

**CONTENTS**  
**EAGLE ESTATES a PLANNED UNIT DEVELOPMENT**  
**COVENANTS and RESTRICTIONS**

ARTICLE I . . . . . Definitions

ARTICLE II . . . . . Owner's Property Rights

Section 1 Owner's Easements of Enjoyment

Section 2 Delegation of Use

Section 3 Easements for Parking

Section 4 Easements for Vehicular Traffic

Section 5 Easements for City and County Use

Section 6 Waiver of Use

Section 7 Title to the Common Area

Section 8 Taxes

Section 9 Real Property Taxes

ARTICLE III . . . . . Membership in the Association

Section 1 Membership

Section 2 Transfer

ARTICLE IV . . . . . Voting Rights

Section 1 Classes of Voting Membership

Section 2 Vote Distribution

ARTICLE V . . . . . Duties and Powers of Association

ARTICLE VI . . . . . Covenants for Maintenance Assessments

Section 1 Creation of the Lien and Personal Obligation of Assemblies

Section 2 Purpose of Common Assessments

Section 3 Damage to Common Area by Owners

Section 4 Basis of Maximum Common Assessment

Section 5 Capital Improvement and Reconstruction Assessments

Section 6 Notice of Quorum for Authorization Under Sec 4 & 5

Section 7 Uniform Rate of Assessment

Section 8 Date of Commencement of Assessments: Due Date

Section 9 Exempt Property

ARTICLE VII . . . . . Effect of Non-Payment of Assessments:  
Remedies of The Association

Section 1 Effect of Non-Payment of Assessments: Remedies of the Association  
Section 2 Notice of Assessment  
Section 3 Foreclosure Sale  
Section 4 Curing of Default  
Section 5 Cumulative Remedies  
Section 6 Subordination of the Lien to Mortgages

ARTICLE VIII . . . . . Architectural Control

Section 1 Members of Committee  
Section 2 Review of Proposer Construction  
Section 3 Meetings of the Committee  
Section 4 No Waiver of Future Approvals  
Section 5 Compensation of Members  
Section 6 Inspection of Work  
Section 7 Mom-Liability of Committee Members  
Section 8 Variance

ARTICLE IX . . . . . Maintenance and Repair Obligations

Section 1 Structural Maintenance Areas  
Section 2 Maintenance Obligation of Owners  
Section 3 Maintenance Obligation of Association  
Section 4 Damage and Destruction of Affecting residences – Duty to Rebuild  
Section 5 Variance in Exterior Appearance and Design  
Section 6 Time Limitation

ARTICLE X . . . . . Use Restrictions

Section 1 Single Family Residence  
Section 2 Business or Commercial Activity  
Section 3 Real Estate Business  
Section 4 Nuisances  
Section 5 Signs  
Section 6 Parking and Vehicular Restrictions  
Section 7 Animal Restrictions  
Section 8 Trash  
Section 9 View Obstructions  
Section 10 Temporary Buildings  
Section 11 Common Area Facilities  
Section 12 Declarant Exception  
Section 13 Outside Installation

- Section 14 Insurance Rates
- Section 15 Drilling
- Section 16 Further Subdivision
- Section 17 Drainage
- Section 18 Water Supply System

ARTICLE XI . . . . . Fences

ARTICLE XII . . . . . Damage or Destruction to Common Area

ARTICLE XIII . . . . . Insurance

- Section 1 Common Area
- Section 2 Insurance Obligations of the Association
- Section 3 Replacement or Repair of Property
- Section 4 Waiver of Subrogation
- Section 5 Liability Insurance
- Section 6 Fidelity Coverage
- Section 7 Other Insurance and General
- Section 8 Hazard Insurance

ARTICLE XIV . . . . . Mortgage Protection Clauses

ARTICLE XV . . . . . General Provisions

- Section 1 Enforcement
- Section 2 Severability
- Section 3 Term
- Section 4 Interpretation
- Section 5 Annexation
- Section 6 Amendments
- Section 7 No Public Right or Dedication
- Section 8 Constructive Notice and Acceptance
- Section 9 Reservation of Easements
- Section 10 Notices
- Section 11 No Representations or Warranties

ARTICLE XVI . . . . . Party Walls

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS FOR  
EAGLE ESTATES

BOOK 512 PAGE 635

A PLANNED UNIT DEVELOPMENT SUBDIVISION

\*\*\*\*\*

THIS DECLARATION, made this 3 day of January,  
1992, by EAGLE ESTATES PARTNERSHIP, a Utah General  
Partnership, Declarant:

R E C I T A L S:

A. Declarant is the owner of certain property in the  
County of Box Elder, State of Utah, which is more  
particularly described as follows:

A part of the Northwest Quarter of  
Section 30, Township 9 North, Range 1  
West of the Salt Lake Base and Meridian.  
Beginning at a point on the South right-  
of-way line of 700 South Street located  
North 89 degrees 30'00" East along the  
North line of said Quarter Section 409.83  
feet and South 00 degrees 30'00" East  
16.50 feet from the Northwest corner of  
said Northwest Quarter and running thence  
South 00 degrees 19'30" East along an  
existing fence line 510.54 feet; thence  
South 89 degrees 47'14" West 281.05 feet;  
thence North 00 degrees 26'32" West  
515.19 feet to said South right-of-way  
line; thence along said right-of-way line  
the following two (2) courses, to the  
left along the arc of a 218.20 foot  
radius curve, a distance of 51.51 feet,  
chord bears South 83 degrees 44'12" East  
51.39 feet; thence North 89 degrees  
30'00" East 231.05 feet to the point of  
beginning. Containing 3.296 acres.

MARIE G. NORTH  
BOX ELDER COUNTY RECORDER

41545X

~~myk~~ FEE 59<sup>00</sup>

1992 JAN -6 PM 12:04

B. Declarant has deemed it desirable, for the efficient preservation of the values and amenities in the real property described above ("Properties"), to create a non-profit corporation under the Utah Non-Profit Corporation and Cooperative Association Act to which should be delegated and assigned the powers and duties of owning, maintaining and administering the Common Area and administering and enforcing the covenants and restrictions and collecting from the Lot Owners and disbursing the assessments and charges hereinafter created, which said corporation is sometimes hereafter referred to as the Association.

C. Declarant has caused such corporation, the members of which shall be the respective Owners of Lots.

D. Declarant will develop and convey all of the Properties, as hereinafter defined, pursuant to a general plan for all of the Properties and subject to certain protective covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges, all running with the Properties as hereinafter set forth.

The Properties shall be subdivided into eighteen (18) lots and may be developed in phases.

Each Owner of the Lots shall be members of the Association. Each of the Lots shall have one (1) vote in the Association. The common obligations shall be distributed in like percentages.

E. Declarant hereby declares that all of the Properties shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved, subject to the following easements, restrictions, covenants, conditions and equitable servitudes, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Properties, in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Properties, or any portion thereof. The covenants, conditions, restrictions, reservations, easements and equitable servitudes set forth

herein shall run with the Properties and shall be binding upon all persons having any right, title or interest in the Properties or any part thereof, their heirs, successors and assigns and shall inure to the benefit of every portion of the Properties and any interest therein; and shall inure to the benefit of and be binding upon Declarant, its successors in interest and each Owner and his respective successors in interest; and may be enforced by any Owner and his successors in interest and by the Association.

Notwithstanding the foregoing, no provision of this Declaration shall be construed as to prevent or limit Declarant's rights to complete development of the Properties and construction of improvements therein, nor Declarant's rights to maintain model homes, construction, sales or leasing offices or similar facilities on any property in the Properties owned by Declarant or the Association, nor Declarant's right to post signs incidental to construction, sales or leasing.

## ARTICLE I

### Definitions

Unless otherwise expressly provided, the following words and phrases, when used herein, shall have the meaning hereinafter specified:

Section 1. "Architectural Committee" shall mean the committee created pursuant to Article VIII hereof.

Section 2. "Articles" shall mean the Articles of Incorporation of the Association which have been or shall be filed in the office of the Secretary of State of the State of Utah and as such Articles may be amended, from time to time.

Section 3. "Common Assessment" shall mean the charge against a particular Owner and his Lot, representing a portion of the total costs to the Association of maintaining, improving, repairing, replacing, managing and operating the Properties.

Section 4. "Special Assessments" shall mean a charge against a particular Owner and his Lot, directly attributable to the Owner for corrective action performed pursuant to the

provisions of this Declaration, plus interest thereon as provided for in this Declaration.

Section 5. "Reconstructive Assessment" shall mean a charge against each Owner and his Lot representing a portion or portions of the improvements on the Common Area pursuant to the provisions of this Declaration.

Section 6. "Capital Improvement Assessment" shall mean a charge against each Owner and his Lot representing a portion of the costs to the Association for installation or construction of any improvements on any portion of the Common Area which the Association may, from time to time, authorize.

Section 7. "Association" shall mean EAGLE ESTATES OWNERS ASSOCIATION, a corporation formed under the Utah Non-Profit Corporation and Cooperative Association Act, its successors and assigns.

Section 8. "Beneficiary" shall mean mortgagee under a mortgage or a beneficiary or holder under a Deed of Trust, as the case may be and the assignees of such mortgagee, beneficiary or holder.

Section 9. "Board" shall mean the Board of Directors of the Association, elected in accordance with the Bylaws of the Association.

Section 10. "Bylaws" shall mean the Bylaws of the Association which have been or shall be adopted by the Board, and as such Bylaws may be amended, from time to time.

Section 11. "Common Area" shall mean all the real property and improvements, including without limitation, any landscaped areas, private walkways and water and sanitary and storm sewer facilities, which are owned by the Association for the common use and enjoyment of the Owners of Lots. The Common Area to be so owned by the Association at the time of the conveyance of the first Lot shall also include the following described property located in the County of Box Elder, State of Utah:

A part of the Northwest Quarter of  
Section 30, Township 9 North, Range 1  
West of the Salt Lake Base and Meridian.



Beginning at a point on the South right-of-way line of 700 South Street located North 89 degrees 30'00" East along the North line of said Quarter Section 409.83 feet and South 00 degrees 30'00" East 16.50 feet from the Northwest corner of said Northwest Quarter and running thence South 00 degrees 19'30" East along an existing fence line 510.54 feet; thence South 89 degrees 47'14" West 281.05 feet; thence North 00 degrees 26'32" West 151.19 feet to said South right-of-way line; thence along said right-of-way line the following two (2) courses, to the left along the arc of a 218.20 foot radius curve, a distance of 51.51 feet, chord bears South 83 degrees 44'12" East 51.39 feet; thence North 89 degrees 30'00" East 231.05 feet to the point of beginning. Containing 3.296 acres.

Excluding, however, Lots 1 through 18, inclusive, EAGLE ESTATES, a Planned Unit Development Subdivision, together with a perpetual easement for encroachment of the eaves of the buildings. Provided, however, the exclusive use of the patios, driveways and front sidewalks is reserved for the Lot to which the same are appurtenant.

Section 12. "Common Expenses" shall mean the actual and estimated costs of: maintenance, management, operation, repair and replacement of the Common Area (including unpaid special assessments, reconstruction assessments and capital improvement assessments), including those costs not paid by the Owner responsible for payment, costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to manager, accountants, attorneys and other employees, the costs of all utilities, gardening and other services benefiting the Common Area and all recreational facilities thereon; the costs of fire, casualty and liability insurance, workmen's compensation insurance and other insurance covering the Properties and the costs of bonding of the members of the management body; taxes paid by the Association; amounts paid by the Association for discharge of any lien or encumbrance



levied against the Properties or portions thereof; and the costs of any other item or items designated by or in accordance with other expenses incurred by the Association for any reason whatsoever in connection with the Properties, for the benefit of all of the Owners of Lots.

Section 13. "Declarant" shall mean and refer to EAGLE ESTATES PARTNERSHIP, a Utah General partnership, its successors and assigns, so long as Declarant assigns such rights of Declarant hereunder to any person by an express written assignment.

Section 14. "Declaration" shall mean and refer to this instrument as it may be amended from time to time.

Section 15. "Deed of Trust" shall mean and refer to a mortgage or a Deed of Trust, as the case may be.

Section 16. "Dwelling Unit" shall mean and refer to a building located on a Lot designed and intended for the use and occupancy as a residence by a single family.

Section 17. "Family" shall mean: (1) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, or (2) a group of not more than three (3) persons not all so related, inclusive of their domestic servants, who maintain a common household in a residence on a Lot.

Section 18. "Improvement" shall mean all structures and appurtenances of every type and kind, including but not limited to buildings, out-buildings, walkways, sprinkler pipes, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior air conditioning and water softener fixtures or equipment.

Section 19. "Properties" shall mean and refer to all of the real property described in paragraph A of the Recitals to this Declaration.

Section 20. "Maintenance Funds" shall mean the accounts created for the receipts and disbursements of the Association pursuant to Article VI hereof.

Section 21. "Lot" shall mean and refer to any residential Lot or parcel of land shown upon any recorded subdivision plat of EAGLE ESTATES, with the exception of the Common Area.

Section 22. "Manager" shall mean the person, firm or corporation appointed by the Association hereunder as its agents and delegated certain duties, powers or functions of the Association.

Section 23. "Member" shall mean any person or entity holding a membership in the Association as provided herein.

Section 24. "Mortgage", "Mortgagee" shall mean any mortgage or Deed of Trust or other conveyance of a Lot to secure the performance of an obligation, which will be void and reconveyed upon the completion of such performance. The term "Deed of Trust" or "Trust Deed" when used herein, shall be synonymous with the term "Mortgage". The term "Mortgagee" shall mean a person or entity to whom a mortgage is made and shall include the beneficiary of a Deed of Trust; "Mortgagor" shall mean a person or entity who mortgages his or its property to another (i.e., the maker of a mortgage) and shall include the Trustor of a Deed of Trust. The term "Trustor" shall be synonymous with the term "Mortgagor" and the term "Beneficiary" shall be synonymous with the term "Mortgagee".

Section 25. "Notice and Hearing" shall mean written notice and a public hearing before a Tribunal appointed by the Board at which the Owner concerned shall have opportunity to be heard in person or by counsel at Owner's expense, in the manner further provided in the Bylaws.

Section 26. "Owner" shall mean and refer to a the person or persons or other legal entity or entities, including Declarant, holding fee simple interest of record to any Lot which is part of the Properties, including sellers under executory contract of sale, but excluding those having such interest merely as security for the performance of an obligation. For purposes of Article X only, unless the context otherwise requires, Owner shall also include the family, invitees, licensees and lessees of any Owner.

Section 27. "Person" shall mean a natural individual to

any other entity with the legal right to hold title to real property.

Section 28. "Record, Recorded, Filed and Recordation" shall mean, with respect to any document, the recordation of such document in the office of the County Recorder of Box Elder County, State of Utah.

Section 29. "Subdivision" shall mean a parcel of real property which has been divided or separated into lots, shown on a recorded subdivision map.

## ARTICLE II

### Owners' Property Rights

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of ingress and egress and of enjoyment in, to and over the Common Area which shall be appurtenant to and shall pass with title to every Lot and unit, subject to the following provisions:

(a) The exclusive use of the patios, driveways and front sidewalks is reserved for the Lot to which the same are appurtenant.

(b) The right of the Association to reasonably limit the number of guests of Owners using the Common Area facilities.

(c) The right of the Association to establish uniform rules and regulations pertaining to the use of the Common Area and the recreational facilities thereof, including but not limited to, the right and obligation of the Association to enforce all parking restrictions within the Common Area as set forth in Section 3 of Article II herein.

(d) The right of the Association to charge uniform and reasonable admission and other fees for the use of the recreational facilities, if any, situated upon a portion of the Common Area; provided, however, that none of the Common Area facilities, recreational facilities, parking spaces or other amenities in the Properties shall be leased to the

Owners.

BOOK 512 PAGE 643

(e) The right of the Association, in accordance with its Articles of Incorporation, Bylaws and this Declaration, with the vote of or written assent of two-thirds (2/3rds) of each class of members (excluding therefrom the voting power of Declarant), to borrow money for the purpose of improving the Common Area and facilities and in aid thereof, and subject to the provisions of Article XIV of this Declaration, to mortgage, pledge, deed in trust or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of such mortgagee shall be subordinated to the rights of the Owners.

(f) The right of the Association to suspend the voting rights and right to use the Common Area facilities by an Owner for any period during which any assessment against his Lot remains unpaid and delinquent; and for a period not to exceed thirty (30) days for any single infraction of the published rules and regulations of the Association, provided that any suspension of such voting rights or right to use the Common Area facilities, shall be made only by the Board of Directors of the Association, after notice and an opportunity for a hearing as provided in the Bylaws of the Association.

(g) Subject to the provisions of Article XIV of this Declaration, the Association shall have the right to dedicate, release, alienate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication, release, alienation or transfer shall be effective, unless an instrument signed by Members entitled to cast two-thirds (2/3rds) of the voting power of the Class A Members (excluding the voting power of Declarant), agreeing to such dedication, release, alienation or transfer has been recorded.

(h) The right of the Declarant (and its sales agents, customers and representatives) to the non-exclusive use of the Common Area and the facilities thereof, without charge, for sales, display, access, ingress, egress and exhibit purposes, which right Declarant hereby reserves; provided, however, that such use shall not be for a period of more than five (5) years after the date of recording of this

Declaration. Upon the request of Declarant and upon the vote of a majority of the Class A Members, this term may be extended for an additional period of time.

(i) The right of the Association (by action of the Board) to reconstruct, replace or refinish any improvement or portion thereof upon the Common Area, in accordance with the original design, finish or standard of construction of such improvements, or of the general improvements within the Properties, as the case may be; and not in accordance with such original design, finish or standard of construction only with the vote or written consent of the Owners holding a majority of the voting power of the Association.

(j) The right of the Association to replace destroyed trees or other vegetation and plant trees, shrubs and ground cover upon any portion of the Common Area.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants or contract purchasers who reside in his dwelling unit, subject to reasonable regulation by the Board.

Section 3. Easements for Parking. Temporary guest or recreational parking shall be permitted within the Common Area only within spaces and areas clearly marked for this purpose. Spaces shall be shown by signs or markings on the paved area. The Association, through its officers, committees and agents, is hereby empowered to establish "parking" and "no parking" areas within the Common Area, as well as to enforce these parking limitations by all means lawful for such enforcement, including the removal of any violating vehicle by those so empowered.

Section 4. Easements for Vehicular Traffic. In addition to the general easements for use of the Common Area reserved herein, there shall be and Declarant hereby reserves and covenants for itself and all future Owners within the Properties, that each and every Owner shall have a non-exclusive easement appurtenant for vehicular traffic over all private streets within the Properties, subject to the parking provisions set forth in Section 3 of Article II hereof. Declarant reserves the right to grant similar easements to



Owners of property in subdivisions annexed hereto pursuant to Article XV.

Section 5. Easements for City and County Use. In addition to the foregoing easements over the Common Area, there shall be, and Declarant hereby reserves and covenants for itself and all future Owners, easements for city, county and federal public services, including but not limited to, the right of the police to enter upon any part of the Common Area for the purpose of enforcing the laws and permanent easement in favor of Brigham City pursuant to Title 17, Chapter 34, 17034-3(10) of the Planning and Zoning Ordinances of Brigham City to guarantee that the open spaces remain perpetually in the uses for which intended.

Section 6. Waiver of Use. No Owner may exempt himself from personal liability for assessments duly levied by the Association nor release the Lot or other property owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area and the facilities thereon or by abandonment of his Lot or any other property in the Properties.

Section 7. Title to the Common Area. The Declarant hereby covenants, for itself, its successors and assigns, that it will convey fee simple title to the Common Area described in Article I, Section 11 of this Declaration to the Association, free and clear of all encumbrances and liens, except easements, conditions and reservations set forth in this Declaration. Said conveyance shall be made prior to the conveyance of the first Lot to a purchaser from Declarant. Declarant shall similarly convey the Common Area of any property annexed hereto.

Section 8. Taxes. Each Owner shall execute such instruments and take such action as may be reasonably specified by the Association to obtain separate real estate tax assessments on each Lot. If any taxes or assessments may, in the opinion of the Association, nevertheless be a lien on more than one Lot not under common ownership or any part thereof, they may be paid by the Association and each Owner shall be obligated to pay or to reimburse the Association for, as the case may be, the taxes and assessments assessed by the County Assessor or other taxing

authority against his own Lot and interest, if any, in the Common Area.

Section 9. Real Property Taxes. The payment of real property taxes assessed against the Common Area is the responsibility of the Association. Provided, however, if for any reason the same are not timely paid the payment of the taxes shall be the responsibility of and assessed against the Owners of the Lots on a prorata basis.

### ARTICLE III

#### Membership in the Association

Section 1. Membership. Every Owner of a Lot shall be a member of the Association. Memberships in the Association shall not be assignable, except to the successor in interest of the Member, and every membership in the Association shall be appurtenant to and may not be separated from the fee ownership of such Lot.

Section 2. Transfer. The Association membership held by any Owner of a Lot shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of such Lot and then only to the purchaser or mortgagee of such Lot. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. A Class A Member who has sold his Lot to a contract purchaser under an agreement to purchase shall be entitled to delegate to such contract purchaser his membership rights in the Association. Such delegation shall be in writing and shall be delivered to the Board before such contract purchaser may vote. However, the contract seller shall remain liable for all charges and assessments attributable to his Lot until fee simple title to the Lot sold is transferred. In the event the Owner of any Lot shall fail or refuse to transfer the membership registered in his name to the purchaser of such Lot upon transfer of fee title thereto, the Board of Directors shall have the right to record the transfer upon the books of the Association. The Board of Directors shall have the right to charge a reasonable Special Assessment against any Owner and his Lot, equal to the cost to the Association of effectuating any such transfer of his membership upon the Books of the Association.



Voting rights

Section 1. Classes of Voting Membership. The Association shall have two (2) classes of voting membership respecting the PRUD Lots, as follows:

Class A. Class A Members shall originally be all Owners, with the exception of the Declarant, for so long as there exists a Class B Membership. Class A Members shall be entitled to one (1) vote for each Lot owned. Declarant shall become a Class A Member with regard to Lots owned by Declarant upon conversion of Declarant's Class B Membership as provided below. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised in accordance with Article IV, Section 2 of this Declaration and in no event shall more than one (1) vote be cast with respect to any Lot.

Class B. Class B Membership shall be the Declarant and it shall be entitled to three (3) votes for each Lot owned by Declarant. The Class B Membership shall cease and be converted to Class A Membership on the happening of any of the following events, whichever occurs earliest:

(a) When the total votes outstanding in the Class A Membership, inclusive of votes attributable to any property annexed to the Properties, equals the total votes outstanding in the Class B Membership; or

(b) Three (3) years from the date of recording this Declaration; or

(c) On voluntary cancellation of Class B Membership by Declarant.

Section 2. Vote Distribution. Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership. When more than one person holds such interest or interests in any Lot ("co-owner"), all such co-owners shall be Members and may attend any meetings of the Association, but only one such co-owner shall be entitled to exercise the vote to which the Lot is entitled. Such co-owners may, from time to time, all designate in

writing one of their number to vote. Fractional votes shall not be allowed and the Class A vote for each Lot shall be exercised, if at all, as a unit. Where no voting co-owner is designated or if such designation has been revoked, the vote for such Lot shall be exercised as the majority of the co-owners of the Lot mutually agree. Unless the Board receives a written objection from a co-owner, it shall be presumed that the corresponding voting co-owner is acting with the consent of his or her co-owners. No vote shall be cast for any Lot where the majority of the co-owners present in person or by proxy and representing such Lot cannot agree to said vote or other action. The non-voting co-owner or co-owners shall be jointly and severally responsible for all of the obligations imposed upon the jointly owned Lot and shall be entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established herein, or by the Bylaws of the Association shall be deemed to be binding on all Owners, their successors and assigns. Said voting rights shall be subject to the restrictions and limitations provided in this Declaration and in the Articles of Incorporation and Bylaws of the Association.

#### ARTICLE V

##### Duties and Powers of Association

The Association, acting through the Board of Directors, shall also have the power and duty to:

(a) Maintain, repair and otherwise manage the Common Area and all facilities, improvements and landscaping thereon in accordance with the provisions of Article VI of this Declaration.

(b) Maintain all private streets within the Properties, including cleaning and periodic resurfacing.

(c) Maintain all private sewer systems within the Common Area.

(d) Grant easements, rights-of-way or strips of land, where necessary, for utilities and sewer facilities over the Common Area to serve the Common Area and the Lots.

(e) Maintain such policy or policies of liability and fire insurance with respect to the Common Area and personal property, if any, owned by the Association as provided herein in furthering the purposes of and protecting the interests of the Association and Members and as directed by this Declaration and the Bylaws of the Association.

(f) Employ or contract with a professional manager to perform all or any part of the duties and responsibilities of the Association and shall have the power to delegate its powers to committees, officers and employees. Any such agreement shall be for a term not in excess of three (3) years, subject to cancellation by either party without cause or payment of a termination fee upon ninety (90) days or less written notice.

(g) After fifteen (15) days' written notice, without being liable to any Owner, enter upon any Lot for the purpose of enforcing, by peaceful means, the provisions of this Declaration or for the purpose of maintaining or repairing any such area if for any reason whatsoever the Owner thereof fails to maintain or repair any such area as required by this Declaration.

## ARTICLE VI

### Covenants for Maintenance Assessments

Section 1. Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot owned by it within the Properties, hereby covenants and each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual common assessments for common expenses; (2) capital improvement assessments; (3) special assessments and (4) reconstruction assessments; such assessments to be established and collected as hereinafter provided. Such assessments, together with interest, costs and reasonable attorney's fees for the collection thereof, shall be a charge on the land and shall be a continuing lien upon the property against which such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. Subject to

provisions of this Declaration protecting first mortgagees, the personal obligation for delinquent assessments shall pass to the successors in interest of such Owner. The Board of Directors shall establish no fewer than two (2) such separate accounts ("Eagle Estates Maintenance Funds") into which shall be deposited all monies paid to the Association and from which disbursements shall be made, as provided herein, in the performance of functions by the Association under the provisions of this Declaration. Each of the Maintenance Funds shall include: (1) an Operating Fund for current expenses of the Association and (2) a Common Area Reserve Fund for replacements, painting and repairs (which would not reasonably be expected to recur on an annual or less frequent basis) of the Common Area facilities to the extent necessary under the provisions of this Declaration. The Board of Directors shall not co-mingle any amounts deposited into any of the Eagle Estates Maintenance Funds with one another.

Section 2. Purpose of Common Assessments. The assessments levied by the Association shall be used to promote the common health, safety, benefit, recreation and welfare of the Owners and for the improvements and maintenance of the Common Area and of the dwelling units situated upon the Lots in the Properties as provided herein. The assessments shall also be for an adequate reserve to be used as appropriate for maintenance repairs and replacement of those elements of the common property that must be replaced on a periodic basis. However, disbursements from the Common Area Reserve Fund shall be made by the Board of Directors only for the specific purpose specified in this Article VI. Disbursements from the Operating Fund shall be made by the Board of Directors for such purposes as are necessary for the discharge of its responsibilities herein for the common benefit of all of the Owners, other than those purposes for which disbursements from the Common Area Reserve Fund are to be used. Nothing in this Declaration shall be construed in such a way as to permit the Association to use any assessments to abate any nuisance or annoyance emanating from outside the boundaries of the Properties. Nothing contained herein shall limit, preclude or impair the establishment of additional Eagle Estates Maintenance Funds by the Association, so long as the amounts deposited into any such fund are earmarked for specified purposes authorized by this Declaration.

Section 3. Damage to Common Area by Owners. The foregoing maintenance, repairs or replacements within the Common Area arising out of or caused by the wilful or negligent act of the Owner, his family, guests or invitees shall be done at said Owner's expense or a Special Assessment therefor shall be made against his Lot; provided, however, that the liability of an individual Owner for such damage to the Common Area shall not be absolute, but shall only be that for which the Owner is legally responsible under state law.

Section 4. Basis of Maximum Common Assessment. Until January 1st of the year immediately following the conveyance of the first Lot in the PRUD to an Owner, the maximum Common Assessment under Article VI shall be SIX HUNDRED (\$600.00) DOLLARS per year.

From and after January 1st of the year immediately following the conveyance of the first Lot in the PRUD to an Owner, the maximum annual assessment shall be set by the Board with the approval and assent of fifty-one percent (51%) of each class of members.

Section 5. Capital Improvement and Reconstruction Assessments. In addition to the Common Assessments authorized above, the Board of Directors of the Association may levy, in any assessment year, a Capital Improvement Assessment or Reconstruction Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a Capital Improvement or other such addition upon the Common Area, including fixtures and personal property related thereto; provided that any such total assessment in excess of TWO THOUSAND (\$2,000.00) DOLLARS shall have the vote or written assent of a majority of the votes of Members who are subject to such assessment, excluding the votes of Declarant. Y

Section 6. Notice of Quorum For Any Authorizing Under Sections 4 and 5. Written notice of any meeting called for the purpose of taking any action by the Members authorized under Sections 4 and 5 shall be sent to all Members not less than thirty (30) days, nor more than sixty (60) days, in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty-one percent (51%) of all votes of each class of membership



shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notification requirement and the required quorum at the subsequent meeting shall be twenty five percent (25%) of the voting power of the Association. No such subsequent meeting shall be held more than thirty (30) days following the preceding meeting.

Section 7. Uniform Rate of Assessment. Common Assessments, Capital Improvement Assessments and Reconstruction Assessments provided for in this Article VI must be fixed at a uniform rate for all Lots within the Properties; provided, however, that the Association may, subject to the provisions of Section 3 of this Article, levy Special Assessments against selected Owners who have caused the Association to incur special expenses due to wilful or negligent acts of said Owners, their guests or agents. All Common Assessments shall be collected on a regular basis by the Board of Directors, at such frequency as the Board shall determine.

Section 8. Date of Commencement of Common Assessments; Due Date. The annual Common Assessments provided for herein for each phase of development with the Properties shall commence as to all Lots within such phase of development on the first day of the month following the conveyance of the Common Area within the phase. The first annual Common Assessment shall be adjusted according to the number of months remaining in the fiscal year as set forth in the Bylaws. The Board of Directors shall fix the amount of the annual Common Assessment against each Lot at least thirty (30) days in advance of each Common Assessment period. Written notice of any change in the amount of the annual Common Assessment shall be sent to every Owner subject thereto, at least thirty (30) days prior to the effective date of such change. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments against a Lot is binding upon the Association as of the date of its issuance.

The Board of Directors shall cause to be prepared an annual balance sheet and operating statement reflecting income and expenditures of the Association for each fiscal year, including deposits in and withdrawals from the Common Area Reserve Fund and the Operating Fund, and shall cause to be distributed a copy of each such statement to each Member, and to each first mortgagee who has filed a written request for copies of the same with the Board of Directors, in the manner provided in the Bylaws of the Association. At least sixty (60) days prior to the beginning of each fiscal year, the Board of Directors shall prepare and distribute to the Membership of the Association, a written, itemized estimate (budget) of the expenses to be incurred by the Association during such year in performing its functions under this Declaration (including a reasonable provision for contingencies and deposits into the Common Area Reserve Fund, less any expected income and accounting for any surplus from the prior year's respective Eagle Estates Maintenance Fund).

Each annual Common Assessment shall constitute an aggregate of separate assessments for each of the maintenance Funds reflecting an itemization of the amounts assessed and attributable to prospective deposits into the Common Area Reserve Fund, the Operating Fund and any other maintenance fund established by the Association. If the estimated sums prove inadequate for any reason, including non-payment of any Owner's annual Common Assessment, the Board may, at any time, levy supplemental Common Assessments subject to provisions of Section 4 of this Article, for any of the Maintenance Funds which shall be assessed equally against the Owner of each Lot in the Properties.

Each annual Common Assessment may be paid by the Owner to the Association in one check or payment or in separate checks, as payments attributable to deposits into specified maintenance funds. In the event that any installment of a Common Assessment payment is less than the amount assessed and the payment does not specify the maintenance fund or funds into which it should be deposited, the receipt by the Association from that Owner shall be credited in order of priority, first to the Operating Fund, until that portion of the Common Assessment has been satisfied and second, to the Common Area Reserve Fund.



At the end of any fiscal year of the Association, the Owners may determine that all excess funds remaining in the Operating Fund, over and above the amounts used for the operation of the Properties, may be returned to the Members proportionately, or may be retained by the Association and used to reduce the following year's Common Assessments. Notwithstanding anything contained in the Articles or Bylaws to the contrary, if prior to dissolution of the Association, the Association has not obtained tax exempt status from both the Federal and State governments, then upon such dissolution of the Association, any amounts remaining in the Common Area Reserve Fund shall be distributed to or for the benefit of the Members in a proportion equal to their individual, respective contributions.

Section 9. Exempt Property. The following property, subject to this Declaration, shall be exempt from the assessment herein:

(a) All properties dedicated to and accepted by a local public authority; and

(b) The Common Area.

## ARTICLE VII

### Effect of Non-Payment of Assessments; Remedies of The Association

Section 1. Effect of Non-Payment of Assessments;  
Remedies of The Association. Any installment of a Common Assessment, Capital Improvement Assessment, Special Assessment or Reconstruction Assessment not paid within thirty (30) days after the due date shall bear interest from the due date of such installment at the rate of eighteen percent (18%) per annum. If any installment of an assessment is not paid within thirty (30) days after it is due, the Owner responsible therefor may be required further by the Board of Directors to pay a late charge of FIFTEEN (\$15.00) DOLLARS or ten percent (10%) of the amount of the delinquent installment, whichever is greater. The Association may bring an action at law against the Owner, personally obligated to pay the same, or foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area

or abandonment of his Lot. If any installment of a Common Assessment is not paid within thirty (30) days after its due date, the Board shall mail an acceleration notice to the Owner and to each first mortgagee of a Lot which has requested a copy of the notice. The notice shall specify: (1) the fact that the installment is delinquent; (2) the action required to cure the default; (3) a date, not less than thirty (30) days from the date the notice is mailed to the Owner by which such default must be cured; and (4) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the installments of the Common Assessment for the then current fiscal year and sale of his Lot. The notice shall further inform the Owner of his right to cure after acceleration and to bring a court action to assert the non-existence of a default or any other defense of the Owner to acceleration and sale. If the delinquent installments of Common Assessments and any charges thereon are not paid in full on or before the date specified in the notice, the Board, at its option, may declare all of the unpaid balance payable without further demand and may enforce the collection of the full Common Assessment and all charges thereon in any manner authorized by law and this Declaration.

Section 2. Notice of Assessment. No action shall be brought to enforce any assessment lien herein, unless at least thirty (30) days has expired following the date a Notice of Assessment is deposited in the United States mail, certified or registered, postage prepaid, to the Owner of the Lot and a copy thereof has been recorded by the Association in the office of the County Recorder in which the Properties are located; said Notice of Assessment must recite a good and sufficient legal description of any such Lot, the record Owner or reputed Owner thereof, the amount claimed (which may, at the Association's option, include interest on the unpaid assessment at eighteen percent (18%) per annum plus reasonable attorney's fees and expenses of collection in connection with the debt secured by said lien) and the name and address of the claimant. Such Notice of Assessment shall be signed and acknowledged by an officer of the Association and said lien shall be prior to any Declaration of Homestead recorded after the date on which this Declaration is recorded. The lien shall continue until fully paid or otherwise satisfied.

Section 3. Foreclosure Sale. Any such sale provided for above may be conducted by the Board of Directors, its attorneys or other persons authorized by the Board in accordance with the provisions of the Utah Code Annotated, 1953 as amended, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law. The Association, through duly authorized agents, shall have the power to bid on the Lot at foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

Section 4. Curing of Default. Upon the timely curing of any default for which a Notice of Assessment was filed by the Association, the officers thereof shall record an appropriate Release of Lien, upon payment by the defaulting Owner of a fee, to be determined by the Association, but not to exceed SEVENTY FIVE (\$75.00) DOLLARS to cover the cost of preparing and recording such release. A certificate executed and acknowledged by any two (2) members of the Board stating the indebtedness secured by the liens upon any Lot created hereunder shall be conclusive upon the Association and the Owners as to the amount of such indebtedness as of the date of the certificate, in favor of all persons who rely thereon in good faith. Such certificate shall be furnished to any Owner upon request at a reasonable fee, not to exceed FIFTEEN (\$15.00) DOLLARS.

Section 5. Cumulative Remedies. The assessment liens and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided.

Section 6. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage (meaning any recorded mortgage with first priority or seniority over mortgages) made in good faith and for value and recorded prior to the date on which the assessment came due. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or deed in lieu thereof, shall extinguish the lien of such assessments as to installments which became due prior to such sale or transfer. However, no sale or transfer

shall relieve such Lot from liability for any installments of assessments thereafter becoming due or from the lien thereof.

#### ARTICLE VIII

##### Architectural Control

Section 1. Members of Committee. The Architectural Committee, sometimes referred to in this Declaration as the "Committee" shall consist of three (3) members. The initial members of the Committee shall consist of representatives of Declarant. Each of said persons shall hold office until the election of the first Board of Directors by the membership of the Association. Thereafter, new members of the Committee shall be appointed by the Board of Directors and shall hold office until such time as he has resigned or has been removed or his successor has been appointed, as provided herein. Members of the Committee may be removed at any time without cause. The Board of Directors shall have the right to appoint and remove all members of the Committee.

Section 2. Review of Proposed Construction. Subject to Article X, Section 12 of this Declaration and the Development Guide, no building, fence, wall, patio cover or other structure shall be constructed, painted, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and color and location in relation to surrounding structures and topography by the Architectural Committee. The Committee shall approve proposals of plans and specifications submitted for its approval only if it deems that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area of the Properties as a whole; that the appearance of any structure affected thereby will be in harmony with the surrounding structures, and that the upkeep and maintenance thereof will not become a burden on the Association. The Committee may condition its approval of proposals of plans and specifications upon such changes therein as it deems appropriate, upon the agreement by the Owner submitting the