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NOV 04 2011

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BK 5394 PG 323

WHEN RECORDED RETURN TO:

City of North Salt Lake  
c/o City Manager  
20 S. Hwy 89  
P.O. Box 540208  
North Salt Lake, UT 84054

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- 0011  
- 0012  
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RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
11/04/2011 10:25 AM  
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**TRAILS EASEMENT AGREEMENT**

This TRAILS EASEMENT AGREEMENT (the "Agreement") is executed this 19<sup>th</sup> day of July, 2011, by and between EAGLEWOOD VILLAGE, INC., a Utah corporation ("Eaglewood"), and the City of North Salt Lake, a municipal corporation and political subdivision of the State of Utah (the "City").

**RECITALS**

WHEREAS, Eaglewood is the developer of certain real property located in North Salt Lake, Davis County, State of Utah, known as Eaglewood Village (the "Property"); and

WHEREAS, located within the Property is a certain visible, steep hillside (the "Hillside"), located upon a portion of that certain property more particularly described on Exhibit A attached hereto and made a part hereof, which Hillside is particularly depicted on the map attached hereto and made a part hereof as Exhibit B.

WHEREAS, the City desires to construct, operate, maintain, repair, remove and replace one or more trails and pathways and related amenities (including but not limited to landscaping, sitting areas (i.e. benches, gazebos, etc.) and lighting), for public non-vehicular (i.e. pedestrian and bicycle) use on the Hillside; and

WHEREAS, Eaglewood and the City are willing to enter into this Agreement whereby Eaglewood will grant to the City a permanent easement over and across the Hillside for the foregoing purpose.

**COVENANTS**

NOW, THEREFORE, in consideration of the promises and conditions set forth herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Eaglewood and the City hereby agree as follows:

1. **Grant of Trails Easement.** Eaglewood hereby grants and conveys to the City a perpetual easement over and across the Hillside, for the construction, operation, maintenance, repair and replacement of trails, pathways, and related amenities (including but not limited to

landscaping, sitting areas (i.e. benches, gazebos, etc.) and lighting) (collectively "Trails"), and an access easement for public non-vehicular (i.e. pedestrian and bicycle) use of the Trails.

a. Notwithstanding anything herein to the contrary, Eaglewood, for itself and on behalf of its successors and assigns as owners of the Hillside, reserves the right to grant additional easements to third parties within or across the Hillside not inconsistent with the easement granted herein, and to place improvements on and to utilize the Hillside for uses not inconsistent with the easement granted herein, including, without limitation, the installation, use, maintenance and replacement of landscaping, sprinkler systems, sitting areas, roads/trails, parking lots, and other improvements (collectively "Other Hillside Improvements"). Nothing herein shall be construed to create any obligation upon Eaglewood, its successors or assigns, to provide any Other Hillside Improvements.

b. The City shall conduct its activities within the Hillside in a manner which avoids interference with the Other Hillside Improvements (if any) or which will otherwise create an unreasonable disturbance to other improvements located on the Hillside and/or to residents or other property owners of the Property.

2. **Maintenance and Security of Trails.** Upon the installation of any Trails by the City upon the Hillside, the City shall maintain such Trails and area immediately surrounding such Trails in the same or better condition as the City maintains its other comparable trails within the City's trails system, and Eaglewood hereby grants to the City reasonable access upon the Hillside, between the Trails and a dedicated City street, for the maintenance, repair and operation of the same. Furthermore, the City shall be solely responsible for providing security with respect to such Trails.

3. **Signage.** The City will post appropriate signs at the entrance to and at various points along the Trails (a) warning of the risks and dangers of using the Trails, and (b) instructing the public users of the Trail Easement Area to not depart from such Trails.

4. **Indemnity.** The City shall indemnify Eaglewood, its successors and assigns as owners of the Property, for all damage caused to, or claims made against, Eaglewood, its successors or assigns, as a result of the City's negligence or intentional misconduct with respect to the City's exercise of the rights and privileges herein granted to the City, or the performance of the obligations herein imposed upon the City.

5. **Agreement to be Recorded.** This Agreement shall be recorded against the Hillside and shall be deemed to run with the land and shall be binding on all successors and assigns of Eaglewood in the ownership or development of any portion of the Hillside.

6. **Lawful Agreement.** The parties represent that each of them has lawfully entered into this Agreement, having complied with all relevant statutes, ordinances, resolutions, bylaws, and other legal requirements applicable to their operation. The parties further represent that each of them has authority to enter into this Agreement and that the individuals signing this

Agreement on behalf of each party have authority to bind the party represented by the signing individual. Notwithstanding the foregoing, the Trails Easement granted herein is subject to all existing easements, encumbrances, covenants, conditions and interests of record.

7. **Applicable Law.** This Agreement shall be interpreted pursuant to the laws of the State of Utah.

8. **Time of Essence.** Time shall be the essence of this Agreement.

9. **Interpretation.** The invalidity of any portion of this Agreement shall not prevent the remainder from being carried into effect. Whenever the context of any provision shall require it, the singular number shall be held to include the plural number, and vice versa, and the use of any gender shall include the other gender. Should any provision of this Agreement require judicial interpretation, the Court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party, by reason of the rule of construction that a document is to be construed more strictly against the person who himself or through his agents prepared the same, it being acknowledged that both parties have participated in the preparation hereof.

10. **Modification.** No oral modification or amendments to this Agreement shall be effective, but this Agreement may be modified or amended by written agreement.

11. **Assignment.** Neither this Agreement nor any of the provisions, terms or conditions hereof can be assigned to any other party, individual or entity without assigning the rights as well as the responsibilities under this Agreement.

12. **Relationship of Parties.** This Agreement does not create any joint venture, partnership, undertaking or business arrangement between the parties hereto, nor any rights or benefits to a third party.

13. **Incorporation of Recitals.** The Recitals of this Agreement are incorporated by reference into the Covenants section of this Agreement as if fully set forth herein.

*[Signatures on Next Page.]*



**EXHIBIT A**

**HILLSIDE**

The "Hillside" is located upon a portion of that certain property located in the City of North Salt Lake, Davis County, Utah, which property is more particularly described as follows:

LOTS 3, 5 AND 6, EAGLEWOOD VILLAGE SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE DAVIS COUNTY RECORDER'S OFFICE.

**EXHIBIT B**  
**MAP OF HILLSIDE**

*See attached.*

