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described in Exhibit A.*

ENT 113261:2009 P6 1 of 103  
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AFTER RECORDING PLEASE RETURN TO:

**Monte Vista Ranch, LC**  
c/o Robyn Walden  
1757 E American Way #1  
Eagle Mountain, UT 84005

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**MASTER DECLARATION OF COVENANTS**

**FOR**

**EAGLE MOUNTAIN PROPERTIES COMMUNITIES**  
**MASTER ASSOCIATION**

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# MASTER DECLARATION OF COVENANTS FOR EAGLE MOUNTAIN PROPERTIES COMMUNITIES MASTER ASSOCIATION

## PREAMBLE

*Eagle Mountain Properties is a master planned community located in the City of Eagle Mountain, Utah. This Master Declaration of Covenants ("Master Declaration") is the instrument, more commonly known as a declaration, which establishes the governance structure and a flexible system of standards and procedures for the development, expansion, administration, maintenance, and preservation of the property and common areas within Eagle Mountain Properties Communities Master Association.*

*This Master Declaration is intended to operate in unison with the various District Declarations and District Associations that have been or will be created for properties within Eagle Mountain. The primary function of this Master Declaration is to establish a framework and legal structure for providing common area and community services and facilities, including telecommunications services to the Units and their Owners and for providing landscape maintenance of properties located between Districts, bordering multiple Districts, or if the maintenance of such landscaping is not assigned to or included in a specific District. This Master Declaration is intended to and shall apply to residential, commercial, mixed-use and industrial properties, as such properties are originally described or subsequently annexed to this Master Declaration. This Master Declaration expressly contemplates various properties will be annexed to and become subject to this Master Declaration over the course of many years, and the provisions of this Master Declaration are intended to facilitate the expansion and development of Eagle Mountain Properties Communities Master Association not only as a residential community, but as an integrated master planned community of residential, commercial, mixed use, and industrial properties.*

*An integral part of the plan for operation and administration of Eagle Mountain Properties Communities Master Association is Eagle Mountain Properties Communities Master Association, Inc., (the "Master Association") which has been incorporated pursuant to the Utah Non-profit Corporation Act to own, operate, manage and/or maintain various common areas and community improvements and to administer and enforce this Master Declaration and the other Governing Documents referenced in this Master Declaration. The Master Association is also responsible for collecting all basic service fees associated with the common area and community services, facilities, including the telecommunications services which are provided to the properties subject to this Master Declaration and those properties which are not subject to this Master Declaration but which contract with the Master Association for the collection of fees for such common area and community services, facilities and telecommunications services.*

## MASTER DECLARATION

*By executing and recording this Master Declaration, Monte Vista Ranch L.C., a Utah limited liability company, its successors and assigns (the "Founder"), declares that the property described in Exhibit "A" and any additional property annexed to and made subject to this Master Declaration by supplement or amendment, shall constitute the planned community of Eagle Mountain Properties Communities Master Association (the "Community"). This Master Declaration shall encumber the title to such property, shall govern the development and use of such property, and shall be binding upon the Founder and the future owners of any portion of such property, their respective heirs, successors, successors-in-title, and assigns, and any other person or entity that now or hereafter holds any legal, equitable, or beneficial interest in any portion of such property. This Master Declaration shall also be binding upon the Master Association.*

# Part ONE: Introduction To The Community

## Chapter 1 Governing Documents

*A community is guided and governed by certain principle, rules, restrictions, easements, and assessments that each owner, resident, and business or commercial occupant, by choosing to own, reside, or occupy property in the community, agrees to uphold. Those principles, rules, restrictions, easements and assessments are set forth in the community's governing documents, which bind the community together, give it structure, and provide guidance to all who participate in its growth and evolution.*

### 1.1. Scope and Applicability.

The Community has been established and is administered pursuant to various documents that have a legal and binding effect on all owners and occupants of property in the Community, as well as on anyone else that may now or in the future have an interest in any portion of the property comprising the Community. Such documents, referred to in this Master Declaration as the "Governing Documents," include this Master Declaration and the other documents described in Table 1.1, as they may be amended. All owners and occupants, as well as their tenants, guests, and invitees, are subject to and required to comply with the Governing Documents.

### 1.2. Additional Covenants and Restrictions.

The owner of any property within the Community may impose covenants, easements, rules, restrictions, and assessments on such owner's property in addition to those set forth in the Governing Documents, with such approval as may be required pursuant to Chapter 17. If the provisions of any such additional covenants are more restrictive than the provisions of this Master Declaration, the more restrictive provisions control. The Master Association has the standing, authority and the power, but not the obligation, to enforce any such additional covenants.

<b>GOVERNING DOCUMENTS</b>	
<b>Declaration of Covenants:</b> (recorded)	this Master Declaration of Covenants for Community, which creates obligations that are binding upon the Master Association and all present and future owners of property in the Community.
<b>Supplement:</b> (recorded)	a recorded supplement to this Master Declaration which submits (annexes) additional property to this Master Declaration, creates easements over property described in such Supplement, imposes additional obligations or restrictions on such property, designates special areas as described in Chapter 3, identifies Districts, or any of the foregoing.
<b>District Declarations:</b> (recorded)	The recorded declaration of covenants, restrictions and easements for a District. The District Declarations may create District Associations.
<b>Articles of Incorporation:</b> (filed with Secretary of State)	the Articles of Incorporation of Association, as they may be amended, which establish the Master Association as a nonprofit corporation under Utah law.
<b>By-Laws:</b>	the By-Laws of the Master Association adopted by its Board of Directors, as they may be amended, which govern the Master Association's internal affairs, such as voting, elections, meetings, etc.
<b>Design Guidelines:</b> (Founder adopts)	the design standards and architectural and aesthetics guidelines adopted pursuant to Chapter 5, as they may be amended, which govern new construction and modifications to property within the Community, including structures, landscaping, and other items.
<b>Rules:</b>	the rules of the Master Association adopted pursuant to Chapter 7, which regulate use of property, activities, and conduct within Community.



<p><b>Board Resolutions:</b> (Board adopts)</p>	<p>the resolutions that the Master Association's Board of Directors adopts to establish rules, policies, and procedures for internal governance and Association activities and to regulate the operation and use of property the Master Association owns or controls.</p>
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Table 1.1 - Governing Documents

**1.3. Conflicts and Ambiguities.**

If there are conflicts between any of the Governing Documents and Utah law, Utah law shall control. If there are conflicts between or among any of the Governing Documents, then the Master Declaration, the Articles, and the By-Laws (in that order) shall control. If there is a conflict between the Governing Documents and any additional covenants recorded on any property within the Community (or the rules or policies adopted pursuant to any such additional covenants), the Governing Documents shall control.

The Governing Documents use diagrams, tables, and keynotes to illustrate concepts and assist the reader. If there is a conflict between any diagram and the text of the Governing Documents, the text shall control.

If any court determines by a final and non-appealable final judgment or order that any provision of this Master Declaration is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications of such provision in other instances.

The Master Association's Board of Directors may, by resolution, resolve any ambiguities in the Governing Documents, and any reasonable interpretation of an ambiguous provision shall be determinative.

**1.4. Definitions.**

Capitalized terms used in the Governing Documents have the meaning described in the paragraph where they first appear in bold print. An index to defined terms may be found following the Table of Contents. All other terms used in the Governing Documents have their usual, commonly accepted definitions. Words or phrases which are shown as defined terms, shall be used, interpreted and applied in a uniform and consistent manner.

**1.5. Interpretation of Certain References.**

**"Board," "Board of Directors," or "Board of Trustees."** Shall mean the governing body of the Master Association whether appointed and/or controlled by the Founder or elected by the membership.

**Community-Wide Standard.** Where the Governing Documents require compliance with the "Community-Wide Standard," the standard to be applied is the highest of: (a) the standard of use, conduct, architecture, landscaping, or aesthetic matters generally prevailing in the Community, or (b) the minimum standards described in this Master Declaration, the Design Guidelines, the Rules, and Board resolutions. The Community-Wide Standard may contain objective elements, such as specific maintenance requirements, and subjective elements, such as matters subject to the discretion of the Board or the Reviewer (as defined in Chapter 5). The Community-Wide Standard may or may not be set out in writing. The Founder initially shall establish such standard; however, the Community-Wide Standard may evolve as development progresses and as the Community matures.

**Consent or Approval.** All references in the Governing Documents to "consent" or "approval" shall refer to permission or approval which, unless otherwise expressly qualified in the specific provision, may be granted or withheld in the discretion of the Person whose consent or approval is required.

**Discretion and Determination.** All references in the Governing Documents to "discretion" or to the right to "determine" any matter shall mean the sole and absolute power or right to decide or act. Unless otherwise expressly limited in the Governing Documents or by law, any person authorized in the Governing Documents to exercise its discretion or make a determination may do so without regard to the reasonableness of, and without the necessity of justifying, the decision, determination, action or inaction.

**Person.** References in the Governing Documents to a "Person" or "Persons" shall refer to an individual, a corporation, a partnership, a limited liability company, or any other legal entity.

**Recording.** All references in the Governing Documents to a "recorded" legal instrument, or to recordation or the recording of a legal instrument, shall refer to an instrument filed or recorded, or the filing or recording of a legal instrument, in the official records of Utah County, Utah in order to make them a matter of public record.

## **Chapter 2**

### **Master Administration**

*Vibrant communities depend upon all of their stakeholders working together to uphold community standards and achieve the vision and goals for the community. The Founder, the Master Association, the owners, the builders, and others have a role in the functioning of the community and in helping to fulfill that vision. This chapter identifies these stakeholders and describes their roles in administering the Community.*

#### **2.1. The Founder.**

The Founder has established the vision for the Community and, through the Governing Documents, has set forth the founding principles that will guide the Community during the initial period of development and sale and thereafter. The Founder's proposed plan for development of the Community is described in the master plan for Eagle Mountain Properties Communities Master Association approved by the City of Eagle Mountain, as it may be amended (the "**Master Plan**"). However, the Founder is not obligated to annex property shown on the Master Plan to this Master Declaration, nor to build and develop any portion thereof, nor to build and develop any portion of the Property as shown on the Master Plan. The Founder retains and reserves the right and authority to develop or not develop the Property and any portion thereof, in accordance with the Master Plan or in any other manner authorized and permitted by the City and the Master Development Agreement. In addition, the Founder may annex property to this Master Declaration that is not shown on the Master Plan. The Founder may, at any time, record a Supplement to this Declaration an Exhibit identifying such areas that will be annexed into the Community.

The Founder has reserved various rights in the Governing Documents with respect to development and administration of the Community. The Founder may exercise certain of these rights throughout the "**Development and Sale Period**," which is the period of time during which the Founder or any "Founder Affiliate" owns real property in the Community or has an unexpired option to expand the Community pursuant to Chapter 16. A "**Founder Affiliate**" is any Person that controls, is controlled by, or is under common control with the Founder, and any Person that is an owner, a member, a partner, or a shareholder of the Founder.

The Founder has reserved other rights that may be exercised during the "**Founder Control Period**," which is the period of time that the Founder is entitled to appoint a majority of the members of the Master Association's Board of Directors ("**Board**"). It begins on the date of the Master Association's incorporation and terminates upon the first of the following to occur:

(a) when 40,001 Units (including all annexable areas and phases owned by the Founder but not made part of Exhibit "A" hereto) within the Community have certificates of occupancy issued thereon and have been conveyed to persons other than a Founder Affiliate or a builder holding title for purposes of construction and resale;

(b) December 31, 2108; or

(c) when, in its discretion, the Founder voluntarily and expressly surrenders such right in a recorded instrument.

The Founder has certain approval rights for a limited period as provided in the By-Laws after the termination of the Founder Control Period.

The Founder may assign or partially assign its status and rights as the Founder under the Governing Documents to any Founder Affiliate or any person who takes title to any portion of the property described in the Master Plan for the purpose of development and/or sale. Such assignment shall be made only in a recorded instrument signed by both parties.

## **2.2. The Master Association and its Board.**

The Founder has established the Master Association as the primary entity responsible for administering the Community in accordance with the Governing Documents. On most matters, the Master Association acts through the Board, which is selected as provided in this Declaration and the By-Laws. However, in some instances the Governing Documents, or applicable law, limit the Board's ability to act without the approval of the Master Association's members. Unless the Governing Documents or Utah law specifically provide otherwise, the Board may exercise the Master Association's rights and powers without a vote of the membership.

The Master Association may exercise all rights and powers that the Governing Documents and Utah law expressly grant to it, as well as any rights and powers that may reasonably be implied under the Governing Documents. It may also take any action reasonably necessary to effectuate any such right, power or privilege.

The Board may institute, defend, settle, or intervene on behalf of the Master Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the party's rights or obligations pursuant to the Governing Documents, the enforcement of the Governing Documents, or any other civil claim or action. However, the Board has no legal duty to institute litigation or any other proceeding on behalf of or in the name of the Master Association or its members.

In exercising the Master Association's rights and powers, making decisions on the Master Association's behalf (including, without limitation, deciding whether to file or participate in a lawsuit or take other legal action under any circumstances), and conducting the Master Association's affairs, Board members and the Master Association's officers are required to comply with, and shall be judged by, the standards set forth in the By-Laws.

## **2.3. The Owners.**

Each Person that holds record title to a Unit, as defined in Chapter 3, is referred to in the Governing Documents as an "Owner." However, a Person who holds title merely as security for the performance of an obligation (such as a lender holding a mortgage or similar security instrument) is not considered an "Owner." If a Unit is sold under a recorded contract of sale and the contract specifically so states, the purchaser (rather than the holder of fee simple title) will be considered the Owner. If a Unit has more than one Owner, all co-Owners are jointly and severally obligated to perform the responsibilities of the Owner under the Governing Documents.

## **2.4. Builders.**

Much of the responsibility and credit for helping to create Eagle Mountain Properties Communities Master Association rests with those Persons who purchase one or more unimproved lots or

parcels of land within Community for further subdivision or development and resale in the ordinary course of their business (the "**Builders**"). The Builders have the same privileges and responsibilities as Owners during the time that they own Units for construction and resale, including the privileges of membership in the Master Association.

#### 2.5. **District Associations.**

Portions of the Community, known as "**Districts**," have or will be developed and made subject to District Declarations that establish a separate homeowners association ("**District Association**") to administer additional covenants applicable to that District. However, nothing in this Master Declaration requires the creation of a District Association, and the jurisdiction of any District Association shall be subordinate to that of the Master Association.

District Associations are responsible for administering the additional covenants applicable to the property within their jurisdiction and for maintaining, in accordance with the Community-Wide Standard, any property which they own or which their respective covenants designate as being for the common benefit of their members. In any event that a District Association fails to administer the additional covenants applicable to the property within its jurisdiction, including decisions regarding architectural matters, or maintain the property which it owns, the Master Association shall give written notice of deficiency to the District Association and allow the District Association thirty days (30) to correct said deficiency. If after thirty days (30) said deficiency has not been corrected, the authority to oversee such administration and maintenance may revert back entirely to the control and discretion of the Master Association and its Board for as long as deemed necessary. Any costs incurred by the Master Association pursuant to this Section shall be a cost of the District Association(s) or the individual members thereof, as the case may be.

#### 2.6. **Mortgagees.**

If a Unit or property is made subject to a mortgage, deed of trust, or other form of security instrument affecting title to a Unit ("**Mortgage**"), then the holder, Trustee or beneficiary of that Mortgage or Deed of Trust (the "**Mortgagee**") also has an interest in the administration of the Community. The Governing Documents contain various provisions for the protection of Mortgagees, including those set forth in Chapter 15.

#### 2.7. **Private Amenities.**

Any property and facilities located within, adjacent to, or near the Community which Persons other than the Master Association own and operate for recreational and related purposes is a "**Private Amenity**." The Private Amenities shall include, without limitation, any recreational facilities within or adjacent to the Community and related and supporting facilities and improvements. The Founder and the Master Association may enter into maintenance and cost sharing agreements or establish easements and covenants to share costs with any Private Amenity for maintenance of properties which benefit both the Private Amenity and the Master Association's members ("**Covenant to Share Costs**").

## **Chapter 3**

### **Community Structure and Organization**

*The Community consists of parcels of property, referred to as Units, which are intended and reserved for the exclusive use of the Owner and other occupants of such parcel, as well as property that is intended for the common use of some or all of the residents and public property. Units may be assigned to Service Areas to permit the Master Association to provide special services and benefits to particular areas of the Community.*

### 3.1. Designations of Properties Comprising the Community.

**Units.** The Governing Documents refer to individual lots shown on recorded Plat maps as "Units." A Unit is a portion of the Community, depicted as a separately identified lot, parcel, or airspace on a recorded subdivision plat, or in a recorded condominium instrument. A Unit may be zoned or otherwise intended for development, use, and occupancy as an attached or detached residence, or as a commercial, mixed use, industrial, or governmental use or purpose. The term "Unit" refers to the land, if any, which is part of the Unit, as well as to any structures and other improvements on the Unit. A parcel of land under single ownership and intended for construction of more than one residence or structure is considered a single Unit until a subdivision map, plat, or condominium instrument is recorded subdividing it into more than one Unit.

**Common Area.** Any property and facility that the Master Association owns or in which it otherwise holds possessory or use rights for the common use or benefit of more than one Unit is referred to as "Common Area." The Common Area also includes any property that the Master Association holds under a lease and any easements in favor of the Master Association. The Founder and others may establish and convey Common Area to the Master Association as provided in Section 9.1.

**Limited Common Area.** Certain portions of the Common Area may be designated as "Limited Common Area" and assigned for the exclusive use or primary benefit of less than all Units or Units in specified portions of the Community. Limited Common Areas might include such things as neighborhood entry features, private access roads, vehicle parking areas, landscaped areas, and recreational facilities, among other things, that benefit only a single Unit, several Units, or a designated portion of the Community. The Founder may designate property as Limited Common Area and assign it to particular Units on Exhibit "A" to this Master Declaration or in the Supplement by which the property is submitted to the terms of this Master Declaration, or in the deed conveying such property to the Master Association.

**Area of Common Responsibility.** All of the properties and facilities for which the Master Association has responsibility under the Governing Documents, or for which the Master Association otherwise agrees to assume responsibility, are collectively referred to in the Governing Documents as the "Area of Common Responsibility," regardless of who owns them. The Area of Common Responsibility includes all of the Common Area and may also include Units or portions of Units and property dedicated to the public, such as public rights-of-way. The initial Area of Common Responsibility is described in Chapter 9.

**Other Properties.** In addition to the above, Eagle Mountain Properties Communities Master Association may include property dedicated to the public, property owned or controlled by a District Association for the common use and enjoyment of its members, and Private Amenities as described in Section 14.1.

### 3.2. Service Areas.

In addition to the establishment of District Associations, Units may be part of one or more "Service Areas" in which the Units share Limited Common Areas or receive special benefits or services from the Master Association that the Master Association does not provide to all Units within the Community. A Unit may be assigned to more than one Service Area, depending on the number and types of special benefits or services it receives. Owners within Service Area(s) may be required to pay an assessment for charges, costs and expenses related to the Service Area(s). A Service Area may be comprised of Units of more than one housing or commercial building type and may include Units that are not contiguous.

The Founder may initially designate Service Areas (by name or other identifying designation) and assign Units to a particular Service Area either in Exhibit "A" or in a Supplement. During the Development and Sale Period, the Founder may unilaterally amend this Master Declaration or any Supplement to change Service Area boundaries.

In addition, the Board may, by resolution, designate Service Areas and assign Units to them upon petition of Owners of at least 51% of the Units affected by the proposed designation pursuant to Section 10.2.

The Owners of Units within each Service Area may elect a "Service Area Committee" in accordance with the By-Laws to represent and act on behalf of the Owners with respect to the services and benefits that the Master Association provides to the Service Area. The Service Area Committee shall coordinate with the appropriate District or the Master Association with respect to expenses related to a particular Service Area. The Master Association may levy (and collect) an assessment with respect to any Service Area in the event that no other entity or committee has such legal authority or duty. References to Service Areas in the Governing Documents shall also refer to such Service Area Committees, if appropriate from the context.

### 3.3. Districts.

All of the property subject to a District Declaration shall be deemed grouped into a "District" to facilitate a system of representative voting on matters as to which the Governing Documents require approval of the Association's membership. A District may be comprised of any number of Units and may include Units that are not contiguous to one another. Each District will designate one "Voting Delegate" to cast the votes allocated to Units in that District on matters requiring a vote of the Owners, as described in Chapter 4. Unless the District Declaration specifies otherwise, the president of the District Association shall be the Voting Delegate for the District.

For property not subject to a District Declaration, the Founder may assign Units to a specific District (by name or other identifying designation) in a Supplement annexing the Unit to the terms of this Master Declaration. During the Development and Sale Period, the Founder may unilaterally record a Supplement or an amendment to this Master Declaration or any previously recorded Supplement, to designate or change District boundaries. Thereafter, the Board may amend this Master Declaration or any Supplement to re-designate District boundaries; however, the Board may not combine two or more existing Districts without the consent of Owners of a majority of the Units in the affected Districts.

## Chapter 4

### **Association Membership and Voting Rights**

*The Master Association is an entity and provides a mechanism by which each Owner can participate in the governance and administration of Community. While many powers and responsibilities are vested in the Board in order to facilitate day-to-day management and operation, the membership and voting rights vested in the Owners allow the Owners to participate in administration of the Community and influence the outcome of major decisions.*

#### 4.1. Membership.

The Association initially has two classes of membership: (1) the Owner membership, also known as "Class A" membership, which is comprised of all Owners, including Builders, and (2) the Founder Membership, also known as "Class B" membership, which consists solely of the Founder. All persons holding a membership in the Association are referred to in this Declaration as "Members."

**(a) Owner Membership.** Every Owner is automatically a member of the Association. However, there shall be only one membership per Unit. Thus, if a Unit has more than one Owner, all co-Owners of the Unit share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth below and in the By-Laws. If an Owner is a corporation, a partnership, or other legal entity, its membership rights may be exercised by any officer, director, partner, or trustee, or by an individual the Owner designates from time to time in a writing to the Association's Secretary, except that only the individuals residing in the Unit shall be entitled to use any Common Area recreational facilities available for use by Owners.

**(b) Founder Membership.** The Founder holds the sole Founder Membership and shall be entitled to five (5) votes for each Building Lot or Unit owned by Founder in the Eagle Mountain Properties Communities Master Association and fifteen (15) votes for each acre of land not subject to a recorded subdivision plat. The Founder Membership shall terminate upon expiration of the Founder Control Period, upon deeding of the last Building Lot or Unit to an Owner other than the Founder, or on such earlier date as the Founder determines and declares in a recorded instrument. Notwithstanding anything herein to the contrary, the Founder's Control Period shall be as set forth in Section 2.1 of this Declaration.

The Founder may, by Supplement, create additional classes of membership comprised of the owners of Units within any portion of the additional property annexed to this Master Declaration. The Founder shall specify in any such Supplement the rights, privileges, and obligations of the members of any class of membership created by that Supplement.

#### 4.2. Voting.

Each Unit is assigned one equal vote, subject to the limitations on voting set forth in this Declaration and the other Governing Documents.

Due to the number of Units that may be developed in the Community, the Governing Documents provide for a representative system of voting based upon Districts. Each District shall elect a president by majority vote of the Districts' members. The president of each District Association shall be a District's "Voting Delegate" for the purpose of casting votes of all Units in the District on matters requiring a vote of the membership, except where the Governing Documents specifically require a vote of the Owners.

The Voting Delegate or, in his or her absence, the alternative Voting Delegate, shall attend Master Association meetings and casts all votes allocated to the District that he or she represents on any matters as to which such Voting Delegate is entitled to vote under the Governing Documents. A Voting Delegate may vote all votes it is entitled to cast in its discretion and may, but need not, poll the Owners of Units in the District which he or she represents prior to voting. On any matter for which a Voting Delegate is entitled to cast more than one vote, the Voting Delegate may cast all such votes as a block or split them but shall not be entitled to fractionalize any single vote.

Voting Delegates are subordinate to the Board and their responsibility and authority does not extend to policymaking, supervising, or otherwise being involved in the Master Association governance beyond voting on matters put to a vote of the membership.

In any situation in which an Owner is entitled personally to exercise the vote for his or her Unit, if there is more than one Owner of a Unit, the vote for such Unit shall be exercised as the co-Owners holding a majority of the ownership interest in the Unit determine among themselves. Any co-Owner may cast the vote for the Unit or consent to any action requiring approval of the Owners on behalf of all co-Owners of the Unit, and majority agreement shall be conclusively presumed unless another co-Owner of the Unit protests promptly to the President or other person presiding over the meeting or the balloting, in the case of a vote taken outside of a meeting. In the absence of majority agreement, the Unit's vote

shall be suspended if two or more co-Owners seek to exercise it independently. No more than one vote shall be cast for any Unit and such votes shall not be fractionalized, but shall only be exercised as a single unified vote.

## PART TWO: COMMUNITY STANDARDS

### Chapter 5

#### Architecture, Landscaping and Aesthetic Standards

*The Community derives its unique character from a mix of compatible architectural styles and from the cooperation of all Builders and Owners in upholding minimum design, landscaping and aesthetic standards. This chapter explains how those standards are established and how they are applied and maintained through a process requiring prior approval for construction on and exterior modifications to improvements on Units.*

##### 5.1. General.

All site work, landscaping, structures, improvements, and other items placed on a Unit, Common Area, or Limited Common Area in a manner or location visible from outside of existing structures ("**Improvements**") are subject to standards for design, landscaping and aesthetics adopted pursuant to this chapter ("**Design Guidelines**") and the approval procedures set forth in this chapter, except as this chapter or the Design Guidelines may otherwise specify.

No prior approval is necessary to repaint the exterior of existing structures using the most recently approved color scheme or to rebuild or restore any damaged structures in a manner consistent with the plans and specifications most recently approved for such structures. Generally, no approval is required for work done to the interior of a structure; however, modifications to the interior of screened porches, patios, and other portions of a structure visible from outside of the structure do require prior approval.

Any structure constructed or placed on a Unit shall be designed by and built in accordance with the plans and specifications of a licensed architect, engineer or builder unless the Founder or its designee otherwise approves in its discretion.

Approval under this chapter is not a substitute for any approvals or reviews required by the City of Eagle Mountain, Utah County, or any governmental agency or entity having jurisdiction over architectural or construction matters.

This chapter shall not apply to structures existing on any portion of the Community prior to annexing it to this Master Declaration, nor to the Founder's or any Founder Affiliate's design and construction activities, nor to the Master Association's design and construction activities during the Founder Control Period. This chapter shall not apply to and the Design Review Committee shall not have jurisdiction over any headend equipment, headend facilities or headend compound or site, or any antennae proposed for or which provides Telecommunications Services.

##### 5.2. Design Review Authority.

(a) **Founder.** The Founder shall have exclusive authority to review and act upon all applications for review of proposed Improvements until the later of (i) the expiration of the Development and Sale Period, or (ii) such time as all Units planned for the property described in Exhibits "A" and "B" have been improved with dwellings or other structure for which a certificate of occupancy has been issued. The Founder may designate one or more persons to act on its behalf in reviewing any application. In



reviewing and acting upon any request for approval, the Founder and its designee act solely in the Founder's interest and owe no duty to any other Person.

From time to time, the Founder may delegate any or all of its rights under this chapter to other Persons or committees, including any committee appointed pursuant to Section 5.2(b). Any such delegation shall be in writing, shall specify the scope of responsibilities delegated, and shall be subject to (i) the Founder's right to revoke such delegation at any time and reassume its prior control, and (ii) the Founder's right to veto any decision it determines, in its discretion, to be inappropriate or inadvisable. So long as the Founder has any rights under this chapter, the jurisdiction of others shall be limited to such matters as the Founder specifically delegates

**(b) Design Review Committee.** Upon the Founder's delegation of authority pursuant to Section 5.2(a), or upon expiration or termination of the Founder's rights under this chapter, the Board shall appoint a Design Review Committee ("**Design Review Committee**" or "**DRC**") to assume jurisdiction over matters within the scope of the delegated authority or this chapter, respectively. The DRC shall consist of three (3), five (5) or seven (7), persons, who shall serve and may be removed and replaced in the Board's discretion. DRC members need not be Owners or representatives of Owners. The DRC may, but need not, include architects, engineers, or similar professionals. The Master Association may compensate DRC members in such manner and amount, if any, as the Board may determine appropriate.

Until expiration of the Founder's rights under this chapter, the DRC shall notify the Founder in writing within three business days of any action (i.e., approval, partial approval, or disapproval) it takes under this chapter. A copy of the application and any additional information the Founder may require shall accompany the notice. The Founder shall have 10 business days after receipt of such notice to veto any such action, in its discretion, by written notice to the DRC.

Unless and until such time as the Founder delegates all or a portion of its reserved rights to the DRC or the Founder's rights under this chapter terminate, the Master Association shall have no jurisdiction over architectural matters. Approval of any applications described herein shall in no way relieve the Owner from complying with all Federal, State or Local laws and ordinances with respect to the proposed Improvement.

**(c) Reviewer.** For purposes of this chapter, the entity having jurisdiction in a particular case shall be referred to as the "**Reviewer.**"

**(d) Fees; Assistance.** The Reviewer may establish and charge reasonable fees for its review of applications and may require that such fees be paid in advance. Such fees may also include reasonable costs incurred in having professionals review any application. The Board may include the compensation of such persons in the Master Association's annual operating budget.

Initially, the Founder reviews applications for proposed Improvements. Thereafter, the Board of Directors will appoint a Design Review Committee to review applications for proposed improvements. The Founder or the Design Review Committee is referred to as the "Reviewer." The Reviewer sets fees for reviewing applications.

### 5.3. Guidelines and Procedures.

**(a) Design Guidelines.** The Founder may prepare the initial Design Guidelines, which may contain general provisions applicable to all of Eagle Mountain Properties Communities Master Association as well as specific provisions that vary based on the type of structure, use, or location within the Community. The Design Guidelines are intended to provide guidance to Owners, Builders, and

contractors regarding matters of particular concern to the Reviewer. The Design Guidelines are not the exclusive basis for the Reviewer's decisions, and compliance with the Design Guidelines does not guarantee approval.

The Founder shall have sole and full authority to amend the Design Guidelines for so long as it has review authority under Section 5.2(a). The Founder's right to amend the Design Guidelines shall continue even if it delegates reviewing authority to the DRC, unless the Founder also delegates the power to amend to the DRC. Upon termination or delegation of the Founder's right to amend, the DRC may amend the Design Guidelines with the Board's consent.

Amendments to the Design Guidelines shall apply prospectively only. They shall not require modifications to or removal of any structures previously approved once the approved construction or modification has begun. However, any new work on such structures must comply with the Design Guidelines as amended. There shall be no limitation on the scope of amendments to the Design Guidelines, and such amendments may eliminate requirements previously imposed or otherwise make the Design Guidelines less restrictive.

The Reviewer shall make the Design Guidelines available to Owners, the Builders and their contractors upon request. In the Founder's discretion, such Design Guidelines may be recorded, in which event the recorded version, as it may be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

**(b) Procedures.** Unless the Design Guidelines provide otherwise, no activities within the scope of this chapter (as described in Section 5.1) may begin on any property within the Community until a written application is submitted to and approved by the Reviewer. The application must be accompanied by plans and specifications and such other information as the Reviewer or the Design Guidelines require.

In reviewing each application, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of the proposed external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that such determinations are purely subjective and that opinions may vary as to the desirability and/or attractiveness of particular improvements.

The Reviewer shall have the discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment, and such determinations shall not be subject to the procedures in Chapter 18 or judicial review so long as they are made in good faith and in accordance with required procedures.

The Reviewer shall make a determination on each application after receipt of a completed application with all required information. The Reviewer may permit or require that an application be submitted or considered in stages, in which case a final decision shall not be required until after the final, required submission. The Reviewer may (i) approve the application with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application.

The Reviewer shall notify the applicant in writing of the final determination on any application no later than 30 business days after its receipt of a completed application and all required submissions; however, with respect to any DRC determination subject to the Founder's veto right under Section 5.2(b), the Reviewer shall notify the applicant of the final determination within 40 business days after its receipt of the final determination and all required submissions. Notice shall be deemed given at the time the envelope containing the response is deposited in the U.S. mail with the required postage prepaid and addressed to the Applicant. Hand delivery, facsimile, electronic mail, or similar delivery of such written

notice also shall be sufficient and shall be deemed given at the time of confirmed delivery to the applicant.

If the Reviewer fails to respond within the time period required above, approval shall be deemed given. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with the Design Guidelines unless a written variance has been granted pursuant to Section 5.5.

As part of any approval, the Reviewer may require that construction commence within a specified time period. If construction does not commence within the required period, the approval shall expire, and the Owner must reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within 12 months of commencement unless otherwise specified in the notice of approval or unless the Reviewer, in its discretion, grants an extension in writing.

The Reviewer may exempt certain activities from the application and approval requirements of this chapter, if such activities are undertaken in compliance with the Design Guidelines and the Community-Wide Standard.

#### **5.4. No Waiver of Future Approvals.**

The people reviewing applications under this chapter will change from time to time, and opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. It may not always be possible to identify objectionable features until work is completed. In such cases, the Reviewer may elect not to require changes to objectionable features. However, the Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans shall not constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

#### **5.5. Variances.**

The Reviewer may authorize variances from compliance with any of the Design Guidelines and any procedures when it determines that circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations justify a variance, but no variance shall (a) be effective unless in writing; (b) be contrary to this Master Declaration; or (c) prevent the Reviewer from denying a variance in other circumstances. A variance requires the Founder's written consent during the Development and Sale Period and, thereafter, requires the Board's written consent.

When unusual circumstances exist that make it difficult to comply with a particular requirement of the Design Guidelines, the Owner may file a request with the Reviewer to be excused from complying with such requirement. The Reviewer has the discretion to determine when a variance is appropriate.

#### **5.6. Limitation of Liability.**

This chapter establishes standards and procedures as a mechanism for maintaining and enhancing the overall aesthetics of Eagle Mountain Properties Communities Master Association; they do not create any duty to any Person. Review and approval of any application pursuant to this chapter may be based purely on aesthetic considerations. The Reviewer is not responsible for the structural integrity or soundness of approved construction or modifications, for compliance with building codes and other governmental requirements, or for ensuring that all dwellings are of comparable quality, value, size, or design, or are aesthetically pleasing or otherwise acceptable to other Owners.

The Founder, Founder Affiliates, the Master Association, its officers, the Board, any committee, and any member of any of the foregoing, shall not be liable for (a) soil conditions, drainage, or other general site work; (b) any defects in plans revised or approved hereunder; (c) any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents, whether or not the Founder has approved or featured such contractor as a Builder; or (d) any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Unit. In all matters, the Master Association shall defend and indemnify the Board, the DRC, and the members of each, as provided in the By-Laws.

**5.7. Certificate of Compliance.**

Any Owner may request in writing that the Reviewer issue a certificate of compliance certifying that there are no known violations of this chapter or the Design Guidelines. The Master Association shall either grant or deny such written request within 30 days after receipt and may charge a reasonable administrative fee. Issuance of such a certificate shall prevent the Master Association from taking enforcement action against an Owner for any condition known to the Master Association on the date of such certificate.

## **Chapter 6** **Maintenance, Repair and Replacement**

*One of the benefits of owning property in a planned community is the commitment among neighbors to maintain their property in a neat, attractive and well-landscaped condition to enhance the overall beauty and aesthetic appeal of the Community. This chapter describes the Owners' responsibilities for maintenance and repair of their Units and for insuring their Units against property damage so that funds will be available for repair and restoration if needed.*

**6.1. Maintenance by Owners.**

Each Owner shall maintain his or her Unit, including all structures, landscaping, and other improvements comprising the Unit, in a manner consistent with the Governing Documents and the Community-Wide Standard, unless such maintenance responsibility is otherwise assumed by or assigned to the Master Association or a District Association pursuant to this Master Declaration, any Supplement, or by law.

**6.2. Maintenance by District Associations.**

A District Association shall maintain its common property and any other property for which it has maintenance responsibility in a manner consistent with the Governing Documents, the Community-Wide Standard, and all applicable covenants.

The Master Association may assume maintenance responsibility for property of any District Association, either by contract or agreement with the District Association, or upon the Board's determination, pursuant to Chapter 8, that the level and quality of maintenance then being provided is not consistent with the Governing Documents or the Community-Wide Standard.

**6.3. Responsibility for Repair and Replacement.**

Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement necessary to maintain the property to a level consistent with the Governing Documents and the Community-Wide Standard.

Each Owner shall carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible, unless either the Master Association or a District Association having jurisdiction over the Unit (if any) carries such insurance.

Within 90 days after damage to or destruction of a structure on a Unit which the Owner is responsible for insuring, the Owner shall promptly repair or reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved pursuant to Chapter 5 unless the Board, in its discretion, agrees to extend such period. Alternatively, the Owner shall clear the Unit of debris and maintain it in a neat and attractive landscaped condition consistent with the Governing Documents and the Community-Wide Standard. The Owner shall pay any costs that insurance proceeds do not cover.

Additional recorded covenants applicable to any portion of the Community may establish additional insurance requirements and more stringent standards for rebuilding or reconstructing structures on Units and for clearing and maintaining the Units in the event the structures are not rebuilt or reconstructed.

This Section shall apply to a District Association with respect to its common property in the same manner as if the District Association was an Owner and its common property was a Unit.

## **Chapter 7**

### **Use and Conduct**

*In order to maintain an environment that encourages respect for and courtesy among neighbors and minimizes the potential for disputes, this chapter sets forth basic standards regarding use, occupancy and transfer of interests in Units. In addition, it provides a procedure by which the Board and the membership can adopt and change rules regulating use, conduct and activities within the Community to address particular needs and desires of the Community over time.*

#### **7.1. Rulemaking Authority and Procedures.**

The Governing Documents establish a framework of covenants, restrictions and conditions that govern the Community. However, within that framework, the Master Association must be able to respond to unforeseen issues and changes affecting the Community. Therefore, the Board and the Voting Delegates are authorized to adopt rules in accordance with the following procedures, subject to the limitations set forth in Section 7.2.

**(a) Board Authority.** Subject to the notice requirements in subsection (c) and the Board's duty to exercise judgment and reasonableness on behalf of the Master Association and its Members, the Board may adopt new Rules and modify or rescind existing Rules by majority vote of the directors at any Board meeting.

**(b) Membership Authority.** Subject to the notice requirements in subsection (c), the Voting Delegates entitled to cast a majority of the votes in the Master Association may also adopt new Rules and modify or rescind existing Rules at any meeting of the Master Association duly called for such purpose, regardless of the manner in which the original Rule was adopted. However, during the Development and Sale Period, any such action shall also be subject to the Founder's approval.

**(c) Notice.** The Board shall send notice to all Owners concerning any rule change at within thirty (30) days of adoption or change of a rule.

**(d) Effective Date.** A Rules change adopted under this Section 7.1 shall take effect 30 days after the date on which written notice of the Rules change is given to the Owners.

**(e) Administrative and Operating Policies.** The procedures set forth in this section do not apply to administrative and operating policies that the Board may adopt relating to the Common Areas, such as hours of operation of a recreational facility, speed limits on private roads, safety regulations, or the method of allocating or reserving use of a facility (if permitted) by particular individuals at particular times, notwithstanding that such policies may be published as part of the Rules.

**(f) Conflicts.** No action taken under this Section 7.1 shall have the effect of modifying or repealing the Design Guidelines or any provision of this Master Declaration other than the Rules. In the event of a conflict between the Design Guidelines and the Rules, the Design Guidelines shall control. In the event of a conflict between the Rules and any provision of this Master Declaration (exclusive of the Rules), the Declaration shall control.

Since it is impossible to foresee all potential situations and problems that may arise within the Community, the Board and the Members have the authority to adopt and modify rules as needed to address new or changing circumstances.

## 7.2. Protection of Owners and Others.

Except as may be set forth in this Master Declaration (either initially or by amendment) all Rules shall comply with and be subject to the following provisions:

**(a) Similar Treatment.** Similarly situated Units shall be treated similarly; however, the Rules may vary from one portion of the Community to another.

**(b) Displays.** No Rule shall prohibit an Owner or occupant from displaying business, commercial, political, religious or holiday symbols and decorations on his or her Unit of the kinds normally displayed in the type of district or neighborhood in which the Unit or property is located, nor shall any Rule regulate the content of political signs. However, the Master Association may adopt time, place, and manner restrictions with respect to signs, advertisements, symbols, and displays visible from outside structures on the Unit, including reasonable limitations on size and number, provided that in non-residential use areas, such rules shall be promulgated, interpreted and enforced to foster support, encourage and enhance business activities.

**(c) Household Composition.** No Rule shall interfere with an Owner's freedom to determine household composition, except that in areas of the Community having single family residential land use designation, the Master Association may impose and enforce reasonable occupancy limitations and conditions based on Unit size and facilities and its fair share use of the Common Area.

**(d) Activities within Dwellings and Structures.** No Rule shall interfere with the activities carried on within a structure or dwelling, except that the Master Association may prohibit activities not normally associated with the particular approved land use assigned for the specific parcel. The Master Association may adopt Rules which restrict, limit, or prohibit activities that create un-compensated extra or unusual monetary costs for the Master Association or other Owners, that create a danger to anyone's health or safety, that generate excessive noise or traffic, that create unsightly conditions visible from outside the structure or dwelling, or that are an unreasonable source of annoyance. Provided, that no Rule shall be adopted or enforced pursuant to the foregoing applicable to non-residential areas which unduly limits, impairs or discourages the normal business, commercial, or industrial use of the property.

**(e) Allocation of Burdens and Benefits.** No Rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Area set forth in this Master Declaration to the detriment of any Owner over that Owner's objection expressed in writing to the Master Association. Nothing in this provision shall prevent the Master Association from changing the Common Area available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who are delinquent in paying assessments, abuse the Common Area, or violate the Governing Documents. This provision does not affect the right to increase the amount of assessments as provided in Chapter 12.

**(f) Leasing and Transfer of Units.** No Rule shall prohibit leasing or transfer of any Unit or require approval prior to leasing or transferring a Unit, including the leasing of a garage apartment, in-law suite, or guest house; however, the Rules may require a minimum lease term of up to 6 months for parcels which have an approved land use of single family detached residential uses. Minimum lease terms may vary from one portion of the Community to another.

**(g) Abridging Existing Rights.** No Rule shall require that an Owner or occupant dispose of personal property kept in or on the Unit which is in compliance with the Rules in effect at the time such personal property was brought onto the Unit, but which are rendered noncompliant due to the adoption of new or revised Rules. This exemption shall apply only during the period of such Owner's ownership of the Unit and shall not apply to subsequent Owners who take title to the Unit after adoption of the Rule. If any personal property is lost, destroyed or needs to be replaced, such personal property shall be replaced with personal property which complies with the Rules in effect at the time such personal property is to be replaced.

**(h) Reasonable Rights to Develop.** No Rule may unreasonably interfere with the ability of the Founder, any Founder Affiliate, or Builder to develop, market and sell property in Eagle Mountain Properties Communities Master Association.

**(i) Interference with Easements.** No Rule may unreasonably interfere with the exercise of any easement.

**(j) Interference with Private Amenity.** No Rule or action by the Master Association or Board shall interfere with the use or operation of any property owned or administered by a Private Amenity.

### **7.3. Owners' Acknowledgment and Notice to Purchasers.**

By accepting a deed, each Owner acknowledges and agrees that the use, enjoyment, and marketability of his or her Unit is limited and affected by the Rules, which may change from time to time. All Unit purchasers are hereby notified that the Master Association may have adopted changes to the Rules and that such changes may not be set forth in a recorded document. A copy of the current Rules and administrative policies are available from the Master Association upon request. The Master Association may charge a reasonable fee to cover its reproduction cost.

## **Chapter 8** **Compliance and Enforcement**

*The covenants, restrictions, standards and rules set forth in the Governing Documents are for the benefit of all Owners and occupants of the Community. However, if they are to have any real meaning, there must be a commitment by the stakeholders in the Community to comply with them and there must be a mechanism in place to enforce that compliance in the event that someone fails or refuses to do so. This chapter sets forth the obligation to comply and the remedies available to the Master Association for noncompliance.*

**8.1. Compliance.**

Each District Association, and every Owner, occupant and visitor to a Unit must comply with the Governing Documents and the Community-Wide Standard and shall be subject to sanctions for violations as described in this chapter. In addition, each Owner shall be responsible for, and may be sanctioned for, all violations of the Governing Documents and the Community-Wide Standard by the occupants, invitees, employees, sub-contractors, agents, customers of or visitors to their Units, and for any damage to the Area of Common Responsibility that any of the foregoing cause.

**8.2. Remedies for Non-Compliance.**

The District Association shall be primarily responsible for enforcement within its Association boundaries. However, the Master Association, the Founder, any Founder Affiliate, and every affected Owner shall have the right to file suit at law or in equity to enforce the Governing Documents. In addition, the Board may impose sanctions for violation of the Governing Documents, including those sanctions listed below and any others described elsewhere in the Governing Documents.

**(a) Sanctions Requiring Prior Notice and Hearing.** After written notice and an opportunity for a hearing in accordance with the By-Laws, the Board may:

(i) impose reasonable monetary fines, which shall constitute a lien upon the violator's Unit. In the event that any occupant, guest, or invitee of a Unit violates the Governing Documents or the Community-Wide Standard and a fine is imposed, the fine may, but need not, first be assessed against the violator; however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board;

(ii) suspend an Owner's right to vote (except that no notice or hearing is required if the Owner is more than 60 days delinquent in paying any Base or Special Assessment);

(iii) suspend any Person's right to use any Common Area facilities (A) for any period during which any charge against such Owner's Unit remains delinquent, and (B) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation (except that no notice or hearing is required if the Owner is more than 60 days delinquent in paying any assessment or other charge owed the Master Association); however, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit;

(iv) suspend services the Master Association provides (except that no notice or hearing is required if the Owner is more than 60 days delinquent in paying any assessment or other charge owed to the Master Association);

(v) exercise self-help or take action to abate any violation of the Governing Documents or the Community-Wide Standard in a non-emergency situation (including removing personal property that violates the Governing Documents or the Community-Wide Standard);

(vi) without liability to any Person, preclude any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of Chapter 5 and the Design Guidelines from continuing or performing any further activities in Community;

(vii) levy Specific Assessments to cover costs the Master Association incurs in bringing a Unit into compliance with the Community-Wide Standard or other requirements under the Governing Documents; and

(viii) record a notice of violation with respect to any Unit on which a violation exists.



**(b) Other Sanctions.** The Board may take the following actions to obtain compliance with the Governing Documents and the Community-Wide Standard without prior notice or a hearing:

(i) exercise self-help or take action to abate a violation in any situation that requires prompt action to avoid potential injury or damage or unreasonable inconvenience to other persons or their property (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations);

(ii) exercise self-help or take action to abate a violation on the Common Area under any circumstances;

(iii) require an Owner or a District Association, at its own expense, to perform maintenance or to remove any structure or improvement on such Owner's Unit or on the District Association's property, respectively, that is in violation of the Community-Wide Standard or other requirements under the Governing Documents and to restore the property to its previous condition;

(iv) enter the property and exercise self-help to remove or cure a violating condition if an Owner or District Association fails to take action as required pursuant to subsection (iii) above within 10 days after receipt of written notice to do so, and any such entry shall not be deemed a trespass; or

(v) bring suit at law for monetary damages or in equity to stop or prevent any violation, or both.

**(c) Powers Relating to District Associations.** The Master Association also shall have the power to require specific action to be taken by any District Association in connection with its obligations and responsibilities under this Master Declaration, such as requiring specific maintenance or repairs or aesthetic changes to be effectuated and requiring that a proposed budget include certain items and that expenditures be made therefore.

A District Association shall take appropriate action required by the Master Association in a written notice within the reasonable time frame set by the Master Association in the notice. If the District Association fails to comply, the Master Association shall have the right to effect such action on behalf of the District Association and levy Specific Assessments to cover the costs, as well as an administrative charge and sanctions.

All Owners and District Associations are required to abide by the Governing Documents and the Community-Wide Standard. If an Owner or District Association fails or refuses to obey the Governing Documents or the Community-Wide Standard the Owner may be subject to various penalties including fines and the suspension or loss of services.
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**8.3. Board Decision to Pursue Enforcement Action.**

The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. For example, the Board may determine that, in a particular case:

(a) the Master Association's position is not strong enough to justify taking any or further action;

(b) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;

(c) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Master Association's resources; or

(d) that it is not in the Master Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

A decision not to enforce a particular provision shall not operate or be deemed a waiver, modification or repeal of such provision, nor prevent the Master Association from enforcing the same provision at a later time or prevent the enforcement of any other covenant, restriction, or rule.

#### **8.4. Attorneys Fees and Costs.**

In any action to enforce the Governing Documents, if the Master Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

#### **8.5. Enforcement of Ordinances.**

The Master Association, by contract or other agreement, may enforce applicable city and county ordinances. In addition, Utah County and the City of Eagle Mountain may enforce ordinances within Community.

## **PART THREE: ASSOCIATION OPERATIONS**

### **Chapter 9**

#### **Property Management**

*One of the Master Association's primary functions is maintaining and operating property and facilities for the common benefit of the Owners and residents of Eagle Mountain Properties Communities Master Association. This chapter establishes the Master Association's obligation to accept property that the Founder designates as Common Area or Limited Common Area and to maintain, operate, and insure it, along with certain other properties, for the benefit of Eagle Mountain Properties Communities Master Association.*

#### **9.1. Acceptance and Control of Association Property.**

**(a) Transfers and Conveyances by the Founder.** The Founder, its designees, or any Founder Affiliate, and with the Founder's written consent, any Builder, may transfer or convey to the Master Association interests in real or personal property within, adjacent to or for the benefit of the Community. The Master Association may accept the transfers and conveyances of such property, provided: (1) such property is free and clear of all liens, encumbrances, and hazardous materials (2) the transferor has marketable and insurable title, and (3) and the property will not expose or subject the Master Association to any undue risks, liabilities or potential damages. If the property does not comply with the foregoing standards, the Master Association may reject the property unless: (1) The Master Association by an affirmative vote of the Voting Delegates entitled to cast at least 51 percent (51%) of the total votes in the Master Association agree to accept the property and to assume and become liable for the lien or encumbrance, (2) the person or entity attempting to transfer the property to the Master Association obtains the release and satisfaction of the lien or encumbrance, (3) the person or entity attempting to transfer the property to the Master Association provides a guarantee or indemnity for the lien and encumbrance acceptable to the Voting Delegates entitled to cast at least 51 percent (51%) of the total votes in the Master Association, or (4) the transferor takes such action and remedies necessary to bring the property into compliance with the foregoing standards to the satisfaction of the Master Association. Such property may be improved or

unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests.

Upon the Founder's written request, the Master Association shall re-convey to the Founder, or any Founder Affiliate any unimproved real property that the Founder originally conveyed to the Master Association for no payment, to the extent such parcel was conveyed in error or needed to make minor adjustments in property lines or accommodate changes in the development plan.

The Founder shall have the right to convey any property to the Master Association as Common Area subject to easements permitting persons who are not members of the Master Association to use and enjoy such Common Area upon payment to the Master Association of reasonable use fees.

**(b) Management and Control.** The Master Association is responsible for management, operation, and control of the Common Area, subject to any covenants set forth in the deed or other instrument transferring the property to the Master Association and this Master Declaration. The Master Association may enter into leases, licenses, or operating agreements with respect to portions of the Common Area, for payment or no payment, as the Board deems appropriate. The Master Association may permit use of Common Area facilities by persons other than Owners and occupants of Units and may charge use fees, in such amount as the Board may establish, for such use.

**9.2. Maintenance of Area of Common Responsibility.**

Except to the extent that responsibility for maintenance of any portion of the Area of Common Responsibility is assigned to or assumed by a Private Amenity pursuant to any Covenant to Share Costs, the Master Association shall maintain the Area of Common Responsibility in accordance with the Governing Documents and Community-Wide Standard. The Area of Common Responsibility includes, but is not limited to:

**(a)** the Common Area; provided, the Master Association shall have no responsibility for landscaping or maintenance within any non-disturbance or conservation area established by plat, easement, or governmental requirement;

**(b)** private streets, landscaping, parking facilities, sidewalks, and streetlights (unless maintained by the utility provider) within the Community, and any and all entry features, entry gates, and gatehouses serving the Community, except that any private street, landscaping, parking facilities, sidewalk, streetlight, entrance feature or gate contained within or exclusively serving and for the use of a specific District, District Association or only a portion of the Community shall be maintained as a Service Area Expense of that District, District Association, or portion of the Community;

**(c)** landscaping and any irrigation system installed by the Founder or the Master Association within Areas of Common Responsibility in or adjacent to public rights-of-way in the Community, to the extent that the Board determines it necessary or desirable to maintain the Community-Wide Standard;

**(d)** such portions of any additional property as may be dictated by the Founder, this Master Declaration, any Supplement, or any covenant or agreement for maintenance entered into by, or otherwise binding on the Master Association; and

**(e)** any property and facilities that the Founder or any Founder Affiliate owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Master Association and its Members. The Founder shall identify any such property and facilities by written notice to the Master Association, and they shall remain part of the Area of Common Responsibility until the Founder or

Founder Affiliate revokes such privilege of use and enjoyment by written notice to the Master Association.

The Master Association may maintain other property it does not own, including, without limitation, Units, property dedicated to the public, or property owned or maintained by a District Association, if the Board determines that such maintenance is necessary or desirable to maintain and enforce the Governing Documents or the Community-Wide Standard. The Master Association shall not be liable for any damage or injury occurring on or arising out of the condition of, property it does not own except to the extent that it has been negligent in performing its maintenance responsibilities.

**9.3. Discontinuation of Operation.**

The Master Association shall maintain facilities within the Common Area in proper and safe operation unless the Founder, during the Development and Sale Period, and Voting Delegates entitled to cast sixty percent (60%) of the total votes in the Master Association, consent in writing to discontinue such operation. If the property is Limited Common Area, any discontinuation shall also require the approval in writing the Owners to whom such Limited Common Area is assigned. This Section shall not apply to restrict the Board's ability to establish reasonable operating hours, which may vary by season, or to restrict temporary closures or interruptions in operation as the Board may determine appropriate to perform maintenance or repairs.

**9.4. Restoring Damaged Improvements.**

In the event of damage to or destruction of portions of the Area of Common Responsibility for which the Master Association has insurance responsibility, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially its condition prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

The Master Association shall repair or reconstruct damaged Common Area improvements unless:

- (a) this Master Declaration is terminated pursuant to Section 20.1;
- (b) repair or restoration would be illegal under any state or local statute or ordinance governing health or safety;
- (c) the Founder, during the Development and Sale Period, and Voting Delegates entitled to cast at least sixty percent (60%) of the total votes in the Master Association, or in the case of a Limited Common Area, all Owners of the Units to which the Limited Common Area is assigned, vote within 60 days after the loss not to repair or reconstruct.

If either the insurance proceeds or estimates of the loss, or both, are not available to the Master Association within such 60-day period, then the period shall be extended until such funds or information are available. Except as provided above, no Mortgagee shall have the right to participate in determining whether the damage or destruction to the Common Area shall be repaired or reconstructed.

This provision ensures that desirable Common Area improvements will be replaced if destroyed, but it also makes it possible not to repair or rebuild if the Owners who benefit from the Common Area prefer not to rebuild.

If a decision is made not to restore the damaged improvements and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be

maintained by the Master Association in a neat and attractive condition consistent with the Governing Documents and the Community-Wide Standard.

The insurance proceeds attributable to any Units or Limited Common Areas that are not rebuilt shall be distributed to the Owners of the damaged Units or the Units to which such Limited Common Areas were assigned, or to their respective lien holders, as their interests may appear, in proportion to their relative liability for Association expenses. The Master Association shall retain and place in a capital improvements account for the benefit of all Owners, the Owners within the affected Service Area, or the Owners of Units to which such Limited Common Areas were assigned, as appropriate, any insurance proceeds remaining after paying the costs of repair or reconstruction or after such settlement as is necessary and appropriate. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the membership, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 11.4.

#### **9.5. Relationships with Other Properties.**

The Master Association may contract with the owner of any neighboring property or recreational amenity to provide for sharing of costs associated with (a) maintenance and operation of mutually beneficial properties or facilities, or (b) provision of mutually beneficial services.

## **Chapter 10** **Provision of Services**

*In addition to its property management role, the Master Association is a vehicle for providing a variety of services for the benefit of the Community at large and individual Units. This chapter describes some of the services the Master Association may provide and the mechanism by which it may provide varying levels and types of services to different areas of the Community.*

#### **10.1. Provision of Telecommunication Services to Districts.**

Upon the approval of a majority of existing districts, the Master Association Board of Directors shall have the right, but not the obligation, to enter into one or more contracts for the provision of one or more Telecommunications Services to District Associations or directly to Units or Owners. Founder and/or its nominees, successors, assigns, affiliates, and licensees may contract with Master Association and act as a Telecommunications Provider for one or more Telecommunications Services, subject only to the requirements of all applicable laws, statutes, and regulations. It is the intention of this paragraph to grant the Master Association the power and authority to provide Telecommunications Services in bulk to the Development. Terms used in this Article 10 shall have the following meanings:

(a) "**Telecommunications Provider**" shall mean any party contracting with the Master Association to provide one or more Telecommunication Services. The Founder may be a Telecommunications Provider. With respect to any particular Telecommunications Services, there may be one or more Telecommunications Providers. By way of example, with respect to Multichannel Video Programming service, one Telecommunications Provider may provide Association such service while another may own, maintain and service the Telecommunications Systems which allow delivery of such Multichannel Video Programming Service.

(b) "**Telecommunications Services**" shall mean any and all of the following: voice telephone, or similar services provided by Voice over Internet Protocol (VoIP); Data Transmission Services; electronic

security monitoring services, including the use of Monitoring Systems; and Multichannel Video Programming Distribution Services.

(c) **"Telecommunications Systems"** shall mean all facilities, buildings, items and methods required and/or used in order to provide Telecommunications Services to Development. Without limiting the foregoing, Telecommunications Systems may include wires (fiber optic or of other material), conduits, passive and active electronic equipment, pipes, wireless cell sites, computers, modems, satellite antennae site(s), transmission facilities, amplifiers, junction boxes, trunk distribution, drop cables, related apparatus, converters, connections, head-end antennae, earth station(s), appurtenant devices, network facilities necessary and appropriate to support provision of local exchange services and/or any other item appropriate or necessary to support provision of Telecommunications Services. Ownership and/or control of all of a portion of any part of the Telecommunications Services may be bifurcated among network distribution architecture, system head-end equipment, and appurtenant devices (e.g., individual adjustable digital units).

c.1 Master Association Board of Directors has and retains the right and authority to promulgate, impose, enforce, amend, and supplement technical specifications and standards for the installation and maintenance of fiber optics and telecommunication facilities, including head-end facilities, distribution systems and in-building wiring systems. All fiber optics and telecommunication systems, components, and facilities shall be engineered, installed, repaired and maintained to meet or exceed generally accepted industry standards as to quality and performance and, where applicable, to meet the equipment standards set forth in the most current version of Part 15 of the Rules of the FCC.

c.2 All fiber optics and telecommunications systems, components and facilities maybe periodically upgraded to current technology such that the fiber optics and telecommunications systems, components and facilities remain reasonably equivalent in quality and performance to that provided by other providers of similar systems and services in master-planned or community wide services, with such upgrades being undertaken as deemed necessary.

c.3 Master Association Board of Directors hereby establishes certain minimum technical specifications, requirements and standards for the installation of wiring, distribution systems and facilities to be installed in all homes, buildings and other structures in accordance with the specifications set forth in Exhibit D attached hereto and made a part hereof (the "Structured Wiring Specifications"). The "Structured Wiring Specifications" shall be amended from time to time to comply with the technical requirements of the suppliers and providers of the telecommunications systems and services and advances in the industry. All Builders, sub-builders, District Associations, and those constructing homes, buildings and other structures in the Community shall incorporate the design and technology features and requirements set forth in the "Structured Wiring Specifications" during the construction of such home, building or structure including all interior conduits, jacks, wiring termination boxes, distribution panels, keypads, and other ancillary appurtenances set forth in the "Structure Wiring Specifications". The Structured Wiring work shall be completed in a timely manner and in accordance with the terms and conditions of all applicable permits for each structure, as issued by the appropriate governing authorities.

c.4 Easements for the installation, construction, repair, operation and maintenance of the fiber optics and telecommunication system to and favor of the providers or suppliers of the telecommunication services shall be reserved and created in all subdivisions within the Community, including (1) an appropriate easement for the installation, construction, repair, operation and maintenance of the distribution system from head-end facilities to various subdivisions, from subdivision to subdivision and within subdivisions, to include access and use of utility trenches during the construction of subdivisions to install conduit and other distribution components, and (2) an appropriate easement for the installation, construction, repair, operation and maintenance of the fiber optics and telecommunications from public or private distribution easements to the corner or sides of homes, buildings and structures permitting the provision of service to such home, building or other structure (known as the "Home Drop Easement").

c.5 There shall be no restrictions limiting access to this community by other telecommunications vendors. However any distribution infrastructure deployed by telecommunications vendors accessing the community shall utilize a fiber to the home point to point architecture whereby there is at least two dedicated fibers originating from a common point located in the community and reaching each individual unit. Furthermore the deployment of any and all telecommunications distribution architecture must be deployed underground.

#### **10.2. Provision of Services to Service Areas.**

**(a) Service Areas Designated by Founder.** The Master Association shall provide services to Units within any Service Area designated by the Founder pursuant to Section 3.2 as required by the terms of any Supplement applicable to the Service Area. Service Areas need not be contiguous nor continuous within a geographical area.

**(b) Service Areas Designated by Board.** In addition to Service Areas the Founder may designate pursuant to Section 3.2 hereof, a District's Voting Delegate, or any group of Owners may petition the Board to designate their Units as a Service Area for the purpose of receiving from the Master Association (i) special benefits or services which are not provided to all Units, or (ii) a higher level of service than the Master Association otherwise provides. Any such petition shall be signed by the applicable District's Voting Delegate or by the Owners of a majority of the Units within the proposed Service Area. Upon receipt of such petition, the Board shall investigate the terms upon which the requested benefits or services might be provided and notify the Owners in the proposed Service Area of such terms and the initial fees for providing the requested service, which may include a reasonable administrative charge. If Owners of at least fifty percent (50%) of the Units within the proposed Service Area approve the proposal in writing, the Board shall designate the Units as a Service Area and include the fees for such service as a line item in the Service Area budget pursuant to Section 12.2(c).

#### **10.3. Community Technology.**

**(a) Community Systems.** The Founder may provide, or may enter into and assign to the Master Association or cause the Master Association to enter into contracts with other Persons to provide, central telecommunication receiving and distribution systems (e.g., cable television, high speed data/internet/intranet services, telephone, voice over internet protocol (VoIP), and security monitoring) and related components, including associated infrastructure, equipment, hardware, and software, to serve the Community ("**Community Systems**"). Any such contracts may provide for installation, operation, management, maintenance, and upgrades or modifications to the Community Systems as the Founder determines appropriate.

The Master Association may enter into bulk rate service agreements providing access to any such Community Systems for all Units as a Common Expense. If particular services or benefits are provided to particular Owners or Units at their request (including an entire District Association), the benefited Owner(s) shall pay the service provider directly for such services, or the Master Association may assess the charges as a Service Area Assessment or Specific Assessment pursuant to Chapter 12 and pay such charges to the provider on behalf of the Owners, as the Board deems appropriate.

**(b) Founder Reservations.** Founder reserves the right to own the fiber optic infrastructure for the purpose of delivering telecommunication services to the members of the Master Association. The Founder, through a Telecommunications Provider, will offer telecommunications services (internet, voice and video content), and access to technology that is competitive with and comparably equal to or better than the video services offered by the major, dominant video providers in the geographic area immediately surrounding Eagle Mountain as measured in terms of service quality, downtime, responsiveness to customers, retail rates, bulk rates and range of content offered. In the event of any

termination of any agreement with a Telecommunications Provider, the Founder shall have the right to be compensated for fair market value of the fiber optic infrastructure.

**(c) Opportunities for Community Interaction.** The Master Association may make use of computers, the internet, and expanding technology to facilitate community interaction and encourage participation in Association activities. For example, the Master Association may sponsor a community cable television channel, create and maintain a community intranet or internet home page, maintain an "online" newsletter or bulletin board, and offer other technology-related services and opportunities for Owners and residents to interact and participate in Association-sponsored activities. To the extent Utah law permits, and unless otherwise specifically prohibited in the Governing Documents, the Master Association may send notices by electronic means, hold Board or Association meetings and permit attendance and voting by electronic means, and send and collect assessment and other invoices by electronic means.

**10.4 Additional Community Services and Facilities.** The Master Association may provide additional community services and facilities. By way of example and not limitation, such services might include such things as nonpotable water for irrigation, cable television, other telecommunications services, community technology, high-speed internet information and/or data services, utilities, fire protection, security services, private street maintenance, community parking facilities, trash collection, landscape maintenance, pest control, and caretaker services. Any District Association contract for services may require individual Owners or occupants to execute separate agreements directly with the Persons providing components or services in order to gain access to or obtain specified services. Such contracts and agreements may contain terms and conditions that, if violated by the Owner or occupant of a Unit, may result in termination of services provided to such Unit. Any such termination shall not relieve the Owner of the continuing obligation to pay assessments for any portion of the charges for such service that are assessed against the Unit as a Common Expense or Service Area Expense pursuant to Chapter 12.

In its discretion, the Board may discontinue offering particular services and may modify or cancel existing contracts for services, subject always to the specific contract terms which may prohibited unilateral action by the Board, and subject to any provision that may exist elsewhere in the Governing Documents requiring the Master Association to provide such services.

#### **10.5 OTARD Rights.**

The Master Association and the members enjoy certain federally mandated rights as defined by the Federal Communications Commission (FCC) regarding the use of Over The Air Reception Devices (OTARD). These FCC rights pre-empt all other rules and regulations addressing the use of OTARD. Founder has included within the utility infrastructure a fiber optic distribution network which is capable of delivering any over the air signals that could also be accessed by OTARD. The Master Association and its individual members voluntarily waive their rights under the FCC OTARD rules in light of the fact that over the air signals can be distributed to all members via the fiber optic infrastructure. The same waiver of OTARD rights as defined in this Section shall be imposed upon lessees who may from time to time lease premises from individual members of the Master Association.

## **Chapter 11** **Association Insurance**

*The Master Association is responsible for insuring against various types of risks, including property damage to Master Association property, personal injury, and liability. This chapter describes the minimum types and amounts of coverage that the Master Association must obtain the specific requirements for such policies, and the handling of deductibles and premiums for such insurance.*



**11.1. Required Coverages.**

The Master Association shall obtain and maintain in effect the following insurance coverage, if reasonably available, or if not reasonably available, the most nearly equivalent coverage as is reasonably available:

(a) Blanket property insurance covering "all risks of direct physical loss" on a replacement cost basis (or comparable coverage by whatever name denominated) for all insurable improvements on

(i) the Common Area and Limited Common Areas;

(ii) property within any Service Area owned or maintained by the Master Association, to the extent specified in any applicable Supplement; and

(iii) other portions of the Area of Common Responsibility, to the extent that the Master Association has responsibility for repair or replacement in the event of a casualty.

If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. The limits of Association property insurance policies shall be sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes.

(b) Commercial general liability insurance on the Area of Common Responsibility, insuring the Master Association and its Members for property damage or personal injury caused by the negligence of the Master Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage shall have a limit of at least \$5,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage. Such coverage may be provided through a combination of primary and umbrella policies. However, if additional coverage and higher limits are available at reasonable cost that a reasonably prudent person would obtain, the Master Association shall obtain such additional coverage or limits;

(c) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(d) Directors and officers liability coverage with a limit of at least \$1,000,000.00; and

(e) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's business judgment but not less than an amount equal to one-fourth of the annual Base Assessments on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation.

The Master Association shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the City of Eagle Mountain, Utah area. In the exercise of its business judgment, the Board may obtain additional insurance coverage and higher limits than this Section requires.

**11.2. Deductibles.**

The Master Association's policies may contain a reasonable deductible, which shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 11.1. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Service Area Expense in the same manner as the premiums for the applicable insurance coverage under Section 11.4. However, if the Board reasonably determines, after notice and an

opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Units as a Specific Assessment.

Persons who cause damage in Eagle Mountain Properties Communities Master Association may be held responsible for the insurance deductible payable on any insurance claim related to such damage.

**11.3. Policy Requirements.**

All Association policies shall provide for a certificate of insurance to be furnished to the Master Association and, upon request, to each Owner.

To the extent available at reasonable cost and terms, all Association insurance shall:

(a) be written with a company authorized to do business in Utah that satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(b) be written in the name of the Master Association as trustee for the benefited parties. All policies shall be for the benefit of the Master Association and its members, except that policies on Limited Common Area shall be for the benefit of the Owners of Units within the Service Area to which the Limited Common Area is assigned and their Mortgagees, as their interests may appear;

(c) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

(d) contain an inflation guard endorsement;

(e) include a co-insurance waiver or an agreed amount endorsement, if the policy contains a co-insurance clause;

(f) provide that each Owner is an insured person with respect to liability arising out of such Owner's status as a member of the Master Association;

(g) provide a waiver of subrogation against any Owner or household member of an Owner; and

(h) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any act or omission of one or more Owners, unless acting on the Master Association's behalf within the scope of their authority, or on account of any curable defect or violation, without prior written demand to the Master Association and allowance of a reasonable time to cure the defect or violation.

In addition, the Board shall use reasonable efforts to secure insurance policies that provide:

(a) a waiver of subrogation as to any claims against the Master Association's directors, officers, employees, and manager;

Subrogation is a legal concept by which one person is substituted in the place of another with respect to a lawful claim or right. For example, once they have paid a claim by an insured party, insurance companies generally have the right to step into the shoes of the insured party and sue any one that the insured party could have sued.

- (b) a waiver of the insurer's right to repair and reconstruct instead of paying cash;
- (c) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;
- (d) an endorsement requiring at least 30 days' prior written notice to the Master Association of any cancellation, substantial modification, or non-renewal;
- (e) a cross liability provision; and
- (f) a provision vesting in the Board exclusive authority to adjust losses. However, Mortgagees having an interest in such losses may not be precluded from participating in the settlement negotiations, if any, related to the loss.

**11.4. Insurance Premiums.**

Premiums for all Association insurance shall be a Common Expense, except that premiums for property insurance on Units within, or Limited Common Areas assigned to, a particular Service Area shall be a Service Area Expense, unless the Board reasonably determines that other treatment of the premiums is more appropriate.

**Chapter 12**

**Association Finances**

*This chapter provides for various types of funding to cover expenses that the Master Association incurs or expects to incur in exercising its authority and performing its responsibilities under the Governing Documents. The primary source of funding is the assessments which this chapter authorizes the Master Association to levy against the Units and collect from the Owner of each Unit. Assessments are secured by a lien on each Unit as described in this chapter.*

**12.1. Association Expenses.**

**(a) Common Expenses.** Except as the Governing Documents otherwise specifically provide, "Common Expenses" as used in this Master Declaration shall mean and refer to all of the expenses that the Master Association incurs, or expects to incur, in connection with: (i) all Telecommunications Services which the Master Association has contracted to uniformly provide to all Units; (ii) the ownership, maintenance, and operation of the Area of Common Responsibility, and otherwise for the general benefit of the Owners. Common Expenses include such operating reserves and reserves for repair and replacement of capital items within the Area of Common Responsibility as the Board finds necessary or appropriate. In addition, Board members may receive a reasonable stipend for costs incurred to attend and participate in Board meetings. Such costs shall be deemed a Common Expense.

The characterization of a particular expense as a "Common Expense" shall not preclude the Master Association from seeking reimbursement for, or a contribution toward, such expenses from other Persons who may be responsible for the expenses incurred or for sharing such expenses pursuant to this Master Declaration, any Supplement, or any other recorded covenants or agreements.

**(b) Service Area Expenses.** All expenses that the Master Association incurs or expects to incur in connection with (i) the ownership, maintenance and operation of Limited Common Areas, (ii) the Telecommunications Services which the Master Association has contracted to provide on a non-uniform basis to all or any portion of the Community, or (iii) in providing other benefits and services to a Service Area, including any operating reserve or reserve for repair and replacement of capital items maintained

for the benefit of the Service Area, are considered "Service Area Expenses." Service Area Expenses may include a reasonable administrative charge in such amount as the Board deems appropriate, provided that any such administrative charge is applied at a uniform rate per Unit among all Service Areas receiving the same service.

**12.2. Budgeting for and Allocating Association Expenses.**

**(a) Preparation of Budget.** At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year. In addition, the Board shall prepare a separate budget for each Service Area reflecting the estimated Service Area Expenses that the Master Association expects to incur for the benefit of such Service Area in the coming year.

The estimated expenses in each budget shall include, in addition to any operating reserves, a reasonable contribution to a reserve fund for repair and replacement of any capital items to be maintained as a Common Expense or as a Service Area Expense of the Service Area for whom the budget is prepared, as applicable. In determining the amount of such reserve contribution, the Board shall take into account the number and nature of replaceable assets, the expected useful life of each, the expected repair or replacement cost, and the contribution required to fund the projected needs by annual contributions over the useful life of the asset.

Each budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Units, and the amount to be generated through the levy of Base Assessments and Service Area Assessments pursuant to subsections (b) and (c) of this Section.

**(b) Calculation of Base Assessments.** The total budgeted Common Expenses, less any surplus in the Common Expense budget from prior years and any income anticipated from sources other than assessments against the Units, shall be allocated among all Units subject to assessment under Section 12.5 and levied as a "Base Assessment." Base Assessments shall be levied at a uniform rate per Unit subject to assessment under Section 12.5, except as otherwise provided in that section.

The Founder may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by the Founder under Chapter 12 Any such subsidy may be treated as a contribution, an advance against future assessments due from the Founder, or a loan, in the Founder's discretion. Any such subsidy and the characterization thereof shall be conspicuously disclosed as a line item in the income portion of the budget. Payment of such subsidy in any year shall not obligate the Founder to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Master Association and the Founder.

**(c) Calculation of Service Area Assessments.** The total Service Area Expenses budgeted for each Service Area, less any surplus in such Service Area budget from prior years, shall be allocated among all Units in the Service Area that are subject to assessment under Section 12.5 and levied as a "Service Area Assessment." Except as otherwise specified in Section 12.5 or in any Supplement applicable to a Service Area, Service Area Assessments shall be set at a uniform rate per Unit in the Service Area. A supplement may provide that any portion of the assessment intended for exterior maintenance of structures, insurance on structures, or replacement reserves which pertain to particular structures may be levied on each of the benefited Units in proportion to the benefit received, as the Board may reasonably determine.

All funds that the Master Association collects as Service Area Assessments shall be accounted for separate from the Master Association's general funds and shall be expended solely for the benefit of the Service Area for which they were collected.

**(d) Surplus Funds.** Any surplus funds of the Master Association remaining after payment of or provision for all Association expenses and any prepayment of or provision for reserves shall be taken into account in the income portion of the budget pursuant to which the funds were collected, in order to reduce the assessments that would otherwise be levied pursuant to that budget in the succeeding year.

### **12.3. Special Assessments.**

The Master Association may levy "**Special Assessments**" to cover Common Expenses or Service Area Expenses that are non-routine, unanticipated, or in excess of those anticipated in the applicable budget. Except as otherwise specifically provided in this Master Declaration, any Special Assessment for Common Expenses shall require the affirmative vote or written consent of Voting Delegates entitled to cast more than 50% of the votes attributable to Units subject to assessment under Section 12.5 and shall be allocated among the Units pursuant to the same allocation as Common Expenses. Any Special Assessment for Service Area Expenses shall require the affirmative vote or written consent of Owners representing more than 50% of the total votes allocated to Voting Delegates in the benefited Service Area and shall be allocated in the same manner as Service Area Assessments under Section 12.2(c). In addition, during the Development and Sale Period, any Special Assessment shall also be subject to the Founder's written consent. Special Assessments shall be payable in such manner and at such times as the Board determines and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

### **12.4. Specific Assessments.**

The Master Association may levy "**Specific Assessments**" against a particular Unit within a District as follows:

**(a)** to cover the costs, including overhead and administrative costs, of providing services to a particular Unit upon request of the individual Owner pursuant to any menu of optional services which the Master Association may offer (which might include the items identified in Section 10.1). Specific Assessments for optional services may be levied in advance of the provision of the requested service; and

**(b)** to cover costs incurred in bringing the Unit into compliance with the Governing Documents or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; however, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing in accordance with the By-Laws before levying any Specific Assessment under this subsection **(b)**; and

**(c)** to cover the Unit's pro rata share of any costs that the Master Association incurs in bringing the District of which the Unit is a part into compliance with the provisions of the Governing Documents; however, the Board must give prior written notice to the Owners of Units in the District and an opportunity for such Owners to be heard before levying any such assessment.

### **12.5. Authority to Assess Owners; Time of Payment.**

The Founder hereby establishes and the Master Association is hereby authorized to levy assessments as provided for in this Chapter and elsewhere in the Governing Documents. The obligation to pay assessments shall commence as to each Unit on the first day of the month following the issuance of a certificate of occupancy or actual occupancy of the Unit for residential or commercial purposes, whichever is earlier. The first annual Base Assessment and Service Area Assessment, if any, levied against each Unit within the District shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence for the District.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners of Units with a history of delinquent payment. If the Board so elects,

assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment and any Service Area Assessment shall be due and payable in advance on the first day of each fiscal year.

If any Unit Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require the outstanding balance on all assessments to be paid in full immediately.

#### **12.6. Obligation for Assessments.**

**(a) Personal Obligation.** By accepting a deed or entering into a recorded contract to purchase any Unit, each Owner covenants and agrees to pay all assessments authorized in the Governing Documents and assessed directly against a Unit or a Unit Owner. All assessments, together with interest (computed from its due date at a rate of 12% per annum or at the highest rate that the Board may establish subject to the limitations of Utah law), late charges as determined by Board resolution, costs, and reasonable attorneys fees, shall be the personal obligation of each Owner and a lien upon each Unit until paid in full. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

The Board's failure to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, abatement, defense, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments and Service Area Assessments at the rate of assessment established for the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Master Association may retroactively assess any shortfall.

No Owner shall be exempt from liability for assessments by non-use of Common Area, abandonment of his or her Unit, or non-use of services provided to the Unit. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Master Association or their Boards to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

**(b) District Association Payment of Assessments.** The Master Association may, in lieu of collecting Assessments on an individual basis from each Owner, bill any District Association or District Committee for the combined Regular Assessments due with respect to all the Units within each such District. Each District Association or District Committee, as the case may be, shall pay the Regular Assessments due for all Units within the District promptly upon receipt of any such billing. If any District Association or District Committee fails to pay the total combined Regular Assessments within thirty (30) days after the receipt of a bill therefor, the Master Association shall thereupon send notice of the Regular Assessment due to each Owner of a Unit within the District and such Regular Assessment shall then be payable by each such Unit Owner. In the alternative, the Master Association may elect to sue any District Association or District Committee for the payment of all the Regular Assessments due for all Units within the District.

**(c) Assessment Statement.** Within seven days after receipt of a written request from any Owner, Mortgagee, prospective Mortgagee, or prospective purchaser of a Unit, delivered personally or sent by certified mail, first-class postage prepaid, return receipt requested to the Master Association's registered agent or designee, the Master Association shall issue a written statement setting forth the amount of any unpaid assessments with respect to such Unit and such Unit's District Association, the amount of current periodic assessments and the date on which such assessment becomes or became due, and any credit for

advanced payments or prepaid items. Such statement shall be delivered personally or by certified mail, first-class postage prepaid, return receipt requested.

The Master Association may require the payment of a reasonable processing fee for issuance of such statement. Such statement shall be binding upon the Master Association as to Persons who rely thereon in good faith.

**12.7. Lien for Assessments.**

**(a) Existence of Lien.** The Master Association shall have a lien against each Unit to secure payment of assessments, as well as interest, late charges (subject to the limitations of Utah law), and costs of collection (including attorneys fees and expenses). Such lien shall be superior to all other liens, except (a) liens and encumbrances recorded prior to this Master Declaration and which the Master Association has assumed or taken subject to; (b) the liens of all real estate taxes and other governmental assessments or charges, and (c) the lien or charge of any Mortgage made in good faith and for value having first priority over any other Mortgages on the Unit and recorded prior to the assessment becoming delinquent, except that the Master Association's lien shall have priority over any such Mortgage to the extent of assessments that would have become due in the absence of acceleration during the six months immediately preceding any judicial or nonjudicial foreclosure of the Mortgage. The Founder or the Master Association may unilaterally record a Supplement which modifies any provision of this Master Declaration if such modification is necessary to maintain any project qualifications for Fannie Mae, Freddie Mac, FHA, or the United States Department of Veterans Affairs.

The Master Association shall, if required by Utah law, and as further evidence and notice of the lien, execute and record a document setting forth as to any Unit the amount of the delinquent sums due the Master Association at the time such document is executed and the fact that a lien exists to secure the repayment thereof. However, the failure of the Master Association to execute and record any such document shall not affect the validity, enforceability, or priority of the lien.

**(b) Enforcement of Lien.** The Master Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Master Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Master Association. The Master Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same, in addition to pursuing any and all remedies allowed by law to enforce the lien.

In order to secure the obligation of each Owner to pay its share of Association expenses, the Master Association has a lien against each Unit. If an Owner does not pay his or her assessments on time, the Master Association may foreclose the lien on such Owner's Unit, causing it to be sold to pay the past due assessments. The Master Association may also sue an Owner in court to recover past due assessments.

**(c) Effect of Sale or Transfer.** Sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of a first Mortgage having priority over the Master Association's lien pursuant to Section 12.6(a) shall extinguish the lien as to any installments of such assessments due more than six months prior to the Mortgagee's foreclosure. The subsequent Owner of the foreclosed Unit shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid

assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 12.5, including such acquirer, its successors and assigns.

**12.8. Exempt Property.**

The following property shall be exempt from payment of Base Assessments, Service Area Assessments, and Special Assessments:

- (a) All Common Area and such portions of the property owned by the Founder or a Founder Affiliate as are included in the Area of Common Responsibility;
- (b) Any headend site or Telecommunications Services sites;
- (c) Any property dedicated to and accepted by any governmental authority or public utility;
- (d) Property owned by any District Association for the common use and enjoyment of its members, or owned by the members of a District Association as tenants-in-common;
- (e) Platted lots or raw ground;
- (f) Developer owned or undeveloped lots that are held for the purposes of construction and resale;
- (g) An unoccupied home owned by the Founder, unless the Founder has a certificate of occupancy and uses the home as a model home or office.

In addition, the Master Association may, by resolution, grant exemptions to certain Persons qualifying for tax-exempt status under Section 501(c) of the Internal Revenue Code so long as such Persons own property subject to this Master Declaration for purposes listed in Section 501(c) of the Internal Revenue Code.

**12.9. Capitalization of Association.**

The first Owner of each Unit other than the Founder, a Founder Affiliate, or a Builder designated by the Founder, shall make a contribution to the working capital of the District Association in which the respective Unit is situated, in an amount equal to one-sixth of the annual District Association assessment per Unit for that year. This amount shall be in addition to, not in lieu of, the annual Base Assessment and any Service Area Assessment levied on the Unit and shall not be considered an advance payment of such assessments. This amount shall be due and payable to the respective District Association immediately upon transfer of title for its use in covering initial start-up expenses (including any insurance premiums to be paid in advance), operating expenses, and other expenses it incurs pursuant to this Master Declaration, its District declaration, or for helping to fund reserves, in the respective District Board's discretion.

**12.10. Use and Consumption Fees.**

The Board may charge use, consumption, or activity fees to any Person using Association services or facilities or participating in Association-sponsored activities. The Board may determine the amount and method of determining such fees. Different fees may be charged to different classes of users (e.g., Owners and non-Owners).

**12.11. Community Enhancement Fee**

(a) **Authority.** As an additional primary funding source, a Community Enhancement Fee shall be collected upon each non-exempt transfer of title to a Unit. The fee shall be charged to the seller of the Unit, shall be payable to the Master Association at the closing of the transfer, shall constitute an assessment against the Unit being transferred, and shall be secured by the Master Association's lien for



assessments under this Section 12 until paid. Each Owner shall notify the Master Association's Secretary or designee at least seven days prior to the scheduled closing and provide the name of the buyer, the date of title transfer, and other information the Board may reasonably require.

**(b) Fee Determination.** The fee shall be based upon the "gross sales price" of the property and shall be in an amount equal to one half of one percent (1/2%) of the Unit's gross selling price, or in the case of a transfer other than a sale at fair market value, one half of one percent (1/2%) of the appraised value of the real property being transferred, as determined by the County for real estate ad valorem tax purposes. The "gross sales price," for purposes of this section, shall mean the total amount paid by the purchaser for the real property, excluding customary closing costs.

**(c) Purpose.** The Community Enhancement Fees shall be placed in a segregated account and used to protect or promote the common interest and the proper operation of the Community and to provide funding for activities and such other purposes as the Board, or a committee that it appoints, deems beneficial to the general good and welfare of Community. For example, Community Enhancement Fees might be used to sponsor or fund, or to assist one or more tax-exempt entities in sponsoring or funding:

- (i) cultural, artistic, and educational programs, festivals, and holiday celebrations and activities;
- (ii) listings of community services for the benefit of residents of Community and the surrounding community (e.g., caretaker services, childcare, personal shopping services, etc.);
- (iii) computer Internet or intranet sites and community-wide video and technology;
- (iv) learning centers and computer centers;
- (v) Declaration clubs and other volunteer organizations and activities;
- (vi) recycling programs;
- (vii) recreational leagues;
- (viii) social services, educational programs, community outreach programs, and other charitable causes;
- (ix) the preservation and maintenance of natural areas, wildlife preserves, or similar conservation areas and sponsorship of educational programs and activities that contribute to the overall understanding, appreciation, and preservation of the natural environment within and surrounding Eagle Mountain Properties Communities Master Association;
- (x) other programs and activities which enhance the welfare, benefit, and lifestyle of residents within and outside of Eagle Mountain Properties Communities Master Association, including management or administrative fees as required for the proper operation of the Community.

Such Community Enhancement Fees shall not be used to engage in any political activity, including lobbying, protesting, or taking or asserting a position in any zoning matter.

**(d) Exempt Transfers.** Notwithstanding the above, no Community Enhancement Fee shall be levied upon transfer of title to a Unit:

- (i) by or to the Founder;
- (ii) by a Builder designated by the Founder who held title solely for purposes of development and resale;
- (iii) by a co-Owner to any Person who was a co-Owner immediately prior to such transfer;
- (iv) to the Owner's estate, surviving spouse, or heirs at law upon the death of the Owner;
- (v) to an entity wholly owned by the grantor or to a family trust created by the grantor for the benefit of grantor, his or her spouse, and/or heirs at law; provided, upon any subsequent transfer of an ownership interest in such entity, the Community Enhancement Fee shall become due;
- (vi) to an institutional lender pursuant to a Mortgage or upon foreclosure of a Mortgage; or
- (vii) under circumstances that the Board, in its discretion, deems to warrant classification as an exempt transfer (e.g., a transfer made solely for estate planning purposes may be, but is not required to be, deemed exempt from payment of the Community Enhancement Fee);

- (viii) when the Unit being transferred is a non-residential unit if the Founder, in its discretion, deems such transfer as an exempt transfer; or
- (ix) by any owner holding title of record to any Lot or Unit as reflected in the public records, including contract purchasers under executory contracts of sale, as of the date of the recording of this Declaration.

## **PART FOUR: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY**

### **Chapter 13**

#### **Easements**

*The easements created in this chapter establish the rights of Owners to use the Common Area and create various rights for the benefit of owners, the Founder, the Master Association, and others over property within the Community. Some of these rights are related to development and construction within the Community and on adjacent property. Others relate to the rights of the Master Association to come upon property of others to fulfill its responsibilities.*

#### **13.1. Easements in Common Area.**

The Founder grants to each Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) the Governing Documents and any other applicable covenants;
- (b) any restrictions or limitations contained in any deed conveying such property to the Master Association;
- (c) certain Owners' rights to the exclusive use of those portions of the Common Area designated "Limited Common Area," if any; and
- (d) the Board's right to:
  - (i) adopt rules regulating Common Area use and enjoyment, including rules limiting the number of guests who may use the Common Area, and to charge use fees for such use;
  - (ii) suspend an Owner's right to use Common Area facilities;
  - (iii) dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Master Declaration;
  - (iv) impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon the Common Area;
  - (v) rent any portion of any clubhouse or other Common Area recreational facilities on an exclusive or non-exclusive short-term basis to any Person;
  - (vi) permit use of any recreational facilities situated on the Common Area by persons who do not own property subject to this Master Declaration or reside in the Community, which use may be subject to admission charges, membership fees, or other user fees established in the Board's discretion;
  - (vii) permit any Person to use Common Areas, at such charge or no charge as the Board may determine, for the purpose of offering and conducting classes or similar activities for the benefit of interested Owners and residents and such other individuals as the Board may specify, whether offered on a fee basis for profit or otherwise; and
  - (viii) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred; and
- (e) a perpetual, nonexclusive easement over the Common Area hereby reserved by the Founder for the benefit of such persons as the Founder may designate at any time prior to expiration of the Development

and Sale Period by recorded instrument, to use and enjoy such portions of the Common Area as the Founder may designate upon payment to the Master Association of reasonable use fees, as specified in such recorded instrument.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable Board regulation. An Owner who leases his or her entire Unit (as opposed to leasing only a garage apartment, in-law suite, or guest house authorized pursuant to Section 7.2(f)) shall be deemed to have assigned all such rights to the lessee of such Unit for the period of the lease.

An easement is one person's right to go onto or do something on the property of another.

**13.2. Easements of Encroachment.**

The Founder grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units. A permitted encroachment is a structure or fixture that extends unintentionally from one person's property onto another's a distance of not more than one foot, as measured from any point on the common boundary along a line perpendicular to such boundary. An encroachment easement shall not exist if the encroachment results from willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

An encroachment occurs when a person's home, fence, or other structure extends onto his or her neighbor's property. This section permits minor, unintentional encroachments to remain.

**13.3. Easements for Utilities, Etc.**

**(a) Installation and Maintenance.** The Founder reserves for itself, its successors, assigns, and designees, perpetual exclusive easements throughout the Community (but not through a structure) for the purpose of:

- (i) installing utilities and infrastructure, Community Systems, security and similar systems, and drainage systems to serve the Community;
- (ii) installing walkways, pathways and trails, and signage on property the Founder or the Master Association owns or within public rights-of-way or easements reserved for such purpose on a recorded plat;
- (iii) inspecting, maintaining, repairing, and replacing the utilities, infrastructure, and other improvements described above; and
- (iv) access to read, maintain, replace, and repair utility meters.

Notwithstanding the above, the Founder reserves the right to deny access to any utility or service provider, to the extent permitted by law, and to condition such access on negotiated terms.

**(b) Specific Easements.** The Founder also reserves the non-exclusive right and power to grant and record such specific easements, consistent with Section 13.3(a), as it deems necessary or appropriate to develop the property described in Exhibits "A" and "B." The location of the specific easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed, or conditioned.

**(c) Minimal Interference.** All work associated with the exercise of the easements described in subsections (a) and (b) of this Section shall be performed so as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person

exercising the easement shall restore the property, to the extent reasonably possible, to the condition existing prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

**13.4. Easements to Serve Additional Property.**

The Founder hereby reserves for itself and its duly authorized agents, successors, assigns, and Mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the property described in Exhibit "B," whether or not such property is made subject to this Master Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property. The Person exercising such easement rights shall be responsible for any damage caused to the Common Area as a result of their actions in connection with development of such property.

If the above easement grants permanent access to any property that is not annexed to this Master Declaration, the Founder, or its successors or assigns, shall enter into a reasonable agreement with the Master Association to share the cost of maintenance that the Master Association provides for the benefit of the easement holder. The shared maintenance costs may include maintenance to or along any roadway providing access to the benefited property.

**13.5. Easements for Maintenance, Emergency, and Enforcement.**

By this Master Declaration, the Founder grants to the Master Association easements over the Community as necessary to enable the Master Association to perform maintenance under Section 9.2 and exercise its enforcement rights under Section 8.2. The Master Association shall also have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance, to inspect for compliance with the Governing Documents, and to enforce the Governing Documents. Any member of the Board and its duly authorized agents and assignees and all emergency personnel in the performance of their duties may exercise such right. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

The Master Association may come onto a Unit to perform maintenance or to address violations of the covenants, but will give prior notice unless there is an urgent need to enter the property.

**13.6. Aviation Easements for Airport.**

Each Owner, by acceptance of a deed to a Unit or Unplatted Parcel within the Community, hereby expressly acknowledges, for himself and for his guests, invitees, agents, assignees and successors-in-interest, that the Community is adjacent to an airport, referred to as the "Jake Garn Airport", and the Owner agrees that, just as the proximity of an airport to the Owner's residence or property may have the effect of creating a unique and valuable environment in which to reside, so may such proximity involve certain inherent aspects which may be less desirable, including, but not limited to, various activities commonly associated with the use and operations of airplanes and the normal and usual activities associated with the operation and maintenance of an airport and the operations of airplanes. "Airplanes" shall include without limitation aircraft of all types, including, but not limited to, fixed wing aircraft, rotor wing aircraft, lighter-than-air craft, powered and non-powered aircraft, jet and piston powered aircraft, manned and unmanned aircraft, single and multi-engine aircraft, and all associated and supporting equipment. The "operation and maintenance" of aircraft and the airport shall include, but not be limited to, the actual operation of aircraft, the use of the airspace immediately above the Community, the over-flight of the property by aircraft, landing and departures of aircraft, the operation of radios, operation of

radar, storage and dispensing of fuels, repair and construction of aircraft, airport lights, engine repairs, and all other activity associated with aircraft and airports. Accordingly, Founder hereby creates and grants, and each Owner consents, agrees and waives any and all objection to the creation and granting of, perpetual easements to the Founder, the owner and operator of the "Jake Garn Airport", to all owners and occupants of "Jake Garn Airport" and the surrounding "Jake Garn Airpark" lands, to permit the doing of every act reasonably necessary and proper to the operation and maintenance of airplanes and the "Jake Garn Airport" and the adjacent "Jake Garn Airpark", which acts may include, but shall not be limited to, the over-flight of the Community of airplanes, the creation of noise, fumes, vibration, odors, visual effects, lights, fuel odors, from the airport and airplanes, the landing and taking-off of airplanes, maintenance of airplanes, the flight of airplanes over and upon any and all parts of the Community, including Units, Unplatted Parcels, Common Areas, streets and rights-of-way, and the operation of airplanes and equipment on, over and about the Common Areas, streets and rights-of-way of the Community. All lots, units, and properties in the Community are further subject to height and use restrictions imposed by the Federal Aviation Administration pertaining to the operation of aircraft and airports, including height restrictions and clear-view flight paths. All Owners assume all risks associated with the operation and maintenance of the airport or the operation and maintenance of airplanes, and all Owners agree and covenant not to make any claim or institute any action whatsoever against the owner and operator of the "Jake Garn Airport" or the adjacent "Jake Garn Airpark", the Founder, Master Association, District Associations, the directors, officers, employees and agents of the foregoing, or any other party other than the pilot who caused the property damage or personal injury arising or resulting from the negligent operation of any particular aircraft, or for negligent design of the Airport or placement of the Unit. Nothing herein shall in any way relieve pilots or aircraft owners from liability for damages resulting from the negligent operation of airplanes. Further, all Owners waive objection to and assume the risk of noise, personal injury or property damage caused by maintenance or operation of the Airport, the Airpark or airplanes, including, but not limited to, noise from maintenance equipment at any and all times, although such maintenance typically takes place around sunrise and sunset; noise caused by pilots and aircraft; the use of pesticides, herbicides and fertilizers; view restrictions caused by maturation of trees and shrubbery; and reduction in privacy caused by constant aircraft traffic on or from the Airport or Airpark or the removal or pruning of trees and shrubbery on the Airport or Airpark. Owners shall not interfere with the activities and operations of the Airport or Airpark, nor shall Owners enter or trespass upon or over the property of the Airport unless such Owner is a member thereof or is otherwise permitted by the owner or management of the Airport. Each Owner expressly acknowledges that the Founder or its assigns may or may not be the owner of the Airport or Airpark, which is to be treated as separate private property, and that the Founder makes no representations or warranties as to membership or use by any Owner in the Airport or Airpark, or as to the operation or activities of the Airport or Airpark, or, finally, as to the location, landscaping or appearance of the various improvements of the Airport or Airpark, including the design and layout (as they may affect views, flight patterns of aircraft, ingress and egress to the Airport or Airpark or, without limitation, any other aspect of the Community) of runways, taxiways, hangars, maintenance facilities, all or any part of which may be constructed, removed, eliminated, relocated or modified from time to time in the sole discretion of the owner of the Airport or Airpark without the consent of any Owner of any Unit or Unplatted Parcel in the District Property. Ownership of a Unit or Unplatted Parcel or membership in the Master Association or a District Association does not give, nor shall it be construed to give, any right, vested or otherwise, or any easement, prescriptive or otherwise, to use the Airport or Airpark or any improvements located thereon, and does not grant any ownership or membership or other interest therein. Founder hereby reserves the right, which right shall be delegated to the owner and operator of the "Jake Garn Airport" or any District Association created in the Airpark area upon the expiration of the Founder Control Period, to promulgate such additional rules and regulations, and to create and grant such other further and additional easements, all as may be reasonably necessary or desirable, within the sole discretion of the Founder, for the assurance and maintenance of an orderly relationship between the Airport, Airpark and the Community, provided that no rule or amendment shall be adopted, enacted or promulgated which in any manner or fashion reduces,

restricts, or infringes upon the rights and protection granted to the Airport and Airpark herein. This Article can not be amended, modified, or deleted without the prior written unanimous consents of the Founder, the managing entity or owner of Jake Garn Airport, and all District Associations within the Airpark areas, which such consents maybe withheld or denied in the absolute discretion of each such entity.

**13.7. Easements Over Community Private Roadways.**

(a) Not later than the expiration of the Development and Sale Period, the Founder will transfer any existing private roadways within and serving the Community which have not been previously transferred, ("**Community Private Roadways**") to the Master Association as Common Area, subject to the easements for access described in this Master Declaration, any Supplements, easements previously created for the benefit of property adjacent to the Community and such additional easements as the Founder deems appropriate. Nothing contained herein requires or obligates the Founder to create any particular "**Community Private Road**" in the Community. "**Private Roads**" contained or created within a particular District or subdivision or between and among adjacent Districts and subdivisions, for the primary use of and access by the owners and residents of that District or subdivision shall remain "private" subject only to the conditions, regulations, and restrictions of that particular District Association and subdivision in which it is contained, and shall not be required to be transferred to the Master Association by operation of this Article 13.7(a). Use of such "**Community Private Roadways**" shall be subject to and in accordance with any rights and easements shown on the recorded subdivision plats of the Community and such reasonable Use Restrictions and Rules as the Master Association may adopt from time to time consistent with this Master Declaration, the recorded subdivision plats, and any law, ordinance, or regulation governing the Community.

(b) The Founder hereby reserves for itself, its agents, employees, successors, assigns, and other persons it may designate, an easement over the "**Community Private Roadways**" for the purpose of constructing, maintaining, repairing, or rebuilding any subdivision improvements installed or to be installed in the Community and for performing any other work within the Community which the Founder deems reasonably necessary, in its discretion, or which the Founder is required to perform pursuant to a contract with any Owner or pursuant to the requirements of any government agency having jurisdiction over the Community. The Founder hereby authorizes the contractors, subcontractors, laborers, materialmen, and other Persons providing construction services and materials to any Unit to exercise this easement for access to such Unit, subject to such rules as the Master Association may adopt; however, during the Development and Sale Period, the Founder shall have the right to restrict use of all or portions of the "**Community Private Roadways**" and designate alternate access for such Persons, and to revoke such authorization and prohibit the use of the "**Community Private Roadways**" by Persons who violate the Governing Documents or any agreement with the Founder.

(c) The Founder hereby creates a perpetual, nonexclusive easement for access, ingress, and egress over the "**Community Private Roadways**" for law enforcement, fire fighting, paramedic, rescue, and other emergency vehicles, equipment, and personnel; school buses; U.S. Postal Service delivery vehicles and personnel; utility providers; and vehicles, equipment, and personnel providing garbage collection service to the Community; however, such easement shall not authorize any such Persons to enter the Community except while acting in their designated or official capacities. The Master Association shall have the right to limit access for garbage collection purposes to such days of the week as the Board may specify.

(d) The Founder reserves for itself and Founder Affiliates a perpetual, non-exclusive easement of access to and use of the "**Community Private Roadways**" and Common Areas in connection with the marketing and sale of other communities which Founder or any Founder Affiliate may be developing and marketing, in order to show the Community as an example of the Founder's developments.

(e) The Founder hereby establishes for the benefit of any Private Amenities and its members (regardless of whether such members are Owners hereunder), guests, invitees, employees, agents, contractors, and designees, a right and nonexclusive easement of access and use over all "Community Private Roadways" reasonably necessary to travel between the entrance to the Community and the Private Amenity. Without limiting the generality of the foregoing, members of the Private Amenity and guests and invitees of the Private Amenity shall have the right to park their vehicles on the "Community Private Roadways" at reasonable times before, during, and after tournaments and other similar functions held by or at the Private Amenity, to the extent that the Private Amenity has insufficient parking to accommodate such vehicles.

(f) The existence of the easements described in this Section shall not preclude the Master Association from maintaining gates or other devices or systems designed to limit general vehicular access to the Community, provided that the Master Association at all times maintains systems and/or procedures to permit entry of Persons authorized to exercise the easements granted in this subsection without unreasonable interference or delay.

### **13.8. Landscape and Signage Easement.**

The Founder reserves for itself, the Master Association, and their respective successors and assigns, a perpetual, nonexclusive landscape and signage easement along, over and under a strip of land on each side of all Roadways running parallel to the right-of-way line and extending a distance of 10 feet out from (a) the back of the curb of the Roadway; (b) the outside edge of the Roadway pavement; or (c) the front edge of any sidewalk; whichever is the greatest distance from the center line of the Roadway ("L&S Easement"), for the purpose of installing, maintaining, repairing, and replacing landscaping, street trees, and community signage. The Master Association shall be responsible for maintaining all landscaping, street trees, and community signage installed or constructed by the Master Association, or with respect to those items or areas expressly assumed by the Master Association, as part of the Common Area except as otherwise provided in Section 9.2.

### **13.9. Specific Easements for Community Services.**

Without limiting any other reservation, power or right to create easements set forth above or elsewhere in this Master Declaration, the Founder may grant easements to service providers in conjunction with bulk service and community service agreements over any and all of the properties subject to this Master Declaration, and prior to additional properties being made subject to this Master Declaration, not inconsistent with improvements thereon, in, to and over existing utility easements or property becoming subject to utility easements, whether or not public utility easements, private utility easements, over the Common Elements, and in and to, and over, the private roadways, the roadways and paths dedicated as public ways. The Founder may also grant easements for the installation, maintenance, operation, management and upgrading of communication towers, antennae, head-end equipment, and related hardware which may be exclusive easements.

### **13.10. Telecommunications Easements.**

(a) Founder (i) reserves unto itself and its nominees, successors, assigns, affiliates, and licensees, and (ii) retains the right to grant to Telecommunications Providers providing Telecommunications Services to all or a part of the Community pursuant to any third party service agreements entered into between the Master Association and such Telecommunication Provider or any subsidiaries and/or affiliates which the Telecommunication Provider designates, a limited or perpetual right, privilege, easement and right-of-way across, over, under and upon certain portions of the Community for the installation, construction and maintenance of Telecommunications Systems together with a limited or perpetual right, privilege and easement of ingress and egress, access, over and upon the designated areas of the Community for installing, constructing, inspecting, maintaining, altering, moving, improving and replacing facilities and equipment constituting such systems. Furthermore, and without limiting the foregoing, the Founder

reserves to itself the right to create, grant and establish exclusive and non-exclusive easements on the Common Area for the installation, maintenance, repair, replacement and operation of headend facilities (antennae and associated equipment) utilized in providing Telecommunications Services to the Community. The easements provided for herein, may at the option of the Telecommunications Provider, and with the consent of the Master Association be also used to provide Telecommunications Services, or any of them to property outside of the Community, for the benefit of the developers, owners and occupants of such other property.

(b) In addition to all other rights reserved and granted herein, Founder and the Telecommunications Providers who have service agreements or contracts with the Master Association shall have the right to use all paved roadways for ingress and egress to and from Telecommunications Systems and for the construction and maintenance of Telecommunications Systems within Community. No amendment to this Master Declaration shall limit the easements and rights of a Telecommunications Provider hereunder without such Telecommunications Provider's consent.

(c) None of the restrictions contained in this Master Declaration shall apply to the headend facilities except the provisions of Section 13.6 herein (the Aviation Easement rules). For the purpose of this Master Declaration, each headend facilities or headend compound consists of a building approximately 13 feet by 18 feet, contained upon a parcel of real property having an easement therefore, which parcel is approximately 30 feet by 40 feet in dimension, and which building contains certain electronic and other equipment and antennae (satellite dish and otherwise) used to provide Telecommunications Services to the Community, which antennae may be on the building, on its roof or on the abutting ground or separate parcel having an appropriate easement permitting its installation. There may be more than one headend facility in the Community. Furthermore, the Architectural Rules shall not apply to the headend facilities, nor shall Master Association or and District Association approval nor approval of any Architectural Board or Architectural Committee be required so long as initial installation had Founder's approval, was otherwise in conformity with applicable building and zoning requirements, and modifications to such headend facility were not in violation of applicable building and zoning requirements when installed. Founder's approval may be evidenced by a writing, but shall be conclusively presumed in the absence of a writing if that headend is installed prior to the Founder turning over control of the Master Association to Owners other than the Founder. Nothing in this Master Declaration shall be deemed to prohibit, restrict or control or grant the Master Association any authority over, any headend facility or headend compound outside the Community, which headend facilities and headend compounds are hereby authorized to and may service the Community, and property outside the Community at the option of the Telecommunications Provider.

## **Chapter 14**

### **Disclosures and Waivers**

*This chapter discloses some important information about the Community for the benefit of prospective purchasers of property in the Community. Each Owner, by accepting a deed to property in the Community, also accepts and agrees to the matters set forth in this chapter.*

#### **14.1. Private Amenities**

No Person gains any right to enter or to use any Private Amenity by virtue of membership in the Master Association or ownership or occupancy of a Unit. Access to and use of any Private Amenity is strictly subject to the rules and procedures of the owner of such Private Amenity.

All Persons are hereby advised that no representations or warranties have been or are made by the Founder, the Master Association, any Builder, or by any Person acting on behalf of any of the foregoing



with regard to the continuing ownership or operation of the Private Amenities. No purported representation or warranty in such regard, written or oral, shall be effective unless specifically set forth in a written instrument which the record owner of the Private Amenity executes.

Ownership or operation of any Private Amenity may change at any time. This may be for different reasons, such as (a) the sale to or assumption of operations by an independent Person, (b) establishment of, or conversion of the membership structure to, an "equity" club or similar arrangement whereby the members of a Private Amenity or an entity owned or controlled by its members become the owner(s) and/or operator(s) of the Private Amenity, or (c) the conveyance of a Private Amenity to one or more Founder Affiliates. No consent of the Master Association, any District Association, any Voting Delegate, or any Owner shall be required to effectuate any change in ownership or operation of any Private Amenity, subject to the terms of any written agreements entered into by such owners.

Rights to use the Private Amenities will be granted only to such persons, and on such terms and conditions, as may be determined by their respective owners. Such owners shall have the right, from time to time in their discretion and without notice, to amend or waive the terms and conditions of use of their respective Private Amenities and to terminate use rights altogether.

#### **14.2. Safety and Security.**

Each Owner and occupant of a Unit, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Community. The Master Association may, but shall not be obligated to, maintain or support certain activities within the Community designed to promote or enhance the level of safety or security which each person provides for himself or herself and his or her property. However, the Master Association, the Founder, and Founder Affiliate shall not in any way be considered insurers or guarantors of safety or security within Eagle Mountain Properties Communities Master Association, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including security monitoring systems or any mechanism or system for limiting access to the Community, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing any tenants and other occupants of such Owner's Unit that the Master Association, its Board and committees, and the Founder and Founder Affiliates are not insurers or guarantors of security or safety and that each Person within the Community assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

#### **14.3. Changes in Master Plan.**

Each Owner acknowledges that Eagle Mountain Properties Communities Master Association is a master planned community, the development of which is likely to extend over many years, and agrees that neither the Master Association nor any District Association shall engage in, or use Association funds to support, any protest, challenge, or other form of objection to changes in uses or density of property within the Community, or changes in the Master Plan as it relates to property outside the Community, without the Founder's prior written consent.

#### **14.4. View Impairment.**

Neither the Founder, any Founder Affiliate, nor the Master Association, guarantee or represent that any view over and across the Units, Common Areas, lakes, or open space within the Community, will be preserved without impairment. The Founder, Founder Affiliates, and the Master Association shall

have no obligation to relocate, prune, or thin trees or shrubs on the Common Area, except as otherwise required under a separate covenant or agreement. The Master Association shall have the right to add trees and other landscaping to the Common Area. There shall be no express or implied easements for view purposes or for the passage of light and air.

**14.5. Notices and Disclaimers as to Community Systems and Services.**

Each Owner acknowledges that interruptions in cable television and other Community Systems, facilities and services will occur from time to time. The Founder, Founder Affiliates, Association, and their respective successors or assigns, shall not be liable for, and shall not be obligated to refund, rebate, discount, or offset any applicable fees as a result of any interruption in Community Systems, facilities and services, regardless of whether or not such interruption is caused by reasons within the service provider's control.

The Owner of each Unit shall be responsible for ensuring that the dwelling on such Unit is pre-wired to connect to any Community System installed by or at the request of the Founder pursuant to Section 17. If such wiring is installed by a party other than the provider of the Community System, the Owner shall contact the provider of the Community System upon completion of such installation and arrange for the provider of the Community System to inspect the wiring to ensure compatibility with the Community System. If authorized by the Founder, the provider of the Community System may charge the Owner of the Unit a reasonable fee for such inspection. If it is determined that the wiring is not compatible, the Owner of the Unit shall promptly arrange for such wiring to be replaced with wiring that is compatible with the Community System.

**14.6. Radio and Telecommunication Towers.**

Every Owner and occupant of a Unit is hereby advised that radio and telecommunication towers and related equipment may now or hereafter be located within or in the vicinity of Eagle Mountain Properties Communities Master Association. The Founder, any Founder Affiliate, Builders, the Master Association, and their respective members, partners, affiliates, officers, directors, agents, and employees, shall not be liable for any damage or injury to any Person or any property arising out of or related to the construction, installation, maintenance, or operation of, or proximity to, radio or telecommunication towers, antennae, any such towers that may now or hereafter be located in or in the vicinity of Community.

**14.7. Adjacent Farming, Natural Gas Facility and Other Nuisances.**

There is active farming, high tension electrical transmission lines, and a natural gas transmission pipeline and facility located adjacent to and within current and future phases of the Community. Some or all of those activities present or may present dangerous conditions or situations. Neither the Founder or the Master Association own, control, or operate the high tension electrical transmission lines and the natural gas transmission pipeline, each of which is owned and operated by independent, non-related third parties. Owners and occupants, and potential Owners should fully investigate and acquaint themselves with such potentially dangerous activities and operations before deciding to locate in Eagle Mountain Properties Communities Master Association. Owners and occupants of the Community should anticipate regular usage of roadways adjacent to and in the vicinity of Eagle Mountain Properties Communities Master Association by agricultural and commercial vehicles, heavy trucks, and other vehicles traveling to and from the farm land, high tension electrical transmission lines, and the natural gas transmission pipeline facility. The Founder, Builders, and the Master Association have no ability to control traffic, noise, or odors, or seepage emanating from the farm land, high tension electrical transmission lines, and the natural gas pipeline facility and no assurances are made by the Founder, the Master Association, Builders, or anyone authorized to act on their behalf that the farm land, high tension electrical transmission lines, and the natural gas pipeline facility will not be a nuisance to or otherwise adversely

impact property in the Community. Each Owner, by accepting title to a Unit in the Community, and each occupant, by taking occupancy of a home or other structure in the Community, acknowledges the existence of the farm land, high tension electrical transmission lines, and the natural gas transmission pipeline facility and other nuisances that may exist in the vicinity of the Community and agrees that neither the Founder, Builders, nor the Master Association shall have any responsibility or liability associated with or arising out of such farm land, high tension electrical transmission lines, and the natural gas transmission pipeline facility or other nuisances, and fully releases and covenants not to sue, the Founder, Builders, nor the Master Association with regard to any such facilities, damages or losses.

**14.8. Use of Non-Potable Water.**

Each Owner and occupant of a Unit, and their respective guests and invitees, are hereby advised that the water used to irrigate landscaping and other property within or adjacent to Community may be treated effluent, re-use water or "gray water." Although such water is considered safe for irrigation and limited contact, it is not suitable for human or animal consumption and should not be used for drinking, bathing, swimming, or any purpose other than irrigation.

## **Chapter 15** **Rights of Lenders**

*In order to enhance each Owner's ability to obtain financing for the purchase of his or her Unit, this chapter sets forth provisions for the benefit of lenders who make mortgage loans.*

**15.1. Notices of Action.**

An institutional holder, trustee, insurer, or guarantor of a first Mortgage or Deed of Trust that provides a written request to the Master Association (such request to state the name and address of such holder, insurer, trustee, or guarantor and the street address of the Unit to which its Mortgage or Deed of Trust relates, thereby becoming an "**Eligible Holder**"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss that affects a material portion of the Community or that affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder; and

(b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Unit or the Owner or occupant which is not cured within 60 days; or

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Master Association.

**15.2. Notice to Association.**

Upon request, each Owner shall furnish to the Master Association the name and address of the holder of any Mortgage, Deed of Trust or other financing instrument encumbering such Owner's Unit.

**15.3. Failure of Mortgagee to Respond.**

Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Master Association does not receive a written response from the Mortgagee within 30 days of the date of the Master Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested with the required postage prepaid

## PART FIVE: COMMUNITY DEVELOPMENT

### Chapter 16

#### **Expansion of the Community**

*It is not practical to develop, market and sell a community the projected size of Eagle Mountain Properties Communities Master Association all at one time. Therefore, the Founder intends to develop the Community in phases to meet demand. This chapter establishes procedures by which the Founder and the Master Association may expand the Community.*

##### **16.1. Expansion by the Founder.**

The Founder shall have the unilateral right, privilege, and option, from time to time at any time to annex into the Community and this Master Declaration all or any portion of the property (i) subject to the Master Plan, or (ii) which is so situated that its addition will be consistent with a uniform scheme of development as determined in the sole discretion of the Founder. Such annexation shall be accomplished by filing in the public records of Utah County, State of Utah a Supplement, which may also be referred to as a "Declaration of Annexation," which describes the additional property being annexed so as to become part of the Community and Exhibit "A", thereby submitting same to the terms of the Master Declaration. The Founder may record such a Supplement without the consent of any Person except the owner of such property, if not the Founder.

The Founder's right to annex additional property to this Master Declaration and to expand the Community under this section expires when all property described in the Master Plan has been annexed to this Master Declaration or 40 years after this Master Declaration is recorded, whichever is earlier. Until then, the Founder may transfer or assign this right of annexation to any Founder Affiliate or any Person who is the developer of at least a portion of the real property described in the Community. Any such transfer shall be described in a recorded instrument executed by the Founder.

Nothing in this Master Declaration shall require the Founder or any successor to submit additional property to this Master Declaration or to develop any of the property described in the Master Plan in any manner whatsoever. The Founder may submit different parcels of property to this Master Declaration at different times. The Founder gives no assurances as to the boundaries of the parcels that may be annexed to this Master Declaration, or as to the order in which the Founder may submit different parcels of property to this Master Declaration, or as to whether buildings erected on any additional property annexed to this Master Declaration will be compatible with other buildings in the Community in terms of architectural style, quality of construction, principal materials employed in construction, or size.

##### **16.2. Expansion by the Master Association.**

The Master Association also may submit additional property to this Master Declaration by recording a Supplement describing the additional property. Any Supplement that the Master Association records must be approved by Voting Delegates entitled to cast more than fifty percent (50%) of the total votes in the Master Association at a meeting duly called for such purpose and by the owner of the property to be annexed. In addition, during the Development and Sale Period, the Founder's consent is required. The Master Association's President and Secretary, the owner of the property, and the Founder, if the Founder's consent is required, shall sign the Supplement.

**16.3. Additional Covenants and Easements.**

Any supplement that the Founder records may impose additional covenants and easements on the property described in such Supplement, such as covenants obligating the Master Association to maintain and insure such property and authorizing the Master Association to recover its costs through Service Area Assessments. Such provisions may be included in a Supplement annexing new property to this Master Declaration or may be set forth in a separate Supplement applicable to property previously annexed to this Master Declaration. If someone other than the Founder owns the property, then the Supplement must be signed by such owner evidencing such owner's consent. Any Supplement may add to, create exceptions to, or otherwise modify the terms of this Master Declaration as it applies to the property described in the Supplement, in order to reflect the different character and intended use of such property.

**16.4. Effect of Filing a Supplement.**

A Supplement shall be effective upon recording unless otherwise specified in the Supplement. On the effective date of the Supplement, any additional property made subject to this Master Declaration shall be assigned voting rights in the Master Association and assessment liability in accordance with the provisions of this Master Declaration.

**Chapter 17****Additional Rights Reserved to the Founder**

*This chapter reserves various rights to the Founder, in addition to those specifically reserved elsewhere in the Governing Documents, in order to facilitate the Founder's development and sale of property in the Community, to enable the Founder to respond to Owners' concerns, and to protect various property rights and other interests of the Founder.*

**17.1. Special Development Rights.**

In addition the rights specifically reserved to the Founder under Chapter 16 with respect to expanding the Community, the Founder reserves the right, during the Development and Sale Period, to:

(a) create Units, Common Areas, and Limited Common Areas, and to create, and designate "Community Private Roadways", within any portion of the Community which it owns;

(b) subdivide or combine any Unit or Units which it owns in order to create larger or additional Units, Common Areas, and/or Limited Common Areas;

(c) convert any Unit which it owns into Common Area, Limited Common Area, or "Community Private Roadways";

(d) adjust the boundaries of any Units that it owns and any Common Area or Limited Common Area; and

(e) amend this Master Declaration or any Supplement to withdraw property from the Community and the coverage of this Master Declaration, provided that such property has not been previously conveyed or transferred to a third party. Any such amendment shall not require the consent of any Person other than the Owner(s) of the property to be withdrawn, if not the Founder. If the property is Common Area, the consent of the Master Association shall be required to such withdrawal.

**17.2. Marketing and Sales Activities.**

Notwithstanding anything in the Governing Documents to the contrary, during the Development and Sale Period the Founder and its designees or assigns may construct, use, and maintain such facilities and conduct such activities upon portions of the Common Area and other property they own as, in the Founder's opinion, may reasonably be required, convenient, or incidental to the construction or sale of Units. Such permitted facilities and activities shall include business offices, signs, flags (whether hung

from flag poles or attached to a structure), model homes, sales offices, parking facilities, exterior lighting features or displays, and special events. There shall be no limit on the number or location of such facilities, except as otherwise restricted by state law or local ordinance or regulations.

**17.3. Access for Development Purposes.**

During the Development and Sale Period, the Founder and its employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Common Area, "Community Private Roadways" and "district private roads" contained within a particular subdivision or District within the Community for the purpose of:

(a) exercising any rights reserved to the Founder pursuant to this Master Declaration, including the rights set forth in Sections 17.1 and 17.2; and

(b) making, constructing, and installing any improvements indicated on recorded subdivision maps or plats of the Community and such other improvements to the Common Area and to the Exhibit "B" property as it deems appropriate.

**17.4. Right to Approve Changes in Community Standards.**

During the Development and Sale Period, no amendment to or modification of any Rules or Design Guidelines shall be effective without prior notice to and the written approval of the Founder.

**17.5. Additional Covenants and Restrictions.**

During the Development and Sale Period, no one other than the Founder or a Founder Affiliate may record any additional covenants or restrictions affecting any portion of the Community without the Founder's written consent. Any instrument recorded without the required consent shall be void and of no force and effect.

**17.6. Exclusive Rights to Use Name of Development.**

No Person other than the Founder or a Founder Affiliate shall use the name "Eagle Mountain Properties Communities Master Association" or any derivative of such name or in any logo or depiction associated with the Community in any printed or promotional material without the Founder's prior written consent. However, Owners may use the name "Eagle Mountain Properties Communities Master Association" in printed or promotional matter where such term is used solely to specify that particular property is located within the Community, and the Master Association shall be entitled to use the word "Eagle Mountain Properties Communities Master Association" in its name.

**17.7. Community Systems.**

The Founder reserves for itself, Founder Affiliates, and their respective successors and assigns, a perpetual right and easement over all of the property in Eagle Mountain Properties Communities Master Association to install and operate such Community Systems as the Founder, in its discretion, deems appropriate to serve any portion of the Community. Such right shall include, without limitation, the Founder's right to select and contract with companies licensed to provide telecommunications, cable television, and other Community Systems services in the area. The Founder also has and retains the right to charge or authorize any provider to charge individual users a reasonable fee, or cause the Master Association to enter into bulk service agreements with such providers providing for the fees for such services to be paid by the Unit owners to the Master Association (as and appropriate assessment) and paid by the Master Association to the provider, providing that in any case, such fees may not exceed the maximum allowable charges for such services, defined from time to time by the laws, rules and regulations of any government authority having jurisdiction. Nothing in this Master Declaration shall however grant any government authority the power to define such maximum allowable charges it does not have by operation of law, nor be deemed any waiver of any contracting party's right not to have its contracts impaired by laws, rules or regulations promulgated after such contract is entered into.

Notwithstanding the above, there is no guarantee or representation that any particular Community System will be made available.

**17.8. Easement to Inspect and Right to Correct.**

The Founder reserves for itself and others it may designate the right, but not the obligation, to inspect, monitor, test, redesign, and correct any structure, improvement, or condition that may exist on any portion of the property within the Community, including Units, and a perpetual nonexclusive easement of access throughout the Community to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Unit shall be only after reasonable notice to the Owner, and no entry into an enclosed structure shall be permitted without the Owner's consent. The person exercising this easement shall promptly repair, at such person's own expense, any damage he or she causes. Nothing in this paragraph shall relieve an Owner of the responsibility for the maintenance and repair of his or her Unit.

The Founder, or someone it designates, may enter any Owner's property to inspect and correct problems with the Unit. The Founder must give the Owner of the Unit prior notice, unless it is an emergency.

**17.9. Right to Notice of Design or Construction Claims.**

No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within the Community in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless the Founder and any builder involved in the design or construction have been first notified in writing and given an opportunity to meet with the owner of the property to discuss the owner's concerns and conduct their own inspection.

**17.10. Right to Transfer or Assign the Founder's Rights.**

The Founder may transfer any or all of the Founder's special rights and obligations set forth in this Master Declaration or the By-Laws in whole or in part, temporarily or permanently, to other Persons. However, such a transfer shall not reduce an obligation or enlarge a right beyond that which the Founder has under this Master Declaration or the By-Laws. No transfer or assignment of the Founder's status as the Founder or as the Founder member shall be effective unless it is in a recorded instrument that the Founder has signed. The Founder may permit other Persons to exercise, on a one-time or limited basis, any right reserved to the Founder in this Master Declaration where the Founder does not intend to transfer such right in its entirety. In such case, it shall not be necessary to record any written assignment unless desired to evidence the Founder's consent to such exercise.

**17.11. Termination of Rights.**

Except as otherwise specified above, the rights reserved to the Founder in this Chapter shall terminate on the earlier of (a) termination of the Development and Sale Period; or (b) the Founder's recording of a written statement that all sales activity has ceased.

## **PART SIX: PROCEDURES FOR AND LIMITATIONS ON CERTAIN ACTIONS**

### **Chapter 18**

#### **Dispute Resolution and Limitation on Litigation**

*From time to time, disputes may arise between owners or between an owner and the Master Association, the Founder or others involved in the Community. This Chapter commits the parties to any*

*such a dispute to work together in an attempt to resolve the dispute without litigation in order to facilitate the prompt resolution of such disputes in a manner that respects and builds upon the relationships between the parties. It also requires substantial support of the Master Association's membership before the Master Association can engage in certain types of litigation that could result in significant legal and emotional costs to the Community.*

**18.1. Agreement to Encourage Resolution of Disputes Without Litigation.**

**(a) Bound Parties.** The Founder, the Master Association and its officers, directors, and committee members, the Community Council and its officers, directors, and committee members, all Persons subject to this Master Declaration, and any Person not otherwise subject to this Master Declaration who agrees to submit to this Chapter (collectively, "**Bound Parties**"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b) of this Section, unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 18.2 in a good faith effort to resolve such Claim.

**(b) Claims.** As used in this Chapter, the term "**Claim**" shall refer to any claim, grievance, or dispute arising out of or relating to:

- (i) the interpretation, application, or enforcement of the Governing Documents;
- (ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or
- (iii) the design or construction of improvements within the Community, other than matters of aesthetic judgment under Chapter 5, which shall not be subject to review.

Notwithstanding the above, the following shall not be considered "Claims" and shall not be subject to the alternative dispute resolution provisions of Section 18.1(a), unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 18.2:

- (i) any suit by the Master Association to collect assessments or other amounts due from any Owner;
- (ii) any suit by the Master Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Master Association's ability to enforce the provisions of Part Two of this Master Declaration (relating to creation and maintenance of community standards);
- (iii) any suit that does not include the Founder, a Founder Affiliate, or the Master Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Governing Documents;
- (iv) any dispute which affects the material rights or obligations of a party who is not a Bound Party and has not agreed to submit to the procedures set forth in Section 18.2;
- (v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 18.2(a), unless the party or parties against whom the Claim is made agree to toll, or extend, the Claim's statute of limitations to comply with this Chapter; and



(vi) any suit by the Master Association to enforce the Governing Documents where the Master Association has given the violator notice and either a hearing or an opportunity to cure the violation, or both, prior to the Master Association filing suit.

**18.2. Dispute Resolution Procedures.**

**(a) Notice.** The Bound Party asserting a Claim ("**Claimant**") subject to the alternative dispute resolution provisions of Section 18.1(a) against another Bound Party ("**Respondent**") shall give written notice ("**Notice**") by mail or personal delivery to each Respondent and to the Board, stating plainly and concisely:

- (i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;
- (ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
- (iii) the Claimant's proposed resolution or remedy; and
- (iv) the Claimant's desire to meet with the Respondent to discuss, in good faith, ways to resolve the Claim.

**(b) Negotiation.** The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

**(c) Mediation.** If the parties have not resolved the Claim through negotiation within 30 days of the date of the Notice (or within such other agreed upon period), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Master Association (if the Master Association is not a party to the Claim) or to an independent agency providing dispute resolution services located within thirty miles of the Community. Each Bound Party shall present the mediator with a written summary of the Claim.

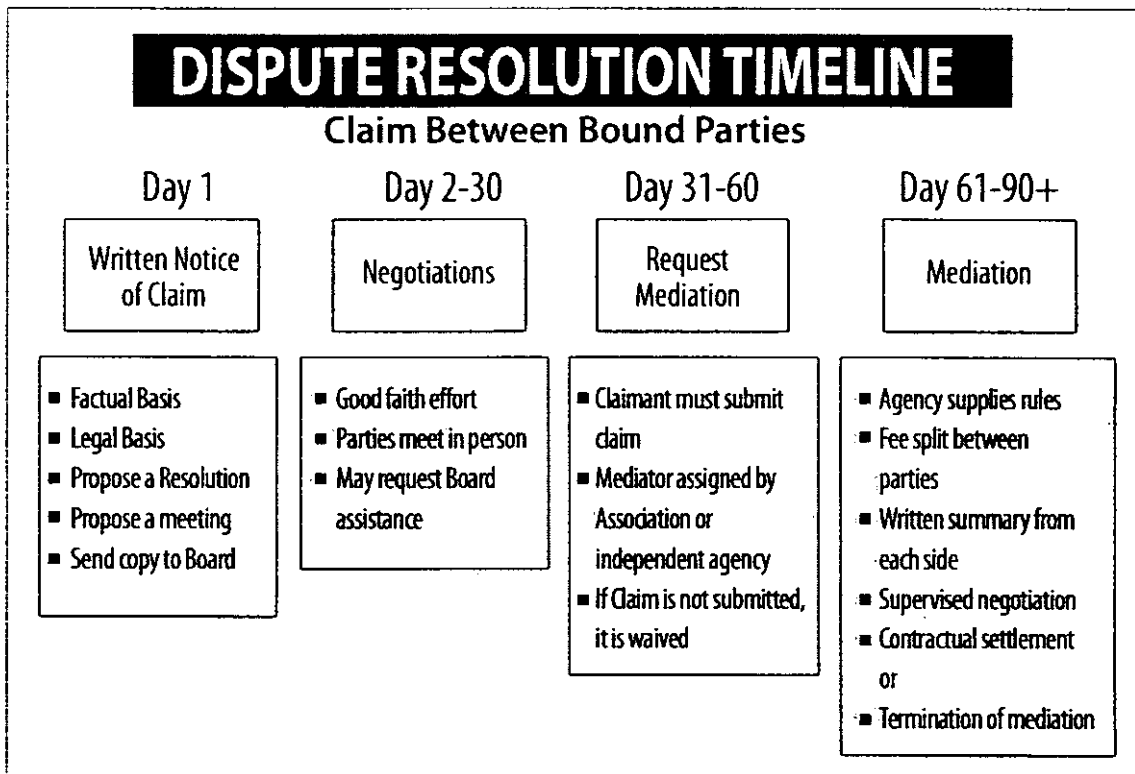


Diagram 18.1

If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation when scheduled: (1) the Claimant shall be deemed to have waived the Claim; (2) the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim, and (3) the Claimant shall be liable to the Respondent for all attorney's fees and court costs irrespective of the final determination or outcome of the Dispute.

If the parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate. Each Bound Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall pay an equal share of the mediator's fees.

**(d) Settlement.** Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to comply again with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys fees and court costs.

**18.3. Disputes Between Owners and Providers of Services.**

**(a) Application to Owners.** The provisions of Section 18.2 shall apply to any dispute between an Owner and the provider of services, such as telecommunication services to that Owner or the Owner's Unit. For the purposes of this Chapter 18, the Master Association shall not be considered a provider of any services

for reason that the Master Association, under the provisions of Chapter 10, has entered into a contract or agreement with the service provider to provide a service or services to Owners.

**(b) Application to Service Provider.** Paragraph 18.3(a) above shall only apply to providers of services who agree in the contract or agreement with the Master Association or the Founder to provide services, to be bound by said Paragraph 18.3 (a).

**(c) Duty to Pay Assessments.** An Owner may not withhold or fail to pay any assessment imposed by the Master Association in respect of, or which is in payment for, a service for reason of a dispute by the Owner relating to the service. Notwithstanding the pendency of any such dispute, all assessments shall remain due and payable to the Master Association, to the same extent and terms as if no dispute existed. The failure of an Owner to pay his assessments in full, shall, notwithstanding the pendency of a dispute, not limit or abate the right and authority of the Master Association to exercise its rights to collect assessments as elsewhere provided in this Declaration. This Section shall not authorize an Owner to include the Master Association as a party in any dispute with a service provider.

**(d) Resolution of Disputes.** This Section 18.3 shall not be construed to prevent the resolution of a dispute to include a monetary award.

**(e) Application to Owners Only.** Neither this Section 18.3, nor Section 18.2 shall apply to any dispute between a service provider and any person, whether real or corporate, other than an Owner.

**18.4. Initiation of Litigation by Association.**

In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Master Association shall not initiate any judicial or administrative proceeding unless first approved by a vote of Voting Delegates entitled to cast one-third (1/3) of the total votes in the Master Association, except that no such approval shall be required for actions or proceedings:

**(a)** initiated during the Founder Control Period;

**(b)** initiated to enforce the provisions of this Master Declaration, including collection of assessments and foreclosure of liens;

**(c)** initiated to challenge ad valorem taxation or condemnation proceedings;

**(d)** initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or

**(e)** to defend claims filed against the Master Association or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

**Chapter 19**

**Changes in the Common Area**

*Various influences and circumstances within and outside the Community may give rise to a need or desire to make changes in the ownership of, or rights to use, Common Area. This chapter explains the procedures for dealing with matters such as changing use rights in Common Area or Limited Common Area, partition of the Common Area, and condemnation.*

**19.1. Assignment and Reassignment of Limited Common Area.**

(a) **Assignment.** The Board may assign any portion of the Common Area as Limited Common Area to and for the use and benefit of particular Units, upon approval of the Board and Voting Delegates representing a majority of the total votes in the Master Association, including a majority of the votes attributable to Units to which the Limited Common Area is proposed to be assigned, upon such terms, conditions, restrictions and compensation as deemed appropriate by the Board. Limited Common Area which has been assigned to and for the use and benefit of particular Units may be reacquired by the Master Association, upon approval of the Board and Voting Delegates representing a majority of the total votes in the Master Association, and the consent of each Owner having an interest in the Limited Common Area to be reacquired upon such terms, conditions, restrictions and compensation as agreed upon by the parties. During the Development and Sale Period, any such assignment or reassignment shall also require the Founder's written consent.

(b) **Use by Others.** Upon approval of a majority of Owners of Units to which any Limited Common Area is assigned, the Master Association may permit Owners of other Units to use all or a portion of such Limited Common Area upon payment of reasonable user fees, which fees shall be used to offset the Service Area Expenses attributable to such Limited Common Area. In addition, if a particular Limited Common Area element or facility is designed for the exclusive use, benefit and enjoyment of a particular Unit, or a specific group of Units, the consent of the Owner of each such Unit shall be required.

**19.2 Condemnation.**

(a) **Notice to Owners.** If any part of the Common Area is taken by any authority having the power of condemnation or eminent domain, or conveyed by the Master Association in lieu of and under threat of condemnation with such approval as may be required under Section 19.4, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Master Association to be disbursed as follows:

If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Master Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking the Founder, during the Development and Sale Period, and Voting Delegates entitled to cast at least fifty (50%) of the total votes in the Master Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 9.4 regarding funds for restoring damaged improvements shall apply.

If the taking or conveyance does not involve any improvements on the Common Area, if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be treated in the same manner as proceeds from the sale of Common Area under Section 19.4.

**19.3. Partition.**

Except as permitted in this Master Declaration, the Common Area shall remain undivided, and no Person shall bring any action to partition any portion of the Common Area without the written consent of all the Master Association, all District Associations and all Owners and Mortgagees. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property or from acquiring and disposing of real property that may or may not be subject to this Declaration, with such approval as may be required under Section 19.4.

Partition is a legal action in which a party requests to have a portion of one interest in property split off so that the party can possess that portion or interest separately from other parties who have rights in the property.

#### **19.4. Transfer, Mortgaging, or Dedication of Common Area.**

The Master Association may transfer or dedicate portions of the Common Area to The City of Eagle Mountain, Utah, or to any other local, state, or federal governmental or quasi-governmental entity; may subject Common Area to a security interest; or may transfer or convey Common Area to a non-governmental entity as follows:

(a) if Common Area other than Limited Common Area, upon the written direction of Voting Delegates entitled to cast at least fifty (50%) of the total votes in the Master Association and, during the Development and Sale Period, the written consent of the Founder; or

(b) if Limited Common Area, upon the written direction of Voting Delegates entitled to cast at least fifty (50%) of the total votes in the Master Association and the written consent of each Owner of Units for which such Limited Common Area is assigned or for which such Limited Common Area has been designated for the exclusive use, benefit and enjoyment.

The proceeds from the sale or mortgaging of Common Area other than Limited Common Area shall be an asset of the Master Association to be used as the Board determines, unless otherwise directed by Voting Delegates at the time such sale or mortgage is authorized pursuant to Section 19.4(a). The proceeds from the sale or mortgaging of Limited Common Area shall be disbursed in the manner directed by the Owners of Units to which the Limited Common Area is assigned at the time such sale or mortgage is authorized pursuant to Section 19.4(b).

No conveyance or encumbrance of Common Area may deprive any Unit of rights of access or support.

## **Chapter 20**

### **Termination and Amendment of Declaration of Covenants**

*As the Community matures and grows, the rules by which it is governed must be flexible enough to adapt to changes in the development plan, as well as changes in the needs and desires of the Community that inevitably will occur. This chapter sets out procedures by which either the Founder or the Owners as a group may amend this Master Declaration to address such changes.*

#### **20.1. Term and Termination.**

This Master Declaration shall be effective for a minimum of 40 years from the date it is recorded. After 40 years, this Master Declaration shall be renewed and extended automatically for successive 10-year periods unless at least two-thirds (2/3) of the then Owners, including the Founder, sign a document stating that the Declaration of Covenants is terminated and that document is recorded within the year before any extension. In such case, this Master Declaration shall terminate on the date specified in the termination document. The termination of this Master Declaration shall not operate to terminate any easement, Limited Common Area, or specific vested property interest created in this Master Declaration without the consent of the holder of such easement, Limited Common Area or vested property interest.

#### **20.2. Amendment.**

(a) **By the Founder.** In addition to the specific amendment rights granted elsewhere in this Master Declaration, until conveyance of a Unit to a Person other than a Builder, the Founder may unilaterally amend this Master Declaration for any purpose.

**(b) By Owners.** Except as otherwise specifically provided above or elsewhere in this Master Declaration, this Master Declaration may be amended only by the affirmative vote or written consent of not less than fifty percent (50%) of the total votes of Owners not within a District, and the consent of Voting Delegates entitled to cast not less than two-thirds (2/3) of the total votes in the Master Association. During the Development and Sale Period, the Founder's written consent shall also be required.

Any amendment pursuant to this Section shall be prepared, executed, certified and recorded on behalf of the Master Association by any officer designated for such purpose or, in the absence of such designation, by the Master Association's President.

**(c) Validity and Effective Date.** Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

No amendment may remove, revoke, or modify any right or privilege of the Founder or the Founder Member without the written consent of the Founder or the Founder Member, respectively (or the assignee of such right or privilege).

If an Owner consents to any amendment to this Master Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording unless a later effective date is specified in the amendment.

No action to challenge the validity of an amendment may be brought more than two years after its recordation. In no event shall a change of conditions or circumstances operate to amend any provisions of this Master Declaration.

**(d) Telecommunications Provider's Approval.** Any proposed amendment to this Master Declaration which by such amendment proposes to limit, reduce, revoke, terminate, interfere with, or otherwise adversely affects any easements, rights or obligations of a Telecommunication Provider having a service agreement in good standing with the Master Association to provide such telecommunication services to the Community, may only be amended with the prior written consent of the Telecommunications Provider, which such consent shall not be unreasonably withheld.

**(e) Exhibits.** Exhibit "A" and "B" are incorporated by this reference and this Chapter shall govern amendment of those exhibits. Exhibit "C" is attached for informational purposes only and may be amended as provided in that exhibit. Exhibit "D" is attached for informational purposes only and may be amended as provided in that exhibit.

**20.3. Limitations on Effect of Termination or Modification.**

Neither the termination nor the modification of this Master Declaration or any provision in it shall modify, terminate or otherwise affect the terms of any bulk services contract or any easements granted in support thereof, and they shall survive any such termination or modification.

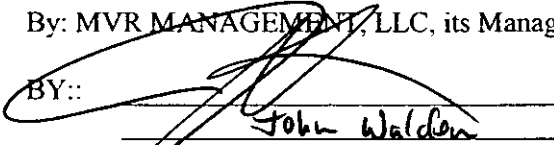
[Signature Page Follows]

In witness of the foregoing, the Founder has executed this Master Declaration this 22 day of October, 2009.


**FOUNDER: MONTE VISTA RANCH LC, a Utah limited liability company**

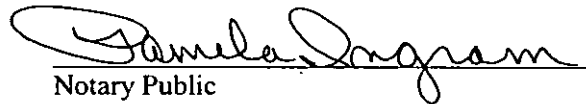
By: MVR MANAGEMENT, LLC, its Manager

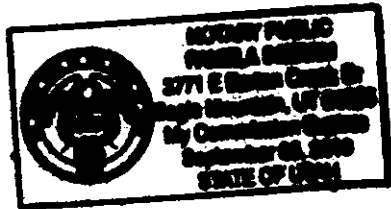
BY::

  
John Walden  
Its: Manager

STATE OF UTAH            )  
                                          ss.  
COUNTY OF UTAH        )

 John Walden personally appeared before me and proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged that he or she executed the same. Subscribed and sworn to before me on this \_\_\_\_ day of October 22, 2009.

  
Notary Public



**EXHIBIT "A"**  
**Land Initially Subject to the Master Declaration**

**PARCEL 1:**

INTENTIONALLY OMITTED.

**PARCEL 2:**

SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 8, TOWNSHIP 6 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN.

LESS AND EXCEPTING FROM PARCEL 2 THOSE LANDS CONVEYED TO THE TOWN OF EAGLE MOUNTAIN, A MUNICIPAL CORPORATION BY THAT CERTAIN WARRANTY DEED RECORDED OCTOBER 21, 1997 AS ENTRY NO. 82283 IN BOOK 4410 AT PAGE 128 DESCRIBED AS FOLLOWS: COMMENCING AT A POINT WHICH IS NORTH 89°40'07" WEST ALONG THE SECTION LINE A DISTANCE OF 814.26 FEET FROM THE GLO MONUMENT FOR THE SOUTH QUARTER CORNER OF SECTION 8, TOWNSHIP 6 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH 00°19'53" EAST A DISTANCE OF 190.00 FEET; THENCE NORTH 89°40'07" WEST A DISTANCE OF 229.263 FEET; THENCE SOUTH 00°19'53" WEST A DISTANCE OF 190.00 FEET; THENCE SOUTH 89°40'07" EAST A DISTANCE OF 229.263 FEET TO THE POINT OF BEGINNING.

**PARCEL 3:**

NORTHWEST QUARTER; WEST HALF OF THE SOUTHWEST QUARTER, LOTS 2, 3, 6, 7, 8, 9 OF SECTION 17, TOWNSHIP 6 SOUTH, RANGE 1 WEST, SALT LAKE MERIDIAN.

**PARCEL 4:**

ALL OF SECTION 18, TOWNSHIP 6 SOUTH, RANGE 1 WEST, SALT LAKE MERIDIAN.

LESS AND EXCEPTING FROM PARCEL 4 THOSE LANDS LYING WITHIN THE FOLLOWING DESCRIBED PROPERTY:

BEGINNING AT THE CENTER OF SECTION 13, TOWNSHIP 6 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, THENCE SOUTH ALONG THE CENTER SECTION LINE 6,092 FEET, MORE OR LESS, THENCE EAST 5,280 FEET, MORE OR LESS, TO THE MID SECTION LINE OF SECTION 19, THENCE NORTH 3,452 FEET, MORE OR LESS, TO THE NORTH SECTION LINE OF SECTION 19, THENCE EAST 1,450 FEET, MORE, OR LESS, TO THE CENTER OF A COUNTY ROAD, THENCE NORTH ALONG THE COUNTY ROAD 1,980 FEET, MORE OR LESS, THENCE WEST 1,056 FEET, MORE OR LESS, THENCE NORTH 406 FEET, MORE OR LESS, TO THE CENTER SECTION LINE OF SECTION 18, THENCE WEST 5,190 FEET, MORE OR LESS, TO THE POINT OF BEGINNING. (SOD FARM)



ALSO LESS AND EXCEPTING FROM PARCEL 4 THOSE LANDS CONVEYED TO PATTERSON CONSTRUCTION, INC., BY THE FOLLOWING: SPECIAL WARRANTY DEED RECORDED NOVEMBER 30, 1998 AS ENTRY NO. 123546 IN BOOK 4878 AT PAGE 255 OF OFFICIAL RECORDS; SPECIAL WARRANTY DEED RECORDED DECEMBER 10, 1999 AS ENTRY NO. 128003 IN BOOK 5296 AT PAGE 310 OF OFFICIAL RECORDS; SPECIAL WARRANTY DEED RECORDED DECEMBER 30, 1999 AS ENTRY NO 133745 AT PAGE 5314 AT PAGE 848 OF OFFICIAL RECORDS, AND NOW DESCRIBED AS EAGLE POINT SUBDIVISION, PLAT "A"; EAGLE POINT SUBDIVISION, PLAT "A" AMENDMENT; EAGLE POINT SUBDIVISION, PLAT "C"; EAGLE POINT SUBDIVISION, PLAT "D"; EAGLE POINT SUBDIVISION, PLAT "E"; ALL ACCORDING TO THE OFFICIAL PLATS THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE UTAH COUNTY RECORDER.

**PARCEL 5:**

LOTS 4, 9, 10, 11, NORTHWEST QUARTER OF SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 6 SOUTH, RANGE 1 WEST, SALT LAKE MERIDIAN. ALSO LOTS 2 AND 3; NORTHWEST QUARTER OF NORTHWEST QUARTER OF SECTION 20.

LESS AND EXCEPTING FROM PARCEL 5 THOSE LANDS CONVEYED TO DALE S. CUTLER AND BETH D. CUTLER HUSBAND AND WIFE AS JOINT TENANTS, BY THAT CERTAIN WARRANTY DEED RECORDED OCTOBER 23, 1998 AS ENTRY NO. 108282 IN BOOK 4825 AT PAGE 272 OF OFFICIAL RECORDS, DESCRIBED AS FOLLOWS: COMMENCING AT A POINT LOCATED SOUTH 89°08'57" WEST ALONG THE 16<sup>TH</sup> SECTION LINE 821.87 FEET FROM THE NORTH ¼ CORNER OF SECTION 20, TOWNSHIP 6 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 0°08'57" WEST ALONG THE 16<sup>TH</sup> SECTION LINE 512.47 FEET; THENCE NORTH 89°43'12" WEST ALONG THE 16<sup>TH</sup> SECTION LINE 850.00 FEET; THENCE NORTH 0°08'57" EAST 512.47 FEET; THENCE SOUTH 89°43'12" EAST 850.00 FEET TO THE POINT OF BEGINNING.

**PARCEL 6:**

NORTH ½ AND THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 6 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN.

LESS AND EXCEPTING FROM PARCEL 6 THOSE LANDS CONVEYED TO STEVEN G. SMITH AND KAY SMITH BY THAT CERTAIN WARRANTY DEED RECORDED JUNE 12, 1997 AS ENTRY NO. 44889 IN BOOK 4293 AT PAGE 427 OF OFFICIAL RECORDS, DESCRIBED AS FOLLOWS: THE NORTH ½ OF THE NORTH ½ OF THE NORTH ½ OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER, AND THE NORTH ½ OF THE SOUTH ½ OF THE NORTH ½ OF THE NORTH ½ OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER, AND THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER, ALL IN SECTION 15, TOWNSHIP 6 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN.

**PARCEL 7:**

THE SOUTH HALF OF SECTION 24, TOWNSHIP 6 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN.

LESS AND EXCEPTING FROM PARCEL 7 THOSE LANDS LYING WITHIN THE FOLLOWING DESCRIBED PROPERTY:

BEGINNING AT THE CENTER OF SECTION 13, TOWNSHIP 6 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, THENCE SOUTH ALONG THE CENTER SECTION LINE 6,092 FEET, MORE OR LESS, THENCE EAST 5,280 FEET, MORE OR LESS, TO THE MID SECTION LINE OF SECTION 19, THENCE NORTH 3,452 FEET, MORE OR LESS, TO THE NORTH SECTION LINE OF SECTION 19, THENCE EAST 1,450 FEET, MORE, OR LESS, TO THE CENTER OF A COUNTY ROAD, THENCE NORTH ALONG THE COUNTY ROAD 1,980 FEET, MORE OR LESS, THENCE WEST 1,056 FEET, MORE OR LESS, THENCE NORTH 406 FEET, MORE OR LESS, TO THE CENTER SECTION LINE OF SECTION 18, THENCE WEST 5,190 FEET, MORE OR LESS, TO THE POINT OF BEGINNING. (SOD FARM)

ALSO LESS AND EXCEPTING FROM PARCEL 7 THOSE LANDS CONVEYED TO EAGLE MOUNTAIN CITY BY THAT CERTAIN PLAT FILING RECORDED APRIL 16, 1999 AS ENTRY NO 43857 AS MAP FILING NUMBER 8004, ARM 93, DESCRIBED AS FOLLOWS: COMMENCING NORTH 1452.25 FEET AND EAST 2565.36 FEET FROM THE SOUTHWEST CORNER OF SECTION 24 TOWNSHIP 6 SOUTH RANGE 2 WEST SALT LAKE BASE AND MERIDIAN; THENCE NORTH 0 DEG 27'1" EAST 257.12 FEET; THENCE NORTH 83 DEG 18'12" EAST 49.14 FEET; THENCE SOUTH 21 DEG 56'34" EAST 240.64 FEET; THENCE ALONG A CURVE TO THE RIGHT (CHORD BEARS: SOUTH 33 DEG 44'12" WEST 46.25 FEET, RADIUS=28 FEET); THENCE SOUTH 89 DEG 24'54" WEST 115.07 FEET TO THE POINT OF BEGINNING.

ALSO LESS AND EXCEPTING FROM PARCEL 7 THOSE LANDS CONVEYED TO EAGLE MOUNTAIN CITY BY THAT CERTAIN PLAT FILING RECORDED APRIL 16, 1999 AS ENTRY NO 43858 AS MAP FILING NUMBER 5050, ARM 93, DESCRIBED AS FOLLOWS: COMMENCING NORTH 1441.1 FEET AND EAST 10.83 FEET FROM THE SOUTHWEST CORNER OF SECTION 24, TOWNSHIP 6 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH 0 DEG 26'2" EAST 1029.27 FEET; THENCE EAST 554.01 FEET; THENCE SOUTH 0 DEG 26'2" WEST 1029.27 FEET; THENCE WEST 554.01 FEET TO THE POINT OF BEGINNING.

ALSO LESS AND EXCEPTING FROM PARCEL 7 THOSE LANDS CONVEYED TO EAGLE MOUNTAIN CITY BY THAT CERTAIN WARRANTY DEED RECORDED OCTOBER 21, 1997 AS ENTRY NO. 82280 IN BOOK 4410 AT PAGE 121 OF OFFICIAL RECORDS, DESCRIBED AS FOLLOWS: (WASTE WATER TREATMENT PLANT) BEGINNING AT A POINT WHICH IS NORTH 0°26'02 EAST A DISTANCE OF 1446.72 FEET ALONG THE SECTION LINE AND EAST A DISTANCE OF 1475.74 FEET FROM THE SOUTHWEST SECTION CORNER OF SECTION 24, TOWNSHIP 6 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN; THENCE EAST A DISTANCE OF 1078.70

FEET; THENCE NORTH 00°27'08" EAST A DISTANCE OF 1285.16 FEET; THENCE NORTH 88°59'38" WEST A DISTANCE OF 434.38 FEET; THENCE SOUTH A DISTANCE OF 252.61 FEET; THENCE NORTH 88°59'38" WEST A DISTANCE OF 654.63 FEET; THENCE SOUTH A DISTANCE OF 1051.63 FEET TO THE POINT OF BEGINNING.

ALSO LESS AND EXCEPTING FROM PARCEL 7 THOSE LANDS CONVEYED TO EAGLE MOUNTAIN CITY BY THAT CERTAIN WARRANTY DEED RECORDED MARCH 24, 2004 AS ENTRY NO. 32630:2004 OF OFFICIAL RECORDS, DESCRIBED AS FOLLOWS: COMMENCING AT THE WEST ONE-QUARTER CORNER OF SECTION 24, TOWNSHIP 6 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH 00°46'23" EAST ALONG THE WESTERLY SECTION LINE OF SECTION 24, A DISTANCE OF 277.58 FEET; THENCE EAST A DISTANCE OF 1863.56 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 08°31'51" WEST A DISTANCE OF 454.22 FEET TO A POINT ON THE NORTHERLY BOUNDARY LINE OF A PARCEL OF LAND OWNED BY THE CITY OF EAGLE MOUNTAIN; THENCE SOUTH 88°59'38" EAST ALONG THE SAID CITY BOUNDARY A DISTANCE OF 321.17 FEET; THENCE CONTINUING ALONG SAID CITY BOUNDARY NORTH A DISTANCE OF 252.61 FEET; THENCE CONTINUING ALONG SAID CITY BOUNDARY SOUTH 88°59'38" EAST A DISTANCE OF 434.38 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF SWEETWATER ROAD; THENCE NORTH 00°27'08" EAST ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 204.42 FEET; THENCE DEPARTING SAID RIGHT OF WAY LINE NORTH 89°32'52" WEST A DISTANCE OF 689.69 FEET TO THE POINT OF BEGINNING.

**PARCEL 8:**

LOTS 2, 3, 4 AND THE EAST HALF OF THE SOUTHWEST QUARTER, THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER; AND THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN.

**PARCEL 9:**

LOTS 3, 4, AND 8, SECTION 29, TOWNSHIP 6 SOUTH, RANGE 1 WEST, SALT LAKE MERIDIAN.

**PARCEL 10:**

THE SOUTHEAST QUARTER; THE EAST HALF OF THE SOUTHWEST QUARTER; THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER; AND THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 30, TOWNSHIP 6 SOUTH, RANGE 1 WEST SALT LAKE BASE AND MERIDIAN. ALSO, THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 30.

**PARCEL 11:**

THE WEST  $\frac{3}{4}$  OF SECTION 25, TOWNSHIP 6 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN.

**PARCEL 12:** INTENTIONALLY OMITTED.

**PARCEL 13:** INTENTIONALLY OMITTED.

**PARCEL 14:**

THE NORTHEAST QUARTER OF SECTION 35, TOWNSHIP 6 SOUTH, RANGE 2 WEST SALT LAKE BASE AND MERIDIAN.

**PARCEL 15:**

ALL OF SECTION 36, TOWNSHIP 6 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN.

**PARCEL 16:**

THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER; THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER; THE EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 31, TOWNSHIP 6 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN. ALSO, LOTS 3 AND 4; THE SOUTH HALF OF THE SOUTHEAST QUARTER AND THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER; THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER; THE NORTH HALF OF THE NORTHEAST QUARTER; AND LOTS 1 AND 2 OF SAID SECTION 31.

**PARCEL 17:**

THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER; THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER; THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER; THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER; THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER; ALL OF LOT 7 IN SECTION 6, TOWNSHIP 7 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN.

**PARCEL 18:**

THE NORTHEAST QUARTER OF SECTION 13, TOWNSHIP 7 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN.

**PARCEL 19:** INTENTIONALLY OMITTED.

**PARCEL 20:** INTENTIONALLY OMITTED.

**PARCEL 21:**

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THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 11, AND ALL OF SECTION 14, ALL IN TOWNSHIP 6 SOUTH, RANGE 2 WEST SALT LAKE BASE AND MERIDIAN.

LESS AND EXCEPTING FROM PARCEL 21 THE WOODS @ EAGLE MOUNTAIN PHASE 1 SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE UTAH COUNTY RECORDER.

ALSO LESS AND EXCEPTING FROM PARCEL 21 OVERLAND TRAILS ESTATES PHASE 1 SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE UTAH COUNTY RECORDER.

ALSO LESS AND EXCEPTING FROM PARCEL 21 OVERLAND TRAILS SUBDIVISION, PHASE II, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE UTAH COUNTY RECORDER.

ALSO LESS AND EXCEPTING FROM PARCEL 21 THOSE LANDS CONVEYED TO TITLE WEST OF PROVO, INC., AS TRUSTEE BY THAT CERTAIN WARRANTY DEED RECORDED MAY 19, 1998 AS ENTRY NO. 50329 IN BOOK 4641 AT PAGE 220 OF OFFICIAL RECORDS, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT WHICH IS NORTH 00 DEG 05' 47" EAST 70.00 FEET AND SOUTH 89 DEG. 59' 09" WEST 262.71 FEET FROM THE SOUTHEAST CORNER OF SECTION 14, TOWNSHIP 6 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 89 DEG. 59' 09" WEST 1435.48 FEET; THENCE NORTH 179.31 FEET; THENCE NORTH 19 DEG. 03' 47" EAST 152.06 FEET; THENCE EAST 1285.03 FEET; THENCE 203.55 FEET ON THE ARC OF A NON TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 1927.50 FEET THRU AN ANGLE OF 06 DEG. 03' 01" CENTER OF CURVE BEARS NORTH 63 DEG. 19' 44" EAST 1927.50 FEET, CHORD BEARS SOUTH 29 DEG. 41' 47" EAST 203.45 FEET; THENCE SOUTH 145.94 FEET TO THE POINT OF BEGINNING. TOGETHER WITH A 20 FOOT RIGHT OF WAY ACCESS EASEMENT AS DESCRIBED ON SAID DOCUMENT.

**PARCEL 22:**

THE SOUTH HALF OF THE SOUTHEAST QUARTER AND THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SECTION 12; ALL OF SECTION 13; THE NORTH HALF OF SECTION 24; THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 23; ALL IN TOWNSHIP 6 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN.

LESS AND EXCEPTING FROM PARCEL 22 THOSE LANDS LYING WITHIN THE FOLLOWING DESCRIBED PROPERTY:

BEGINNING AT THE CENTER OF SECTION 13, TOWNSHIP 6 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, THENCE SOUTH ALONG THE CENTER SECTION LINE 6,092 FEET, MORE OR LESS, THENCE EAST 5,280 FEET, MORE OR LESS, TO THE

MID SECTION LINE OF SECTION 19, THENCE NORTH 3,452 FEET, MORE OR LESS, TO THE NORTH SECTION LINE OF SECTION 19, THENCE EAST 1,450 FEET, MORE, OR LESS, TO THE CENTER OF A COUNTY ROAD, THENCE NORTH ALONG THE COUNTY ROAD 1,980 FEET, MORE OR LESS, THENCE WEST 1,056 FEET, MORE OR LESS, THENCE NORTH 406 FEET, MORE OR LESS, TO THE CENTER SECTION LINE OF SECTION 18, THENCE WEST 5,190 FEET, MORE OR LESS, TO THE POINT OF BEGINNING. (SOD FARM)

ALSO LESS AND EXCEPTING FROM PARCEL 22 OVERLAND TRAILS ESTATES PHASE 1 SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE UTAH COUNTY RECORDER.

ALSO LESS AND EXCEPTING FROM PARCEL 22 OVERLAND TRAILS 1C SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE UTAH COUNTY RECORDER.

ALSO LESS AND EXCEPTING FROM PARCEL 22 THE LANDING AT EAGLE MOUNTAIN SUBDIVISION, PHASES I, II, AND 3, ACCORDING TO THE OFFICIAL PLATS THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE UTAH COUNTY RECORDER.

ALSO LESS AND EXCEPTING FROM PARCEL 22 MOUNTAIN VIEW SUBDIVISION, PHASES 1 AND 2 ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE UTAH COUNTY RECORDER.

ALSO LESS AND EXCEPTING FROM PARCEL 22 MOUNTAIN VIEW RANCH SUBDIVISION, PHASES 3 AND 4, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE UTAH COUNTY RECORDER.

ALSO LESS AND EXCEPTING FROM PARCEL 22 PROPOSED THE LANDING AT EAGLE MOUNTAIN SUBDIVISION, PHASE 4, DESCRIBED AS FOLLOWS:  
 COMMENCING NORTH 1215.91 FEET AND EAST 4158.23 FEET FROM THE SOUTHWEST CORNER OF SECTION 12, TOWNSHIP 6 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH 47 DEG 8'19" WEST 50.4 FEET; THENCE NORTH 45 DEG 56'44" WEST 110.81 FEET; THENCE NORTH 81 DEG 3'55" WEST 10.73 FEET; THENCE NORTH 30 DEG 1'10" EAST 1.72 FEET; THENCE NORTH 5 DEG 41'37" EAST 81.42 FEET; THENCE NORTH 59 DEG 15'18" EAST 142.24 FEET; THENCE SOUTH 66 DEG 30'29" EAST 86.62 FEET; THENCE SOUTH 89 DEG 25'45" EAST 96.84 FEET; THENCE SOUTH 83 DEG 41'41" EAST 220.59 FEET; THENCE SOUTH 83 DEG 40'53" EAST 57.09 FEET; THENCE SOUTH 80 DEG 38'26" EAST 50.27 FEET; THENCE SOUTH 80 DEG 25'11" EAST 113.19 FEET; THENCE SOUTH 76 DEG 9'25" EAST 55.84 FEET; THENCE SOUTH 69 DEG 5'50" EAST 82.64 FEET; THENCE SOUTH 60 DEG 37'59" EAST 81.15 FEET; THENCE SOUTH 86 DEG 36'57" EAST 81.27 FEET; THENCE SOUTH 33 DEG 3'16" EAST 142.24 FEET; THENCE SOUTH 21 DEG 10'57" WEST 86.1 FEET; THENCE S 21 DEG 10'57" WEST 0.4 FEET; THENCE NORTH 81 DEG

3'55" WEST 10.24 FEET; THENCE SOUTH 83 DEG 17'46" WEST 110.42 FEET; THENCE SOUTH 80 DEG 3 7'58" WEST 50.12 FEET; THENCE ALONG A CURVE TO THE RIGHT (CHORD BEARS: SOUTH 38 DEG 54'1" WEST 31.91 FEET, RADIUS=20 FEET); THENCE ALONG A CURVE TO RIGHT (CHORD BEARS: NORTH 84 DEG 35'13" WEST 24.05 FEET, RADIUS=192 FEET); THENCE ALONG A CURVE TO THE RIGHT (CHORD BEARS: NORTH 77 DEG 12'47" WEST 132.39 FEET, RADIUS=1003.4 FEET); THENCE ALONG A CURVE TO THE LEFT (CHORD BEARS: NORTH 80 DEG 25'40" WEST 308.94 FEET, RADIUS=1268 FT); THENCE ALONG A CURVE TO RIGHT (CHORD BEARS: NORTH 83 DEG 55'21" WEST 121.33 FEET, RADIUS=993 FT); THENCE NORTH 80 DEG 25'11" WEST 148.11 FEET; THENCE ALONG A CURVE TO THE RIGHT (CHORD BEARS: NORTH 76 DEG 28'51" WEST 23.63 FEET, RADIUS=172 FEET); THENCE ALONG A CURVE TO THE RIGHT (CHORD BEARS: NORTH 18 DEG 59'1" WEST 32.18 FEET, RADIUS=20 FEET) TO THE POINT OF BEGINNING.

ALSO LESS AND EXCEPTING FROM PARCEL 22 THOSE LANDS CONVEYED TO EAGLE MOUNTAIN CITY BY THAT CERTAIN SPECIAL WARRANTY DEED RECORDED JUNE 9, 2000 AS ENTRY NO. 45369:2000 OF OFFICIAL RECORDS DESCRIBED AS FOLLOWS: (BOUNDARY DESCRIPTION FOR THE FIRESTATION) COMMENCING AT A POINT WHICH IS SOUTH 89°31'09" EAST ALONG A SECTION LINE A DISTANCE OF 954.79 FEET AND NORTH A DISTANCE OF 575.85 FEET FROM THE MONUMENT FOR THE SOUTHERN QUARTER CORNER OF SECTION 12, TOWNSHIP 6 SOUTH, RANGE 2 WEST OF THE SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 53°50'10" EAST A DISTANCE OF 81.54 FEET; THENCE EAST A DISTANCE OF 102.14 FEET; THENCE NORTH 08°56'01" EAST A DISTANCE OF 214.82 FEET; THENCE WEST A DISTANCE OF 125.68 FEET; THENCE SOUTH 08°26'07" WEST A DISTANCE OF 57.83 FEET TO A POINT ON A TANGENT CURVE WITH A RADIUS OF 157.00 FEET THE BEGINNING RADIAL OF WHICH BEARS NORTH 81°33'53" WEST; THENCE ALONG SAID CURVE A DISTANCE OF 129.92 FEET THROUGH A CENTRAL ANGLE OF 47°24'41" TO THE POINT OF BEGINNING.

ALSO LESS AND EXCEPTING FROM PARCEL 22 THOSE LANDS CONVEYED TO PATTERSON CONSTRUCTION, INC., BY THE FOLLOWING: SPECIAL WARRANTY DEED RECORDED NOVEMBER 30, 1998 AS ENTRY NO. 123546 IN BOOK 4878 AT PAGE 255 OF OFFICIAL RECORDS; SPECIAL WARRANTY DEED RECORDED DECEMBER 10, 1999 AS ENTRY NO. 128003 IN BOOK 5296 AT PAGE 310 OF OFFICIAL RECORDS; SPECIAL WARRANTY DEED RECORDED DECEMBER 30, 1999 AS ENTRY NO 133745 AT PAGE 5314 AT PAGE 848 OF OFFICIAL RECORDS, AND NOW PARTLY DESCRIBED AS EAGLE POINT SUBDIVISION, PLAT "A"; EAGLE POINT SUBDIVISION, PLAT "A" AMENDMENT; EAGLE POINT SUBDIVISION, PLAT "C"; EAGLE POINT SUBDIVISION, PLAT "D"; EAGLE POINT SUBDIVISION, PLAT "E"; EAGLE POINT CONDOMINIUMS, PHASE 1; ALL ACCORDING TO THE OFFICIAL PLATS THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE UTAH COUNTY RECORDER.

ALSO LESS AND EXCEPTING FROM PARCEL 22 THE FOLLOWING: PROPOSED SWEETWATER 'EAST PARK AREA', A PARCEL OF LAND IN THE WEST ½ OF THE

NORTHEAST QUARTER OF SECTION 13, TOWNSHIP 6 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, EAGLE MOUNTAIN CITY, UTAH COUNTY, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 13; THENCE N89°32'12"W 376.33 FEET ALONG THE NORTH LINE OF SAID SECTION 13; THENCE SOUTH 975.99 FEET TO THE POINT OF BEGINNING; THENCE S00°01'03"E 744.17 FEET; THENCE N89°12'51"W 31.70 FEET; THENCE N89°23'13"W 12.07 FEET; THENCE N89°33'36"W 383.06 FEET; THENCE N00°27'08"E 141.70 FEET; THENCE N89°32'52"W 100.00 FEET; THENCE N00°27'08"E 250.00 FEET; THENCE N89°32'52"W 100.00 FEET; THENCE N00°27'08"E 100.00 FEET; THENCE S89°32'52"E 100.00 FEET; THENCE N00°27'08"E 320.69 FEET; THENCE S82°04'01"E 525.19 FEET TO THE POINT OF BEGINNING.

ALSO LESS AND EXCEPTING FROM PARCEL 22 THOSE LANDS CONVEYED TO PETER HOLTOM AND CHRISTOPHER KEMP, BY THAT CERTAIN WARRANTY DEED RECORDED FEBRUARY 3, 2006 AS ENTRY NO. 13930:2006 OF OFFICIAL RECORDS AND DESCRIBED AS FOLLOWS: COMMENCING AT A POINT S89°32'35"E ALONG THE SECTION LINE 1205.32 FEET AND NORTH 555.96 FEET FROM THE SOUTHWEST SECTION CORNER OF SECTION 12, TOWNSHIP 6 SOUTH, RANGE 2 WEST, SALT LAKE BASE & MERIDIAN TO A POINT ON THE NORTHEAST BOUNDARY OF OVERLAND TRAILS PHASE I AS RECORDED AT THE UTAH COUNTY RECORDERS OFFICE BOOK 48 PAGE 227, SAID POINT BEING THE POINT OF BEGINNING; THENCE ALONG SAID BOUNDARY N54°39'35"E 325.96 FEET; THENCE LEAVING SAID BOUNDARY S30°04'09"E 209.66 FEET; THENCE S13°55'51"E 203.36 FEET; THENCE S00°47'59"W 242.37 FEET TO A POINT ON THE SAID BOUNDARY; THENCE ALONG SAID BOUNDARY THE FOLLOWING FOUR COURSES: SAID POINT BEING THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 1435.00 FEET; THENCE NORTHWESTERLY 309.72 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 12°21'59" (CHORD BEARING AND DISTANCE OF SAID CURVE BEING N79°38'35"W 309.12 FEET) TO THE BEGINNING OF A REVERSE CURVE TO THE RIGHT HAVING A RADIUS OF 25.00 FEET; THENCE NORTHWESTERLY 38.41 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 88°02'15" (CHORD BEARING AND DISTANCE OF SAID CURVE BEING N41°48'27"W 34.74 FEET); THENCE N02°12'40"E 35.45 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 525.00 FEET; THENCE NORTHWESTERLY 334.08 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 36°27'36" (CHORD BEARING AND DISTANCE OF SAID CURVE BEING N16°01'08"W 328.47 FEET) TO THE POINT OF BEGINNING. ALSO COMMENCING AT A POINT S89°32'35"E ALONG THE SECTION LINE 1267.68 FEET AND SOUTH 103.06 FEET FROM THE SOUTHWEST SECTION CORNER OF SECTION 12, TOWNSHIP 6 SOUTH, RANGE 2 WEST, SALT LAKE BASE & MERIDIAN TO A POINT ON THE NORTH BOUNDARY OF OVERLAND TRAILS PHASE III-A AS RECORDED AT THE UTAH COUNTY RECORDERS OFFICE BOOK 48 PAGE 273 SAID POINT BEING THE POINT OF BEGINNING; THENCE ALONG SAID BOUNDARY THE FOLLOWING TWO COURSES: N02°12'40"E 235.01 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 1385.00 FEET; THENCE SOUTHEASTERLY 197.03 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 08°09'04" (CHORD BEARING



AND DISTANCE OF SAID CURVE BEING S83°17'59"E 196.87 FEET) TO A POINT ON THE WESTERLY RIGHT-OF-WAY OF AQUA AVENUE; THENCE ALONG SAID RIGHT-OF-WAY THE FOLLOWING 3 COURSES: SAID POINT BEING THE BEGINNING OF A COMPOUND CURVE TO THE RIGHT HAVING A RADIUS OF 21.00 FEET; THENCE SOUTHEASTERLY 38.33 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 104°34'49" (CHORD BEARING AND DISTANCE OF SAID CURVE BEING S25°47'05"E 33.22 FEET) TO THE BEGINNING OF A COMPOUND CURVE TO THE RIGHT HAVING A RADIUS OF 475.00 FEET; THENCE SOUTHWESTERLY 145.09 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 17°30'03" (CHORD BEARING AND DISTANCE OF SAID CURVE BEING S21°24'56"W 144.52 FEET); THENCE S30°09'58"W 70.68 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 1150.00 FEET; THENCE SOUTHEASTERLY 131.54 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 06°33'13" (CHORD BEARING AND DISTANCE OF SAID CURVE BEING N84°00'49"W 131.47 FEET) TO THE POINT OF BEGINNING.

ALSO LESS AND EXCEPTING FROM PARCEL 22 IRA HODGES SCENIC PARKWAY CHURCH SUBDIVISION, PLAT "A" ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE IN THE OFFICE OF THE UTAH COUNTY RECORDER.

ALSO LESS AND EXCEPTING FROM PARCEL 22 THOSE LANDS CONVEYED TO K.N.P. L.L.C., BY THAT CERTAIN WARRANTY DEED RECORDED SEPTEMBER 25, 2002 AS ENTRY NO. 112862:2002 OF OFFICIAL RECORDS AND DESCRIBED AS FOLLOWS: BEGINNING AT A POINT THAT IS SOUTH 00°27'16" WEST ALONG THE SECTION LINE 893.83 FEET AND EAST 1096.15 FEET FROM THE NORTHWEST CORNER OF SECTION 13, TOWNSHIP 6 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN: THENCE EAST 88.96 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 20.00 FEET; THENCE SOUTHEASTERLY 32.61 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 93°25'35" (CHORD BEARING AND DISTANCE OF SAID CURVE BEING SOUTH 43°17'13" EAST 29.12 FEET); THENCE NORTH 88°06'20" EAST 72.31 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 20.00 FEET, FROM WHICH POINT A RADIAL LINE BEARS SOUTH 86°34'25" EAST; THENCE NORTHEASTERLY 30.22 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 86°34'25" (CHORD BEARING AND DISTANCE OF SAID CURVE BEING NORTH 46°42'47" EAST 27.43 FEET); THENCE EAST 100.70 FEET TO A POINT ON THE WESTERLY LINE OF OVERLAND TRAILS PHASE III, SUBDIVISION; THENCE SOUTH ALONG SAID BOUNDARY 679.52 FEET; THENCE LEAVING SAID SUBDIVISION BOUNDARY NORTH 84°35'55" WEST 361.10 FEET; THENCE NORTH 05°06'06" EAST 648.10 FEET TO THE POINT OF BEGINNING.

ALSO LESS AND EXCEPTING FROM PARCEL 22 THOSE LANDS CONVEYED TO STAR DEVELOPMENT, LLC, BY THAT CERTAIN WARRANTY DEED RECORDED OCTOBER 21, 1999 AS ENTRY NO. 113252:1999 OF OFFICIAL RECORDS AND DESCRIBED AS FOLLOWS: COMMENCING SOUTH 00°27'16" WEST ALONG THE SECTION LINE A DISTANCE OF 893.83 FEET AND EAST A DISTANCE OF 1297.31

FEET FROM THE NORTHWEST CORNER OF SECTION 13, TOWNSHIP 6 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH  $06^{\circ}09'03''$  EAST 50.29 FEET; THENCE EAST 765.90 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 225 FEET; THENCE SOUTHEASTERLY 82.95 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF  $21^{\circ}07'21''$  (CHORD BEARING AND DISTANCE OF SAID CURVE BEING SOUTH  $79^{\circ}26'20''$  EAST 82.48 FEET); THENCE SOUTH  $68^{\circ}52'39''$  EAST 14.09 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 177.93 FEET; THENCE SOUTHEASTERLY 71.27 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF  $22^{\circ}57'00''$  (CHORD BEARING AND DISTANCE OF SAID CURVE BEING SOUTH  $80^{\circ}26'23''$  EAST 70.79 FEET) TO THE BEGINNING OF A COMPOUND CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 50 FEET; THENCE NORTHEASTERLY 49.09 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF  $56^{\circ}15'04''$  (CHORD BEARING AND DISTANCE OF SAID CURVE BEING NORTH  $61^{\circ}52'28''$  EAST 47.14 FEET) TO THE BEGINNING OF A REVERSE CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 85.00 FEET; THENCE NORTHEASTERLY 33.16 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF  $22^{\circ}21'05''$  (CHORD BEARING AND DISTANCE OF SAID CURVE BEING NORTH  $44^{\circ}55'29''$  EAST 32.95 FEET) TO THE BEGINNING OF A REVERSE CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 50 FEET; THENCE NORTHEASTERLY 49.09 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF  $56^{\circ}15'04''$  (CHORD BEARING AND DISTANCE OF SAID CURVE BEING NORTH  $27^{\circ}58'30''$  EAST 47.14 FEET); THENCE NORTH  $89^{\circ}50'58''$  EAST 50.00 FEET TO THE BEGINNING OF A NONTANGENT CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 50.00 FEET, A RADIAL LINE BEARS NORTH  $89^{\circ}50'58''$  WEST; THENCE SOUTHEASTERLY 49.09 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF  $56^{\circ}15'04''$  (CHORD BEARING AND DISTANCE OF SAID CURVE BEING SOUTH  $28^{\circ}16'34''$  EAST 47.14 FEET) TO THE BEGINNING OF A REVERSE CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 85.00 FEET; THENCE SOUTHEASTERLY 5.89 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF  $03^{\circ}58'23''$  (CHORD BEARING AND DISTANCE OF SAID CURVE BEING SOUTH  $54^{\circ}24'54''$  EAST 5.89 FEET) TO THE BEGINNING OF A REVERSE CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 50.00 FEET; THENCE SOUTHEASTERLY 32.79 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF  $37^{\circ}34'15''$  (CHORD BEARING AND DISTANCE OF SAID CURVE BEING SOUTH  $71^{\circ}12'51''$  EAST 32.20 FEET); THENCE EAST 109.59 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 20 FEET; THENCE NORTHEASTERLY 31.26 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF  $89^{\circ}32'52''$  (CHORD BEARING AND DISTANCE OF SAID CURVE BEING NORTH  $45^{\circ}13'34''$  EAST 28.17 FEET) TO THE POINT OF CUSP; THENCE SOUTH  $00^{\circ}27'08''$  WEST 154.00 FEET TO THE POINT OF CUSP WITH A 20.00 FEET RADIUS CURVE CONCAVE TO THE SOUTHWEST, A RADIAL LINE BEARS NORTH  $89^{\circ}32'52''$  WEST; THENCE NORTHWESTERLY 31.57 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF  $90^{\circ}27'08''$  (CHORD BEARING AND DISTANCE OF SAID CURVE BEING NORTH  $44^{\circ}46'26''$  WEST 28.40 FEET); THENCE WEST 108.38 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 50.00

FEET; THENCE SOUTHWESTERLY 32.79 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 37°34'18" (CHORD BEARING AND DISTANCE OF SAID CURVE BEING SOUTH 71°12'51" WEST 32.20 FEET) TO THE-BEGINNING OF A REVERSE CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 85.00 FEET; THENCE NORTHWESTERLY 129.41 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 87°13'51" (CHORD BEARING AND DISTANCE OF SAID CURVE BEING NORTH 83°57'22" WEST 117.27 FEET) TO THE POINT OF CUSP; THENCE SOUTH 290.86 FEET; THENCE WEST 195.00 FEET; THENCE SOUTH 52.16 FEET; THENCE WEST 562.08 FEET; THENCE NORTH 17.54 FEET; THENCE WEST 125.00 FEET; THENCE NORTH 387.46 FEET; THENCE WEST 100.70 FEET TO THE POINT OF BEGINNING.

ALSO LESS AND EXCEPTING FROM PARCEL 22 THOSE LANDS CONVEYED TO ROBERT A. HEADMAN BY THAT CERTAIN WARRANTY DEED RECORDED FEBRUARY 24, 2000 AS ENTRY NO. 14778:2000 OF OFFICIAL RECORDS, DESCRIBED AS FOLLOWS: (PART OF INDUSTRIAL PARK) COMMENCING N00°45'23"E 419.55 FEET 1724.89 FEET FROM THE WEST QUARTER CORNER OF SECTION 24 TOWNSHIP 6 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, THENCE NORTH °00'22" E 292.57 FEET; THENCE S88°59'38"E 148.40 FEET; THENCE S01°00'22"W 292.57 FEET; THENCE N88°59'38"W 148.40 FEET TO THE POINT OF BEGINNING.

**PARCEL 23:**

THE NORTHWEST QUARTER AND THE NORTH HALF OF THE SOUTHWEST QUARTER AND THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 19, TOWNSHIP 6 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN.

LESS AND EXCEPTING FROM PARCEL 23 THOSE LANDS LYING WITHIN THE FOLLOWING DESCRIBED PROPERTY:

BEGINNING AT THE CENTER OF SECTION 13, TOWNSHIP 6 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, THENCE SOUTH ALONG THE CENTER SECTION LINE 6,092 FEET, MORE OR LESS, THENCE EAST 5,280 FEET, MORE OR LESS, TO THE MID SECTION LINE OF SECTION 19, THENCE NORTH 3,452 FEET, MORE OR LESS, TO THE NORTH SECTION LINE OF SECTION 19, THENCE EAST 1,450 FEET, MORE, OR LESS, TO THE CENTER OF A COUNTY ROAD, THENCE NORTH ALONG THE COUNTY ROAD 1,980 FEET, MORE OR LESS, THENCE WEST 1,056 FEET, MORE OR LESS, THENCE NORTH 406 FEET, MORE OR LESS, TO THE CENTER SECTION LINE OF SECTION 18, THENCE WEST 5,190 FEET, MORE OR LESS, TO THE POINT OF BEGINNING. (SOD FARM)

ALSO EXCEPTING FROM PARCEL 23 THOSE LANDS DESCRIBED AS FOLLOWS: THAT PORTION OF SECTION 19, TOWNSHIP 6 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT SOUTH 1918.79 FEET AND WEST 82.51 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 18, TOWNSHIP 6 SOUTH, RANGE 1 WEST, (BASED ON THE UTAH STATE PLANE COORDINATE SYSTEM), SALT LAKE BASE

AND MERIDIAN; THENCE NORTH 25.00 FEET; THENCE WEST 50.00 FEET; THENCE SOUTH 50.00 FEET; THENCE EAST 50.00 FEET; THENCE NORTH 25.00 FEET TO THE POINT OF BEGINNING.

**PARCEL 24:**

COMMENCING AT THE EAST QUARTER CORNER OF SECTION 7, TOWNSHIP 6 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, THENCE SOUTH 396 FEET, THENCE WEST 1128 FEET, THENCE NORTH 132 FEET, MORE OR LESS, THENCE WEST 352 FEET, THENCE NORTH 213 FEET, THENCE EAST 660 FEET, MORE OR LESS, THENCE NORTH 1358 FEET, THENCE EAST 1210 FEET, THENCE SOUTH 1358 FEET TO THE POINT OF BEGINNING.

**PARCEL 25:**

THE SOUTHEAST QUARTER OF SECTION 7, TOWNSHIP 6 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN,

LESS AND EXCEPTING FROM PARCEL 25 THE FOLLOWING DESCRIBED PARCEL AND PROPERTY LYING NORTH OF THE FOLLOWING DESCRIBED PARCEL: COMMENCING 5.75 CHAINS SOUTH OF THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SECTION 7, TOWNSHIP 6 SOUTH, RANGE 1 WEST, SALT LAKE MERIDIAN; AND RUNNING THENCE SOUTH 12.75 CHAINS, THENCE WEST 40 CHAINS, THENCE NORTH 12.75 CHAINS, THENCE EAST 40 CHAINS TO THE POINT OF BEGINNING.

LESS AND EXCEPTING FROM PARCEL 25, EAGLE POINT SUBDIVISION PLATS "I" AND "J" AS RECORDED IN UTAH COUNTY RECORDS.

**PARCEL 26:**

INTENTIONALLY OMITTED.

**PARCEL 27:**

COMMENCING AT A POINT 1320 FEET EAST AND 437.3 FEET SOUTH OF THE NORTH QUARTER CORNER OF SECTION 11, TOWNSHIP 6 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, THENCE SOUTH 35°37' WEST 2590.6 FEET, THENCE SOUTH 87°21' EAST 1518.8 FEET, THENCE NORTH 2176.7 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPTING FROM PARCEL 27 THOSE LANDS CONVEYED TO EAGLE MOUNTAIN CITY BY THAT CERTAIN SPECIAL WARRANTY DEED RECORDED JANUARY 14, 2002 AS ENTRY NO. 4669:2002 OF OFFICIAL RECORDS, DESCRIBED AS FOLLOWS: (PONY EXPRESS PARK) COMMENCING AT A POINT WHICH IS SOUTH 89°33'15" EAST ALONG THE SECTION LINE 1311.46 FEET AND NORTH 1126.06 FEET

FROM THE SOUTH QUARTER CORNER OF SECTION 11, TOWNSHIP 6 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH 01°09'50" WEST 1287.83 FEET; THENCE NORTH 86°00'26" WEST 1540.51 FEET; THENCE NORTH 36°57'38" EAST 2631.94 FEET; THENCE SOUTH 01°11'08" WEST 750.91 FEET; THENCE SOUTH 88°05'16" EAST 140.09 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTHEAST WITH A RADIUS OF 2746.50 FEET, A RADIAL LINE BEARS NORTH 83°23'14" EAST; THENCE SOUTHEASTERLY 1535.21 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 32°01'36" (CHORD BEARING AND DISTANCE OF SAID CURVE BEING SOUTH 22°37'34" EAST 1515.30 FEET) TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE NORTHWEST WITH A RADIUS OF 20.00 FEET; THENCE SOUTHWESTERLY 29.94 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 85°45'45" (CHORD BEARING AND DISTANCE OF SAID CURVE BEING SOUTH 07°14'12" WEST 27.22 FEET); THENCE SOUTH 50°07'04" WEST 116.01 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE NORTHWEST WITH A RADIUS OF 52.44 FEET; THENCE SOUTHWESTERLY 32.50 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 35°30'26" (CHORD BEARING AND DISTANCE OF SAID CURVE BEING SOUTH 67°52'17" WEST 31.98 FEET); TO THE BEGINNING OF A REVERSE CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 82.00 FEET; THENCE SOUTHWESTERLY 129.86 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°44'11" (CHORD BEARING AND DISTANCE OF SAID CURVE BEING SOUTH 40°15'25" WEST 116.71 FEET); TO THE BEGINNING OF A REVERSE CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 52.44 FEET; THENCE SOUTHWESTERLY 49.11 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 53°39'42" (CHORD BEARING AND DISTANCE OF SAID CURVE BEING SOUTH 21°43'10" WEST 47.34 FEET); TO THE BEGINNING OF A REVERSE CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 675 FEET; THENCE SOUTHWESTERLY 87.05 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 07°23'21" (CHORD BEARING AND DISTANCE OF SAID CURVE BEING SOUTH 44°51'20" WEST 86.99 FEET); THENCE NORTH 51°01'21" WEST 267.18 FEET; THENCE SOUTH 36°18'53" WEST 265.76 FEET; THENCE SOUTH 05°21'42" WEST 418.63 FEET; THENCE SOUTH 08°33'05" EAST 212.18 FEET; THENCE SOUTH 20°54'02" EAST 203.20 FEET; THENCE SOUTH 37°59'55" WEST 218.34 FEET; THENCE SOUTH 88°50'10" WEST 16.14 FEET TO THE POINT OF BEGINNING.

**PARCEL 28:** INTENTIONALLY OMITTED

**PARCEL 29:** INTENTIONALLY OMITTED

**PARCEL 30:** INTENTIONALLY OMITTED.

**PARCEL 31:** INTENTIONALLY OMITTED.

**PARCEL 32:** INTENTIONALLY OMITTED.

**PARCEL 33:**

THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER AND THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER, IN SECTION 12, TOWNSHIP 6 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN.

EXCEPTING THEREFROM THE LANDS DEEDED TO THE CITY OF EAGLE MOUNTAIN FOR EAGLE MOUNTAIN BOULEVARD AND FOR PONY EXPRESS PARK; ALSO EXCEPTING THEREFROM THE LANDS RECORDED AS OVERLAND TRAILS SUBDIVISION PHASES 1 AND 1B, AS RECORDED IN THE UTAH COUNTY RECORDS.

**PARCEL 34:**

THE SOUTH HALF OF THE NORTHWEST QUARTER; THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, ALL IN SECTION 7, TOWNSHIP 6 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN.

LESS AND EXCEPTING FROM PARCEL 34, CEDAR TRAIL VILLAGE SUBDIVISION, PHASE I, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE IN THE OFFICE OF THE UTAH COUNTY RECORDER.

**PARCEL 35:**

THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER; THE SOUTH HALF OF THE NORTHEAST QUARTER; THE NORTH HALF OF THE SOUTHEAST QUARTER; AND THE NORTH HALF OF THE SOUTHWEST QUARTER, THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER, ALL IN SECTION 12, TOWNSHIP 6 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN.

LESS AND EXCEPTING FROM PARCEL 35 EAGLEPARK SUBDIVISION, PHASE 1 SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE UTAH COUNTY RECORDER.

ALSO LESS AND EXCEPTING FROM PARCEL 35 EAGLEPARK SUBDIVISION, PHASE 2 SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE UTAH COUNTY RECORDER.

ALSO LESS AND EXCEPTING FROM PARCEL 35 OVERLAND TRAILS ESTATES PHASE 1 SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE UTAH COUNTY RECORDER.

ALSO LESS AND EXCEPTING FROM PARCEL 35 THE LANDING AT EAGLE MOUNTAIN SUBDIVISION, PHASE 3, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE UTAH COUNTY RECORDER.

ALSO LESS AND EXCEPTING FROM PARCEL 35 PROPOSED THE LANDING AT EAGLE MOUNTAIN SUBDIVISION, PHASE 4, DESCRIBED AS FOLLOWS:

COMMENCING NORTH 1215.91 FEET AND EAST 4158.23 FEET FROM THE SOUTHWEST CORNER OF SECTION 12, TOWNSHIP 6 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH 47 DEG 8'19" WEST 50.4 FEET; THENCE NORTH 45 DEG 56'44" WEST 110.81 FEET; THENCE NORTH 81 DEG 3'55" WEST 10.73 FEET; THENCE NORTH 30 DEG 1'10" EAST 1.72 FEET; THENCE NORTH 5 DEG 41'37" EAST 81.42 FEET; THENCE NORTH 59 DEG 15'18" EAST 142.24 FEET; THENCE SOUTH 66 DEG 30'29" EAST 86.62 FEET; THENCE SOUTH 89 DEG 25'45" EAST 96.84 FEET; THENCE SOUTH 83 DEG 41'41" EAST 220.59 FEET; THENCE SOUTH 83 DEG 40'53" EAST 57.09 FEET; THENCE SOUTH 80 DEG 38'26" EAST 50.27 FEET; THENCE SOUTH 80 DEG 25'11" EAST 113.19 FEET; THENCE SOUTH 76 DEG 9'25" EAST 55.84 FEET; THENCE SOUTH 69 DEG 5'50" EAST 82.64 FEET; THENCE SOUTH 60 DEG 37'59" EAST 81.15 FEET; THENCE SOUTH 86 DEG 36'57" EAST 81.27 FEET; THENCE SOUTH 33 DEG 3'16" EAST 142.24 FEET; THENCE SOUTH 21 DEG 10'57" WEST 86.1 FEET; THENCE S 21 DEG 10'57" WEST 0.4 FEET; THENCE NORTH 81 DEG 3'55" WEST 10.24 FEET; THENCE SOUTH 83 DEG 17'46" WEST 110.42 FEET; THENCE SOUTH 80 DEG 3'58" WEST 50.12 FEET; THENCE ALONG A CURVE TO THE RIGHT (CHORD BEARS: SOUTH 38 DEG 54'1" WEST 31.91 FEET, RADIUS=20 FEET); THENCE ALONG A CURVE TO RIGHT (CHORD BEARS: NORTH 84 DEG 35'13" WEST 24.05 FEET, RADIUS=192 FEET); THENCE ALONG A CURVE TO THE RIGHT (CHORD BEARS: NORTH 77 DEG 12'47" WEST 132.39 FEET, RADIUS=1003.4 FEET); THENCE ALONG A CURVE TO THE LEFT (CHORD BEARS: NORTH 80 DEG 25'40" WEST 308.94 FEET, RADIUS=1268 FT); THENCE ALONG A CURVE TO RIGHT (CHORD BEARS: NORTH 83 DEG 55'21" WEST 121.33 FEET, RADIUS=993 FT); THENCE NORTH 80 DEG 25'11" WEST 148.11 FEET; THENCE ALONG A CURVE TO THE RIGHT (CHORD BEARS: NORTH 76 DEG 28'51" WEST 23.63 FEET, RADIUS=172 FEET); THENCE ALONG A CURVE TO THE RIGHT (CHORD BEARS: NORTH 18 DEG 59'1" WEST 32.18 FEET, RADIUS=20 FEET) TO THE POINT OF BEGINNING.

ALSO LESS AND EXCEPTING FROM PARCEL 35 TRAILHEAD ACCESS/CHURCH SITE SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE UTAH COUNTY RECORDER.

ALSO LESS AND EXCEPTING FROM PARCEL 35 CEDAR TRAIL VILLAGE SUBDIVISION, PHASE I, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE UTAH COUNTY RECORDER.

ALSO LESS AND EXCEPTING FROM PARCEL 35 THOSE LANDS CONVEYED TO ALPINE SCHOOL DISTRICT BY THAT CERTAIN SPECIAL WARRANTY DEED RECORDED NOVEMBER 25, 2002 AS ENTRY NO. 142618:2002 OF OFFICIAL RECORDS, DESCRIBED AS FOLLOWS: COMMENCING SOUTH 00°27'57" WEST ALONG THE EAST SECTION LINE 2369.34 FEET AND WEST 1423.47 FEET FROM THE NORTHEAST SECTION CORNER OF SECTION 12, TOWNSHIP 6 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN TO THE POINT OF BEGINNING, POINT ALSO THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT, CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 2984.00 FEET, A RADIAL LINE BEARS NORTH

87°07'46" WEST; THENCE SOUTHWESTERLY 224.48 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 04°18'37" (CHORD BEARING AND DISTANCE OF SAID CURVE BEING SOUTH 05°01'32" WEST 224.43 FEET); THENCE SOUTH 07°10'51; WEST 181.39 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE LEFT, CONCAVE TO THE WEST, HAVING A RADIUS OF 500.00 FEET; THENCE SOUTHEASTERLY 62.66 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 07°10'51" (CHORD BEARING AND DISTANCE OF SAID CURVE BEING SOUTH 03°35'25" WEST 62.62 FEET); THENCE SOUTH 118.85 FEET TO THE NORTHWEST CORNER OF THE TRAILHEAD ACCESS/CHURCH SITE RIGHT-OF-WAY AS RECORDED IN BOOK 53, AT PAGE 245 AT THE UTAH COUNTY RECORDER'S OFFICE; THENCE ALONG SAID BOUNDARY THE FOLLOWING TWO COURSES: SAID POINT ALSO BEING THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT, CONCAVE TO THE EAST, HAVING A RADIUS OF 516.00 FEET, A RADIAL LINE BEARS SOUTH 84°14'44" EAST; THENCE SOUTHEASTERLY 111.32 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 12°21'40" (CHORD BEARING AND DISTANCE OF SAID CURVE BEING SOUTH 00°25'34" EAST 111.11 FEET) TO THE BEGINNING OF A REVERSE CURVE TO THE RIGHT CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 1313.12 FEET; THENCE SOUTHEASTERLY 76.23 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 03°19'34" (CHORD BEARING AND DISTANCE OF SAID CURVE BEING SOUTH 04°45'54" EAST 76.22 FEET) AND LEAVING SAID BOUNDARY TO THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 10334.40 FEET, A RADIAL LINE BEARS NORTH 03°49'11" EAST; THENCE NORTHWESTERLY 701.54 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 03°53'22" (CHORD BEARING AND DISTANCE OF SAID CURVE BEING NORTH 84°14'08" WEST 701.40 FEET) TO A POINT ON THE EAST RIGHT-OF-WAY OF SWEETWATER ROAD AS RECORDED PER BOOK 59, PAGE 44 IN THE UTAH COUNTY RECORDER'S OFFICE; THENCE NORTH ALONG SAID BOUNDARY 701.49 FEET; THENCE EAST LEAVING SAID BOUNDARY 736.95 FEET TO THE POINT OF BEGINNING.

PARCEL 36: INTENTIONALLY OMITTED.

PARCEL 37: INTENTIONALLY OMITTED.

PARCEL 38: INTENTIONALLY OMITTED.

PARCEL 39: INTENTIONALLY OMITTED

**EXCEPTED FROM THE ABOVE PARCELS 1 THROUGH 39, THE FOLLOWING DESCRIBED PROPERTY:**

THAT PORTION OF SECTION 13 AND 24, TOWNSHIP 6 SOUTH, RANGE 2 WEST, AND SECTION 18 AND 19, TOWNSHIP 6 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, IN THE COUNTY OF UTAH, STATE OF UTAH, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:



BEGINNING. AT THE SOUTH QUARTER CORNER OF SECTION 18, TOWNSHIP 6 SOUTH, RANGE 1 WEST, (BASED ON THE UTAH STATE PLANE COORDINATE SYSTEM); THENCE ALONG SECTION LINE SOUTH 89 DEGREES 56'13" EAST 879.69 FEET TO THE WEST SIDE OF A COUNTY ROAD; THENCE ALONG SAID COUNTY ROAD NORTH 03 DEGREES 07'31" EAST 1089.40 FEET; THENCE CONTINUING ALONG SAID COUNTY ROAD NORTH 02 DEGREES 07'48" EAST 1130.21 FEET TO THE CENTERLINE OF A GRAVEL ROAD; THENCE ALONG SAID GRAVEL ROAD NORTH 87 DEGREES 43'58" WEST 1163.84 FEET TO A FENCE LINE; THENCE ALONG SAID FENCE LINE NORTH 03 DEGREES 03'20" EAST 419.66 FEET; THENCE ALONG A FENCE LINE NORTH 89 DEGREES 13'44" WEST 5100.88 FEET; THENCE ALONG A FENCE LINE SOUTH 00 DEGREES 27'05" WEST 5966.21 FEET; THENCE ALONG A FENCE LINE SOUTH 88 DEGREES 55'05" EAST 4897.88 FEET; THENCE ALONG A FENCE LINE NORTH 03 DEGREES 11'17" EAST 3314.01 FEET TO THE SECTION LINE; THENCE ALONG SAID SECTION LINE SOUTH 89 DEGREES 54'25" EAST 225.58 FEET TO THE POINT OF BEGINNING. (SOD FARM RE-DESCRIBED)

PARCEL 40: INTENTIONALLY OMITTED.

PARCEL 41: INTENTIONALLY OMITTED.

PARCEL 42: INTENTIONALLY OMITTED.

PARCEL 43: INTENTIONALLY OMITTED

PARCEL 44:

LOTS 1 THRU 26 AND 35 THRU 60 AND 85 THRU 92 AND 135 THRU 142 AS SHOWN ON THE SUBDIVISION MAP ENTITLED '**PIONEER ADDITION, PHASE 1**' FILED FOR RECORD ON JULY 9, 2003 AS ENTRY NUMBER 103476:2003 AS MAP NUMBER 10060 IN THE OFFICIAL RECORDS OF UTAH COUNTY, UTAH.

LOTS 1 THRU 74 AS SHOWN ON THE SUBDIVISION MAP ENTITLED '**PIONEER ADDITION, PHASE 2**' FILED FOR RECORD ON MARCH 29, 2005 AS ENTRY NUMBER 32409:2005 AS MAP NUMBER 11000 IN THE OFFICIAL RECORDS OF UTAH COUNTY, UTAH.

LOTS 75 THRU 138 AND AS SHOWN ON THE SUBDIVISION MAP ENTITLED '**PIONEER ADDITION, PHASE 3**' FILED FOR RECORD ON JAN 23, 2006 AS ENTRY NUMBER 7618:2006 AS MAP NUMBER 11468 IN THE OFFICIAL RECORDS OF UTAH COUNTY, UTAH.

LOTS 1 THRU 95 AS SHOWN ON THE SUBDIVISION MAP ENTITLED '**PIONEER ADDITION, PHASE 4**' FILED FOR RECORD ON JULY 7, 2005 AS ENTRY NUMBER 73825:2005 AS MAP NUMBER 11171 IN THE OFFICIAL RECORDS OF UTAH COUNTY, UTAH.

LOTS 93 THRU 95 AND 124 THRU 144, AS SHOWN ON THE SUBDIVISION MAP ENTITLED '**PIONEER ADDITION, PHASE 5A**' FILED FOR RECORD ON DECEMBER 15, 2004 AS ENTRY NUMBER 140651:2004 AS MAP NUMBER 10845 IN THE OFFICIAL RECORDS OF UTAH COUNTY, UTAH.

LOTS 27 THRU 34 AND LOTS 61 THRU 84 AND 99 THRU 124 AS SHOWN ON THE SUBDIVISION MAP ENTITLED '**PIONEER ADDITION, PHASE 5B**' FILED FOR RECORD ON AUGUST 16, 2006 AS ENTRY NUMBER 105658:2006 AS MAP NUMBER 11822 IN THE OFFICIAL RECORDS OF UTAH COUNTY, UTAH.

LOTS 1 THRU 95 AS SHOWN ON THE SUBDIVISION MAP ENTITLED '**PIONEER ADDITION, PHASE 6**' FILED FOR RECORD ON OCTOBER 2, 2006 AS ENTRY NUMBER 130259:2006 AS MAP NUMBER 11895 IN THE OFFICIAL RECORDS OF UTAH COUNTY, UTAH.

LOTS 1 THRU 127 AS SHOWN ON THE SUBDIVISION MAP ENTITLED '**PIONEER ADDITION, PHASE 7A**' FILED FOR RECORD ON FEBRUARY 16, 2007 AS ENTRY NUMBER 24756:2007 AS MAP NUMBER 12120 IN THE OFFICIAL RECORDS OF UTAH COUNTY, UTAH.

LOTS 201 THRU 204 AS SHOWN ON THE SUBDIVISION MAP ENTITLED '**PIONEER ADDITION, PHASE 7B**' FILED FOR RECORD ON NOVEMBER 11, 2006 AS ENTRY NUMBER 17182:2007 AS MAP NUMBER 12095 IN THE OFFICIAL RECORDS OF UTAH COUNTY, UTAH.

LOTS 1 THRU 23 AS SHOWN ON THE SUBDIVISION MAP ENTITLED '**COLONIAL PARK PHASE 1**' FILED FOR RECORD ON JUNE 18, 2003 AS ENTRY NUMBER 91479:2003 AS MAP NUMBER 10037 IN THE OFFICIAL RECORDS OF UTAH COUNTY, UTAH.

LOTS 201 THRU 242 AS SHOWN ON THE SUBDIVISION MAP ENTITLED '**COLONIAL PARK PHASE 2**' FILED FOR RECORD ON JULY 21, 2008 AS ENTRY NUMBER 82196:2008 AS MAP NUMBER 12769 IN THE OFFICIAL RECORDS OF UTAH COUNTY, UTAH.

LOTS 1 THRU 62 AS SHOWN ON THE SUBDIVISION MAP ENTITLED '**AUTUMN RIDGE PHASE 1**' FILED FOR RECORD ON JULY 27, 2007 AS ENTRY NUMBER 108734:2007 AS MAP NUMBER 12383 IN THE OFFICIAL RECORDS OF UTAH COUNTY, UTAH.

LOTS 1 THRU 27 AS SHOWN ON THE SUBDIVISION MAP ENTITLED '**OVERLAND TRAILS PHASE III-A**' FILED FOR RECORD ON OCTOBER 10, 2000 AS ENTRY NUMBER 79767:2000 AS MAP NUMBER 8769 IN THE OFFICIAL RECORDS OF UTAH COUNTY, UTAH.

LOTS 101 THRU 148 AS SHOWN ON THE SUBDIVISION MAP ENTITLED  
**'SWEETWATER SUBDIVISION PHASE 1'** FILED FOR RECORD ON OCTOBER 25,  
2007 AS ENTRY NUMBER 153142:2007 AS MAP NUMBER 12525 IN THE OFFICIAL  
RECORDS OF UTAH COUNTY, UTAH.

LOTS 1 THRU 36 AS SHOWN ON THE SUBDIVISION MAP ENTITLED **'PARK PLACE  
AT TRAILHEAD'** FILED FOR RECORD ON MARCH 2, 2007 AS ENTRY NUMBER  
31171:2007 AS MAP NUMBER 12146 IN THE OFFICIAL RECORDS OF UTAH COUNTY,  
UTAH.

LOTS 1 THRU 65 AS SHOWN ON THE SUBDIVISION MAP ENTITLED **'TRAILHEAD  
PUD PLAT A'** FILED FOR RECORD ON NOVEMBER 8, 2008 AS ENTRY NUMBER  
64747:2008 AS MAP NUMBER 12738 IN THE OFFICIAL RECORDS OF UTAH COUNTY,  
UTAH.

**LESS AND EXCEPTING FROM ALL PARCELS ABOVE ANY LANDS LYING  
WITHIN THE BOUNDS OF CITY OR COUNTY ROADS, AND OTHER PUBLICLY  
OWNED LANDS, AND ANY OTHER LAND DEEDED TO OTHERS PRIOR TO THE  
DATE OF RECORDING OF THIS DOCUMENT, BUT NOT SPECIFICALLY  
DETAILED HEREIN.**

***SEPTEMBER 1, 2009, MSW***

**Exhibit "B"**  
**Expansion Property**

Additional areas to be included in the future

**EXHIBIT "C"**

**By-Laws of Eagle Mountain Properties Communities Master Association, Inc.**

# Exhibit "C"

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## BY-LAWS OF

### EAGLE MOUNTAIN PROPERTIES COMMUNITIES MASTER ASSOCIATION, INC.

#### ARTICLE 1. NAME, PRINCIPAL OFFICE, and DEFINITIONS

1.1 Name. The name of the corporation is the Eagle Mountain Properties Communities Master Association, Inc., and is hereinafter referred to as the "Corporation" or as the "Association".

1.2 Principal Office. The principal office of the Association in the State of Utah shall be located within Utah County. The Association may have such other offices, either within or without the State of Utah, as the Board may determine or as the affairs of the Association may require.

1.3 Corporate Seal. The seal of the Association shall bear the name of the Association, the word "Utah", and the year of incorporation.

1.4 By-Laws Applicability. The provisions of these By-Laws are applicable to the Association, the Members of the Association, and the subdivision, Eagle Mountain Properties Communities Master Association, together with such subsequent phases, additions or annexations thereto as may hereafter be brought within the jurisdiction of the Association.

1.5 Personal Application. All present and future Members, Owners and tenants, employees, and any other person that might use the facilities owned and/or managed by the Association are subject to these By-Laws.

1.6 Definitions. The words and phrases used in these By-Laws shall have the meanings as set forth in the Master Declaration of Covenants for Eagle Mountain Properties Communities Master Association, as recorded in the Official Records of Utah County, Utah, as supplemented, restated, renewed, extended or amended, from time to time, unless the context shall otherwise required, all of which are adopted herein by reference. Additional terms and phrases shall have the meanings and applications as set forth herein. Words or phrases contained or set forth in bold or quotation marks herein shall be defined terms and shall be applied in a consistent and uniform manner.

- A. Declaration: "Declaration" shall mean the Master Declaration for this Subdivision, and any amendments or supplements, and shall hereinafter be referred to as the "CC&R's" or "Declaration".
- B. Founder: "Founder" shall mean Monte Vista Ranch LC, a Utah limited liability company, its successors and assigns.
- C. Subdivision: "Subdivision" shall mean and include all phases and additions for the Eagle Mountain Properties Communities Master Association, subdivision according to the plat thereof as recorded in the Public Records of Utah County, Utah. Subdivision shall include any additional phases added to said subdivision or future phases of such subdivision as provided by the Declaration.

**ARTICLE 2. MEMBERSHIP, MEETINGS, VOTING, QUORUM, PROXIES.**

2.1 **Membership.** The Association shall initially have two (2) classes of membership, "Owner Membership" and "Founder Membership", as more fully set forth in the Declaration, the provisions of which are adopted herein by reference.

2.2 **Meetings of the Association.** Meetings of the Members of the Association shall be of the Voting Members or their alternates, unless otherwise stated. The Voting Members shall be responsible for casting all votes of the membership of the Association for all matters requiring the vote of the membership of the Association, unless otherwise expressly specified in the Declaration or these By-Laws.

2.3 **Order of Business.** The order of business at meetings shall be as follows: (1) roll call to determine the attendance, in person or by proxy, at the meeting of sufficient members to constitute a quorum; (2) publication of the proof of notice of the meeting or waiver of notice of the meeting; (3) publication, adoption or amendment of the agenda for the meeting; (4) reading and adoption of minutes of preceding meeting; (5) reports of officers, including the reports of the President or financial officers, or their designated representatives, as to the activities and financial condition of the Association; (6) reports of committees; (7) election of Directors, if Directors are to be elected at such meeting; (8) unfinished business; (9) new business; and (10) adjournment. Meetings shall be conducted by the officers of the Association or by their representative, in order of their priority, commencing with the President.

2.4 **Place of Meetings.** Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the members as may be designated by the Board of Directors either within the Properties or as convenient thereto as possible and practical.

2.5 **Annual Meetings.** Annual meetings of the Members of the Association shall be set by the Board as to occur at least ninety (90) days but not more than one hundred twenty (120) days before the close of the Association's fiscal year on a date and time set by the Board.

2.6 **Special Meetings.** The President may call special meetings upon his own initiative. In addition, it shall be the duty of the President to call a special meeting of the Association: (a) if so directed by a resolution of a majority of a quorum of the Board of Directors, or (b) after the Founder Membership Control Period has terminated, if a written petition requesting a special meeting is signed by Voting Members representing a least ten percent (10%) of the total votes of the Association. The notice of any special meeting shall state the date, time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

2.7 **Notice of Meeting.** Written or printed notice stating the place, day and hour of any meeting of the Voting Members shall be delivered, either personally or by mail, to each Voting Member entitled to vote at such meeting, not less than ten (10) days nor more than thirty (30) days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting. When required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice.

- A. If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States First Class mail addressed to the Voting Member at his address as it appears on the most current records of the Association, with postage thereon prepaid.
- B. So long as the Founder Membership exists, the Founder Membership member shall be given written notice of all meetings of the Board of Directors, the officers, the Association or any committee thereof, and such notice shall contain the proposed agenda or purpose of the meeting.

2.8 Waiver of Notice. Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any member may, in writing, waive notice of any meeting of the members, either before, at or after such meeting. Attendance at a meeting by a member shall be deemed a waiver by such member of notice of the time, date and place thereof and of the business transacted thereat (if notice of same is required by statute or by these By-Laws), unless such member specifically objects to lack of proper notice at the time the meeting is called to order, or in the case where the business transacted thereat is required to be contained in the notice, such member specifically objects to proper notice before such business is put to a vote.

2.9 Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, or cannot be completed within the time provided for such meeting, the Voting Members, either in person or by alternate, representing a majority of the total votes present at such meeting, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Voting Members in the manner prescribed for regular meetings.

- A. The Voting Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Voting Members to leave less than a quorum, provided that Voting Members or their alternates representing at least twenty-five percent (25%) of the total votes of the Association remain in attendance, and provided further that any action taken is approved by Voting Members or their alternates representing at least a majority of the number of votes of the Association required to constitute a quorum.

2.10 Voting. Voting by the Members shall be set out in the "Declaration". Except for Founder Membership provided in the Declaration and except as may be otherwise provided in the Declaration, each Owner Member shall be entitled to one vote for each Building Lot or Residential Unit owned by such Member. If a particular Building Lot or Residential Unit is owned by more than one person, they may not split the vote applicable to such Lot or Unit, they shall collectively designate in writing to the Association the name of one of the owners to cast the vote for such Lot or Unit to and act on behalf of such Lot or Unit, and only one vote shall be allowed for such Lot or Unit.



2.11 Quorum. The presence in person or by proxy of the Founder Member (if one), and the presence in person or by proxy of the Owner Members holding at least fifty percent (50%) of the total Owner Members votes entitled to be cast shall constitute a quorum. The Members present at a meeting at which a quorum is present may continue to conduct business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum.

2.12 Proxies. Votes may be cast in person or by proxy. Proxies must be in writing and filed at the meeting and remain valid until December 31 of the year such proxy is executed or until canceled by the member giving the proxy. Proxies can be cancelled by the Member executing such proxy at any time, by a notice in writing to the Association and to the person named as the proxy. Proxies can be limited for certain meetings, certain issues, or unlimited.

2.13 Majority. As used in these By-Laws, the term "majority" shall mean those votes, owners, or other group as the context may indicate totaling more than fifty percent (50%) of the total number authorized to vote or act on the pending matter.

2.14 Conduct of Meetings. The President, or in his absence the Vice President, shall preside over all meetings of the Association. The Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring at the meeting. Meetings of the Association shall be conducted in accordance with Robert's Rules of Order.

2.15 Action Without A Meeting. Any action required by law to be taken at a meeting of the Voting Members or any action which may be taken at a meeting of the Voting Members, may be taken without a formal meeting if written consent setting forth the action so taken is signed by Voting Members representing the requisite vote necessary to approve the subject matter thereof, and any such consent shall have the same force and effect as a vote of the Voting Members on such action at a meeting duly called. Provided however, unless an emergency exists which requires immediate action, the action taken or approved when no formal meeting is conducted shall be suspended for a period of not more than 30 days after such approval during which time the written consent setting forth the action taken or approved is provided to all Members. All Members who either did not participate in such action or did not consent to such action in writing shall have the right to file a written objection to the action taken or approved set forth in such written consent. All objections must be filed with the Association no later than 20 days after the notice to the Members has been mailed. If more than 10% of the Members object to the action taken or approved as set forth in the written consent by timely filing written objections to such action, the President shall call a special meeting of the Members to reconsider the action taken or approved.

2.16 Notice of Action. So long as the Founder Membership exists, within ten (10) days following the meeting of the Board of Directors, the officers, the Association, or any committee thereof, the presiding officer of said meeting or his appointed agent shall deliver a true and complete copy of the minutes and/or transactions of the meetings to the Founder member at its office.

**ARTICLE 3: ADMINISTRATION AND MANAGEMENT**

## Section A: Board of Directors.

3.1 Board of Directors; Composition; Qualifications. The affairs of the Association shall be governed and managed by the Board of Directors. Except with respect to Directors appointed by the Founder, the Directors shall be Members of the Association. Except for the Founder, only one (1) Owner of a particular Unit may serve on the Board at any time. Except with respect to Directors appointed by the Founder, in the case of a member which is a corporation, partnership, or other legal entity, the person designated in writing to the Secretary of the Association as the representative of such entity, shall be eligible to serve as a Director. Directors appointed by the Founder need not be members.

3.2 Directors During Founder Membership Control. The Directors shall be appointed by the Founder acting in its sole discretion and shall serve at the pleasure of the Founder until the first to occur of the following:

- A. when 40,001 units have certificates of occupancy issued thereon and have been conveyed to Persons other than the Founder and Owners holding title solely for the purpose of development and sale;
- B. December 31, 2108;
- C. When, in its sole discretion, the Founder so determines.

3.3 Right to Disapprove Actions. This Section 3.3 may not be modified, repealed, or amended in any manner without the express, written consent of the Founder member so long as the Founder Membership exists.

- A. So long as the Founder Membership exists, the Founder member shall have an absolute discretionary right to disapprove, veto, and reverse any actions by the Board of Directors, the officers or any committee of the Association, as is more fully provided in this Section. This right shall be exercisable only by the Founder member, its successors and assigns who specifically take this power in a recorded instrument. The right to disapprove shall be as follows:
- B. No action authorized by Board of Directors, the officers or the Association or any committee thereof shall become effective, nor shall any action, policy or program be implemented, until and unless:
- C. The Founder member shall have been given written notice of all meetings and proposed actions to be considered and approved at the meetings of the Board, the officers, the Association or any committee thereof by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, as it may change from time to time, which notice complies as to the Board of Directors meetings Article III, Sections 8, 9, and 10, of these By-Laws and which notice shall, except in the case of the regular meetings held pursuant to these By-Laws, set forth in reasonable particularity the agenda to be followed at said meeting, and

- D. The Founder member shall be given the opportunity at such meeting to join in or to have its representative to join in the discussion and determination of the issue before the meeting. The Founder member shall have and is hereby granted a right to disapprove any such action, policy or program authorized or permitted by the Board of Directors, the officers, the Association or any committee thereof an to be taken by the Board of Directors, the officers, the Association, any committee, or any individual member of the Association, if Board of Directors officer, committee or Association approval is necessary for such action. This right may be exercised by the Founder member, its representative or agents at any time within fourteen (14) days following the meeting held pursuant to the terms and provisions hereof. This right to disapprove may be used to block proposed actions but shall not extend to the requiring of any action or counteraction on behalf of any committee, the officers, the Board of Directors or the Association. The Founder member shall not use its right of disapproval to require a deduction in the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.
- E. The disapproval of the Founder member pursuant to this Section shall prohibit the taking of such action or implementation or adoption of such program or policy, and shall supersede any approval otherwise obtained from the Board of Directors, the officers, the Association or any committee thereof.

3.4 Number of Directors. During the Founder Membership Control Period the number of directors on the Board of Directors shall be not less than three (3) nor more than five (5). Thereafter the number of directors on the Board of Directors may be increased upon approval of Voting Members representing a majority of the votes present at the meeting, provided that there shall always be an odd number of directors, and there shall always be at least five (5) directors. The initial Board of Directors shall consist of three (3) members appointed by the Founder. The Founder may appoint additional directors in its sole discretion to the Board of Directors from time to time to replace directors appointed by it, to fill vacancies of directors appointed by it, or to fill additional positions on the Board of Directors due to its expansion.

3.5 Nomination of Directors. Except with respect to directors entitled to be selected by the Founder, nominations for elections of directors to the Board of Directors shall be made by a Nominating Committee. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and three (3) or more members of the Association appointed by the Board of Directors. The Nominating Committee shall be appointed by the Board of Directors not less than thirty (30) days prior to such annual meeting of the Voting Members at which Voting Members other than the Founder are entitle to elect members to the Board of Directors. Members of the Nominating Committee shall serve a term of one (1) year or until their successors are appointed and assume such position. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determines, but in no event less than the number of positions to be filled. Nominations shall also be permitted from the floor. All candidates shall have an equal and reasonable opportunity to communicate their qualifications to the Voting Members and to solicit votes.

3.6 Election and Term of Office. Within thirty (30) days after termination of the Founder Membership Control Period, the Association shall call a special meeting at which the Voting

Members shall elect all directors of the Board of Directors. A majority of the directors shall be elected to serve a term of two (2) years, and the remaining directors shall be elected to serve a term of one (1) year. Upon expiration of the initial term of office of each such director, a successor shall be elected to serve a term of two (2) years. Thereafter, all directors shall be elected to serve two (2) year terms.

- A. At any election of directors by the Voting Members, each Voting Member shall be entitled to cast one (1) equal vote with respect to each vacancy to be filled on the Board of Directors. The candidates receiving the largest number of votes shall be elected to fill the positions for which the election is held. The directors elected by the Voting Members shall hold office until their respective successors have been elected and assume such office. Directors may be elected to serve any number of consecutive terms.

3.7 Removal of Directors and Vacancies. Except for Directors appointed by the Founder, a director may be removed, with or without cause, by the affirmative vote of Voting Members representing a majority of the votes present, at the meeting. Any director, other than a director appointed by the Founder, whose removal is sought, shall be given notice prior to any meeting called for that purpose. At a meeting in which a director is removed, a successor shall be elected by the Voting Members to fill the vacancy for the remainder of the term of such removed director. Any director appointed by the Founder may only be removed by the Founder, in its sole discretion, and the Founder shall be entitled to appoint a successor director to fill such vacancy. Any Director whose removal has been proposed by the Voting Members shall be given an opportunity to be heard at the meeting. If any or all of the Directors are so removed, new Directors may be elected at such meeting.

- A. Any director elected by the Voting Members who has three (3) consecutive unexcused absences from Board of Directors meetings or who is delinquent in the payment of any assessments or other charge due the Association for more than thirty (30) days may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and a successor may be appointed by the Board of Directors to fill the vacancy for the remainder of the term. The foregoing shall not apply to directors appointed by the Founder to the Board of Directors.
- B. Except in the case of directors appointed by the Founder, in the event of death, disability or resignation of a director, a vacancy may be declared by the Board of Directors, and it may appoint a successor. Any director appointed by the Board of Directors shall serve for the remainder of the term of the director who vacated the position. In the event of death, disability or resignation of a director appointed by the Founder, the Founder shall be entitled to appoint a director to fill the vacancy created, and such director shall serve for the remainder of the term of the director who vacated the position.

#### Section B: Meetings.

3.8 Organizational Meetings. Immediately following each annual meeting of Members or Directors where one or more Directors are elected, the Board of Directors shall hold a meeting for the purpose of organization, election of officers, and transaction of other business, as appropriate.

3.9 Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the directors, but at least four (4) such meetings shall be held during each fiscal year with at least one (1) meeting occurring per quarter. Notice of the time and place of the meetings of the Board of Directors shall be communicated to directors not less than four (4) days prior to the meeting; provided, however, notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to holding of the meeting.

3.10 Special Meetings. Special meetings of the Board of Directors shall be held when called by written notice signed by the President or by any two (2) directors of the Board of Directors if the Board of Directors is three members or by any three (3) directors of the Board of Directors if the Board of Directors is five or more members. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director of the Board of Directors by one of the following methods: (1) by personal delivery, (2) written notice by first class mail, postage prepaid, (3) by telephone communication, either directly to the director or to a person at the director's office of home who would be reasonably be reasonably be expected to communicate such notice promptly to the director, or (4) by fax or email, provided such Director has previously authorized the receipt of email as a method of notice. All such notices shall be given at the director's telephone number or sent to the director's address as shown on the records of the Association. Notices sent by U.S. Mail shall be deposited into a United States mailbox at least ten (10) days before the time set for the meeting. Notices given by personal delivery, telephone, fax or email shall be delivered, telephoned, faxed or emailed at least seventy-two (72) hours before the time set for the meeting.

3.11 Waiver of Notice. The transactions of any meeting of the Board of Directors, however called and noticed or whenever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.12 Quorum of Board of Directors. At all meetings of the Board of Directors, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any meeting of the Board of Directors cannot be held because a quorum is not present, a majority of the directors who are present at such meeting may adjourn the meeting to a time not less than five (5) days nor more than thirty (30) days from the date the original meeting was called. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.13 Compensation. No director shall receive any compensation from the Association for acting as such unless approved by Voting Members representing a majority of the total votes of the Association at a regular or special meeting of the Association; provided any director may be

reimbursed for expenses incurred costs advanced on behalf of the Association upon approval of a majority of the other directors. Provided, however, that nothing herein contained shall be construed to preclude any Director from serving the Association in some other capacity and receiving compensation for such other capacity, or to receive reimbursement for expenses and out of pocket costs incurred in carrying out such duties

3.14 Conduct of Meetings. The President shall preside over all meetings of the Board of Directors, and the Secretary shall keep a minute book of meetings of the Board of Directors, recording therein all resolutions adopted by the Board of Directors and all transactions and proceedings occurring at such meetings. Meetings may be conducted by telephone and shall be considered as any other meeting, provided the directors participating in the meeting are able through telephone connection to hear and to be heard. Meetings of the Board of Directors shall be conducted in accordance with Robert's Rules of Order.

3.15 Open Meetings. Subject to the provisions of Section 3.16 of this Article, all members of the Board of Directors shall be open to all Voting Members, but Voting Members other than directors may not participate in any discussions or deliberating unless permission to speak is requested on his or her behalf by a director. In such case, the President may limit the time any Voting Member is allowed to speak. Provided however, the Board of Directors may decide to conduct the discussion and deliberation of certain issues to closed sessions, when such issues involve pending or anticipated litigation, employee issues, or other matters upon the advice of counsel to the Board.

3.16 Action Without a Formal Meeting. Any action to be taken or that may be taken at a meeting of the Board of Directors may be taken without a formal meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors of the Board of Directors, and such consent shall have the same force and effect as a unanimous vote.

3.17 Committees. The Board may form or designate such committees as the Board shall desire, and establish the purposes and powers of each such committee created. The Board may appoint members and officers of each such committee, and all members and officers of all committee may be removed by the Board with or without cause at any time.

#### Section C: Powers and Duties.

3.18 Powers. The Board of Directors shall be responsible for the affairs and conduct of business of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not by the Declaration, the Articles of Incorporation or these By-Laws directed to be done and exercised exclusively by the Voting Members or the membership generally.

- A. The Board of Directors shall delegate to one or more of the individual Directors the authority to act on behalf of the Board of Directors on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board of Directors.

- B. The Board of Directors shall have the exclusive jurisdiction over and sole responsibility for the Association's administration, management, operation, regulation, care, protection of the Common Area and Area of Common Responsibility, the establishment, levy, imposition, enforcement and collection of all assessments for which provision is made in the Declaration; the promotion and advancement of the general interests of the members of the Association; all as more particularly provided in the Declaration, Article of Incorporation, these By-Laws and the rules and regulations of the Association.
- C. In addition to the duties imposed by the Declaration, the Article of Incorporation and these By-Laws or by any resolution of the Association that may be hereafter be adopted, the Board of Directors shall have the power to and shall be responsible for the following, in way of explanation, but not limitation:
- .1 preparation and adoption of annual budgets in which there shall be established the contribution of each Owner to the Common Expenses;
  - .2 making assessments to defray the Common Expenses, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of assessments; provided, unless otherwise determined by the Board of Directors, the Regular Assessment shall be payable in equal quarterly installments, each such installment to be due and payable in advance on the first day of January, April, July, and October of each year;
  - .3 providing for the operation, care, upkeep, and maintenance of all the Common Area and Area of Common Responsibility;
  - .4 designating, hiring and dismissing the personnel necessary for the maintenance, operation, repair and replacement of the Association, its property, Common Area and Area of Common Responsibility, and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies and materials to be used by such personnel in the performance of their duties;
  - .5 collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association, provided, any reserve fund may be deposited, in the director's best business judgment, in depositories other than banks;
  - .6 making and amending rules and regulations;
  - .7 opening of bank accounts on behalf of the Association and designating the signatories required;
  - .8 making or contracting for the making of repairs, additions and improvement to or alterations of the Common Area in accordance with the Declaration and these By-Laws after damage or destruction by fire or other casualty;
  - .9 enforcing by legal means the provision of the Declaration, these By-Laws, the Planning Criteria and the rules and regulations adopted by it and bringing or participating in any proceedings which may be instituted on behalf of or against the Owners concerning the Association;
  - .10 obtaining and carrying insurance against casualty and liabilities, as provided in the Declaration or as otherwise determined to be appropriate by the Board of Directors, and paying the premium cast thereof;
  - .11 paying the cost of all services rendered to the Association or its members and not chargeable directly to specific Owners;

- .12 keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred;
- .13 making available to any prospective purchaser of a Unit, any Owner, any first mortgage or holder of a Deed of Trust, and the holders, insurers, and guarantors of a first mortgage or Deed of Trust on any Unit, current copies of the Declaration, the Articles of Incorporation, these By-Laws, rules and regulations governing the Unit, and all other books, records, and financial statements of the Association;
- .14 hiring or retaining such professionals and independent contractors to provide advice, services, and representation of the Association, including attorneys, accountants, property managers, engineers, and others;
- .15 permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Properties, and
- .16 entering into contracts, granting easements or performing other rights, obligations or duties of the Association set out in the Declaration, including without limitation, the right to enter into any cable television, fiber optics, communication, or internet service agreement.

3.19 Management Agent.

The Board of Directors may employ for the Association a professional management agent or agents at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize. The Board of Directors may delegate to the managing agent or manager, subject to the Board of Directors supervision, all of the powers granted to the Board of Directors by these By-Laws, other than and excluding the powers set forth in subparagraphs .1, .2, .6, .7. and .16 of Section 3.18(c) of these By-Laws. The Founder, or an affiliate or other related entity of the Founder, may be employed as managing agent or manager. No management contract may have a term in excess of two (2) years and must permit termination by either party without cause and without termination fee on ninety (90) days written notice

3.20 Accounts and Reports. The following management standards of performance will be followed unless the Board of Directors by resolution specifically determines otherwise:

- A. accrual accounting, as defined by generally accepted accounting principal, shall be employed;
- B. accounting and controls should conform to generally accepted accounting principles;
- C. cash accounts of the Association shall not be commingled with any other accounts;
- D. no remuneration shall be accepted by the managing agent from vendors, independent contractors or others providing goods or services to the Association, whether in the form of commissions, finder's fees, prizes, gifts or otherwise; any thing of value received shall benefit the Association; provided, nothing herein shall prohibit the managing agent from earning commissions for service performed by the managing agent in leasing Units on behalf of Owners of such Units;
- E. any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board of Directors;
- F. financial reports shall be prepared for the Association at least quarterly containing:
  - .1 an income statement reflecting all income and expense activity for the preceding period on an accrual basis;



- .2 a statement reflecting all cash receipts and disbursements for the preceding period;
  - .3 a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;
  - .4 a balance sheet as of the last day of the preceding period; and
  - .5 a delinquency report listing all Owners who are delinquent in paying the installments of assessments at the time of the report and describing the status of any action to collect such installments which remain delinquent (an installment of an assessment shall be considered to be delinquent in the fifteenth (15<sup>th</sup>) day after the installment is due unless otherwise determined by the Board of Directors); and
- E. an annual report consisting of at least the following shall be distributed to all Voting Members within one-hundred-twenty (120) days after the close of the fiscal year: (1) a balance sheet showing all assets, liabilities and balances; (2) an operating (income) statement; and, (3) a statement of changes in financial position for the fiscal year. The annual report referred to above shall be prepared on an audited or reviewed basis, as determined by the Board of Directors, by an independent public accountant; provided, during the Founder Membership Control Period, the annual report need only include certified or reviewed financial statements.

3.21 Borrowing. The Board of Directors shall have the power to borrow money for the purpose of maintenance, repair or restoration of the Common Area without the approval of the Voting Members of the Association. The Board of Directors shall also have the power to borrow money for other purposes; provided, the Board of Directors shall obtain the approval of Voting Members representing a majority of the total votes of the Association in the event that the proposed borrowing is for purposes of modifying, improving or adding amenities and the total amount of such borrowing exceeds or would exceed five (5%) percent of the budgeted gross expenses of the Association for that fiscal year. Notwithstanding anything to the contrary contained in the Declaration, these By-Laws or the Articles of Incorporation, during the Founder Membership Control Period, no mortgage lien shall be placed on any portion of the Common Area owned by the Association without the affirmative written consent, or any combination thereof, of Voting Members representing at least a majority of the total votes of the Association other than the Founder.

3.22 Rights of the Association. With respect to the Common Area, Areas of Common Responsibility, or other areas of responsibility of the Association, and in accordance with the Articles of Incorporation, these By-Laws and the Declaration, the Board of Directors on behalf of the Association shall have the right to contract with any Person for the performance of various duties and functions. Without limiting the foregoing this right shall entitle the Board of Directors on behalf of the Association to enter into common management, operational or other agreements with trusts, condominiums, cooperatives or Districts and other owners or residents associations, both within and without the Properties. Such agreements shall require the consent of a majority of all Directors of the Association.

3.23 Enforcement. The Board of Directors shall have the power to impose reasonable fines, late fees, collection costs, and penalties, which shall constitute a lien upon the property of the violating Owner, and to suspend an Owner's right to vote, if any, or to use the Common Area or Areas of Common Responsibility for violation of any duty imposed upon such Owner under the Declaration, the Articles of Incorporation, these By-Laws or any rules and regulations duly adopted hereunder; provided, however, nothing herein shall authorize the Association or the Board of Directors to limit

or bar ingress and egress to or from a Unit or to suspend an Owner's right to vote, if any, due to nonpayment of assessments. In the event that any occupant of a Unit violates the Declaration, Articles of Incorporation, By-Laws or rules or regulations and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board of Directors, the Owner of such Unit shall pay the fine upon notice from the Association. The failure of the Board of Directors to enforce any provision of the Declaration, Articles of Incorporation, By-Laws, or rules or regulations shall not be deemed a waiver of the right of the Board of Directors to do so thereafter.

- A. Notice. Prior to imposition of any sanction hereunder, the Board of Directors or its delegate (or the Covenants Committee, if any) shall serve the alleged violator written notice by mail, hand delivery or other delivery at the address of the alleged violator contained in the records of the Association, or if no address of the alleged violator is on record, then by posting written notice at the site of the alleged violation or upon the Unit in which the alleged violator occupies describing: (1) the name of the alleged violator and nature of the alleged violation, (2) the proposed sanction to be imposed, (3) a period of not less than ten (10) days within which the alleged violator may present a written request to the Board of Directors for a hearing; and (4) a statement that the proposed sanction shall be imposed as contained in the Notice unless a challenge is begun within the period of time provided in (3) for requesting a hearing. If a timely challenge is not made, the sanction stated in the Notice shall be imposed. The sanction may include, without limitation, sanctions that will automatically be imposed by the Association in the event the violation is not abated or recurs within a stated period of time from the first alleged violation. Copies of the Notices and proof of notice shall be placed in a record book of the Association kept for this purpose. Proof of Notice shall be deemed adequate if a copy of the Notice, together with a statement of the date and manner of delivery, is entered by the officer, director or agent who delivered such Notice, or if the alleged violator requests a hearing within the time period stated in the Notice.
- B. Hearing. If a hearing is requested in a timely manner, the hearing shall be held in executive session affording the Owner or alleged violator a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results, findings, and the sanction, if any, imposed. The Board of Directors may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within a period of time specified by the Board of Directors. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.
- C. Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the Association, acting through the Board of Directors, may elect to enforce any provision of the Declaration, the Articles of Incorporation, these By-Laws, the Planning and Design Criteria, or the rules and regulations of the Association by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or by suit at law or in equity to enjoin any violation or to recover monetary damages, or to seek any other appropriate remedy, or any combination of the foregoing, without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including court costs, witness fees, attorneys' and paralegals' fees incurred by the Association, whether suit be brought or not, and including those incurred on appeal and in post judgment enforcement.

## ARTICLE 4: OFFICERS.

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4.1 Officers. The principal officers of the Association shall be a President, Vice-President, Secretary, and a Treasurer, which, except during the Founder Membership Control Period, shall be elected from members of the Board of Directors, shall be elected by the Board and serve at the will of the Board. The Board of Directors may create and appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem advisable, such officers to have the authority and to perform the duties prescribed to them from time to time by the Board of Directors. One person may hold two or more offices at the same time, except those of President and Secretary which must be held by two separate individuals.

4.2 Election, Term of Office and Vacancies. The officers of the Association shall serve for one (1) year terms and be elected annually by the Board of Directors at the organizational meeting of the Board of Directors following each annual meeting of the Association, as herein set forth in Article 3. A vacancy in any office arising because of death, resignation, removal or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

4.3 Removal. Any officer may be removed by the Board of Directors with or without cause, whenever in its judgment the best interests of the Association will be served by such removal. Removal of an officer shall be by affirmative majority vote of the Board of Directors at any regular or special meeting of the Board of Directors.

4.4 Resignation. Any officer may resign at any time by giving written notice of such resignation to the Board of Directors, the President or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later date specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4.5. Powers and Duties. The offices of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may from time to time, specifically be conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Association, and shall be the presiding officer at all meetings of the Board of Directors and the Voting Members. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

4.6 Agreements, Contracts, Deeds, Leases, Checks, Etc. All agreements, contracts, deeds, leases, checks and other instruments of the Association shall be executed by at least two (2) officers or by such other person or persons as may be designated by resolution of the Board of Directors.

4.7 Compensation. The Board may authorize, fix and determine compensation, if any, for the services of the officers, agents, and employees of the Association. Appointment of any person as an officer of the Association shall not be construed to preclude any officer from serving the Association in some other capacity and receiving compensation therefore, or to receive reimbursement for expenses and out of pocket costs incurred in carrying out such duties.

## ARTICLE 5: COMMITTEES

5.1 General. Committees are hereby authorized to perform such tasks and to serve for such periods as may be provided for in the Declaration, these By-Laws, the Articles of Incorporation or designated by a resolution adopted by a majority of the Directors of the Board of Directors present at a meeting at which a quorum is present. Such committees shall perform such duties and have such powers as may be provided in the Declaration, the Articles of Incorporation, these By-Laws and the resolution of the Board of Directors. In the event of conflict in the terms of any of the foregoing, the Declaration, Articles of Incorporation, By-Laws and resolutions of the Board of Directors (in that order) shall prevail. Each committee shall operate in accordance with the terms related thereto, the rules adopted by the Board of Directors and the terms and provisions of the Declaration, the Articles of Incorporation and these By-Laws.

5.2 Covenants Committee. In addition to any other committees which may be established by the Board of Directors pursuant to Section 5.1 hereof, the Board of Directors may appoint a Covenants Committee consisting of at least five (5) no more than seven (7) members. Acting in accordance with the provisions of the Declaration, these By-Laws and resolutions the Board of Directors may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association for violations of the Declaration and shall conduct all hearings held pursuant to Article 3, Section 3.23 of these By-Laws.

5.3 District Committees. In addition to any other committees appointed as provided above, there shall be a District Committee for each District which has no formal organizational structure or association (unless the entire District is owned by a single owner). Each District Committee shall consist of three (3) members; provided, however, by vote of at least fifty-one (51%) percent of the Owners within the District this number may be increase to five (5) members.

- A. The members of each District Committee shall be elected by the vote of Owners of Units within that District at an annual meeting of such Owners, at which the Owners of Units within that District holding at least one-third (1/3) of the total votes of Units in the District are represented, in person or by proxy. The Owners of Units within a District shall have the number of votes assigned to their Units in the Declaration. Committee members shall be elected for a term of one (1) year or until their successors are elected. Any director elected to the Board of Directors from a District shall be an ex officio member of the District Committee of the District in which such Director owns a unit.
- B. In the conduct of its duties and responsibilities, each District Committee shall abide by the procedures and requirements applicable to the Board of Directors set forth in Article 3, Sections 3.8, 3.9, 3.10, 3.11, 3.12, 3.13, 3.14, 3.15 and 3.16 of these By-Laws; provided, however, the term "Voting Member" shall refer to the Owners of Units with the District. Each District Committee shall elect a chairman from among its members who shall preside at its meetings and who shall be responsible for transmitting any and all communications to the Board of Directors and shall be the Voting Delegate from that District.

#### **ARTICLE 6: INDEMNIFICATION.**

6.1 Indemnification. The Association shall hold harmless, protect, defend, and indemnify every officer, director, committee member and employee of the Association against any and all costs and expenses, including attorneys' fees, reasonably incurred by or imposed upon such officer,

director, committee member or employee in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, committee member, or employee of the Association. Such officers, directors, committee members and employees shall not be liable for any mistakes of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. Such officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent they may also be members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director, committee member, or employee may otherwise be entitled. The Association shall, as a common expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

#### **ARTICLE 7: MISCELLANEOUS.**

7.1 **Fiscal Year.** The fiscal year of the Association shall be the calendar year.

7.2 **Parliamentary Rules.** Except as may be modified by the Board of Directors, **Roberts' Rules of Order** (current edition) shall govern the conduct of Association proceedings when not in conflict with Utah Law, the Articles of Incorporation, the Declaration, or these By-Laws.

7.3 **Conflicts.** If there are conflicts between the provisions of Utah Law, the Articles of Incorporation, the Declaration and these By-Laws, the provisions of Utah Law, the Declaration, the Articles of Incorporation and these By-Laws shall prevail in that order.

7.4 **Books and Records.**

A. **Inspection by Members and Mortgagees.** The Declaration and By-Laws, membership register, books of account, and minutes of meetings of the Voting Members, the Board of Directors, and committees shall be made available for inspection any copying by any Mortgagee, Voting Member of the Association, or by his or her duly appointed representative, at any reasonable time and for a purpose reasonably related to his or her interest as a Voting Member, at the office of the Association or at such other place within the Properties as the Board of Directors shall prescribe.

B. **Rules for Inspection.** The Board of Directors shall establish reasonable rules with respect to:

- .1 notice to be given the custodian of the records;
- .2 hours and days of the week when such an inspection may be made; and,
- .3 payment of the cost of reproducing copies of the documents requested.

C. **Inspection by Directors.** Every Director of the Board of Directors shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director of the Board of Directors includes the right to make extracts and a copy of relevant documents at the expense of the Association.

7.5 Notices. Unless otherwise provided in these By-Laws, all notices, demands, bills, statements or other communications under these By-Laws shall be in writing and shall be deemed to have been duly and properly given if delivered personally or if sent by United States Mail, first class postage prepaid.

- A. If to a member or a Voting Member, at the address which the member or Voting Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such member or Voting Member; or
- B. If to the Association, the Board of Directors, or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated by notice in writing to the Voting Members pursuant to this Section.

7.6 Amendment. During the Founder Membership Control Period, the Founder may unilaterally amend these By-Laws with consent or approval of the Board of Directors, members or Voting Members of the Association. Thereafter, the Founder may unilaterally amend these By-Laws so long as it still owns any portion of the Properties or the property which is subject to annexation under the provisions of the Declaration, and so long as the amendment does not materially adversely affect any material right of any member of the Association. After the Founder Membership control period has expired, these By-Laws may also be amended by the affirmative vote or written consent, or any combination thereof, of Voting Members representing a majority of the total votes of the Association. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under than clause. The amendment shall be effective upon adoption and a copy thereof shall be recorded in the public records of Utah County, Utah. Notwithstanding anything to the contrary set forth herein, the Founder may unilaterally amend these By-Laws at any time to include any provisions which may be required by the Federal National Mortgage Association ("FANNIE MAE"), the Federal Home Loan Mortgage Corporation ("FREDDIE MAC"), the Veterans Administration, the Department of Housing and Urban Development, and any other federal, state or local governmental agency or department.

- A. No amendment may remove, revoke, or modify any right or privilege of Founder or the Founder Membership member with the written consent of Founder, or the assignee of such right or privilege. No amendment may impair the validity or priority of the lien of any mortgage or deed of trust held be a mortgagee or impair the rights granted to mortgagees herein without the prior written consent of such mortgagees.

IN WITNESS WHEREOF, the members of the Board of Directors have adopted these By-Laws effective as of - October 22, 2009.

/s/ [Signature]  
 \_\_\_\_\_  
 , Director

/s/ [Signature]  
 \_\_\_\_\_  
 , Director

/s/ [Signature]  
 \_\_\_\_\_  
 , Director

**EXHIBIT "D"**  
**Structured Wiring Specifications**

To be included in the future