

**AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
for  
EAGLE'S LANDING PLAT "A", A MOUNTAIN HOME DEVELOPMENT**

**ARTICLE I  
DEFINITIONS**

When used in this Declaration, each of the following terms shall have the meaning indicated:

1.01 Declaration shall mean this "Amended and Restated Declaration of Covenants, Conditions and Restrictions of Eagle's Landing, Plat 'A', a Mountain Home Development."

1.02 Association shall mean EAGLE'S LANDING HOMEOWNER'S ASSOCIATION, a Utah nonprofit corporation, and its successors and assigns.

1.03 Articles shall mean and refer to the Articles of Incorporation of the Association, which are or shall be filed in the Office of the Secretary of State of Utah, as amended from time to time.

1.04 Bylaws shall mean the Bylaws of the Association, as amended from time to time.

1.05 Board shall mean the Board of Trustees of the Association.

1.06 Common Areas shall mean all portions of the Development, except the Lots, and shall include all property owned by the Association for the common use and enjoyment of the Owners such as all common recreational facilities, open spaces, structural common areas and the like, together with all easements appurtenant thereto.

1.07 Living Unit shall mean a structure which is designed and intended for use and occupancy as a single-family residence, together with all improvements located on the same Lot and used in conjunction with such residence.

1.08 Managing Agent shall mean any person or entity officially appointed or employed under Written Contract by the Board of Trustees of the Association.

1.09 Mortgage shall mean any first mortgage, first deed of trust or trust deed or the act of encumbering any property by a mortgage, deed of trust or trust deed; and Mortgagee shall mean any first mortgagee or a mortgage and any trustee or beneficiary of a first deed of trust or trust deed.

1.10 Owner shall mean any person who is the owner of record (as reflected by the records in the office of the County Recorder of Utah County, Utah) of a fee or undivided fee interest in any Lot, which is part of the Development, including contract buyers. Notwithstanding any

applicable theory relating to mortgages, no Mortgagee shall be an Owner unless such party acquires fee title pursuant to foreclosure or sale or conveyance in lieu thereof. Developer shall be an Owner with respect to each Lot owned by it.

1.11 Property shall mean all land covered by this Declaration, including Common Areas and Lots and other land annexed to the Property, as provided in the Declaration.

1.12 Lot shall mean any lot of land within the Property designed and intended for improvement with a Living Unit.

1.13 Plat shall mean and refer to the planned unit development of Eagle's Landing, Plat "A", a Mountain Home Development identified at the outset hereof as Item 2 initially creating Common Areas and 95 Lots, as the same may be amended or supplemented.

1.14 Developer shall mean Eagle's Landing Utah Holdings L.L.C., and or its successors.

1.15 Development shall mean the Eagle's Landing, Plat "A", a Mountain Home Development as it exists at any given time.

1.16 Reimbursement Assessment shall mean a charge against a particular Owner and his Lot for the purpose of reimbursing the Association for costs incurred in bringing the Owner and his Lot into compliance with the provisions of this Declaration, the Articles, Bylaws, rules and regulations of the Association, or any other charge designated as a Reimbursement Assessment in this Declaration, the Articles, Bylaws or rules and regulations of the Association, together with costs, interest, attorney's fees and other charges payable by such Owner, pursuant to the provisions of this Declaration.

## **ARTICLE II**

### **MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

2.01 Membership. Every Owner upon acquiring title to a Lot shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership of such Lot ceases for any reason, at which time his membership in the Association with respect to such Lot shall automatically cease and the successor Owner shall become a member. Membership in the Association shall be mandatory and shall be appurtenant to and may not be separated from the ownership of a Lot.

2.02 Voting Rights. All members receive one vote per lot owned regardless of whether any development has occurred on it. Any prior division of ownership interest into separate classes of ownership is void. Each lot's owner is entitled only to a single vote.

2.03 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 such Owners may determine among themselves. A vote cast at any Association meeting by any of such Owners, whether in person, by proxy, or by other means designated in the voting instructions shall be conclusively

presumed to be the entire vote attributable to the Lot concerned unless an objection is made at the meeting by another Owner of the same Lot, in which event a majority interest of the co-owners as shown on the record of ownership maintained by the Association shall be entitled to cast the vote.

2.04 Record of Ownership. Every Owner shall promptly cause to be duly filed of record the conveyance document (or in the case of contract buyer, a copy of the sales contract) to him of his Lot and shall file a copy of such conveyance document with the secretary of the Association, who shall maintain a record of ownership of the Lots. Any Owner who mortgages his Lot or any interest therein by a mortgage which has priority over the lien of any assessment provided herein shall notify the secretary of the Association of the name and address of the Mortgagee and also of the release of such Mortgage; and the secretary of the Association shall maintain all such information in the record of ownership.

### **ARTICLE III** **DUTIES AND POWERS OF THE ASSOCIATION**

3.01 Duties of the Association. Without limiting any other duties which may be imposed upon the Association by its Articles of Incorporation or this Declaration, the Association shall have the obligation and duty to do and perform each and every one of the following for the benefit of the Owners and the maintenance and improvement of the Property:

- a. The Association shall accept all Owners as members of the Association.
- b. The Association has title to all Common Areas.
- c. The Association shall maintain, repair, replace and landscape the Common Areas, it being understood and agreed that each Lot Owner shall maintain, repair and replace his Lot and improvements thereon, including but not limited to landscaping.
- d. To the extent not assessed to or paid by the Owners directly, the Association shall pay all real property taxes and assessments levied upon any portion of the Common Areas, provided that the Association shall have the right to contest or compromise any such taxes or assessments.
- e. The Association shall obtain and maintain in force the policies of insurance required by the provisions of this Declaration.
- f. The Association may employ a responsible corporation, partnership, firm, person, or other entity as the Managing Agent to manage and control the Common Areas, 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 such as shall be specified by the Board. Any agreement appointing a Managing Agent shall be terminable by either party, with or without cause and without payment of any termination fee, upon thirty (30) days written notice thereof; and the term of any such agreement may not exceed one year, renewable by agreement of the parties for successive

one-year periods. Any Managing Agent may be an agent or employee of the Association or an independent contractor, as the Board deems appropriate.

3.02 Powers and Authority of the Association. The Association shall have all the powers set forth in its Articles of Incorporation, together with its general powers as a nonprofit corporation, and the power to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration, including the ability to charge 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 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 Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration or any rules and regulations promulgated by the Board, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration and such rules and regulations.

b. In fulfilling any of its duties under this Declaration, including its duties for the maintenance, repair, operation or administration of the Common Areas, or in exercising any of its rights to construct improvements or other work upon any of the Common Areas, and 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 (90) days written notice, the Association shall have the power and authority (i) to pay and discharge any and all liens placed upon any Common Areas 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 and (ii) to obtain, contract and pay for, or otherwise provide for:

i. Construction, maintenance, repair, and landscaping of the Common Areas 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) trash 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. Such materials, supplies, furniture, equipment, services and labor as the Board may deem necessary.

c. The Board may delegate to the Managing Agent any of its powers under this Declaration; provided, however, that the Board cannot delegate to such Managing Agent the

power to execute any contract binding on the Association for a sum in excess of \$500.00, nor the power to sell, convey, mortgage, or encumber any Common Areas.

3.03 Association Rules. The Association may from time to time and subject to the provisions of this Declaration, may adopt, amend, repeal and enforce rules and regulations governing, among other things: (a) the use of the Common Areas; (b) the use of any roads or utility facilities owned by the Association; (c) the collection and disposal-of refuse; (d) the maintenance of animals on the Property; and (e) other matters concerning the use and enjoyment of the Property and the conduct of residents within the Development.

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

#### **ARTICLE IV** **ASSESSMENTS**

4.01 Personal Obligation and Lien. 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 monthly, special and Reimbursement Assessments described in this Article, together with late payment fees, interest, and costs of collection, if and when applicable. All such amounts shall be, constitute, and remain: (a) a charge and continuing lien upon the Lot with respect to which such assessment is made until fully paid; and (b) the personal joint and several obligations of the Owner or Owners of such Lot at the time the assessment falls due. No Owner may exempt themselves or their Lot from liability for payment of assessments by waiver of his rights in the Common Areas or by abandonment of his Lot. In a voluntary conveyance of a Lot, the grantee shall be jointly and separately liable with the grantor for all such unpaid assessments, late payment fees, interest and cost of collection, including reasonable attorney's fees, which shall be a charge on the lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

4.02 Purpose of Assessments. Assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the Development. The use made by the Association of funds obtained from assessments may include payment of the cost of: taxes and insurance on the Common Areas; maintenance, repair, and improvements of the Common Areas, establishment and funding of a reserve to cover major repair or replacement or improvement within the Common Areas; and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions or purposes under this Declaration or its Articles of Incorporation.

4.03 Basis and Maximum of Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be \$300 per Lot.

a. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased effective January 1 of each year without a vote of the membership in conformance with the rise, if any, of the Consumer Price Index (published by the Department of Labor, Washington, D.C.) for the preceding month of July.

b. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above that established by the Consumer Price Index formula by a vote of the members for the next succeeding two (2) year and at the end of each such period of two years, for each succeeding period of two (2) years, provided that any such change shall have the assent of two thirds (2/3) of the votes of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, or by other means designated in the voting instructions, written notice of which shall be sent to all members not less than thirty (30) days, nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any changes in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

4.04 Special Assessments. The Association may levy special assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonably capable of being fully paid with funds generated by monthly assessments; or (b) the cost of any construction, reconstruction, or unexpectedly required addition to or replacement of the Common Areas. Any such special assessment must be assented to by 2/3 of the voting of membership for approval, which Owners presented in person or represented by proxy, or by other means designated in the voting instructions are entitled to cast at a meeting duly called for the purpose. Written notice setting forth the purpose of such meeting shall be sent to all Owners at least ten (10) but not more than thirty (30) days prior to the meeting date.

4.05 Quorum Requirements. The quorum at any meeting required for any action authorized by Section 2 or 3 above shall be as follows: At the first meeting called, the presences of Owners or proxies, or other means designated, entitled to cast sixty percent (60%) of all the votes shall constitute a quorum. If a quorum is not present at the first meeting, the meeting shall be adjourned for 24 hours, at which time it shall reconvene and any number of Lot Owners present at such subsequent meeting shall constitute a quorum. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting.

4.06 Reimbursement Assessment on Specific Lot. In addition to the monthly assessment and any special assessment authorized, the Board may levy at any time Reimbursement Assessments (a) on every Lot Owner or occupant which shall cause any damage to the Common Areas necessitating repairs (it is the person's responsibility for repairs to be made whole); and (b) on every Lot as to which the Association shall incur any expense for maintenance or repair work performed, or enforcement action taken, or other provisions of this Declaration. 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 shall be allocated among the affected Lots according to the special benefit or cause of damage or maintenance or repair work or enforcement action and such assessment may be made in advance of the performance of work. If a special benefit arises from any improvement which is part of the general maintenance obligations of the Association, it shall not give rise to a Reimbursement Assessment against the Lots benefitted.

4.07 Uniform Rate of Assessment. All monthly and special assessments authorized shall be fixed at a uniform rate for all Lots.

4.08 Monthly Assessment Due Dates. The monthly assessments provided for herein shall be due the 1<sup>st</sup> of each month. At least fifteen (15) days prior to the 1<sup>st</sup> of the month and at least fifteen (15) days prior to the effective date of any change in the amount of the monthly assessments, the Association shall give each Owner written notice of the amount and first due date of the assessment concerned.

4.09 Certificate Regarding Payment. Upon the request of any Owner or prospective purchaser or encumbrancer of a Lot and upon the payment of a reasonable fee to the Association to cover administrative costs, the Association shall issue a certificate stating whether or not payments of 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 rely thereon in good faith.

4.10 Effect of Nonpayment – Remedies. Any Assessment (whether monthly, special, or Reimbursement Assessment) not paid when due shall, together with interest and costs of collection, be, constitute, and remain a continuing lien on the affected Lot. If any assessment is not paid within thirty (30) days after the date on which it becomes due, the amount thereof shall bear interest from the due date at the rate of \$5.00 per month; and the Association may bring an action against the Owner who is personally liable or may foreclose its lien against the Lot, or both. Any judgment obtained by the Association in connection with the collection of delinquent assessments and related charges shall include reasonable attorney's fees, court costs, and every other expense incurred by the Association in enforcing its rights.

4.11 Subordination of Lien to Mortgages. The lien of the assessment provided herein shall be subordinate to the lien of any Mortgage to a bank, savings and loan association, insurance company or other institutional lender; and the holder of any such Mortgage or purchaser who comes in to possession of a Lot by virtue of the foreclosure of such Mortgage or the exercise of power of sale under such Mortgage, or by deed in lieu of foreclosure, shall take free of such assessment lien as to any assessment which accrues or becomes due prior to the time such holder or purchaser takes possession of such Lot; provided, that to the extent there are any proceeds of the sale on foreclosure of such Mortgage or by exercise of such power of sale in excess of all amounts necessary to satisfy all indebtedness secured by and owed to the holder of such Mortgage, the lien shall apply to such excess. No sale or transfer shall relieve any Lot from the lien of any assessment thereafter becoming due.

**ARTICLE V**  
**PROPERTY RIGHTS AND CONVEYANCES**

5.01 Easement Concerning Common Areas. Each Owner shall have a nonexclusive right to an easement of use and enjoyment in and to the Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Any Owner may delegate the right and easement of use and enjoyment described herein to any family member, household guest, tenant, lessee, contract purchaser, or other person who resides on such Owner's Lot. Notwithstanding the foregoing, no Owner shall have any right or interest in any easements forming a portion of the Common Areas except for the necessary parking, access, communication, utility, drainage, and sewer purposes for which such easements are intended for use in common with others. No personal property may be kept on common grounds. Exceptions must be presented to the board for approval if circumstances arise.

5.02 Form of Conveyancing; Leases. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Lot shall describe the interest or estate involved substantially as follows:

Lot No. \_\_\_\_\_ as identified in the Plat recorded in Book \_\_\_\_\_, Page \_\_\_\_\_, as Entry No. \_\_\_\_\_, contained within the Eagle's Landing Plat "A", a Mountain Home Development identified in the- "Declaration of Covenants, Conditions, and Restrictions of Eagle's Landing Plat "A", a Mountain Home Development" recorded in the office of the Utah County Recorder in Book \_\_\_\_\_, at Page \_\_\_\_\_. TOGETHER WITH a right and easement of use and enjoyment in and to the Common Areas described, and as provided for, in said Declaration of Covenants, Conditions and Restrictions.

Whether or not the description employed in any such instrument is in the above-specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot. Any lease of a Lot shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration and the Articles of Incorporation and Bylaws of the Association and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease.

5.03 Transfer of Title to Common Areas. Developer shall convey to the Association title to the various Common Areas free and clear of all liens (other than the lien of current general taxes and the lien of any non-delinquent assessments, charges, or taxes, imposed by governmental or quasigovernmental authorities), as each such Common Area is substantially completed.

5.04 Limitation on Easement. An Owner's right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:

- a. The right of the Association to govern by rules and regulations the use of



the Common Areas by the Owners so as to provide for the enjoyment of the Common Areas by every Owner in a manner consistent with the preservation of quiet enjoyment of the Lots by every Owner, including the right of the Association to impose reasonable user charges for the use of facilities (other than open areas) within the Common Areas and reasonable limitations on the number of guests per Owner who at any given time are permitted to use the Common Areas.

b. The right of the Association to suspend an Owner's right to the use of any amenities included in the Common Areas for any period during which an assessment on such Owner's Lot remains unpaid and for a period not exceeding ninety (90) days for any infraction by such Owner of the provisions of this Declaration or of any rule or regulation promulgated by the Board.

c. The right of the County of Utah, Utah, and any other governmental or quasi-governmental body having jurisdiction over the Property to enjoy access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Common Areas for the purpose of providing police and fire protection, transporting school children, and providing any other governmental or municipal service; and

d. The right of the Association to dedicate or transfer any part of the Common Areas to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association; provided that such dedication or transfer must first be assented to in writing by (i) all holders of Mortgages secured by Lots and (ii) the Owners of at least seventy-five percent (75%) of the Lots (not including Lots owned by Developer).

5.05 Reservation of Access and Utility Easements. Developer reserves easements for access, electrical, gas, communications, cable television and other utility purposes and sewer, drainage and water facilities (whether servicing the Property or other premises or both) over, under, along, across and through the Property, together with the right to grant agency or to any public utility or other corporation or association, easements for such purposes over, under, across, along and through the Property upon the usual terms and conditions required by the grantee thereof for such easement rights; provided, however, that such easement rights must be exercised in such manner as not to interfere unreasonably with the use of the Property by the Owners and the Association and those claiming by, through or under the Owners or the Association; and in connection with the installation, maintenance or repair of any facilities as provided for any of such easements, the Property shall be promptly restored by and at the expense of the person owning and exercising such easement rights to the approximate condition of the Property immediately prior to the exercise thereof.

5.06 Easements for Encroachments. If any part of the Common Areas as improved by Developer now or hereafter encroaches upon any Lot or if any structure constructed by the Developer on any Lot now or hereafter encroaches upon any other Lot or upon any portion of the Common Areas, a valid easement for such encroachment and the maintenance thereof,

so long as it continues, shall exist. If any structure on any Lot shall be partially or totally destroyed and then rebuilt in a manner intended to duplicate the structure so destroyed, minor encroachments of such structure upon any other Lot or upon any portion of the Common Areas due to such reconstruction shall be permitted; and valid easements for such encroachments and the maintenance thereof, so long as they continue, shall exist.

## **ARTICLE VI** **USE RESTRICTIONS**

6.01 Use of Common Area. The Common Areas shall be used only in a manner consistent with the use restriction applicable to Lots and Living Units.

6.02 Living Structures. Living units are only single-family residences as required under the ordinances of Utah County. No multi-family or twin homes shall be permitted. Detached accessory buildings such as sheds, shops, or detached garages are permitted in accordance with the ordinances of Utah County. Any accessory structures must be pre-approved in writing by the Architectural Control Committee and shall conform to the Utah County building permit process and ordinances prior to construction. 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, so as to create a nuisance or interfere with the rights of any Owner, or in a way which would result in an increase in the cost of any insurance covering the common areas.

6.03 Recreation Vehicles. Boats, trailers, large trucks, and commercial vehicles belonging to Owners or other residents of the Property shall not be parked in the Common Areas, but arrangements must be made to park or store those vehicles on the owner's own lot or otherwise off the site.

6.04 Hay Storage. All hay shall be stored in a manner that isolates it from big game.

6.05 Septic Tanks. An individual tank will be required for each living unit.

6.06 Septic System Maintenance. Individual septic tanks must be maintained to Utah County Health Department standards for this area. Inspection must be done every 3-5 years with pumping done if recommended during inspection. The cost of the inspection and/or pumping will be the responsibility of the lot owner. The water company will be responsible for any ground water testing.

6.07 Feeding Big Game. Homeowners shall not feed big game unless done as part of a Division of Wildlife Resources-sponsored program.

6.08 Access to Forest Service Land. No motor vehicle access should be permitted from individual lots to the wildlife management area and Forest Service Land. The homeowner's association should obtain permission from the Division of Wildlife Resources and Forest Service prior to establishing any trail access from the Property to the management area.

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

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

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

## **ARTICLE VII** **ARCHITECTURAL CONTROL**

7.01 Architectural Control Committee. The Board shall appoint a three-member Architectural Control Committee (the "Committee"), the function of which shall be to ensure that the Property harmonize with existing surroundings and structures. The Committee must be composed of Owners. Committee shall use its best judgment to ensure that property conforms to and harmonizes with existing surroundings and structures. If such a Committee is not appointed the Board itself shall perform the duties required of the Committee.

7.02 Approval Procedure. Any plans and specifications submitted to the Committee shall be approved or disapproved by it in writing within thirty (30) days after submission. In the event the Committee fails to take any action within such period it shall be deemed to have approved the material submitted.

7.03 Construction. Once begun, any improvements, construction or alterations approved by the Committee shall be diligently pursued to completion. If temporary use is needed of unimproved portions of the Common Areas the Board must be notified.

7.04 Liability for Damages. The Committee shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by it with respect to any request made pursuant to this Article VII.

7.05 Impervious Surface. The grade level footprint of each dwelling shall be at least 1600 square feet for ramblers, and 1400 for multi-level homes excluding the garage, porches, patios, and verandas. A minimum of an enclosed two car garage is required.

7.06 Fencing. All fencing must be maintained. Hedges are permitted as dividers between lots instead of fences. No front pet runs. No chain link as perimeter fencing.

7.07 Plants. No owner shall permit anything or condition to exist upon any Lot that shall induce, breed or harbor disease carrying insects or noxious plants or weeds. The Board in its sole discretion shall have the right to determine the existence of any nuisance. The following trees, because of their undesirable characteristics, are prohibited.

Tree of Heaven (Paradise)	American Plane Tree	Lace Leaf Poplar
Silver Poplar	Bolleana Poplar Freemont	Narrow-leaf Poplar
Carolina Poplar	Poplar Siberian Elm	Lombardy Poplar
Black Locust	Russian Olive	American Elm
Chinese Elm		

7.08 Building Type. No single-family dwelling shall exceed two (2) stories in height nor contain a garage holding less than two cars. No Modular Homes, Mobile Homes, or "Move On" Homes are permitted. Residential structures are to be constructed using conventional construction methods. All homes must be constructed in accordance with Utah County building and fire codes. All proposed residences must pass review with the Architectural Control Committee prior to construction.

7.09 Dwelling Elevation. Dwelling elevations shall vary from lot to lot. No elevation shall be duplicated on adjacent lots or on lots directly transverse (diagonally) on the same street. It will be the responsibility of the Architectural Control Committee to check each plan to insure diversity within the Development. Builders must submit plans to the Architectural Control Committee for approval of elevations and other considerations prior to submission of the plans to Utah County for commencement of the building permit process.

7.10 Roof Pitch and Materials. The roof pitch of each dwelling must be equal to or greater than a 6/12 pitch. A lesser pitch may be used on minimal portions of the dwelling as an appealing architectural accent. The Architectural Committee must approve any use of a lesser pitch. All Roofing materials must be a minimum of a 25-year asphalt or fiberglass architectural shingle, roof tile, or metal, and must comply with the ordinances of Utah County.

7.11 Exterior Materials. The exterior of the dwelling shall be comprised of brick, stone, stucco or Hardie type concrete-based siding. Vinyl siding is prohibited. Aluminum siding may only be used on soffit and fascia.

7.12 Landscaping. Landscaping in the front yard must be maintained.

7.13 Nuisance. No property owner shall maintain a nuisance or conduct noxious or offensive activities at any time. In addition, no property owner shall maintain a nuisance as defined by the ordinances of Utah County, or the laws of the State of Utah.

7.14 Temporary Structures or Site Material. No structures of a temporary nature, trailer, tent, shack, etc., shall be used on any lot for storage or residence prior to commencement of construction of a single-family dwelling on the lot. No building or other materials shall be placed on the lot until the commencement of construction.

7.15 Maintenance, Parking, and Storage. The owner of a lot, in accordance with the Ordinances of Utah County, must maintain and repair any and all improvements to insure a clean, safe, and attractive property. Any equipment, R.V's, trailers, boats, etc. must be parked 25 feet from the street. Inoperative vehicles may not remain in front of any lot for

more than seventy-two (72 hours). All maintenance, parking, and storage of items must comply with the ordinances of Utah County, and the State of Utah.

## **ARTICLE VIII** **INSURANCE**

8.01 Hazard Insurance. The Board shall procure and maintain from a company or companies holding a financial rating of Class VI or better from Best's Key Rating Guide, a policy or policies of hazard insurance in an amount or amounts equal to or exceeding the full replacement value (exclusive of the value of land, foundations, excavation and other items normally excluded from coverage) of the common property owned by the Association (including all building service equipment, if any, and the like) with an Agreed Amount Endorsement or its equivalent, if available, or an Inflation Guard Endorsement and, if required by any Mortgagee of any Lot, Demolition and Contingent Liability from Operation of Building Laws Endorsement, an Increased Cost of Construction Endorsement, an Earthquake Damage Endorsement, and such other endorsements as any Mortgagee of a Lot shall reasonably require. Such insurance policy or policies shall name the Association as insured for the benefit of the Owners and shall afford protection, to the extent applicable, against at least the following:

- a. loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage; and
- b. such other risks as shall customarily be covered with respect to projects similar in construction, location, and use.

8.02 Liability Insurance. The Board shall procure and maintain from a company or companies holding a financial rating of Class VI or better from Best's Key Rating Guide a policy or policies (herein called the "Policy") of Public Liability Insurance to insure the Association, the Board and the Managing Agent and employees of the Association against claims for bodily injury and property damage arising out of the conditions of the Common Areas or activities thereon under a Comprehensive General Liability form. Such insurance shall be for such limits as the Board may decide, but not less than those limits customarily carried by properties of comparable character and usage in the County of Utah nor less than \$1,000,000 for personal injury and property damage arising out of a single occurrence, such coverage to include protection against water damage liability, liability for non-owned and hired automobile, liability for the property of others and such other risks, as shall customarily be covered with respect to property similar in construction, location and use. The Policy shall contain a "Severability of interest" endorsement which shall preclude the insurer from denying the claim of any Owner because of negligent acts of the Association or other Owners and a cross-liability endorsement pursuant to which the rights of the named insureds as between themselves are not prejudiced. The Policy shall provide that the Policy may not be canceled by the insurer unless it gives at least 180 days prior written notice thereof to the Board and every other person in interest who shall have requested in writing such notice of the insurer. Any such coverage procured by the Board shall be without prejudice to the right of the

Owners to insure their personal liability for their own benefit at their own expense.

8.03 Additional Insurance; Further General Requirements. The Board may also procure insurance which shall insure the Common Areas and the Association or the Owners and others against such additional risks as the Board may deem advisable. Insurance procured and maintained by the Board shall not require contribution from insurance held by any of the Owners or their Mortgagees. Each policy of insurance obtained by the Board shall, if reasonably possible, provide:

- c. a waiver of the insurer's right of subrogation against the Association, the Owners and their respective directors, officers, agents, employees, invitees and tenants;
- d. that it cannot be canceled, suspended, or invalidated due to the conduct of any particular Owner or Owners;
- e. that it cannot be canceled, suspended, or invalidated due to the conduct of the Association without a prior written demand that the defect be cured; and
- f. that any "no other insurance" clause therein shall not apply with respect to insurance maintained individually by any of the Owners.

8.04 Fidelity Coverage. If the Development contains or comes to contain more than thirty (30) Living Units, the Association shall at all times maintain fidelity coverage to protect against dishonest acts on the part of officers, trustees, managing agents, directors and employees of the Association and all others (including volunteers) who handle, or are responsible for handling, funds of the Association. Such fidelity bonds shall: -

- a. name the Association as an obligee;
- b. be written in an amount based upon the best business judgement of the Association and shall not be less than the estimated maximum of funds, including reserve funds in the custody of the Association or the Managing Agent at any given time during the term of each bond, but in no event be less than a sum equal to three months assessment on all Lots plus reserve fund;
- c. contain waivers of any defense based upon the exclusion of volunteers or persons who serve without compensation from any definition of "employee" or similar expression; and
- d. provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least ninety (90) days prior written notice to all Mortgagees of Lots.

8.05 Review of Insurance. The Board shall periodically, and whenever requested by twenty percent (20%) or more of the Owners, review the adequacy of the Association's insurance program and shall report in writing the conclusions and action taken on such review to Owner of

each Lot and to the holder of any Mortgage on any Lot who shall have requested a copy of such report. Copies of every policy of insurance procured by the Board shall be available for inspection by any Owner.

8.06 Lots and Living Units Not Insured by Association. The Association shall have no duty or responsibility to procure or maintain any fire, liability, extended coverage, or other insurance covering any Lot and acts and events thereon. Accordingly, Owners of Lots in the Development shall obtain fire, extended coverage, and liability insurance to the full replacement value of all Living Units constructed on such Owner's Lot.

8.07 Other Insurance Provisions. All insurance required pursuant to Article X shall be written by insurers licensed in the State of Utah

## **ARTICLE IX** **CONDEMNATION**

If at any time or times the Common Areas or any part thereof shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages shall be payable to the Board and shall be used promptly by the Board to the extent necessary for restoring or replacing any improvements on the remainder of the common Areas. Upon completion of such work and payment in full therefor, any proceeds of condemnation then or thereafter in the hands of the Board which are proceeds for the taking of any portion of the Common Areas shall be disposed of in such a manner as the Board shall reasonably determine; provided, however, that in the event of a taking in which any Lot is eliminated, the Board shall disburse the portion of the proceeds of the condemnation award allocable to the interest of the Owner of such Lot in the Association and the Common Area to such Owner and any Mortgagee of such lot, as their interest shall appear, after deducting the proportionate share of said Lot in the cost of debris removal.

## **ARTICLE X.** **RIGHTS OF MORTGAGEES**

Notwithstanding any other provisions of this Declaration, the following provisions concerning the rights of Mortgagees shall be in effect:

10.01 Preservation of Regulatory Structure and Insurance. Unless Utah County; the Owners of at least seventy-five (75%) of the Lots (not including Lots owned by Developer); and such Owners' Mortgagees, if any, shall be given their prior written approval, the Association shall not be entitled:

a. by act or omission to change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Living Units, the exterior maintenance of Living Units, the maintenance of party walls or common fences and driveways, or the upkeep of lawns or plantings on the Property;

b. to fail to maintain fire and extended coverage on insurable portions of the Common Areas on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost); or

c. to use hazard insurance proceeds for losses to the Common Areas for other than the repair, replacement, or reconstruction of improvements on the Common Areas.

This Section may be amended, except that such amendment must be approved by a vote otherwise sufficient to authorize acting under this subsection prior to such amendment.

10.02 Preservation of Common Area. Change in Method of Assessment. Unless the Association shall receive the prior written approval of (i) all Mortgages of Lots; (ii) the Owners of at least seventy-five percent (75%) of the Lots (not including Lots owned by Developer); and (iii) Utah County, the Association shall not be entitled:

d. by act or omission to seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas, except to grant easements for utilities and similar or related purposes, as hereinbefore reserved;

e. to change the ratio or method of determining the obligations, assessments, dues or other charges which may be levied against a Lot or the Owner thereof.

This Section 2 may be amended, except that such amendment must be approved by a vote otherwise sufficient to authorize action under this subsection prior to such amendment.

10.03 Notice of Matters Affecting Security. The Board shall give written notice to any Mortgagee of a Lot requesting such notice whenever:

f. there is any default by the Owner of the Lot subject to the Mortgage in performance of any obligation under this Declaration or the Articles or Bylaws of the Association which is not cured within sixty (60) days after default occurs; or

g. damage to the Common Areas from any one occurrence exceeds \$10,000; or

h. there is any condemnation or taking by eminent domain of the Lot subject to Mortgage or of the Common Areas; or

i. any of the following matters come up for consideration or effectuation by the Association:

i. abandonment or termination of the Development established by this Declaration;

ii. material amendment of the Declaration or the Articles or Bylaws of the Association; or



iii. any decision to terminate professional management of the Common Areas and assume self-management by the Owners.

10.04 Notice of Meetings. The Board shall give to any Mortgagee of a Lot requesting the same, notice of all meetings of the Association; and such first mortgagees shall have the right to designate in writing a representative to attend all such meetings.

10.05 Right to Examine Association Records. Any Mortgagee shall have the same right to inspect the books and records of the Association and receive audited financial statements as the Owner of the Lot securing the Mortgage; provided, that the foregoing shall not be deemed to impose upon the Association any obligation to cause its financial statements to be audited.

10.06 Right to Pay Taxes and Charges. Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against 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; and Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association. Developer, for the Association as owner of the Common Areas, hereby covenants and the Association by acceptance of the conveyance of the Common Areas, whether or not it shall be so expressed in such conveyance, is deemed to covenant and agree to make such reimbursement.

10.07 Exemption From any Right of First Refusal. Any Mortgagee which obtains title to the Lot encumbered by its Mortgage pursuant to the remedies provided for in said Mortgage, pursuant to foreclosure of said Mortgage, pursuant to exercise of a power of sale available under said Mortgage, or pursuant to deed or assignment in lieu of foreclosure, shall be exempt from and shall in no way be governed by or subject to any "right of first refusal" which may be contained in or provided for in this Declaration.

10.08 Construction. In the event another provisions or clause of this Declaration deals with the same subject matter as is dealt with in any provision or clause of this Article X, the provision or clause which results in the greatest protection and security for a Mortgagee shall control the rights, obligations, or limits of authority, as the case may be, applicable to the Association with respect to the subject concerned.

10.09 No Priority Accorded. No provision of this Declaration gives or may give a Lot Owner or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Lot Owners of insurance proceeds or condemnation awards for loss to or taking of Lots and/or the Common Areas.

10.10 Written Approval of Mortgagees Required. No amendment to this Article X which has the effect of diminishing the rights, protection, or security afforded to Mortgagees shall be accomplished or effective unless all of the Mortgagees of the individual Lots have given their prior written approval to such amendment. Any amendment to this Article X shall be accomplished by an instrument executed by the Association and filed for record in the office



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of the Utah County Recorder. In any such instrument an officer of the Association shall certify that any prior written approval of Mortgagees required by this Article X as a condition to amendment has been obtained.

**ARTICLE XI**  
**MISCELLANEOUS**

11.01 Notices. Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall deemed to have been properly furnished if delivered or mailed, postage prepaid, to the person named as the Owner, at the latest address for such person as reflected in the records of the Association at the time of delivery or mailing. Any notice required or permitted to be given to the Association may be given by delivering or mailing the same to the B o a r d . Any notice required or permitted to be given to the Architectural Control Committee may be given by delivering or mailing the same to the Board.

11.02 Amendment. Except as provided in and/or subject to the terms of items (a) through (d) below, the vote of at least sixty-five percent (65%) of the members of the Association shall be required to amend this Declaration or Plat. Any amendment so authorized shall be accomplished through the recordation of an instrument executed by the Association. In such instrument, the Association shall certify that the vote required by this Section for amendment has occurred. The foregoing right of amendment shall, however, be subject to the following:

a. Any amendment to the foregoing Article X ("Rights of Mortgagees") shall be subject to the matters treated by the last Section of said Article.

b. Developer shall have the right unilaterally to amend and supplement this Declaration and the Plat in conjunction with its addition to the Development of each portion of the Additional Land, all in the manner and to the extent provided for in Section 2 of Article III of this Declaration.

c. Until such time as seventy-five percent (75%) of the Lots of the Development have been sold, Developer shall have, and is hereby vested with, the right to amend this Declaration and/or the Plat. Such right shall obtain without regard to the subject matter of amendment including, but not limited to, modifications, additions or deletions in or to any of the documents of the Development (The Declaration, Supplementary Declarations, Plat, the Articles, Bylaws and sales agreements) as may be required by any permanent lender, secondary mortgage market agency, public authorities or the title company insuring title; provided, however, that none of the same shall: (i) increase the proportion of the common expenses to be borne by any Lot Owner, (ii) decrease the financial obligations of Developer hereunder.

d. Notwithstanding anything to the contrary herein contained, no amendment to the Plat or to any provision of this Declaration may have the effect of diminishing or impairing any right, power, authority, privilege, protection, or control accorded to Developer (in its capacity as Developer) herein shall be accomplished or effective unless the instrument through which such amendment is purported to be accomplished is consented to in writing by Developer.



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11.03 Consent in Lieu of Vote. In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage or number of the Owners, whether present or represented by proxy, or by other means designated in the voting instructions, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners entitled to cast at least the stated percentage or number of all membership votes outstanding in connection with the class of membership concerned. The following additional provisions shall govern any application of this Section 3:

a. All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Owner.

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

c. Except as provided in the following sentence, any change in ownership of a Lot which occurs after a 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 Owners whose memberships are appurtenant to the same Lot are secured, the consent of none of such Owners shall be effective.

11.04 Reserve Fund. The Association shall establish an adequate reserve to cover the costs of reasonably predictable and necessary major repairs and replacements of the Common Areas and exterior maintenance and shall cause such reserve to be funded by regular monthly or other periodic assessments against the Lot Owners rather than by special assessments.

11.05 Developer's Rights Assignable. All or any portion of the rights of Developer under this Declaration or in any way relating to the Property may be assigned.

11.06 Interpretation. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way 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, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof, which shall remain in full force and effect. The laws of the State of Utah shall govern the validity, construction, and enforcement of this Declaration.

11.07 Covenants to Run with Land. This Declaration and all provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Developer, all parties who hereafter acquire any interest in a Lot, their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Lot or Living Unit shall comply with, and all interests in all Lots or in the Common Areas shall be subject to, the terms of this Declaration



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and the provisions of any rules, regulations, agreements, instruments, and determinations contemplated by this Declaration. By acquiring any interest in a Lot or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

11.08 Duration. The covenants and restrictions of this Declaration shall remain in effect for a term of thirty (30) years from the date this Declaration is filed in the office of the County Recorder of Utah County, Utah, after which time they shall be automatically extended for successive periods often (10) years each unless terminated by an instrument filed in the office of the County Recorder, executed by any two (2) officers of the Association, certifying that the Owners of at least seventy-five percent (75%) of the Lots and their first mortgagees, if any, voted in favor of such termination.

11.09 Maintenance and Open Space Preservation Agreement. That certain Maintenance and Open Space Preservation Agreement (the "Preservation Agreement") among Developer, the Association, and Utah County, is, by this reference, incorporated herein and made a part hereof. Notwithstanding anything contained herein to the contrary, in the event of any conflict between the terms of this Declaration and the Preservation Agreement, the terms and provisions of the Preservation Agreement shall control. Notwithstanding anything contained herein to the contrary, neither this Declaration nor the Plat, can be amended without the prior written consent of Utah County.

11.10 Vacation Rentals. Air B&B, VRBO, or any other short term vacation style rental of property, homes or land, for less than 30 consecutive day terms are not permitted.

11.11 Fireworks. Fireworks are allowed in winter months when there is sufficient snow and no danger of fire.

11.12 Drones. Hovering drones over private property is not allowed.

11.13 Livestock Animal Guidelines. Four livestock animals are allowed, two cows maximum.

11.14 Maintenance of Animals. Animal owners are required to maintain livestock and their grazing/living areas. Utah county codes will be followed. In addition, no property shall be overgrazed to cause nuisance to neighboring properties. No animal (livestock or pets) or their living areas shall induce, breed, or harbor disease or create an area that encourages insect breeding or rodent habitation or foul smells.

11.15 Animal owners are required to clean up after their animals when they are off of their property. (Cleaning up dog mess while walking, etc).

11.16 This Declaration, any amendment or supplement hereto, and any amendment or supplement to the Plat shall take effect upon its being filed for record in the office of the County Recorder of Utah County, Utah.



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The undersigned hereby certifies, on behalf of the Board of Trustees, that a vote concerning this amendment was conducted and approval from at least 65% of the Owners was obtained.

DATED this 7 day of ~~October~~ <sup>NOVEMBER</sup>, 2023.

EAGLE'S LANDING HOMEOWNER'S ASSOCIATION

By: *Dustin Quarnberg*  
Dustin Quarnberg, President

STATE OF UTAH            )  
                                  :SS  
COUNTY OF UTAH        )

On the 7 day of ~~October~~ <sup>November</sup>, 2023 before me, a notary public, personally appeared Dustin Quarnberg, who proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, acknowledged that he executed the same. Witness my hand and official seal.

*Aurora Rudecindo*  
Notary Public

