

WY212 10-100  
01-107-0034 & 0010, 0013,

SW 1/4 10-100 01-120-0033  
01-107-0012 10-100

WHEN RECORDED RETURN TO:

Roger D. Henriksen, Esq.  
Kimball, Parr, Waddoups, Brown & Gee  
185 South State Street, Suite 1300  
P.O. Box 11019  
Salt Lake City, Utah 84147-0019

F 1559123 R 15533 P 234  
SHERYL L. WHITE, DAVIS CNTY RECORDER  
1999 NOV 17 11:13 AM FEE 33.00 DEP CY  
REC'D FOR ASSOCIATED TITLE COMPANY

DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION (this "Declaration") is executed as of the 12<sup>th</sup> day of November, 1999, by  
**EP LAND II, LLC**, a Utah limited liability company (hereinafter referred to as "Declarant").

RECITALS:

A. Declarant is the record owner of the property (the "Property") more particularly described in Exhibit A attached hereto and incorporated herein by this reference, which Property Declarant has acquired from Granite Construction Company, a California corporation ("Granite") in a transaction of even date herewith.

B. Granite owns and operates a sand, gravel, and asphalt business adjacent to the Property and desires to ensure the continued compatibility of such operations with any development that may exist or come to exist on the Property.

C. As part of the consideration for the transfer of the Property by Granite to Declarant, Declarant has agreed to subject the Property to the covenants and restrictions hereinafter set forth. Granite would not have conveyed the Property to Declarant in the absence of this Declaration.

DECLARATION

NOW, THEREFORE, in consideration of the transfer of the Property to Declarant and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant hereby declares that the Property is and shall be held, transferred, sold, conveyed, and occupied subject to the following:

1. Definitions. As used in this Declaration, each of the following terms shall have the indicated meaning:

1.1. "Adjacent Property" means property owned or operated, now or in the future, by Granite located adjacent to the Property, and includes, but is not limited to, the property described in Exhibit B attached hereto and incorporated herein by reference.

1.2. "Adjacent Property Owner" means Granite and its successors and assigns to the Adjacent Property or any portion thereof.

1.3. "Official Records" means the official records of the Davis County Recorder, State of Utah.

1.4. **"Operations"** means operations consisting of sand, gravel and asphalt excavation, extraction and processing businesses, including but not limited to, plants, conveyors, trucks, crushers, grinders, heavy machinery and other improvements, equipment and appurtenances used in connection therewith.

1.5. **"Lot"** means any parcel, lot or other subdivision created on the Property, now or in the future.

1.6. **"Mortgage"** means a mortgage or a deed of trust recorded in the Official Records.

1.7. **"Mortgagee"** means the mortgagee under a mortgage, or the beneficiary under a deed of trust, recorded in the Official Records.

1.8. **"Owner"** means the person that at the time concerned is the legal owner of record (in the Official Records) of a whole or undivided fee interest in any portion of the Property, including any owner of any Lot. If there is more than one Owner of a Lot at the time concerned, the obligations and liabilities of each such Owner for performance under, and compliance with, the applicable provisions of this Declaration shall be joint and several. Notwithstanding any applicable theory relating to a Mortgage, the terms "Owner" and "Owners" shall not mean a Mortgagee unless and until such Mortgagee has acquired title to the Lot concerned pursuant to foreclosure or any arrangement or proceeding in lieu of foreclosure.

2. **Use Covenant.** Each Owner of a Lot shall be deemed to have taken title to such Lot subject to and in recognition of the following facts and circumstances, all of which are agreed to by such Owner:

2.1. Each Lot located on the Property is located near the Adjacent Property on which the Operations are conducted. The Property is located in an area of historically industrial and commercial operations, including sand, gravel and asphalt operations at various locations in the vicinity.

2.2. The Operations necessarily involve the creation of certain noise, dust, fumes, light, vibrations and other conditions which may be perceptible beyond the boundaries of the Property. In addition, the Operations by their nature change the natural or existing terrain of the Adjacent Property and may affect the views and other natural conditions surrounding the Property.

2.3. The use and occupancy of any Lot may involve exposure to such conditions.

2.4. The Operations shall not be deemed to be a nuisance, private or public, whether by virtue of any changed conditions in and about the locality thereof or otherwise; provided that this provision shall not apply if the condition claimed to be a nuisance results from the negligent conduct of the Operations. The Operations may be conducted on the Adjacent Property for so long as the Adjacent Property Owner determines that it is in its best interests to conduct such operations.

2.5. No Owner shall take any action, directly or indirectly, to seek the curtailment, cessation or interruption of the Business, including but not limited to, any action in which such Owner contends that the Operations constitute a nuisance because of changed conditions or any other reason other than the negligent conduct of the Operations. Without limiting the generality of the foregoing, each Owner hereby covenants and agrees that such Owner will not at any time, directly or indirectly, initiate, maintain, or prosecute, or in any way knowingly aid in the initiation, maintenance, or prosecution, of any claim,

demand, cause of action, or proceeding (administrative or otherwise), at law, in equity, or otherwise, against any Adjacent Property Owner for any claim, damage, loss, or injury of any kind arising out of or in any way connected with the Operations.

3. Nature of Restrictions. The restrictions and covenants set forth in Section 2 shall be perpetual. Each covenant and restriction created by this Declaration is an appurtenance to the Adjacent Property and every portion thereof (but no other real property) and may not be transferred, assigned or encumbered except as an appurtenance to the Adjacent Property or any portion thereof. Each covenant and restriction contained in this Declaration shall constitute a covenant running with the land. No breach of this Declaration shall defeat or render invalid the lien of any Mortgage made in good faith and for value. The interests in and rights concerning any portion of the parcels affected by this Declaration shall be subject and subordinate to the arrangement provided for in this Declaration, and the arrangement provided for in this Declaration shall be prior and superior to such interests and rights, as may be necessary to effectuate all of the terms and provisions set forth in this Declaration. The Adjacent Property Owner is an intended beneficiary of this Declaration and shall be entitled to enforce the terms and provisions hereof.

4. Attorneys' Fees. If any person brings suit to enforce or interpret this Declaration or for damages on account of the breach of any provision of this Declaration, the prevailing party shall be entitled to recover from the other party its reasonable attorneys' fees and costs incurred in any such action or in any appeal from such action, in addition to the other relief to which the prevailing party is entitled.

5. General Provisions. This Declaration shall be governed by, and construed and interpreted in accordance with, the laws (excluding the choice of laws rules) of the State of Utah. This Declaration shall inure to the benefit of, and be binding on, Declarant and its successors and assigns. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be valid under applicable law; but, if any provision of this Declaration shall be invalid or prohibited under applicable law, such provision shall be ineffective to the extent of such invalidity or prohibition without invalidating the remainder of such provision or the remaining provisions of this Declaration.

6. Modification. This Declaration and any covenant or restriction contained in this Declaration may not be terminated, extended, modified or amended without the consent of each of the Adjacent Property Owners, and any such termination, extension, modification or amendment shall be effective on recordation in the Official Records a written document effecting the same, executed and acknowledged by each Owner; provided, however, that no such termination, extension, modification or amendment shall affect the rights of any Mortgagee holding a Mortgage constituting a lien on any Lot unless such Mortgagee consents to the same in writing.

Declarant has executed this Declaration on the date set forth below, to be effective as of the date first set forth above.

**EP LAND II, LLC,**  
a Utah limited liability company

By:

  
W. Scott Kjar, Its Manager

STATE OF UTAH

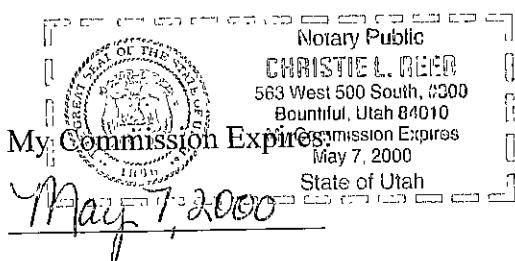
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County of Davis

}

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of November, 1999  
by **W. SCOTT KJAR**, the Manager of **EP LAND II, LLC**, a Utah limited liability company.



Christie L. Reed  
NOTARY PUBLIC  
Residing in Bountiful, Utah

EXHIBIT A

TO

F 1559123 S 2583 P 238

DECLARATION OF COVENANTS AND RESTRICTIONS

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**PROPERTY DESCRIPTION**

The "Property" referred to in the foregoing Declaration is located in Davis County, Utah and is more particularly described as follows:

SW 1/4 in 1/4  
01-101-003-00

Beginning at the Southeast Corner of Lot 147 of Eaglepointe Estates Phase 1 Subdivision in North Salt Lake City, Davis County, Utah, which point is also N 89°51'14" W 595.99 ft. along the Section Line and North 607.67 ft. from the South Quarter Corner of Section 12, T.1N., R.1W., S.L.B. & M. and running thence S 60°00'00" W 1,190.85 ft.; thence N 30°00'00" W 119.75 ft.; thence N 60°27'42" E 510.86 ft.; thence N 4°15'54" E 391.01 ft.; thence N 78°20'29" W 93.94 ft.; thence N 62°57'23" W 207.14 ft.; thence N 46°58'26" W 207.14 ft.; thence N 30°59'29" W 207.14 ft.; thence N 23°00'00" W 222.84 ft.; thence N 21°42'56" W 270.30 ft.; thence N 34°26'19" E 80.36 ft; thence S 89°58'08" E 210.07 ft.; thence S 70°16'48" E 374.69 ft. to the Northwest Corner of Lot 155 of said Phase 1; thence along the boundary of said Phase 1 in the following six courses to the Point of Beginning: S 3°45'00" W 119.53 ft., S 20°07'51" E 125.48 ft., S 23°15'00" E 125.78 ft., S 44°55'28" E 126.25 ft., S 55°40'48"E 252.63 ft., S 41°30'00"E 525.57 ft.

EXHIBIT B

S 1559125 8 2583 P 239

TO

DECLARATION OF COVENANTS AND RESTRICTIONS

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**ADJACENT PROPERTY DESCRIPTION**

The "Adjacent Property" referred to in the foregoing Declaration includes, but is not limited to, the following property located in Davis County, Utah and more particularly described as follows:

Parcel A:

Beginning at the Southwest Corner of Section 12 in Township 1 North, Range 1 West, Salt Lake Meridian, thence North 40 chains, thence East 15 chains, thence South 40 chains, thence West 15 chains to the point of beginning.

LESS AND EXCEPTING: Beginning at a point which is South  $89^{\circ}36'12''$  East 340.18 feet along the Quarter Section line from the West Quarter corner of Section 12, Township 1 North, Range 1 West, Salt Lake Meridian, and running thence South  $89^{\circ}36'12''$  East 650.00 feet along the Quarter section line to the East line of the West half of the East half of the Northwest Quarter of the Southwest Quarter of Section 12, thence South  $0^{\circ}04'18''$  East along said East line 1100.0 feet, thence North  $30^{\circ}31'45''$  West 1282.26 feet to the point of beginning.

01-101-0018

Parcel B:

[Existing Whitehill description] - See Exhibit 1 attached hereto

LESS AND EXCEPTING THE FOLLOWING PARCEL:

Beginning at the Southeast Corner of Lot 147 of Eaglepointe Estates Phase 1 Subdivision in North Salt Lake City, Davis County, Utah, which point is also N  $89^{\circ}51'14''$  W 595.99 ft. along the Section Line and North 607.67 ft. from the South Quarter Corner of Section 12, T.1N., R.1W., S.L.B. & M. and running thence S  $60^{\circ}00'00''$  W 1,190.85 ft.; thence N  $30^{\circ}00'00''$  W 119.75 ft.; thence N  $60^{\circ}27'42''$  E 510.86 ft.; thence N  $4^{\circ}15'54''$  E 391.01 ft.; thence N  $78^{\circ}20'29''$  W 93.94 ft.; thence N  $62^{\circ}57'23''$  W 207.14 ft.; thence N  $46^{\circ}58'26''$  W 207.14 ft.; thence N  $30^{\circ}59'29''$  W 207.14 ft.; thence N  $23^{\circ}00'00''$  W 222.84 ft.; thence N  $21^{\circ}42'56''$  W 270.30 ft.; thence N  $34^{\circ}26'19''$  E 80.36 ft; thence S  $89^{\circ}58'08''$  E 210.07 ft.; thence S  $70^{\circ}16'48''$  E 374.69

ft. to the Northwest Corner of Lot 155 of said Phase 1; thence along the boundary of said Phase 1 in the following six courses to the Point of Beginning: S 3°45'00" W 119.53 ft., S 20°07'51" E 125.48 ft., S 23°15'00" E 125.78 ft., S 44°55'28" E 126.25 ft., S 55°40'48"E 252.63 ft., S 41°30'00"E 525.57 ft.

## EXHIBIT "A"

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Beginning at a point which is South  $89^{\circ}36'12''$  East 340.18 feet along the Quarter Section line from the West Quarter corner of Section 12, Township 1 North, Range 1 West, Salt Lake Meridian, and running thence South  $89^{\circ}36'12''$  East 650.0 feet along the Quarter Section line to the East line of the West half of the Northwest Quarter of the Southwest Quarter of Section 12; thence South  $0^{\circ}04'18''$  East along said East line 1100.0 feet; thence North  $30^{\circ}31'45''$  West 1282.26 feet to the point of beginning.

01-107-0013

Beginning at the Southwest corner of Section 12, Township 1 North, Range 1 West, Salt Lake Meridian; thence North 40 chains; thence East 340.18 feet; thence South  $30^{\circ}31'45''$  East 1282.26 feet; thence South 1540.0 feet; thence West 15 chains to beginning.

01-107-0012

Beginning on the West line of Lot 166, EAGLEPOINTE ESTATES PHASE 1, which point is North  $89^{\circ}36'12''$  along the Quarter Section line 1388.59 feet from the center of Section 12, Township 1 North, Range 1 West, Salt Lake Meridian; and running thence South  $16^{\circ}58'29''$  East 378.62 feet, more or less; thence South  $10^{\circ}58'0''$  East 198.66 feet, thence South  $6^{\circ}46'49''$  West 193.69 feet, thence South  $16^{\circ}00'$  West 202.66 feet, thence South  $3^{\circ}45'00''$  West 238.62 feet, thence South  $20^{\circ}07'51''$  East 125.48 feet, thence South  $23^{\circ}15'00''$  East 125.78 feet, thence South  $44^{\circ}55'28''$  East 126.25 feet, thence South  $55^{\circ}40'48''$  East 252.63 feet, thence South  $41^{\circ}30'$  East 525.37 feet, thence South  $60^{\circ}00'00''$  West 1210 feet, North 40 chains, East 260.81 feet to beginning.

01-107-0034

Beginning at the Southwest corner of the Northwest Quarter of Section 12, Township 1 North, Range 1 West, Salt Lake Meridian; and running thence East 290.0 feet to center of a canal; thence South  $89^{\circ}31'43''$  East 967.23 feet, more or less, to the West line of Eaglepointe Estates Phase 1, thence North  $16^{\circ}58'29''$  West 58.77 feet, more or less; thence North  $11^{\circ}55'16''$  East 324.05 feet, thence North  $1^{\circ}45'28''$  East 97.66 feet, thence North  $22^{\circ}00'$  West 66.0 feet, thence North  $29^{\circ}35'26''$  West 50.0 feet, thence North  $60^{\circ}24'34''$  West 141.72 feet to a point on a 20 foot radius curve to the left, thence 29.62 feet along the arc of said curve, said point being on the South line of Eaglepointe Drive, thence Northwesterly along the arc of a 424.0 foot radius curve to the left 257.61 feet, thence North  $59^{\circ}15'00''$  West 413.32 feet, more or less, to a point on a 467.0 foot radius curve to the left, thence 169.13 feet along the

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arc of said curve, thence North 80°00' West 517.66 feet to a point on a 267.0 foot radius curve to the left, thence 95.75 feet along the arc of said curve, thence South 44°00'00" West 470.09 feet, thence South 40°58' West 191.47 feet, thence South 22°37' West 109.8 feet, thence South 66°49' East 20.0 feet; thence South 23°11' West 163.0 feet; thence South 43°34' East 193.11 feet, thence South 30°35' West 433.78 feet to the South line of the Northeast Quarter of Section 11, thence along said line East 837.0 feet to the point of beginning. ALSO: Beginning at the Southeast corner of Section 11, Township 1 North, Range 1 West, Salt Lake Meridian; thence West 837.0 feet, thence North 30°35' East 433.78 feet, thence South 43°32'58" East 193.11 feet, thence South 23°11'00" West 163.0 feet, thence North 66°49'00" West 20.0 feet, thence South 22°37' West 109.8 feet, thence South 40°58' West 389.8 feet to the true point of beginning, thence North 46°29' West 33 feet, thence North 43°46' East 21.80 feet, thence North 65°0'00" East 79.36 feet, thence South 43°31'00" West 101.08 feet to the point of beginning. ALSO: Beginning at the Northwest corner of Lot 101, of Eaglepointe Estates Phase 1, a subdivision of part of Section 12, Township 1 North, Range 1 West, and running thence North 11°51'38" West 105.08 feet along the East line of Eaglepointe Drive, to a point of tangency with a 490.0 foot radius curve to the left, thence Northwesterly along the arc of said curve 198.73 feet, thence North 78°31'27" East 5.0 feet, thence South 11°00' East 324.27 feet, more or less, to North line of said subdivision, thence North 78°31'10" West 92.87 feet, more or less to point of beginning.

01-108-0048 PT

Beginning at the Northwest corner of Section 13, Township 1 North, Range 1 West, Salt Lake Meridian, and running, thence along the Section line South 89°51'14" East 986.33 feet; thence South 32°39'34" West 609.25 feet; thence South 800.00 feet; thence South 89°46'32" West 657.56 feet along the South line of the North half of the Northwest Quarter of said Section 13; thence North 1.318.01 feet along the section line of the point of beginning.

01-120-0033

LESS AND EXCEPTING THE FOLLOWING DESCRIBED PROPERTY FROM THE FOREGOING PARCELS OF LAND: Beginning at the Southeast corner of Lot 147 of Eaglepointe Estates Phase 1 Subdivision in North Salt Lake City, Davis County, Utah, which point is also North 89°51'14" West 595.99 feet along the Section line and North 607.67 feet from the South quarter corner of Section 12, Township 1 North, Range 1 West, Salt Lake Base and Meridian and running thence South 60°00'00" West 1,190.85 feet, thence North 30°00'00" West 119.75 feet, thence North 60°27'42" East 510.86 feet, thence North 4°15'54" East 391.01 feet, thence North 78°20'29" West 93.94 feet, thence North 62°57'23" West 207.14 feet, thence North 46°58'26" West 207.14 feet, thence North 30°59'29" West 207.14 feet, thence North

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23°00'00" West 222.84 feet, thence North 21°42'56" West 270.30 feet, thence North 34°26'19" East 80.36 feet, thence South 89°58'08" East 210.07 feet, thence South 70°16'48" East 374.69 feet to the Northwest corner of Lot 155 of said Phase 1, thence along the boundary of said Phase 1 in the following six courses to the Point of Beginning. South 3°45'00" West 119.53 feet, South 20°07'51" East 125.48 feet, South 23°15'00" East 125.78 feet, South 44°55'28" East 126.25 feet, South 55°40'48" East 252.63 feet, South 41°30'00" East 525.57 feet.