIEW SUB PUD PH 03  
LOT 02 EAGLE VIEW SUB PUD PH 03  
LT 03 EAGLE VIEW SUB PUD PH 03  
LOT 04 EAGLE VIEW SUB PUD PH 03  
LT 05 EAGLE VIEW SUB PUD PH 03  
LT 06 EAGLE VIEW SUB PUD PH 03  
LOT 07 EAGLE VIEW SUB PUD PH 03  
LOT 08 EAGLE VIEW SUB PUD PH 03  
LOT 09 EAGLE VIEW SUB PUD PH 03  
LT 10 EAGLE VIEW SUB PUD PH 03  
LOT 11 EAGLE VIEW SUB PUD PH 03 AMEND 1  
LOT 13 EAGLE VIEW SUB PUD PH 03 AMEND. 1  
LOT 14 EAGLE VIEW SUB PUD PH 03  
LOT 15 EAGLE VIEW SUB PUD PH 03  
LOT 16 EAGLE VIEW SUB PUD PH 03  
LOT 17 EAGLE VIEW SUB PUD PH 03  
LOT 18 EAGLE VIEW SUB PUD PH 03  
LT 20 EAGLE VIEW SUB PUD PH 03

## **EXHIBIT “C”**

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

#### **ARTICLE I 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.

#### **ARTICLE II DECLARATION**

- 2.1 **Declaration.** Reference is made to that certain Restated and Amended 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 “Restated Declaration”). All capitalized terms as used in these Bylaws shall have the same meanings as set forth in the Restated Declaration. The Restated Declaration, as it may be amended or supplemented from time to time, is incorporated herein by reference.

#### **ARTICLE III 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 Restated 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 the provisions of the Revised Nonprofit Corporations Act, 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 percent (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 one (1) classes of voting membership. Each Member shall be entitled to one (1) vote for each Lot owned. Fractional votes shall not be allowed.
- 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.

## ARTICLE IV 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. 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). 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 Restated 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 Restated 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, and the Private Roads, as may be adopted by the Association and which are consistent with these Bylaws, the Articles and the Restated 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 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 a 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 a 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.

## **ARTICLE V 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 Restated 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 Restated 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 Restated 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 Restated 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 Restated Declaration, any amendment to the Restated 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.

## **ARTICLE VI 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 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 Restated 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 Restated 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 Restated 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. For purposes of this paragraph 6.4(d) only, an Assessment will be considered delinquent if it is 90 days or more past due.

## ARTICLE VII AMENDMENTS TO BYLAWS

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. 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 Restated 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.

**ARTICLE VIII  
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.

**ARTICLE IX  
CONSTRUCTION**

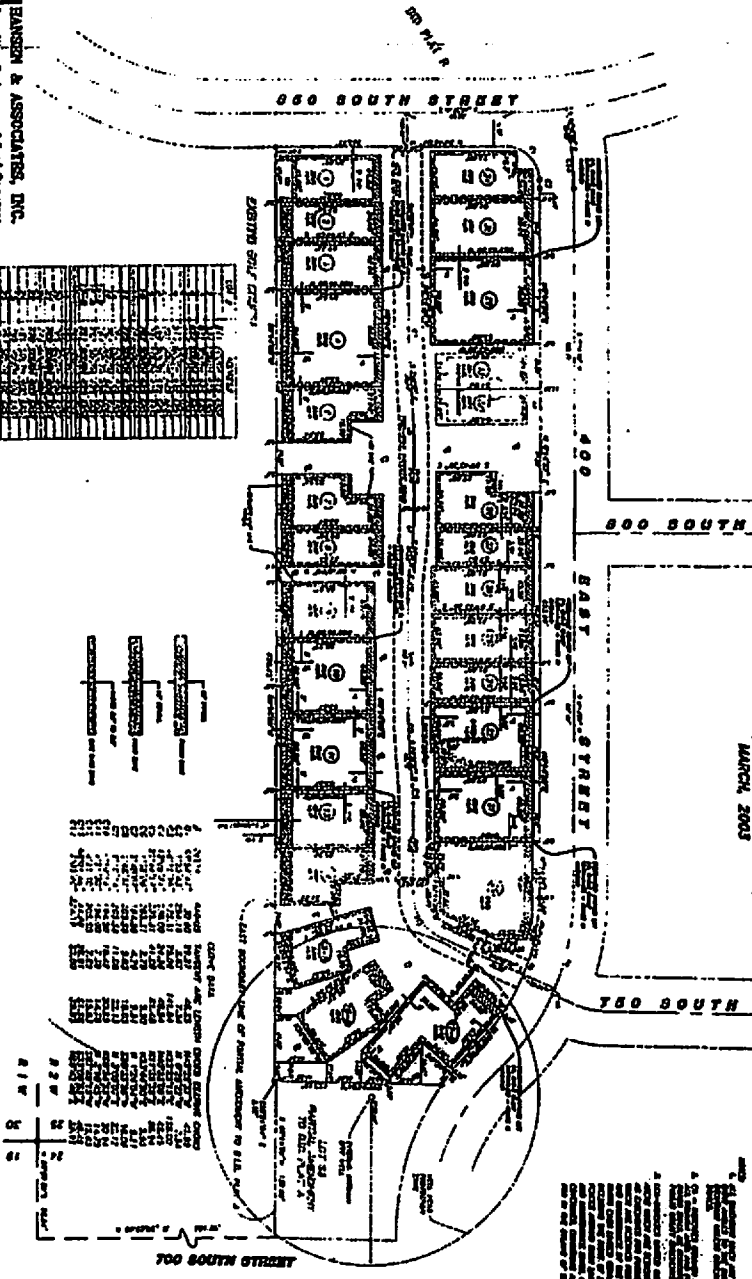
Any discrepancies or conflicts between the provisions of the Utah Code Annotated, the Restated Declaration, the Articles and Bylaws, and the Association Rules shall, unless otherwise provided, be resolved by giving priority first to the statutes, second to the Restated Declaration, third to the Articles,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

**EXHIBIT "D"**

**PLAT MAPS**

**EAGLE CREST TOWNHOMES - PHASE III AMENDMENT NO. 3**

A PART OF THE NORTHWEST QUARTER SECTION 24, T9N, R29W OF THE SALT LAKE BASIN AND MERRIWEATHER BRIDGES CITY, SALT LAKE COUNTY, UTAH



**EVA BANSON & ASSOCIATES, INC.**  
 Planning, Engineering, Architecture and Land Development  
 1000 South Main Street, Suite 200  
 Salt Lake City, Utah 84143  
 Phone: (801) 462-1100  
 Fax: (801) 462-1101  
 Website: www.evabanson.com

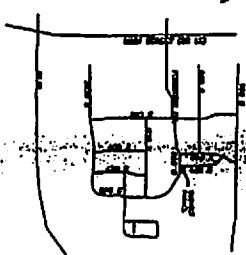
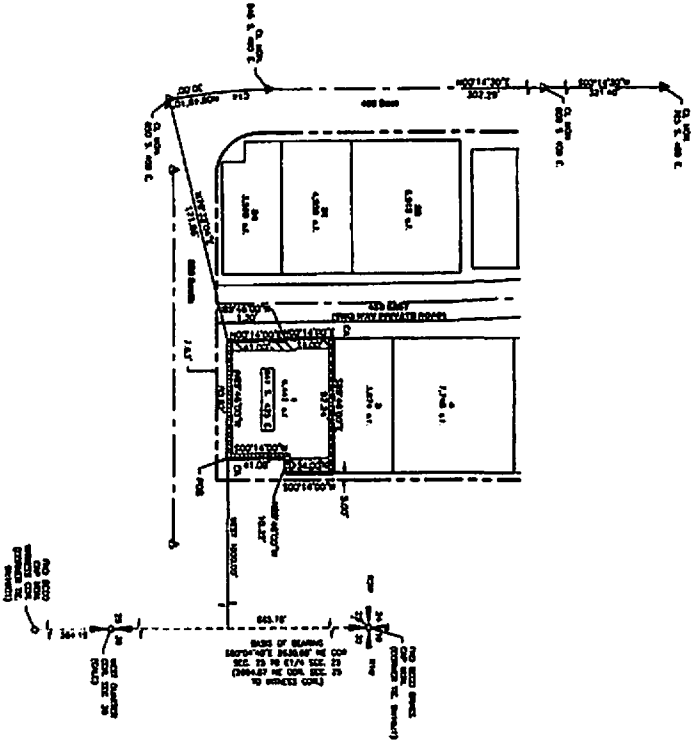
<p><b>COUNTY SUPERVISOR'S CERTIFICATE</b>          I HEREBY CERTIFY THAT THE ABOVE DESCRIBED PROJECT HAS BEEN REVIEWED AND FOUND TO BE IN ACCORDANCE WITH THE ZONING ORDINANCES OF THE COUNTY OF SALT LAKE COUNTY, UTAH.</p> <p><i>[Signature]</i>          COUNTY SUPERVISOR</p>	<p><b>PLANNING COMMISSION APPROVAL</b>          APPROVED AND RECOMMENDED FOR ADOPTION AS AMENDMENT NO. 3 TO THE ZONING ORDINANCES OF THE COUNTY OF SALT LAKE COUNTY, UTAH.</p> <p><i>[Signature]</i>          PLANNING COMMISSION CHAIR</p>	<p><b>DEVELOPER'S CERTIFICATE</b>          I HEREBY CERTIFY THAT THE ABOVE DESCRIBED PROJECT HAS BEEN REVIEWED AND FOUND TO BE IN ACCORDANCE WITH THE ZONING ORDINANCES OF THE COUNTY OF SALT LAKE COUNTY, UTAH.</p> <p><i>[Signature]</i>          DEVELOPER</p>	<p><b>APPROVAL AND ACCEPTANCE</b>          I HEREBY APPROVE AND ACCEPT THE ABOVE DESCRIBED PROJECT AND THE ZONING ORDINANCES AMENDMENT NO. 3 TO THE ZONING ORDINANCES OF THE COUNTY OF SALT LAKE COUNTY, UTAH.</p> <p><i>[Signature]</i>          COUNTY SUPERVISOR</p>	<p><b>CONTRACTOR'S CERTIFICATE</b>          I HEREBY CERTIFY THAT THE ABOVE DESCRIBED PROJECT HAS BEEN REVIEWED AND FOUND TO BE IN ACCORDANCE WITH THE ZONING ORDINANCES OF THE COUNTY OF SALT LAKE COUNTY, UTAH.</p> <p><i>[Signature]</i>          CONTRACTOR</p>
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EAGLE CREST TOWNHOMES PH 03 AMEND #03



**EAGLE CREST TOWNHOMES, PHASE III**  
**LOT 1 AMENDMENT**  
 A PLANNED UNIT DEVELOPMENT  
 AND CONDENSED LOTS 1 & 2  
 INTO LOT 1  
 PART OF THE NORTHEAST QUARTER OF SECTION 24,  
 TOWNSHIP 9 NORTH, RANGE 2 WEST,  
 SALT LAKE BASIN AND WENDEL  
 BRANCH CREEK, BOX ELDER COUNTY, UTAH



**QUANTITY RESPONSES**  
 The undersigned hereby certifies that the information furnished herein is true and correct to the best of his knowledge and belief.

*[Signature]*  
 DATE: 11/15/2011

**APPROVAL AS TO FORM**  
 I have examined the above and find it conforms to the requirements of the Utah Uniform Condominium Act.

*[Signature]*  
 DATE: 11/15/2011

**ENGINEER'S CERTIFICATE**  
 I have examined the above and find it conforms to the requirements of the Utah Uniform Condominium Act.

*[Signature]*  
 DATE: 11/15/2011

**CITY ENGINE APPROVAL AND TESTIFICATE**

*[Signature]*  
 DATE: 11/15/2011

DATE	TIME	BY	OFFICE
11/15/2011	10:00 AM	[Signature]	CITY ENGINEER'S OFFICE

**LEGEND**

CORNER CORNER  
 ROAD OR SERVICE  
 EASEMENT LINE  
 CONDUIT  
 1' X 2' REBAR CONC  
 18" REBAR CONC  
 3' X 2' REBAR CONC

**OWNER'S CERTIFICATE**  
 I, the undersigned, hereby certify that the information furnished herein is true and correct to the best of my knowledge and belief.

*[Signature]*  
 DATE: 11/15/2011

**LOT 1 SUBMITTAL DESCRIPTION**  
 This is a description of the proposed subdivision of Lot 1, as shown on the attached plan. The subdivision is shown on the attached plan and is described as follows: Lot 1 is a rectangular lot measuring 100 feet by 100 feet. The subdivision is shown on the attached plan and is described as follows: Lot 1 is a rectangular lot measuring 100 feet by 100 feet.

**IMMUTATIVE NOTES**  
 1. The owner of this lot shall be responsible for the cost of the survey and the cost of the subdivision. The owner shall also be responsible for the cost of the subdivision and the cost of the subdivision.

**OWNER'S CERTIFICATE**  
 I, the undersigned, hereby certify that the information furnished herein is true and correct to the best of my knowledge and belief.

*[Signature]*  
 DATE: 11/15/2011

**COMPOSITE APPROVAL SIGNATURE**  
 I have examined the above and find it conforms to the requirements of the Utah Uniform Condominium Act.

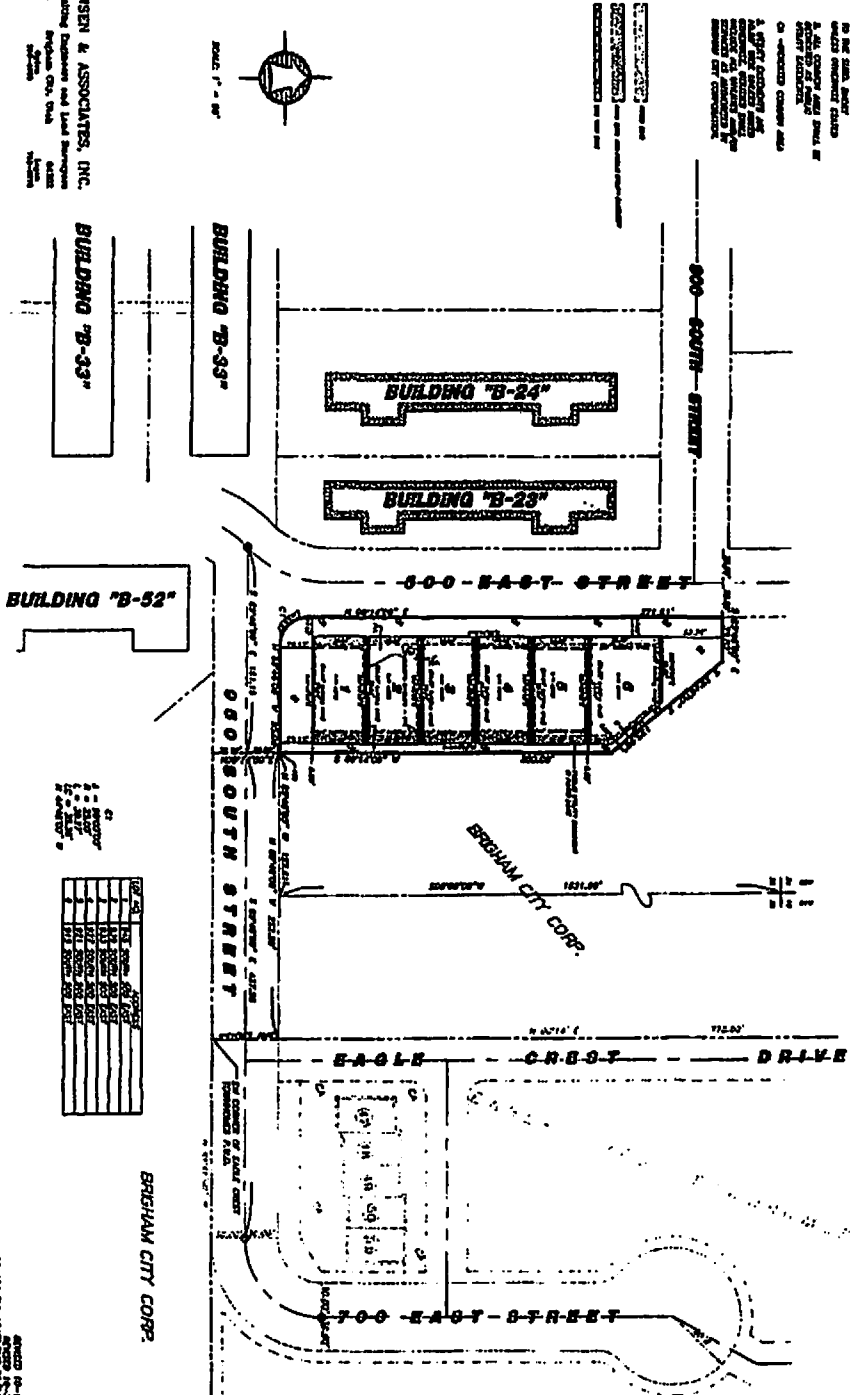
*[Signature]*  
 DATE: 11/15/2011

**EAGLE CREST TOWNHOMES, PHASE III**  
**LOT 1 AMENDMENT**  
 A PLANNED UNIT DEVELOPMENT  
 AND CONDENSED LOTS 1 & 2  
 INTO LOT 1  
 PART OF THE NORTHEAST QUARTER OF SECTION 24,  
 TOWNSHIP 9 NORTH, RANGE 2 WEST,  
 SALT LAKE BASIN AND WENDEL  
 BRANCH CREEK, BOX ELDER COUNTY, UTAH

NO.	REVISIONS
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**ACE ALLIANCE CONSULTING ENGINEERS**  
 102 EAST 200 WEST SUITE A  
 SALT LAKE CITY, UT 84111  
 (435) 755-8121  
 ace@ace-engineers.com

**AMENDED EAGLE CREST TOWNHOMES- PHASE II**  
**A PLANNED UNIT DEVELOPMENT**  
 A PART OF THE NORTHEAST QUARTER SECTION 25, T9N, R29W  
 OF THE SALT LAKE BASIN AND MERRIAM  
 DRAINAGE CITY, 009 ELDER COUNTY, UTAH



**PLANNING COMMISSION APPROVAL**  
 APPROVAL AS TO FORM

**ENGINEER'S CERTIFICATE**  
 APPROVAL AND ACCEPTANCE

**APPROVAL AND ACCEPTANCE**  
 APPROVAL AS TO FORM

**OWNER'S DECLARATION**

**OWNER'S DECLARATION**

**PLANNING COMMISSION APPROVAL**  
 APPROVAL AS TO FORM

**ENGINEER'S CERTIFICATE**  
 APPROVAL AND ACCEPTANCE

**APPROVAL AND ACCEPTANCE**  
 APPROVAL AS TO FORM

**OWNER'S DECLARATION**

**OWNER'S DECLARATION**



**EXHIBIT "E"**

**SEWER MAINTENANCE AGREEMENT**

## **Sewer Maintenance Agreement**

This Sewer Maintenance Agreement (“Agreement”) is created by the express consent and approval of the owners of lots 1, 2, 3, 4, 5 and 6 (“Lot Owners) within Eagle View Subdivision - P.U.D. Phase III (“Eagle View”) for the benefit and use of the Lot Owners. Each Lot Owner acknowledges receiving a payment in excess of \$2,000.00 in consideration for the Lot Owner accepting full and complete responsibility for maintenance of the Sewer Line System described below. The terms of the Agreement are:

1. There exists in Eagle View a common sewer line (the “Sewer Line System”) servicing the six Lot Owners identified herein. The Lot Owners hereby acknowledge, recognize and consent to the existence of the sewer line easement, which is located in the area labeled “utility easement” on the Eagle View Subdivision - P.U.D. Phase III plat map (the “Sewer Easement”), and which runs upon, across, over and under the back portions of the Lots described in Exhibit “D-1”.
2. The Sewer Easement exists for the benefit of the Lot Owners and for the construction, maintenance, repair and replacement of the Sewer Line System.
3. This Agreement creates and grants to each Lot Owner the rights, obligations and duties described herein.
4. This Agreement modifies, amends and replaces the sewer easement and sewer easement assessment language contained in the Declaration of Covenants, Conditions and Restrictions for Eagle Crest Single Family Planned Unit Development, recorded in the office of the Box Elder County Recorder on July 3, 2001, as entry number 154744 (“Enabling Declaration”), and has been approved and authorized by a vote of the Owners approving the Restated Declaration.
5. This Agreement amends and replaces any requirement or obligation that Eagle Crest Single Family Homes Association, Inc. (“Association”) has or had to maintain, repair or replace any the Sewer Line System within the Sewer Easement.
6. Each Lot Owner may lay, construct, reconstruct, replace, repair, renew, operate and maintain conduits, pipes and other necessary sewer line facilities within the Sewer Line Easement.
7. Each Lot Owner is connected by a lateral sewer line to the Sewer Line System. Each lateral sewer line only serves one Lot. All such lateral connections are underground, shall flow naturally (by gravity) into the Sewer Line System, shall not have any adverse effect on the Sewer Line System, and shall be maintained, repaired and replaced at the respective Owner’s sole expense.


8. The Association previously had the responsibility for the care, upkeep, and cleaning of the Sewer Line System. Upon recording of this Agreement each individual Lot Owner shall be solely responsible for the care, maintenance, repair, replacement, upkeep and cleaning of the lateral line that connects the Owner's home to the Sewer Line System, and the Lot Owner's shall collectively be responsible for maintaining, repairing and replacing the Sewer Line System located within the Sewer Easement.
9. The Lot Owners have the affirmative duty to maintain the Sewer Line System for the benefit and use of all users of the Sewer Line System. Failure of any Lot Owner to share in the expense of maintaining, repairing or replacing the Sewer Line System shall give rise to a cause of action by one or more of the remaining Lot Owners against the Lot Owner(s) who fails to contribute an equal share of the expenses associated with the maintenance of the Sewer Line System. In the event the Sewer Line System becomes clogged or in need of maintenance, the Lot Owners shall be required to pay an equal share of the cost to repair the blockage. Or, if it can be determined that one Lot Owner was the cause of the blockage due to negligence of the Lot Owner, that Lot Owner shall solely pay the cost of repair.
10. If an action is instituted by one or more Lot Owners against one or more Lot Owners for the purpose of requiring payment for any repairs or maintenance as outlined in paragraph 9 above, the prevailing party shall be entitled to collect court costs and reasonable attorney fees from any non-prevailing parties.
11. The reservations and grant of easement contained in this Agreement shall survive the recording of any amendment to the Enabling Declaration and the disconnection of Eagle View from the Association and remain a permanent easement on all Lots described in Exhibit "D-1".
12. The rights and obligations described in this Agreement are appurtenant to and pass with title to every Lot described in Exhibit "D-1". Each and every conveyance of a Lot shall be construed to include this grant and reservation of easement, even though no specific reference to such easement appears in any such conveyance.
13. No Lot Owner may build on, harm, damage or injure the Sewer Line System located on an Owner's Lot. Any Lot Owner who harms, interferes with, damages or in any manner injures a drainage pipe within the Agreement area on the Lot Owner's Lot, shall be responsible for any damages resulting to other Lot Owners as a consequence of such interference.

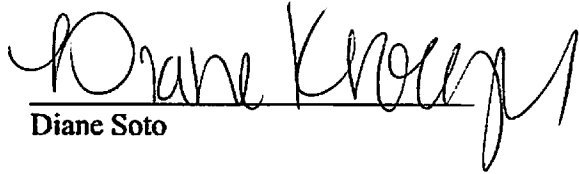
This Agreement has been consented to and approved by the following owners of Lots in Eagle View Subdivision - P.U.D. Phase III.

**[Signatures on Next Pages]**

**Lot 1, Eagle View Subdivision - P.U.D. Phase III  
456 E. 900 S., Brigham City, UT 84032**

IN WITNESS WHEREOF, this 14 day of May, 2017.

  
\_\_\_\_\_  
Wilfred Kroeger

  
\_\_\_\_\_  
Diane Soto

**Lot 2, Eagle View Subdivision - P.U.D. Phase III  
466 E. 900 S., Brigham City, UT 84032**

IN WITNESS WHEREOF, this 14<sup>th</sup> day of May, 2017.

  
\_\_\_\_\_  
Hal Hadfield

**Lot 3, Eagle View Subdivision - P.U.D. Phase III  
472 E. 900 S., Brigham City, UT 84032**

IN WITNESS WHEREOF, this 14 day of May, 2017.

Deceased  
Stephen L. Green

Tamra K Green  
Tamra K. Green


**Lot 4, Eagle View Subdivision - P.U.D. Phase III  
478 E. 900 S., Brigham City, UT 84032**


IN WITNESS WHEREOF, this 15 day of May, 2017.

Amanda E. Peters  
Amanda E. Peters

**Lot 5, Eagle View Subdivision - P.U.D. Phase III  
908 S. 500 E., Brigham City, UT 84032**

IN WITNESS WHEREOF, this 14 day of May, 2017.

  
Helen M. Pulsipher

  
Dennis G. Pulsipher



**Lot 6, Eagle View Subdivision - P.U.D. Phase III**  
**918 S. 500 E., Brigham City, UT 84032**

IN WITNESS WHEREOF, this 16 day of May, 2017.

Eunice Nevling  
Eunice Nevling

Exhibit "D-1"

LEGAL DESCRIPTION OF LOTS  
SUBJECT TO THIS AGREEMENT

All of Lots 1 through 6, Eagle View Subdivision - P.U.D. Phase III, Brigham City, Box Elder County, Utah.