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WHEN RECORDED, MAIL TO:
Eastgate Homeowners Association
PO Box 1029
West Jordan, UT 84084

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RANDALL A. COVINGTON
UTAH COUNTY RECORDER
2005 Feb 15 3:32 pm FEE 204.00 BY LJ
RECORDED FOR EASTGATE HOMEOWNERS ASSOCIA

Parcel #'s: 38:198:0001 through 38:198:0017
Parcel #'s: 38:210:0018 through 38:210:0030
Parcel #'s: 38:220:0031 through 38:220:0049
Parcel #'s: 38:230:0050 through 38:230:0066
Parcel #'s: 38:236:0067 through 38:236:0079
Parcel #'s: 38:255:0080 through 38:255:0103
Parcel #: 22:033:0002

Space Above for Recorder's Use Only

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

for

EASTGATE TOWNHOMES

A Utah Planned Unit Development Project

THIS DECLARATION is made and executed by **Eastgate Homeowners Association**, a Planned Unit Development (PUD), a nonprofit Utah Corporation, hereinafter referred to as "Community Association" or "CA," pursuant to the provisions of the Utah Condominium Ownership Act, Utah Code Annotated §§ 57-8, for itself, its successors, grantees and assigns.

ARTICLE I

RECITALS

CA is the owner of certain land situated in the City of Provo, County of Utah, State of Utah, which is more particularly described in **Article V**.

Buildings and other improvements have been constructed on said land in accordance with the information set forth in the Record of Survey Map recorded previously, prepared and certified by David V. Thomas, a registered land surveyor.

CA desires by recording this Declaration and the aforesaid Record of Survey Map to submit the above-described land and the said buildings and other improvements constructed thereon to the provisions of the Utah Condominium Ownership Act (to the extent they are applicable hereto and not inconsistent herewith) known as the Eastgate Townhomes.

The covenants, conditions, and restrictions, contained in the Declaration and in the exhibits hereto shall be enforceable equitable servitudes and shall run with the land.

The administration of the Property shall be governed by the Bylaws which are embodied in a separate instrument, a true copy of which is appended to and recorded with this Declaration as Exhibit "B".

This Declaration replaces in entirety, any and all previously recorded Declarations and their attached Exhibits. Certification of the required vote for amending these documents is recorded with the same as Exhibit "C".

NOW, THEREFORE, for such purposes, CA hereby makes the following
Declaration: -----

ARTICLE II

DEFINITIONS

1. **Name.** The name by which the Project shall be known as Eastgate Townhomes.

2. **Definitions.** The terms used herein shall have the meaning stated in the Utah Condominium Ownership Act and as given in this Section 2.

(a) **"Act"** shall mean and refer to the Condominium Ownership Act of the State of Utah, Utah Code Annotated 1953, §§ 57-8 as the same now exists and as it may be amended from time to time.

(b) **"Association"** shall mean and refer to the Eastgate Homeowners Association, Inc., a Utah nonprofit corporation formed to manage the affairs of the Project in accordance with this Declaration and **Articles of Incorporation** and the **Bylaws** of the Association attached hereto, which Articles and Bylaws are hereby made a part hereof by this reference.

(c) **"Board of Trustees"** shall mean and refer to the governing Board of the Association, appointed or elected in accordance with this Declaration, the Articles of Incorporation and the Bylaws.

(d) **"CA"** shall mean the Eastgate Homeowners Association, a nonprofit Utah Corporation, the owner of the Common and Limited Common Property as described on the Record of Survey Map, and the authoritative body, which has amended and executed this Declaration and/or any successor to or assignee of CA which, either by operation of law or through a voluntary conveyance, transfer or assignment, comes to stand in the same relation to the Project as did its predecessor.

(e) **"Common Areas and Facilities"** shall mean and refer to:

- (1) The land described herein;
- (2) That portion of the Property not specifically included in the respective Units as herein defined;

(3) All foundations, columns, girders, beams, supports, main walls, roofs, corridors, stairs, stairways, yards, landscaping, fences, service and parking areas and in general all other apparatus, installations and other parts of the Property necessary or convenient to the existence, maintenance and safety of the foregoing or normally in common use;

(4) Elements of the plumbing and electrical systems, as well as all appliance areas outside of individual units which service or are appurtenant to more than one unit.

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(5) Those areas specifically set forth and designated in the Map as "Common Area" or "Limited Common Area"; and

(6) All Common Areas and Facilities as defined in the Act, whether or not expressly listed herein.

(f) **"Common Expenses"** shall mean and refer to:

(1) All sums described in the Act, this Declaration, the Bylaws or in the rules and regulations promulgated by the Board of Trustees which are lawfully assessed against the Unit Owners or any of them in accordance with the Act, this Declaration, the Bylaws or such rules and regulations;

(2) All expenses of operation, administration, maintenance, repair and replacement of the Common Areas and Facilities, including but not limited to, such aggregate sum as the Board of Trustees shall from time to time estimate, in its best judgment, is needed during each year or other appropriate time period to pay all budgeted expenses and other cash requirements arising out of or in connection with operation, administration, maintenance, repair and/or replacement of the Common Areas and Facilities, including but not limited to:

(i) all costs and expenses of operation of the Association, all costs of management of the Common Areas and Facilities, all costs of enforcement of the Act, this Declaration, the Bylaws and the rules and regulations promulgated by the Board of Trustees, all costs of repair and reconstruction of the Common Areas and Facilities, all insurance premiums, all Utility Services, all wages and salaries, all legal and accounting fees, all management fees and all other expenses and liabilities incurred by the Association under or by reason of this Declaration;

(ii) the payment of any deficit remaining from any previous year or time period;

(iii) the creation, maintenance or expansion of an adequate reserve or contingency fund for maintenance, repairs and/or replacement of those Common Areas and Facilities that must be replaced on a periodic basis, and/or for unforeseen emergencies; and

(iv) all other costs and expenses relating to the Project;

(3) Expenses agreed upon as Common Expenses by the Board of Trustees; and

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(4) All other expenses declared to be Common Expenses by the Act, this Declaration, the Bylaw or the rules and regulations promulgated by the Board of Trustees.

(g) **"Community"** shall mean and refer to all of the land hereby made subject to this Declaration by an instrument in writing, duly executed and recorded among the Recorder's Office and any Additional Property that may hereafter expressly be made subject to this Declaration by an instrument in writing, duly executed and recorded among the Recorder's Office.

(h) **"Condominium Association"** shall mean and refer to the definition as found in 2.(d) above.

(i) **"Declaration"** shall mean this Declaration of Covenants, Conditions and Restrictions for Eastgate Townhomes, a Utah Planned Unit Development Project, as the same may be supplemented or amended from time to time.

(j) **"Limited Common Area"** shall mean and refer to those portions of the Common Areas and Facilities reserved for the exclusive use of certain Unit Owners, as specified herein and as more particularly identified in the Map.

(k) **"Manager"** shall mean and refer to the person, persons or corporation, if any, selected by the Association to manage the affairs of the CA, subject to the provisions of Article XII, Section 5 hereof.

(l) **"Map"** shall mean and refer to the Record of Survey Map of the within-described Project recorded herewith by CA.

(m) **"Mortgage"** shall mean and include both a mortgage and a deed of trust on any Unit. **"First Mortgage"** shall mean a Mortgage, the lien of which is prior and superior to the lien of any other Mortgage on the same Unit.

(n) **"Mortgagee"** shall mean and include both the mortgagee under a mortgage and the beneficiary under a deed of trust on any Unit. **"First Mortgagee"** shall mean the Mortgagee under a First Mortgage on any Unit.

(o) **"Plat"** shall mean and refer to any plats recorded among the Recorder's Office that are or may hereafter expressly be made subject to this Declaration by an instrument in writing, duly executed, and recorded among the Recorder's Office.

(p) **"Property"** shall mean and include the land described in Article V, the buildings, all improvements and structures thereon, all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith.

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(q) **"Rules and Regulations"** shall mean and include those rules and regulations adopted from time to time by the Board of Trustees that are deemed necessary for the enjoyment of the Project; provided they are not in conflict with the Act or the Declaration.

(r) **"Unit"** shall mean and refer to a single Unit in this Project including mechanical equipment and appurtenances located within any one unit or located without said unit but designated and designed to serve only the unit, such as appliances, electrical receptacles and outlets, air conditioners, fixtures and the like, as well as all decorated interiors, all surfaces of interior structural walls, floors and ceilings, both inside and outside surfaces of windows and window frames, both inside and outside surfaces of doors and door frames, and trim, consisting of, among other things and as appropriate, wallpaper, paint, flooring, carpeting and tile. All pipes, wires, conduits, or other public utility lines or installations constituting a part of the unit and serving only the unit, and any structural members of any other Property of any kind, including fixtures and appliances within any unit, which are removable without jeopardizing the soundness, safety, or usefulness of the remainder of the building within which the unit is situated shall be considered part of the unit.

(s) **"Unit Owner"** or **"Owner"** shall mean the entity, person or persons owning a Unit in the Project in fee simple as shown in the records of the County Recorder of the county in which the Project is situated. The term Unit Owner or Owner shall not mean or include a mortgagee or beneficiary or trustee under a deed of trust unless and until such a party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof, but shall include persons or entities purchasing a Unit under contract.

(t) **"Utility Services"** shall, at this time, include, but not be limited to, water, sewage disposal, and garbage disposal and all other similar services provided to the Project which are not separately billed or metered to the individual Units by the utility or party furnishing such service.

(u) Those definitions contained in the Act, to the extent they are applicable hereto and not inconsistent herewith, shall be and are hereby incorporated herein by reference and shall have the same effect as if expressly set forth herein and made a part hereof.

ARTICLE III

SUBMISSION TO OWNERSHIP

CA hereby submits the Property to the provisions of this Declaration and the Map in the office of the recorder of the county in which the Project is situated. This amended Declaration is submitted in accordance with the terms and the provisions of the Act and shall be construed in accordance therewith. It is the intention of CA that the provisions of the Act shall apply to the Property (to the extent they are applicable hereto and not inconsistent herewith).

ARTICLE IV

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COVENANTS TO RUN WITH THE LAND

This Declaration contains covenants, conditions and restrictions relating to the Project which, in accordance with the provisions of the Act, are and shall be enforceable equitable servitudes, shall run with the land and shall be binding upon CA, its successors and assigns and upon all Unit Owners or subsequent Unit Owners, their grantees, mortgagees, successors, heirs, personal representatives, devisees, lessees, assigns and guests.

ARTICLE V

DESCRIPTION OF PROPERTY

5.1 Description of Land. The land on which the building and improvements are located is particularly described as the following:

Commencing at a point which is North 89°19' 10" East 520.76 feet along the Section line and North 1136.05 feet from the South quarter corner of Section 7, Township 7 South, Range 3 East, Salt Lake Base and Meridian; thence as Follows: North 89°39' 42" West 111.82 feet; thence North 45°00'00" West 145.29 feet; thence North 00°13'23" East 143.73 feet ; thence North 89°35'54" West 326.71 feet; thence North 00 °13'42" West 27.92 feet; thence South 89°37'15" East 226.60feet; thence North 00° 26'38" West 28.00 feet; thence South 89°35'54" East 100.74 feet; thence South 89°46'37" East 99.71 feet; 00°13'23" West 28.00 feet; thence South 00°18'04" West 52.10 feet; thence South 00°20'18" West 36.41 feet; thence South 62°49'16" West 142.07 feet to the point of the beginning. Contains 1.8371 acres.

And,

Beginning at a point which is 89° 19'10" East 600.60 feet and North 597.7 feet from the South quarter corner of Section 7, Township 7 South, Range 3 East, Salt Lake City Base and Meridian

and thence running North 39°09'07" West 982.65 feet; thence North 00°13' 42" West 24.72 feet; thence South 89°35'54" East 326.71 feet; thence south 00°13'23" West 143.73 Feet; thence South 45°00'00" East 145.29 feet; thence South 89°39' 42" East 111.82 feet; thence North 62°49'16" East 142.07 feet; thence South 00°20'18" West 248.07 feet; thence South 00°14'24" West 286.94 feet; thence South 81°55'13" East 1.49 feet; thence South 02°33'50" West 28.87 feet ; thence South 54° 41'20" West 45.76 feet; thence South 29°51'43" West 13.51 feet to the point of beginning. Contains 4.8341 acres.

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And,

Beginning at a point which is North 641.65 feet and West 1731.32 feet from the Southeast corner of Section 7, Township 7 South, Range 3 East, Salt Lake Base and Meridian and thence running South 89°44'35" West 274.42 feet; thence North 81°55'13" West 1.49 feet; thence North 00°14'24" East 286.94 feet; thence North 89°51'13" East 273.10 feet; thence South 00°19' 05" East 286.61 feet to the point of the beginning. Contains 1.8078 acres.

TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property, whether or not the same are reflected on the Plat

5.2 Additional Annexation by Steven Turley, Developer. Steven Turley, Developer (hereafter referred to as "Annexing Developer") may subject a parcel of land, the legal description of which is attached hereto as Exhibit "A" to the easements, covenants, conditions and restrictions of this Declaration, resulting in an expansion of Eastgate Townhomes, a Planned Unit Development, subject to compliance with the conditions imposed by the following Section 5.03. Upon full compliance with Section 5.03 below, the Annexing Developer may, for a period of three years from the date of this amendment, record a Supplement Declaration which (a) is signed by the then owner(s) of such annexed land as developer; (b) describes the land to be annexed; (c) declares that the annexed land is to be held, transferred, sold, conveyed and occupied as part of the Property subject to this Declaration; (d) sets for such additional limitation, restrictions, easements, covenants, and conditions not inconsistent with those of this Declaration as are applicable to the annexed land, and (e) which is signed by the Board of Trustees, accepting its content, of the Eastgate Homeowners Association. When any such annexation becomes effective, the annexed land shall become part of the Property and Development and subject to the provisions of this Declaration and any amendment or supplement thereto.

5.3 Annexing Developer Requirements. The Annexing Developer's right to annex the parcel of land attached hereto as Exhibit "A" shall be subject to presenting plans and documents evidencing compliance with the following requirements:

a. The annexed land must only consist of that real property described in the attached Exhibit "A."

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b. The Annexing Developer must create and submit Lots and Units consistent with the Planned Unit Development characteristics and requirements set forth in this Declaration;

c. The annexed land, Lots, Units, landscaping, and improvements must be constructed in a manner consistent with the existing style, architecture, design and quality of the Eastgate Townhome Development.

d. No more than one building containing three attached townhome units are permitted to be annexed.

e. A plat map shall be recorded in the office of the County Recorder of Utah County, Utah, evidencing the annexed property.

ARTICLE VI

RIGHT TO COMBINE UNITS

With the written consent of the Board of Trustees, which consent shall not be unreasonably withheld, two or more Units may be utilized by the Owner or Owners thereof as if they were one Unit. To the extent permitted in the written consent of the Association, any walls, floors, or other structural separations between any two such Units, or any space which would be occupied by such structural separations but for the utilization of the two Units as one Unit, may, for as long as the two Units are utilized as one Unit, be utilized by the Owner or Owners of the adjoining Units as Limited Common Areas, except to the extent that any such structural separations are necessary or contain facilities necessary for the support, use, or enjoyment of other parts of the Project. At any time, upon the request of the Owner of one of such adjoining Units, any opening between the two units which, but for joint utilization of the two Units, would have been occupied by structural separation, shall be closed, at the equal expense of the Owner or Owners of each of the two Units and the structural separations between the two Units shall thereupon become Common Areas.

ARTICLE VII

STATEMENT OF PURPOSE AND RESTRICTION ON USE

1. **Purpose.** The purpose of the Project is to provide residential housing space for Unit Owners, their families, guests, lessees and tenants, and the family and guests of such lessees and tenants, and to provide parking for use in connection therewith, all in accordance with the provisions of the Act.

2. **Restriction on Use.** The Units and Common Areas and Facilities shall be used and occupied as hereinafter set forth:

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(a) **Residential Use Only.** Each of the Units shall be occupied only as a residence and for no other purpose. No business shall be operated in or from any Unit other than the rental of the Unit itself, subject to the foregoing occupancy restrictions, applicable zoning and business regulation laws and ordinances.

(b) **Common Areas; Limited Common Areas; Parking Restrictions.** The Common Areas and Facilities shall be used only for the purposes for which they are intended. Each unit owner shall at his own cost keep the Limited Common Areas designated in connection with his unit in a clean, sanitary, and attractive condition at all times. Each parking space shall be used for the parking of currently licensed, registered (as evidenced by a valid and clearly displayed registration sticker) and operable motor vehicles of a size no larger than a standard automobile or a standard truck and for no other purpose. No more than one (1) vehicle may be parked in any parking space at one time. No trailers, boats, racks, snowmobiles, motor homes, recreational vehicles or any other type of vehicles shall be stored in parking spaces. Owners and tenants should refer to the Eastgate Homeowners Association Rules & Regulations for further information.

(c) **Insurance Rates; Compliance with Laws.** Nothing shall be done or kept in any Unit or in the Common Areas and Facilities which will increase the rate of insurance on the building or contents thereof beyond that customarily applicable for the use authorized for such Unit, or will result in the cancellation of insurance on the building, or the contents thereof, without the prior written consent of the Association. No Unit Owner shall permit anything to be done or kept in his Unit or in the Common Areas and Facilities which is in violation of any law or regulation of any governmental authority.

(d) **Visible Changes; Signs.** No Unit Owner shall cause or permit anything to hang, be displayed, be visible or otherwise be placed on the exterior walls or roof of any building or any part thereof, or on the outside of windows or doors, or within any Limited Common Areas appurtenant to such Owner's Unit, without the prior written consent of the Association. Except for one "For Sale" or "For Rent" sign, of a size no greater than five (5) square feet, no sign of any kind shall be displayed to the public view on or from any Unit or the Common Areas and Facilities without the prior written consent of the Association. There shall be a limited of one (1) sign and no post signs may ever be used.

(e) **Offensive Activities; Nuisances.** No noxious or offensive activity shall be carried on in any Unit or in the Common Areas and Facilities, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Unit Owners or occupants. Smoking has been classified as a nuisance, and rights of ownership do not grant exclusive right to smoke inside Units or in any Common Areas, where drifting smoke becomes a nuisance to any other person.

(f) **Structural Integrity.** Nothing shall be done in any Unit or in, on or to the Common Areas and Facilities which will impair the structural integrity of the building or any part thereof or which would structurally change the building or any part thereof except as is otherwise provided herein.

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(g) **Pets.** No animals, livestock, or poultry of any kind shall be permitted on any Lot or within any Unit except such domesticated household pets or birds as are allowed pursuant to the rules and regulations, including applicable Provo City leash and other animal control laws, adopted by the Board pursuant to rights reserved in this Declaration.

(h) **Pet Waste. IT IS UNLAWFUL FOR THE OWNER OF ANY PET NOT TO IMMEDIATELY REMOVE EXCREMENT DEPOSITED BY THE PET ON ANY LIMITED OR COMMON PROPERTY.**

(i) **Debris.** The Common Areas and Facilities shall be kept free and clear of all rubbish, debris and other unsightly materials.

(j) **Admission Fees.** No admission fees, charges for use, leases or other income-generating arrangement of any type shall be employed or entered into with respect to any portion of the Common Areas and Facilities without the prior written consent of the Association.

ARTICLE VIII

PERSON TO RECEIVE SERVICE OF PROCESS

The person to receive service of process in the cases provided herein or in the Act is JESSICA RIBBLE whose address within the State of Utah is 853 East 1090 South; Provo, UT 84606. The said person may be changed by the recordation by the Association of an appropriate instrument.

ARTICLE IX

OWNERSHIP AND USE

1. **Ownership of a Unit.** Except with respect to any of the Common Areas and Facilities located within the bounds of a Unit, each Unit Owner shall be entitled to the exclusive ownership and possession of his Unit.

2. **Nature of and Restrictions on Ownership and Use.** Each Unit Owner shall have and enjoy the rights and privileges of fee simple ownership of his Unit. There shall be no requirements concerning who may own Units, it being intended that they may and shall be owned as any other property rights by persons, corporations, partnerships or trusts and in the

form of common or joint tenancy. The Unit Owners may lease or rent their Units with their appurtenant rights subject to terms and conditions chosen solely by the Unit Owner and his lessee or tenant, except that all Unit Owners, their tenants and other occupants or users of the Project, shall be subject to the Act, this Declaration, the Bylaws, and all rules and regulations of the Association.

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3. **Single Family Housing Ordinance (Local Zoning Definition).** Eastgate Townhomes is zoned by the City of Provo, County of Utah, State of Utah as Single Family Housing.

“Family”, unless otherwise expressly provided herein, means any one of the following:

- (1) one person living alone; or
- (2) the head of household and all persons related to the head of household by marriage or adoption as a parent, child, grandparent, grandchild, brother, sister, uncle, aunt, nephew, niece, great-grandparent or great-grandchild; or
- (3) two or three related or unrelated persons living and cooking together as a single housekeeping unit.

One or two additional related or unrelated person may be included within the definition of a family for purposes of option (2) above (and not options (1) and (3)) if two or more of the persons within option (2) share the legal relationship of parent and child or grandparent and child and if all persons within that option, including the unrelated persons, live and cook together as a single housekeeping unit. For purposes of this exception, the parent or grandparent must actually reside in the subject dwelling. (Provo City Code 14.06, located on page 3 of the Interpretations and Definitions: Provo City Zoning Ordinance Chapter 14)

4. **Rental Restrictions.**

(a) **Approved Leases.** Written Leases shall be in the form acceptable to the Board of Trustees and shall provide (and if a lease does not so provide, shall be deemed to provide) that (1) the association shall have the right to evict the tenant on behalf of the unit owner in the event of violation of state law, the association documents, or the rules and regulations of the association; and (2) that the tenant shall abide by the association documents and the rules and regulations of the association.

(b) **Lease Length; No Transient Use.** No unit shall be rented for transient or hotel purposes or, in any event, for an initial period of less than Twelve (12) months. Transient or hotel purposes shall be defined as (1) rental for any period less than 180 days; or (2) any rental if the occupants of the unit are provided customary hotel services, such as room service for food and beverages, maid service, furnishing laundry and linen, and bell service.

(c) **No Assignments or Subleases.** Leases may not be assigned, and no units may be subleased.

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(d) **Lease Entire Unit.** No owner may lease less than an entire unit.

(e) **Copy of Lease to HOA.** Each unit owner of an association unit shall, promptly following the execution of any lease of a unit, forward a conformed copy thereof to the Board of Trustees.

(f) **Tenant Information to HOA.** The unit owner shall supply the association with information pertaining to the tenant and/or the tenancy that the association reasonably requires, either by way of its rules and regulations or otherwise.

(g) **Violations of Association Documents.** In the event a tenant of a unit fails to comply with the provisions of this declaration, the bylaws, or rules and regulations, then, in addition to all other remedies that it may have, the association shall notify the owner of such violations and demand that the same be remedied through the owner's efforts within 30 days of such notice. If such violation is not remedied within said 30-day period, then the owner shall immediately thereafter, at owner's cost and expense, institute and diligently prosecute an eviction action against the tenant on account of such violation. Such action shall not be compromised or settled without the prior written consent of the association.

(h) **Owner Assumes Responsibility.** The unit owner shall be responsible for all attorneys' fees and costs incurred by the association as a result of a violation of the association documents and/or the rules and regulations by the tenant, irrespective of whatever suit is instituted, and the association may levy a special assessment therefor.

5. **Prohibition against Subdivision of Unit.** Except as provided in Article VI above, no Unit Owner, by deed, plat or otherwise, shall subdivide or in any other manner cause his Unit to be separated into physical tracts or parcels smaller than the whole Unit as shown on the Map, nor shall any Unit Owner cause, suffer or permit the fee ownership of his Unit to be separated or divided in annually recurring or any other time periods for which the Unit will be separately owned.

6. **Ownership of Common Areas and Facilities.** The Common Areas and Facilities contained in the Project are described and identified in Article V of this Declaration and the properly recorded maps on file with the County Recorder. Said Common Areas and Facilities shall be owned by the Eastgate Homeowners Association.

7. **Use of Common Areas and Facilities.** The Common Areas and Facilities shall be used only in a manner which is consistent with their community nature and with the use restrictions applicable to the Units contained in the Project, subject to this Declaration, the

Bylaws, and the rules and regulations promulgated by the Association. This right of use shall be appurtenant to and run with each Unit.

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ARTICLE X

LIMITED COMMON AREAS

Each Unit Owner shall be entitled to the exclusive use and occupancy of the Limited Common Areas reserved to his Unit as set forth herein and/or as shown on the Map, subject, however, to the same restrictions on use which apply generally to the Common Areas and Facilities and to rules and regulations promulgated by the Association. Such right to use the Limited Common Areas shall be appurtenant to and contingent upon ownership of the Unit associated therewith, and even though not specifically mentioned in the instrument of transfer, shall automatically pass to the grantee or transferee of such Unit. Such right of use shall not be revocable, nor may it be voluntarily or involuntarily relinquished, waived, or abandoned.

ARTICLE XI

VOTING - MULTIPLE OWNERSHIP

The vote attributable to and exercisable in connection with a Unit shall be one (1) vote for each Lot in which such member holds the interest. In the event there is more than one Owner of a particular Unit, the vote relating to such Unit shall be exercised as such Owners may determine among themselves. A vote cast at any meeting by any of such Owners shall be conclusively presumed to be the vote attributable to the Unit concerned unless an objection is immediately made by another Owner of the same Unit. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

ARTICLE XII

MANAGEMENT

1. **The Association.** The business, property and affairs of the Project shall be managed, operated and maintained by the Association as agent for the Unit Owners. All duties, responsibilities, rights and powers imposed upon or granted to the Board of Trustees or to the "manager" under the Act shall be duties, responsibilities, rights and powers of the Association hereunder. In addition to its other authority and powers set forth in the Act, the Articles of Incorporation and elsewhere in this Declaration, the Association shall have, and is hereby granted, the following authority and powers:

(a) the authority, without the vote or consent of the Unit Owners or of any other person(s), to grant or create, on such terms as it deems advisable, utility and similar easements, over, under, across and through the Common Areas and Facilities;

(b) the authority to execute and record, on behalf of all Unit Owners, any amendment to the Declaration or Map which has been approved by the vote or consent necessary to authorize such amendment;

(c) the power to sue;

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(d) the authority to enter into contracts which in any way concern the Project, so long as any vote or consent of the Unit Owners necessitated by the subject matter of the agreement has been obtained;

(e) the power and authority to convey or transfer any interest in real property, so long as any vote or consent necessary under the circumstances has been obtained;

(f) the authority to promulgate such reasonable rules, regulations, and procedures as may be necessary or desirable to aid the Association in carrying out any of its functions or to insure that the Project is maintained and used in a manner consistent with the interests of the Unit Owners; and

(g) the power and authority to perform any other acts and to enter into any other transactions which may be reasonably necessary for the Association to perform its functions as agent for the Unit Owners.

Any instrument executed by the Association that recites facts which, if true, would establish the Association's power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument.

2. **Responsibility of the Board of Trustees.** The Board of Trustees shall be responsible for the control, operation and management of the Project in accordance with the provisions of the Act, this Declaration, such administrative, management and operational rules and regulations as it may adopt from time to time as herein provided, and all agreements and determinations lawfully made and entered into by said Board of Trustees.

3. **Approval Required.** The Board of Trustees shall not, without the prior favorable vote or the written consent of the Owners of a majority interest of the ownership, have the authority to purchase or sell any real property or add any property to the Common Areas and Facilities, except for property used in the management of the Project.

4. **Additional Facilities.** The Board of Trustees shall, subject to any necessary approval, have the authority to provide such facilities, in addition to those for which provision has already been made, as it may deem to be in the best interests of the Unit Owners and to effect the necessary amendment of documents and maps in connection therewith.

5. **Manager.** The Board of Trustees may carry out through a Manager any of its functions which are properly the subject of delegation. Any Manager so engaged shall be responsible for managing the Project for the benefit of the Association and the Unit Owners, and shall, to the extent permitted by law and the terms of the agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Board of Trustees itself. Any agreement for professional management of the Project, and any management contract, employment contract or lease of recreational or parking areas or facilities, and any other contract providing for services of the CA, and any lease to which CA is a party which may be entered into by the Board of Trustees or the Association shall call for a term not exceeding two (2) years and shall provide that such agreement or lease may be terminated by either party thereto without cause and without payment of a termination fee upon not in excess of ninety (90) days written notice.

ARTICLE XIII

EASEMENTS

1. **To Service Common Areas and Facilities.** Each Unit shall be subject to such easements as may be necessary for the installation, maintenance, repair or replacement of any Common Areas and Facilities located within the boundaries of such Unit or reasonably accessible only through such Unit.

2. **For Encroachments.** In the event that, by reason of the construction, reconstruction, repair, movement, settlement or shifting of any part of a building, any part of the Common Areas and Facilities encroaches or shall hereafter encroach upon any part of any Unit or any part of any Unit encroaches or shall hereafter encroach upon any part of the Common Areas and Facilities or any other Unit, valid easements for such encroachment and the maintenance of such encroachment are hereby established and shall exist for the benefit of such Unit and the Common Areas and Facilities, as the case may be, so long as all or any part of the building containing any such Unit shall remain standing; provided, however, that in no event shall a valid easement for any encroachment be created in favor of any Unit Owner or in favor of the Unit Owners as owners of the Common Areas and Facilities if such encroachment occurred due to the willful conduct of such Unit Owner or Owners occurring after the date on which this Declaration is recorded.

ARTICLE XIV**CHANGE IN OWNERSHIP**

The Association shall maintain up-to-date records showing the name of each Owner, the address of such Owner, and the Unit which is owned by him. In the event of any transfer of a fee or undivided fee interest in a Unit either the transferor or transferee shall furnish the Association with evidence establishing that the transfer has occurred and that the deed or other instrument accomplishing the transfer is of record in the office of the recorder of the county where the Project is located. The Association may for all purposes act and rely on the information concerning Owners and Unit ownership which is thus acquired by it or, at its option, the Association may act and rely on current ownership information respecting any Unit or Units which is obtained from the office of the county recorder of the county where the Project is located. The address of an Owner shall be deemed to be the address of the Unit owned by such Owner unless the Association is otherwise advised in writing. An Owner who fails to so furnish the above information shall continue to be liable for monthly assessments of Common Expenses even after transferring ownership of the Unit.

ARTICLE XV**ASSESSMENTS**

Every Unit Owner shall pay his proportionate share of the Common Expenses. Payment thereof shall be in such amounts and at such times as the Association determines in accordance with the Act, this Declaration, the Articles of Incorporation or the Bylaws. There shall be a lien for non-payment of Common Expenses as provided in the Act.

In assessing Unit Owners for capital improvements, no assessment for a single improvement in the nature of a capital expenditure exceeding the sum of Ten Thousand Dollars (\$10,000.00) shall be made without the same having been first voted on and approved by a majority of the Unit Owners.

ARTICLE XVI**TAXES**

It is understood that under the Act each Unit is deemed a parcel and subject to separate assessment and taxation by each assessing unit and special district for all types of taxes authorized by law. Each Unit Owner will, accordingly, pay and discharge any and all taxes which may be assessed against his Unit.

ARTICLE XVII

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INSURANCE

1. **Hazard Insurance.** The Association shall at all times maintain in force hazard insurance meeting the following requirements:

(a) A multi-peril type policy covering the entire Project (Common Areas and Facilities, including, without limitation, fixtures, machinery, equipment and supplies maintained for the service of the Project) shall be maintained. Such policy shall provide coverage against loss or damage by fire and other hazards covered by the standard extended coverage blanket "all risk" endorsement and by debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage. As a minimum, such policy shall provide coverage on a replacement cost basis in an amount not less than that necessary to comply with any co-insurance percentage specified in the policy, but not less than one hundred percent (100%) of the full insurable value of the Project (based upon replacement cost). Deductibles shall not exceed the lower of \$10,000 or one percent of the applicable amount of coverage. Funds for such deductibles shall be included in the Association's reserves and shall be so designated. Such policy shall include an "Agreed Amount Endorsement" or its equivalent, and, if necessary or appropriate, an "Increased Cost of Construction Endorsement" or its equivalent.

(b) If a steam boiler is or comes to be contained in the Project, there shall be maintained boiler explosion insurance and a broad form policy of repair and replacement boiler and machinery insurance, evidenced by the standard form of boiler and machinery insurance policy. The insurer's minimum liability per accident under boiler and machinery coverage shall equal the insurable value of the building housing such boiler or machinery or Two Million Dollars (\$2,000,000), whichever is less. Deductibles shall not exceed the lower of \$10,000 or one percent of the applicable amount of coverage. Funds for such deductibles shall be included in the Association's reserves and shall be so designated.

(c) If the Project is or comes to be situated in a locale identified by the Secretary of Housing and Urban Development (HUD) or the Director of the Federal Emergency Management Agency (FEMA) as a Special Flood Hazard Area, flood insurance on the Project shall be obtained and maintained providing coverage at least equivalent to that provided under the National Flood Insurance Program (NFIP) for buildings (including equipment and machinery), detached Common Areas and Facilities, and contents not part of buildings (including equipment and machinery owned by the Association) in an amount at least equal to the lesser of (i) one hundred percent (100%) of their insurable value, or (ii) the maximum coverage available under the NFIP with deductibles not to exceed the higher of \$1,000 or one percent of the applicable amount of coverage, subject to the maximum deductible amount allowed under NFIP. Funds for such deductibles shall be included in the Association's reserves and shall be so designated.

(d) The named insured under each policy required to be maintained by the foregoing items (a), (b) and (c) shall be in form and substance essentially as follows: "Eastgate Homeowners Association, Inc."

(e) Each such policy shall provide that notwithstanding any provision thereof which gives the carrier the right to elect to restore damage in lieu of making a cash settlement, such option shall not be exercisable if it is in conflict with any requirement of law or without the prior written approval of the Association.

2. **Fidelity Insurance.** The Association shall maintain in force fidelity insurance covering losses resulting from dishonest or fraudulent acts committed by the Association's managers, trustees, employees, officers, committee members, or volunteers who manage the funds collected and held for the benefit of the Association. The fidelity insurance shall name the Association as the insured and shall be in an amount at least equal to the maximum amount of funds in the Association's custody at any one time, but in no event less than the sum of three (3) months of assessments on the entire Project plus reserves. An appropriate endorsement to the policy shall be secured to cover persons who serve without compensation if the policy would not otherwise cover volunteers. Any professional management firm retained by the Association shall also maintain in force such fidelity insurance at said firm's sole cost and expense.

3. **Liability Insurance.** The Association shall at all times maintain in force comprehensive general liability (CGL) insurance covering all of the Common Areas and Facilities. Such insurance shall include a "Severability of Interest Endorsement" or its equivalent which shall preclude the insurer from denying the claim of a Unit Owner because of negligent acts of other Owners, the Board of Trustees, or the Association of Unit Owners. The Association shall also maintain in force any additional coverage commonly required by private mortgage investors for developments similar to the Project in construction, location and use, including the following where applicable and available: contingent liability from operation of building laws, comprehensive automobile liability, bailee's liability, elevator collision liability, garage keeper's liability, host liquor liability, worker's compensation and employer's liability and contractual liability. The limits of liability under such insurance shall not be less than One Million Dollars (\$1,000,000.00) for personal injury, bodily injury or property damage arising out of a single occurrence.

4. **General Requirements Concerning Insurance.** Each insurance policy maintained pursuant to the foregoing Article XVII Sections 1 through 3 shall be written by an insurance carrier which is licensed to transact business in the State of Utah and which has a general policyholders rating of B+ or better and a financial category rating of Class XII or better in Best's Insurance Guide and shall contain the standard mortgagee clause commonly used by private institutional mortgage investors. No such policy shall be maintained where:

(a) under the terms of the carrier's charter, bylaws or policy, contributions may be required from, or assessments may be made against, a Unit Owner, a Mortgagee, the Board of Trustees, the Association, a Unit, the Common Areas, or the Project;

(b) by the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members;

(c) the policy includes any limiting clauses (other than insurance conditions) which could prevent the party entitled from collecting insurance proceeds.

Each such policy shall provide that:

(a) coverage shall not be prejudiced by any act or neglect of the Unit Owners when such act or neglect is not within the control of the Association of Unit Owners or the Board of Trustees;

(b) coverage shall not be prejudiced by any failure by the Association or Board of Trustees to comply with any warranty or condition with regard to any portion of the Project over which the Association and Board of Trustees have no control;

(c) coverage may not be canceled or substantially modified (including cancellation for non-payment of premium) without at least thirty (30) days prior written notice to any and all insureds named therein, including any Mortgagee named as an insured; and

(d) the insurer waives any right of subrogation it might have to any and all claims against the Association, the Board of Trustees, any Unit Owner, and/or their respective agents, employees or tenants, and any defense it might have based upon co-insurance or upon invalidity arising from acts of the insured.

If, due to changed circumstances, excessive cost, or any other reason, any of the insurance coverage required to be obtained and maintained under Sections 1 through 3 of this Article XVII cannot reasonably be secured, with respect to such coverage the Association or the Board of Trustees shall obtain and maintain such substitute, different or other coverage as may be reasonable and prudent under the circumstances as they then exist.

5. **Insurance Claims.** The following are responsibilities of Unit Owners and other parties in regards to filing claims:

(a) In the event of duplicated coverage of loss, the Unit Owners policy is primary.

(b) The deductible on the Association's insurance policy shall not exceed the lower of \$10,000 or one percent of the applicable amount of coverage per incident. Any loss falling within the deductible portion of the policy will be borne entirely by the person or entity who is responsible for the damage. If the loss is greater than the deductible, and therefore an "insurable loss" when the Association's master policy will apply, the payment of the deductible will be borne entirely by the person/persons or entity/entities who is responsible for the damage or by the owner(s) of the unit from which the loss originates. If multiple parties are responsible, then payment will be based upon percentage of responsibility.

(c) The "person or entity who is responsible for the damage" will be determined solely at the discretion of the Board of Trustees, who will make such determination after careful review of the circumstances surrounding the loss. The Board of Trustees may determine that a loss resulted from an act or negligence of an owner/occupant. Upon said determination by the Board of Trustees, any loss, or portion thereof, may be assessed to the owner(s) in question, and the Association may collect the amount from said owner(s) in the same manner as any regular assessment.

(d) Should the Board of Trustees, after reviewing the circumstances, determine that no one person or entity should bear the responsibility for the damage, the deductible shall be borne equally by all persons or entities realizing any payment of proceeds from the Association's insurance policy.

(e) IT IS REQUIRED that every homeowner purchase and maintain an active policy of insurance specifically designed to protect owners in community associations. It is also recommended that owners who rent their units also have a "landlords" policy and encourage their renters to purchase a policy of insurance specifically designed to protect renters. By doing so, owners and renters are helping protect themselves against out-of-pocket payments (deductibles) should any disaster befall their unit(s).

(f) Immediately upon determining that you have damage which may be covered by insurance, contact your private insurance agent. At the same time, notify the Association's Managing Agent. YOU SHOULD NEVER ASSUME THAT YOUR DAMAGES WILL BE COVERED BY YOUR OWN INSURANCE OR BY THE ASSOCIATION'S POLICY. ALWAYS KEEP IN MIND THAT YOU MAY BE RESPONSIBLE TO PAY FOR REPAIRS.

(g) MAKE EVERY EFFORT TO MITIGATE YOUR DAMAGES. Turn off valves, clean up water, debris, etc..

(h) If your insurance company denies the claim, let the Managing Agent know as soon as possible and be prepared to furnish them with the name of your insurance agent's name, phone number and why the claim was denied. With Board approval, the Managing Agent will submit the claim to the Association's insurance carrier. **NO CLAIM WILL BE SUBMITTED TO THE ASSOCIATION'S MASTER INSURANCE CARRIER UNLESS AND UNTIL IT HAS BEEN DENIED BY YOUR PRIVATE CARRIER. NO CLAIM WILL BE ACCEPTED BY THE ASSOCIATION'S INSURANCE UNLESS IT IS SUBMITTED BY THE MANAGING AGENT.**

ARTICLE XVIII

DESTRUCTION OR DAMAGE

In the event of destruction of or damage to part or all of the improvements in the Project, and in harmony with other like provisions in this declaration, the procedures of this Article shall apply.

1. **If Insurance Proceeds are Sufficient.** If the proceeds of the insurance maintained by the Association are alone sufficient to repair or reconstruct the damaged or destroyed improvement, such repair or reconstruction shall be carried out.

2. **If Insurance Proceeds are Insufficient and Less Than 75% Destruction.** If less than seventy-five percent (75%) of the Project's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Association are not alone sufficient to accomplish repair or reconstruction, restoration shall be carried out and all of the Unit Owners shall be assessed for any deficiency on the basis of their respective appurtenant percentages of undivided ownership interest in the Common Areas and Facilities, said assessment becoming a lien on the Units as provided in the Act.

3. **If Insurance Proceeds are Insufficient and 75% Destruction.** If seventy-five percent (75%) or more of the Project's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Association are not alone sufficient to accomplish restoration, and if the Unit Owners within one hundred (100) days after the destruction or damage by an affirmative vote of at least seventy-five percent (75%) of the entire undivided ownership interest in the Common Areas and Facilities of the Project elect to repair or reconstruct the affected improvements, restoration shall be accomplished in the manner directed under section 2 above.

4. **If Insurance Proceeds Are Insufficient, 75% Destruction and Owners Elect Not to Reconstruct.** If seventy-five percent (75%) or more of the Project's improvements are destroyed or substantially damaged, if proceeds of the insurance maintained by the Association are insufficient to accomplish restoration, and if the Unit Owners do not, within one hundred (100) days after the destruction or damage and by an affirmative vote of at least

seventy-five percent (75%) of the entire undivided ownership interest in the Common Areas and Facilities of the Project, elect to not repair or reconstruct the affected improvements, the Association shall promptly record with the recorder of the county where the Project is located a notice setting forth such facts. Upon the recording of such notice the provisions of subsections (1) through (4) of Section 57-8-31 of the Act shall apply and shall govern the rights of all parties having an interest in the Project or any of the Units.

5. **Supervision by Board of Trustees; Appraisers.** Any reconstruction or repair which is required to be carried out by this Article shall be accomplished at the instance and direction of the Board of Trustees. Any determination which is required to be made by this Article regarding the extent of damage to or destruction of Project improvements shall be made as follows:

The Board of Trustees shall select three (3) appraisers; each appraiser shall independently estimate the percentage of Project improvements which have been destroyed or substantially damaged; the percentage which governs the application of the provisions of this section shall be the median of the three (3) estimates.

ARTICLE XIX

PAYMENT OF COMMON EXPENSES

1. **Payment Obligation; Late Charges; Interest.** Each Unit Owner shall pay the Association his allocated portion of the Common Expenses upon the terms, at the time, and in the manner herein provided without any deduction on account of any set-off or claim which the Owner may have against the Board of Trustees or Association. If any Unit Owner shall fail to pay any installment or portion thereof, a late charge in an amount determined from time to time by the Board of Trustees may be assessed against that Owner. If any Unit Owner shall fail to pay any installment or portion thereof, of Common Expenses within one (1) month of the time when the same becomes due, the Owner shall pay interest thereon at the rate of eighteen percent (18%) per annum from the date when such installment shall become due to the date of the payment thereof.

2. **Alteration of Common Expenses; Reserves.** The Board of Trustees may, from time to time, up to the close of the year or other time period for which the Common Expenses have been fixed or determined, increase or diminish the amount previously fixed or determined for such year. It may include in the Common Expenses for any year, any liabilities or items of expense which accrued or became payable in the previous year, or which might have been included in the Common Expenses for a previous year, but were not included therein; and also any sums which the Board of Trustees may deem necessary or prudent to provide a reserve against liabilities or expenses then accrued or thereafter to accrue although not payable in that year.

3. **Amount and Payment of Assessments; Initial Purchasers' Additional Assessments.** The portion payable with respect to each Unit in and for each year or for a portion of a year shall be a sum equal to the aggregate amount of the Common Expenses for such year, or portion of year, determined as aforesaid, divided by the number of Units in the Project. Such assessments, together with any additional sums accruing under this Declaration, shall be payable monthly in advance, or in such payments and installments as shall be provided by the Board of Trustees. An additional one-time assessment equal to twice the initial monthly assessment is to be paid by each purchaser of each Unit at the time of purchase, which assessment is an addition to and not in lieu of all other assessments due hereunder.

4. **Board of Trustees Establishes Common Expenses.** The Board of Trustees shall have discretionary powers to prescribe the manner of maintaining and operating the Project and to determine the Common Expenses of the Project to be paid as aforesaid by the Owners under this Declaration. Every such reasonable determination by the Board of Trustees within the bounds of the Act and this Declaration, shall be final and conclusive as to the Owners, and any expenditures made by the Board of Trustees, within the bounds of the Act and this Declaration shall as against the Owner be deemed necessary and properly made for such purpose.

5. **Right to Collect from Tenants.** If an Owner shall at any time let or sublet his Unit and shall default for a period of one (1) month in the payment of any assessments, the Board of Trustees may, at its option, so long as such default shall continue, demand and receive from any tenant or subtenants of the Owner occupying the Unit so much of the rent due or becoming due and payable as is necessary to cure said default and the payment of such rent to the Board of Trustees shall be sufficient payment and discharge of such tenant or subtenant and the Owner to the extent of the amount so paid.

6. **Enforcement of Payment; Lien; Priority of Lien.** Each monthly assessment and each special assessment of Common Expenses, plus all late fees assessed, applicable interest, costs of action and reasonable management and attorney's fees, shall be separate, distinct and personal obligations of the Owner(s) of the Unit against which the same is assessed at the time the assessment is made and shall be collectible as such. Suit to recover a money judgment for unpaid Common Expenses, plus all late fees assessed, applicable interest, costs of action and reasonable management and attorney's fees, may be maintained without foreclosure or waiving the lien (described hereafter) securing the same. If not paid when due, the amount of any assessment, whether regular or special, assessed to a Unit, plus all late charges, interest, costs of action and reasonable management and attorney's fees, shall become a lien upon such Unit upon recordation of a notice thereof as provided by the Act. The said lien for non-payment of Common Expenses shall have priority over all other liens and encumbrances, recorded or unrecorded, except only:

(a) tax and special assessment liens on the Unit in favor of any assessing unit, or special district; and

(b) encumbrances on the interest of the Unit Owner recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

7. **Grantor and Grantee Liability.** In any conveyance, except to a Mortgagee as hereinafter set forth, the grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of the Common Expenses up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee. However, any such grantee shall be entitled to a statement from the Manager or Board of Trustees setting forth the amounts of the unpaid assessments against the grantor, and such grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid assessments against the grantor in excess of the amount set forth.

8. **Certificate of Unpaid Common Expenses; Failure to Provide; Encumbrancer Right to Pay Common Expenses.** A certificate executed and acknowledged by the Manager or Association stating the unpaid Common Expenses then outstanding with respect to a Unit shall be conclusive upon the Association and the Owners as to the amount of such indebtedness on the date of the certificate, in favor of all persons who rely thereon in good faith, and such certificate shall be furnished to any Owner or encumbrancer or prospective Owner or encumbrancers of a Unit upon request at a reasonable fee initially not to exceed Fifty Dollars (\$50.00). Unless the request for a certificate of indebtedness shall be complied with within ten (10) days of cleared payment, all unpaid Common Expenses which become due prior to the date of making of such request shall be subordinate to the lien or interest held by or obtained by the person making the request. Any encumbrancer holding a lien on a Unit may pay any unpaid Common Expenses payable with respect to such Unit and upon such payment that encumbrancer shall have a lien on that Unit of the same rank as the lien of his encumbrance for the amounts paid.

9. **Release of Lien Upon Payment; Foreclosure of Lien.** Upon payment or other satisfaction of delinquent assessments concerning which a notice of non-payment has been recorded, the Board of Trustees shall cause to be recorded in the same manner as the notice of non-payment a further notice stating the satisfaction and release of the lien thereof. Such lien for non-payment of assessment may be enforced by sale by the Board of Trustees or by a bank or trust company or title insurance company authorized by the Board of Trustees, such sale to be conducted in accordance with the provisions of the law applicable to the exercise of powers of sale or foreclosure in deeds of trust or mortgages or in any other manner permitted by law. In any foreclosure or sale, the Unit Owner shall be required to pay all late charges, interest and the costs and expenses of such proceedings including reasonable management and attorney's fees. The Association or Manager shall have the power to bid on the Unit at foreclosure or other sale and to hold, lease, mortgage and convey the Unit.

10. **Rent During Redemption Period.** In the event of foreclosure, the Unit Owner, if he is an owner-occupier and desires to remain in the Unit during any redemption period, shall be required to pay a reasonable rental for the Unit and the plaintiff in the foreclosure action shall be entitled to the appointment of a receiver to collect the rental without regard to the value of the security.

ARTICLE XX

MORTGAGEE PROTECTION

1. **Requests to Notify Mortgagees.** From and after the time a Mortgagee makes written request to the Board of Trustees or the Association of Unit Owners therefore, the Board of Trustees or the Association shall notify such Mortgagee in writing in the event that the Owner of the Unit encumbered by the Mortgage held by such Mortgagee neglects for a period of sixty (60) or more days to cure any failure on his part to perform any of his obligations under this Declaration.

2. **Priority of First Mortgages Over Assessment Liens.** The lien or claim against a Unit for unpaid assessments or charges levied by the Board of Trustees or by the Association of Unit Owners pursuant to this Declaration or the Act shall be subordinate to a First Mortgage affecting such Unit. A First Mortgagee who obtains title to a Unit pursuant to his First Mortgage or a deed or assignment in lieu of foreclosure shall not be liable for such Unit's unpaid assessments which accrue prior to the acquisition of title to such Unit by the First Mortgagee and shall take the same free of such lien or claim for unpaid assessments or charges, but only to the extent of assessments or charges which accrue prior to the acquisition of title to such Unit by the First Mortgagee (except for claims for a pro rata share of such prior assessments or charges resulting from a pro rata reallocation thereof to all Units including the Unit in which the First Mortgagee is interested). No assessment, charge, lien or claim which is described in the preceding sentence as being subordinate to a First Mortgage or as not a burden to a First Mortgagee coming into possession pursuant to his First Mortgage or a deed or assignment in lieu of foreclosure shall be collected or enforced by either the Board of Trustees or the Association from or against a First Mortgagee, a successor in title to a First Mortgagee, or the Unit affected or previously affected by the First Mortgage concerned (to the extent any such collection or enforcement would prejudice the interests of the First Mortgagee or successor in title to the First Mortgagee interested in such Unit).

3. **Approval of First Mortgagees Required to Take Certain Actions.** Without the prior written approval of at least two-thirds (2/3) of the First Mortgagees (based on one vote for each First Mortgage owned), neither the Board of Trustees nor the Association of Unit Owners shall be entitled, by act, omission, or otherwise:

(a) to seek to abandon or terminate the Project or to abandon or terminate the arrangement which is established by this Declaration and the Record of Survey Map (except as provided in Article XVIII hereof in the event of certain destruction or damage);

(b) to partition or subdivide any Unit;

(c) to seek to abandon, partition, subdivide, encumber, sell or transfer all or any of the Common Areas and Facilities (except for the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Areas and Facilities, and except as provided in Article XVIII hereof in the event of certain destruction or damage);

(d) to use hazard insurance proceeds resulting from damage to any part of the Project (whether to Units or to the Common Areas) for purposes other than the repair, replacement, or reconstruction of such improvements, except as provided by statute in the event of substantial loss to the Units and/or Common Areas and Facilities;

(e) to change the voting rights or obligations of any Unit which apply for (1) purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or awards; or

(f) to alter the provisions of Article XVII hereof in such a way as to diminish the insurance protection required to be afforded to the parties designed to be protected thereby, or to fail to maintain the insurance coverage described therein.

4. **Rights of Mortgagees to Records.** Any Mortgagee shall have the right, at its request and expense and upon reasonable notice, to examine the books and records of the Board of Trustees, or the Association of Unit Owners, or of the Project. From and after the time a Mortgagee makes written request to the Board of Trustees or the Association of Unit Owners therefor, the Board of Trustees or the Association shall furnish to such Mortgagee copies of such annual operating reports and other reports or writings summarizing or reflecting the financial position or history of the Project as may be prepared for distribution to or use by the Board of Trustees, the Association, or the Unit Owners.

5. **Reserves to be Funded from Regular Assessments.** The Board of Trustees and the Association shall establish an adequate reserve fund to cover the deductibles under all hazard insurance policies maintained by the Association (which reserve shall be so designated) and the cost of reasonably predictable and necessary major repairs and replacements of the Common Areas and Facilities and shall cause such reserve to be funded by regular monthly or other periodic assessments against the Units rather than by special assessments.

6. **Notice to Mortgagees of Damage or Loss.** From and after the time a Mortgagee makes written request to the Board of Trustees or the Association of Unit Owners

therefor, the Board of Trustees or the Association shall notify such Mortgagee in writing in the event that there occurs any damage or loss to, or any taking or anticipated condemnation of: (a) the Common Areas and Facilities involving an amount in excess of, or reasonably estimated to be in excess of, Ten Thousand Dollars (\$10,000.00); or (b) any Unit involving an amount in excess of, or reasonably estimated to be in excess of, One Thousand Dollars (\$1,000.00). Said notice shall be given within ten (10) days after the Board of Trustees or said Association learns of such damage, loss, taking or anticipated condemnation.

7. **No Priority in Distributions.** Nothing contained in this Declaration shall give a Unit Owner, or any other party, priority over any rights of a First Mortgagee pursuant to its First Mortgage in the case of a distribution to such Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of Units and/or Common Areas and Facilities.

8. **Greater Mortgagee Protection Provisions Control.** In the event another provision or clause of this Declaration deals with the same subject matter as is dealt with in any provision or clause of this Article, the provision or clause which results in the greater protection and security for a Mortgagee shall control the rights, obligations, or limits of authority as the case may be, applicable to the Board of Trustees and Association of Unit Owners with respect to the subject concerned.

9. **No Diminishment of Protection Without Mortgagee Approval.** Except with respect to combination of Units pursuant to Article VI which may be accomplished without consent of any Mortgagee, no amendment to this Article which has the effect of diminishing the rights, protection or security afforded to Mortgagees shall be accomplished or effective unless all of the Mortgagees of the individual Units have given their prior written approval to such amendment. Any amendment to this Article shall be accomplished by an instrument executed by the Board of Trustees and filed for record in the office of the County Recorder of the county where the Project is located. In any such instrument the Board of Trustees shall certify that any prior written approval of Mortgagees required by this Article as a condition to amendment has been obtained.

ARTICLE XXI

EMINENT DOMAIN

In the event that eminent domain proceedings are commenced against the Project or any portion thereof, the provisions of § 57-8-32.5, Utah Code Annotated, as amended, shall apply. The Board of Trustees shall give written notice of such proceedings to all Mortgagees of record. No first lien priority of any Mortgagee shall be diminished or otherwise disturbed by virtue of such proceedings.

ARTICLE XXII

MAINTENANCE

1. **Owner's Obligation to Maintain; Limitations on Limited Common Areas.** Each Owner of a Unit at his own expense shall keep and maintain the interior of such Unit, its equipment and appurtenances, windows, and exterior doors in good order, condition and repair and in a clean and sanitary condition, and shall do all redecorating and painting which may at any time be necessary to maintain the good appearance of such Unit. The Unit Owner shall repair all injury or damages to the Unit, building or buildings caused by the act, negligence or carelessness of the Unit Owner or that of any tenant or subtenant or any member of the Unit Owner's family or of the family of any tenant or subtenant or any agent, employee or guest of the Owner or his tenant or subtenant and all such repairs, redecorating and painting shall be of a quality and kind equal to the original work. Each Unit Owner shall be entitled to the exclusive use and possession of the Limited Common Areas appurtenant to such Unit; provided, however, that without the written permission of the Board of Trustees first had and obtained, a Unit Owner shall not make or permit to be made any structural alteration, in or to the Unit or in or to the exterior of the building, and shall not paint or decorate any portion of the exterior of the Unit or of the building in which the Unit is located. Should any Unit Owner fail or neglect to perform any maintenance or repair obligation imposed upon such Unit Owner by this Declaration, the Association may (but shall have no obligation to), after reasonable notice to such Owner, perform the required maintenance or repair and levy special assessments against such Owner to recover the cost thereof, together with all other expenses associated with the Association doing so. All such special assessments shall constitute a special assessment of Common Expenses against such Unit Owner and shall be payable and collectible in the same manner as other Common Expenses in accordance with Article XIX hereof.

2. **Association's Obligation to Maintain.** Except as herein provided, the Association shall provide for such maintenance and operation of the Common Areas and Facilities as may be reasonably necessary to keep them clean, functional, attractive and generally in good condition and repair. The Association shall have no obligation regarding maintenance or care of Units.

ARTICLE XXIII

RIGHT OF ENTRY

The Board of Trustees and its duly authorized agents shall have the right to enter any and all of the Units in case of an emergency originating in or threatening such Unit or any other part of the Project, whether or not the Unit Owner or occupant thereof is present at the time. The Board of Trustees and its duly authorized agents shall also have the right to enter into any and all of said Units at all reasonable times as required for the purpose of making necessary repairs upon the Common Areas and Facilities and adjacent Units of the Project or for the

purpose of performing emergency installations, alterations or repairs to the mechanical or electrical devices or installations located therein or thereon; provided, however, such emergency installations, alterations or repairs are necessary to prevent damage or threatened damage to other Units in the Project; and provided further, that the Unit Owner affected by such entry shall first be notified thereof if available and if time permits.

ARTICLE XXIV

ADMINISTRATIVE RULES AND REGULATIONS

The Board of Trustees shall have the power to adopt and establish by resolution, such rules and regulations as it may deem necessary for the maintenance, operation, management and control of the Project including, but not limited to, rules and regulations levying special assessments against and/or imposing other appropriate sanctions upon Unit Owners who fail to comply with any provisions of the Act, this Declaration, the Articles of Incorporation, the Bylaws and/or such rules and regulations. The Board of Trustees may from time to time, by resolution, alter, amend and repeal such rules and regulations. When a copy of any amendment or alteration or provision for repeal of any rules or regulations has been furnished to the Unit Owners, such amendment, alteration or provision shall be taken to be a part of such rules and regulations. Unit Owners shall at all times obey such rules and regulations and see that they are faithfully observed by their respective tenants and by all other persons over whom they have or may exercise control and supervision, it being understood that such rules and regulations shall apply and be binding upon all Units Owners, tenants, subtenants and other occupants of the Units. Each and every special assessment levied against a Unit Owner under such rules and regulations shall constitute a special assessment of Common Expenses against such Unit Owners and shall be payable and collectible in the same manner as other Common Expenses in accordance with Article XIX hereof.

ARTICLE XXV

OBLIGATION TO COMPLY HEREWITH

Each Unit Owner, tenant, subtenant, guest or other occupant of a Unit shall comply with the provisions of the Act, this Declaration, the Articles of Incorporation, the Bylaws, and the rules and regulations promulgated by the Board of Trustees, and with all agreements and determinations lawfully made and/or entered into by the Board of Trustees or the Association, when acting in accordance with their authority, and any failure to comply with any of the provisions thereof shall be grounds for all remedial actions granted thereby and/or for an action by the Association, any aggrieved Unit Owner or other aggrieved party for injunctive relief or to recover any loss or damage resulting therefrom, including costs and reasonable attorney's fees.

ARTICLE XXVI**INDEMNIFICATION OF BOARD OF TRUSTEES**

Each member of the Board of Trustees shall be indemnified and held harmless by the Association of Unit Owners against all costs, expenses and liabilities whatsoever, including, without limitation, attorney's fees reasonably incurred by him in connection with any proceeding in which he may become involved by reason of his being or having been a member of the Board of Trustees; provided, however, the foregoing indemnification shall not apply if the loss, expense or liability involved resulted from the willful misconduct or gross negligence of the member.

ARTICLE XXVII**AMENDMENT**

This Declaration and/or the Map may be amended upon the affirmative vote or approval of Unit Owners having ownership of not less than sixty-six and two-thirds percent (66-2/3%) of the Project, except in circumstances where the Act requires a greater or lesser affirmative vote or approval and consent, in which event the provisions of the Act shall be controlling. Any amendment so authorized shall be accomplished by recordation of an instrument executed by the Board of Trustees. In said instrument the Board of Trustees shall certify that the vote required by this Article has occurred. Notwithstanding any other provision contained herein:

ARTICLE XXVIII**CONSENT IN LIEU OF VOTE**

In any case in which the Act or this Declaration requires the vote of a stated percentage of the Project's ownership for authorization or approval of a transaction, such requirement may be fully satisfied by obtaining, without a meeting, unanimous consents in writing to such transaction from all Unit Owners. The following additional provisions shall govern any application of this section:

1. **Maximum of 120 Days Allowed.** All necessary consents must be obtained prior to the expiration of one hundred twenty (180) days after the first consent is given by any Owner;
2. **Subsequent Ownership Changes Ignored.** Any change in ownership of a Unit which occurs after consent has been obtained from the Owner having an interest therein shall not be considered or taken into account for any purpose; and

3. **Consent of all Owners of Each Unit Required.** Unless the consents of all Owners having an interest in the same Unit are secured, the consent of none of such Owners shall be effective.

ARTICLE XXIX

SEVERABILITY

The invalidity of any one or more phrases, sentences, subparagraphs, paragraphs, sections or articles hereto shall not affect the remaining portions of this instrument nor any part thereof, and in the event that any portion or portions of this instrument should be invalid or should operate to render this instrument invalid, this instrument shall be construed as if such invalid phrase or phrases, sentence or sentences, subparagraph or subparagraphs, paragraphs or paragraphs, section or sections, or article or articles had not been inserted.

ARTICLE XXX

GENDER

The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, male or female, shall in all cases be assumed as though in each case fully expressed.

ARTICLE XXXIV

WAIVERS

No provision contained in this Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

ARTICLE XXXII

TOPICAL HEADINGS

The topical headings contained in this Declaration are for convenience only and do not define, limit or construe the contents of the Declaration.

ARTICLE XXXIII

AVAILABILITY OF DOCUMENTS

The Association shall make available for inspection, upon written request, during normal business:

1. **To Owners and Mortgages.** To Unit Owners and Mortgagees and the holders, insurers and guarantors of any First Mortgage, current copies of this Declaration, the Articles of Incorporation and Bylaws of the Association, rules and regulations adopted by the Board of Trustees, and other books, records, and financial statements of the Association.

2. **To Prospective Purchasers.** To prospective purchasers, current copies of this Declaration, the Articles of Incorporation and Bylaws of the Association, rules and regulations adopted by the Board of Trustees and the most recent annual financial statement, if such financial statement is prepared.

ARTICLE XXXIII

EFFECTIVE DATE

This amended Declaration replaces in entirety any previously recorded Declarations and shall take effect upon recording.

IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed on its behalf this 8 day of February, 2005.

**Eastgate Townhomes
Owners Association**
a Utah Nonprofit Corporation

By: Jessica Ribble
Jessica Ribble

STATE OF UTAH)
 : ss.
COUNTY OF UTAH)

The foregoing instrument was acknowledged before me this 8 day of February, 2005, by JESSICA RIBBLE, as President of the Eastgate Townhome Owners Association, a Utah Nonprofit Corporation.

Catherine M. Johnson
NOTARY PUBLIC

My Commission Expires:
8.8.06

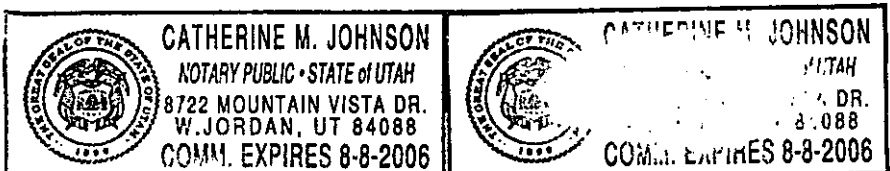


EXHIBIT "A"

DESCRIPTION OF PROPERTY

ADDITIONAL ANNEXATION BY STEVEN TURLEY, DEVELOPER

1. **Description of Land.** The land on which the additional building and improvements are located is particularly described as the following:

BEGINNING AT A POINT WHICH IS NORTH 1296.06 FEET AND EAST 490.96 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 7, TOWNSHIP 7 SOUTH, RANGE 3 EAST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH 00 DEGREES 09'55" EAST 92.59 FEET; THENCE SOUTH 89 DEGREES 46'37" EAST 77.00 FEET; THENCE SOUTH 00 DEGREES 09'55" WEST 92.50 FEET; THENCE NORTH 89 DEGREES 50'42" WEST 77.00 FEET TO THE POINT OF BEGINNING.

1. CONTAINS 0.1636 ACRES MORE OR LESS

EXHIBIT B

BYLAWS OF EASTGATE HOMEOWNERS ASSOCIATION, INC.

A Utah Nonprofit Corporation

Pursuant to the provisions of the Utah Nonprofit Corporation and Cooperative Association Act, the Board of Trustees of Eastgate Homeowners Association, Inc., a Utah nonprofit corporation, hereby adopts the following Bylaws for such nonprofit corporation.

ARTICLE I

NAME AND PRINCIPAL OFFICE

1.01 **Name.** The name of the nonprofit corporation is the EASTGATE HOMEOWNERS ASSOCIATION, INC., hereinafter referred to as the "Association".

1.02 **Offices.** The Principal office of the Association shall be at 454 N. Seven Peaks Blvd., Provo, Utah 84606.

ARTICLE II

DEFINITIONS

2.01 **Definitions.** Except as otherwise provided herein or as may be required by the context, all terms defined in Article II of the Declaration for Eastgate Townhomes, a Utah Planned Unit Development project, hereinafter referred to as the "Declaration", shall have such defined meanings when used in these Bylaws.

ARTICLE III

MEMBERS

3.01 **Annual Meetings.** The annual meeting of Members shall be held in September of each year, the specific date, time, and place to be fixed by the Board of Trustees, for the purpose of electing Trustees, presenting for ratification an itemized budget for the coming fiscal year with estimated allocation thereof to each unit owner, presenting professionally reviewed statements of the common expenses itemizing receipts and disbursements for the previous and current fiscal year, together with the allocation thereof to each unit owner, and transacting such other business as may come before the meeting. If the election of Trustees shall not be held on the day designated herein for the annual meeting of the Members, or at any adjournment thereof, the Board of Trustees shall cause the election to be held at a special

meeting of the Members to be convened as soon thereafter as may be convenient. The Board of Trustees may from time to time by resolution change the date and time for the annual meeting of the Members.

3.02 **Special Meetings.** Special meetings of the Members may be called by the Board of Trustees, the President, or upon the written request of Members holding not less than twenty-five percent (25%) of the voting power of the Members of Association, such written request to state the purpose or purposes of the meeting and to be delivered to the Board of Trustees or the President.

3.03 **Place of Meetings.** The Board of Trustees may designate any place in Utah County, State of Utah as the place of meeting for any annual meeting or for any special meeting called by the Board. A waiver of notice signed by all of the Members may designate any place, either within or without the State of Utah, as the place for holding such meeting. If no designation is made, or if a special meeting is otherwise called, the place of the meeting shall be at the principal office of the Association.

3.04 **Notice of Meetings.** The Board of Trustees shall cause written or printed notice of the time, place, and purposes of all meetings of the Members (whether annual or special) to be delivered, not more than forty (40) nor less than twenty (20) days prior to the meeting, to each Member of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the U.S. mail addressed to the Member at his registered address, with first-class postage thereon prepaid. Each Member shall register with the Association such Member's current mailing address for purposes of notice hereunder. Such registered address may be changed from time to time by notice in writing to the Association. If no address is registered with the Association, a Member's Lot address shall be deemed to be his registered address for purposes of notice hereunder.

3.05 **Members of Record.** Upon purchasing a Unit in the Project, each Owner shall promptly furnish to the Association a certified copy of the recorded instrument by which ownership of such Unit has been vested in such Owner, which copy shall be maintained in the records of the Association. For the purpose of determining Members entitled to notice of or to vote at any meeting of the Members, or any adjournment thereof, the Board of Trustees may designate a record date, which shall not be more than forty (40) nor less than twenty (20) days prior to the meeting, for determining Members entitled to notice of or to vote at any meeting of the Members. If no record date is designated, the date on which notice of the meeting is mailed shall be deemed to be the record date for determining Members entitled to notice of or to vote at the meeting. The persons or entities appearing in the records of the Association on such record date as the owners of record of Units in the Project shall be deemed to be the Members of record entitled to notice of and to vote at the meeting of the Members.

3.06 **Quorum.** The Members present in person or by proxy, at any meeting of the Association, shall constitute a quorum.

3.07 **Proxies.** At each meeting of the Members, or at other times as designated by the Board, each Member entitled to vote shall be entitled to vote in person or by proxy; provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been executed by the Member himself or by his attorney thereunto duly authorized in writing. If a membership is jointly held, the instrument authorizing a proxy to act must have been executed in writing. Such instrument authorizing a proxy to act shall be delivered at the beginning of the meeting to the Secretary of the Association or to such other officer or person who may be acting as secretary of the meeting. The secretary of the meeting shall enter a record of all such proxies in the minutes of the meeting.

3.08 **Votes.** With respect to each matter submitted to a vote of the Members, each Member entitled to vote at the meeting shall have the right to cast, in person or by proxy, the number of votes appertaining to the number of Units owned by such Member, as set forth in the Declaration. The affirmative vote of a majority of the votes entitled to be cast by the Members present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by the Members, unless a greater proportion is required by the Articles of Incorporation, these Bylaws, the Declaration, or Utah law. The election of Trustees shall be by written ballot or voice vote. If a membership is jointly held, all or any holders thereof may attend each meeting of the Members, but such holders must act unanimously to cast the votes relating to their joint Membership.

3.09 **Waiver of Irregularities.** All inaccuracies and irregularities in calls or notices of meetings and in the manner of voting form of proxies, and method of ascertaining Members present shall be deemed waived if no objection thereto is made before or at the meeting.

3.10 **Informal Action by Members.** Any action that is required or permitted to be taken at a meeting of the Members may be taken without a meeting, if a consent in writing, setting forth the action so taken, shall be signed by a majority of the Members entitled to vote with respect to the subject matter thereof.

ARTICLE IV

BOARD OF TRUSTEES

4.01 **General Powers.** The property, affairs, and business of the Association shall be managed by its Board of Trustees. The Board of Trustees may exercise all of the powers of the Association, whether derived from law or the Articles of Incorporation, except such powers as are by law, by the Articles of Incorporation, by these Bylaws, or by the Declaration vested solely in the Members. The Board of Trustees may by written contract delegate, in whole or in part, to a professional management organization or person such of its duties, responsibilities, functions, and powers as are properly delegable. Any agreement for professional management of the Project, shall call for a term not exceeding two (2) years and shall provide

that such agreement or lease may be terminated by either party thereto without cause and without payment of a termination fee upon not in excess of ninety (90) days written notice.

4.02 Number, Tenure and Qualifications. The affairs of the Association shall be managed by a Board of Trustees, consisting of not less than Five (5) nor more than Seven (7) Trustees. Trustees must be Members of the Association. The Owners may increase or decrease to an odd number, the number of Trustees within the aforesaid limits, by a majority vote, at any meeting of Association members. Trustees may be elected to serve for a term of One (1) to Three (3) years. At no time should all trustees terms expire in the same year.

4.03 Regular Meetings. The regular annual meeting of the Board of Trustees shall be held without other notice than this Bylaw after the annual meeting of the Members. The Board of Trustees may provide by resolution the time and place for holding of additional regular meetings without other notice than such resolution.

4.04 Special Meetings. Special meetings of the Board of Trustees may be called by or at the request of a majority of Trustees. The person or persons authorized to call special meetings of the Board of Trustees may fix any place, within or without the State of Utah, as the place for holding any special meeting of the Board of Trustees called by such person or persons. Notice of any special meeting shall be given at least five (5) days prior thereto by written notice delivered personally, or mailed to each Trustee at his registered address, or by Telegram. If mailed, such notice shall be deemed to be delivered when deposited in the U. S. mail so addressed, with first-class postage thereon prepaid. If notice is given by telegram, such notice shall be deemed to have been delivered when the telegram is delivered to the telegraph company. Any Trustee may waive notice of a meeting.

4.05 Quorum and Manner of Acting. A majority of the then authorized number of Trustees shall constitute a quorum for the transaction of business at any meeting of the Board of Trustees. The act of a majority of the Trustees present at any meeting at which a quorum is present shall be the act of the Board of Trustees. The Trustees shall act only as a Board, and individual Trustees shall have no powers as such.

4.06 Compensation. No Trustee shall receive compensation for any services that he may render to the Association as a Trustee; provided, however, that a Trustee may be reimbursed for expenses incurred in performance of his duties as a Trustee to the extent such expenses are approved by the Board of Trustees and (except as otherwise provided in these Bylaws) may be compensated for services rendered to the Association other than in his capacity as a Trustee.

4.07 Resignation and Removal. A Trustee may resign at any time by delivering a written resignation to either the President or the Board of Trustees. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any Trustee may be removed at any time, for or without cause, by the affirmative vote of seventy-five percent (75%)

of the voting power of the Members of the Association at a special meeting of the Members duly called for such purpose.

4.08 Vacancies and Newly Created Trusteeships. If vacancies shall occur in the Board of Trustees by reason of the death, resignation or disqualification of a Trustee, or if the authorized number of Trustees shall be increased, the Trustees then in office shall continue to act, and such vacancies or newly created Trusteeships may be filled by a vote of the Trustees then in office, though less than a quorum, in any way approved by such Trustees at the next meeting of Trustees. Any vacancy in the Board of Trustees occurring by reason of removal of a Trustee by the Members may be filled by election at the meeting at which such Trustee is removed. Any Trustee elected or appointed hereunder to fill a vacancy shall serve for the unexpired term of his predecessor or for the term of the newly created Trusteeship, as the case may be.

4.09 Informal Action by Trustees. Any action that is required or permitted to be taken at a meeting of the Board of Trustees, may be taken without a meeting if consent, setting forth the action so taken, shall be approved by a majority of the Trustees.

ARTICLE V

OFFICERS

5.01 Officers. The officers of the Association shall be a President, Vice President, Secretary, Treasurer and such other officers as may from time to time be appointed by the Board of Trustees.

5.02 Election, Tenure and Qualifications. The officers of the Association shall be chosen by the Board of Trustees annually at the regular annual meeting of the Board of Trustees. In the event of failure to choose officers at such regular annual meeting of the Board of Trustees, officers may be chosen at any regular or special meeting of the Board of Trustees. Each such officer (whether chosen at a regular annual meeting of the Board of Trustees or otherwise) shall hold his office until the next ensuing regular annual meeting of the Board of Trustees and until his successor shall have been chosen and qualified, or until his death, or until his resignation, disqualification, or removal in the manner provided in these Bylaws, whichever first occurs. Any one person may hold any two or more of such offices, except that the President may not also be the Secretary. No person holding two or more offices shall act in or execute any instrument in the capacity of more than one office. The President, Vice President, Secretary and Treasurer shall be and remain Trustees of the Association during the entire term of their respective offices. No other officers need be a Trustee.

5.03 Subordinate Officers. The Board of Trustees may from time to time appoint such other officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority, and perform such duties as the Board of Trustees may from time to time determine. The Board of Trustees may from time to time

delegate to any officer or agent the power to appoint any such subordinate officers or agents and to prescribe their respective titles, terms of office, authorities, and duties. Subordinate officers need not be Members or Trustees of the Association.

5.04 **Resignation and Removal.** Any officer may resign at any time by delivering a written resignation to the President of the Board of Trustees. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed by the Board of Trustees at any time, for or without cause.

5.05 **Vacancies and Newly Created Offices.** If any vacancy shall occur in any office by reason of death, resignation, removal, disqualification, or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by the Board of Trustees at any regular or special meeting.

5.06 **The President.** The President shall be the chief executive officer of the Association and shall exercise general supervision over its property and affairs. The President shall preside at meetings of the Board of Trustees and at meetings of the Members. He shall sign on behalf of the Association all conveyances, mortgages, documents, and contracts, and shall do and perform all other acts and things that the Board of Trustees may require of him. The president shall be invited to attend meetings of each committee, but his attendance at committee meetings shall be optional and within his discretion.

5.07 **The Vice President.** The Vice President shall act in the place and stead of the President in the event of the President's absence or inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board of Trustees.

5.08 **The Secretary.** The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration, or any resolution of the Board of Trustees may require him to keep. The Secretary shall also act in the place and stead of the President in the event of the President's and the Vice President's absence or inability or refusal to act. He shall be the custodian of the seal of the Association, if any, and shall affix such seal, if any, to all papers and instruments requiring the same. He shall perform such other duties as the Board of Trustees may require of him.

5.09 **The Treasurer.** The Treasurer shall have the custody and control of the funds of the Association, subject to the action of the Board of Trustees, and shall, when requested by the President to do so, report the state of the finances of the Association at each annual meeting of the Members and at any meeting of the Board of Trustees. He shall perform such other duties as the Board of Trustees may require of him.

5.10 **Compensation.** No officer shall receive compensation for any services that he may render to the Association as an officer; provided, however, that an officer may be reimbursed for expenses incurred in performance of his duties as an officer to the extent such expenses are approved by the Board of Trustees and (except as otherwise provided in these Bylaws) may be compensated for services rendered to the Association other than in his capacity as an officer.

ARTICLE VI

COMMITTEES

6.01 **Designation of Committees.** The Board of Trustees may from time to time by resolution designate such committees as it may deem appropriate in carrying out its duties, responsibilities, functions, and powers. The membership of each such committee designated hereunder shall include at least one (1) Trustee. No committee member shall receive compensation for services that he may render to the Association as a committee member; provided, however, that a committee member may be reimbursed for expenses incurred in performance of his duties as a committee member to the extent that such expenses are approved by the Board of Trustees and (except as otherwise provided in these Bylaws) may be compensated for services rendered to the Association other than in his capacity as a committee member.

6.02 **Proceedings of Committees.** Each committee designated hereunder by the Board of Trustees may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such committee may from time to time determine. Each such committee shall keep a record of its proceedings and shall regularly report such proceedings to the Board of Trustees.

6.03 **Quorum and Manner of Action.** At each meeting of any committee designated hereunder by the Board of Trustees, the presence of members constituting at least a majority of the authorized membership of such committee (but in no event less than two members) shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such committee. The members of any committee designated by the Board of Trustees hereunder shall act only as a committee, and the individual members thereof shall have no powers as such.

6.04 **Resignation and Removal.** Any member of any committee designated hereunder by the Board of Trustees may resign at any time by delivering a written resignation to the President, the Board of Trustees, or the presiding officer of the committee of which he is a member. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Board of Trustees may at any time, for or without cause, remove any member of any committee designated by it hereunder.

6.05 **Vacancies.** If any vacancy shall occur in any committee designated by the Board of Trustees hereunder, due to disqualification, death, resignation, removal, or otherwise, the remaining members shall, until the filling of such vacancy, constitute the then total authorized membership of the committee and, provided that two or more members are remaining, may continue to act. Such vacancy may be filled at any meeting of the Board of Trustees.

ARTICLE VII

INDEMNIFICATION

7.01 **Indemnification: Third Party Actions.** The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was a Trustee or officer of the Association, or is or was serving at the request of the Association as a director, trustee, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit, or proceeding by an adverse judgment, order, settlement, or conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

7.02 **Indemnification: Association Actions.** The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that he is or was a Trustee or officer of the Association, or is or was serving at the request of the Association as a director, trustee, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against expenses (including attorney's fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association and except that no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for gross negligence or willful misconduct in the performance of his duty to the Association, unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

7.03 **Determinations.** To the extent that a person has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in Sections 7.01 or 7.02 hereof, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorney's fees) actually and reasonably incurred by him in connection therewith. Any other indemnification under Sections 7.01 or 7.02 hereof shall be made by the Association only upon a determination that indemnification of the person is proper in the circumstances because he has met the applicable standard of conduct set forth respectively in Sections 7.01 or 7.02 hereof. Such determination shall be made either (i) by the Board of Trustees by a majority vote of disinterested Trustees or (ii) by independent legal counsel in a written opinion, or (iii) by the Members by the affirmative vote of at least fifty percent (50%) of the voting power of the Members of the Association at any meeting duly called for such purpose.

7.04 **Advances.** Expenses incurred in defending a civil or criminal action, suit, or proceeding as contemplated in this Article may be paid by the Association in advance of the final disposition of such action, suit, or proceeding upon a majority vote of a quorum of the Board of Trustees and upon receipt of an undertaking by or on behalf of the person to repay such amount or amounts unless it ultimately be determined that he is entitled to be indemnified by the Association as authorized by this Article or otherwise.

7.05 **Scope of Indemnification.** The indemnification provided for by this Article shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any provision in the Association's Articles of Incorporation, Bylaws, agreements, vote of disinterested Members or Trustees, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office. The indemnification authorized by this Article shall apply to all present and future Trustees, officers, employees, and agents of the Association and shall continue as to such persons who cease to be Trustees, officers, employees, or agents of the Association and shall inure to the benefit of the heirs and personal representatives of all such persons and shall be in addition to all other rights to which such persons may be entitled as a matter of law.

7.06 **Insurance.** The Association may purchase and maintain insurance on behalf of any person who was or is a Trustee, officer, employee, or agent or was or is serving at the request of the Association as a trustee, director, officer, employee, or agent of another corporation, entity, or enterprise (whether for profit or not for profit).

7.07 **Payments and Premiums.** All indemnification payments made, and all insurance premiums for insurance maintained, pursuant to this Article shall constitute expense of the Association and shall be paid with funds from the Assessments referred to in the Declaration.

ARTICLE VIII

FISCAL YEAR AND SEAL

8.01 **Fiscal Year.** The fiscal year of the Association shall begin on the first day of January each year and end on the last day of December of the same year.

8.02 **Seal.** The Board of Trustees may by resolution provide a corporate seal which shall be circular in form and shall have inscribed thereon the name of the Association, the state of incorporation, and the words "Corporate Seal".

ARTICLE IX

RULES AND REGULATIONS

9.01 **Rules and Regulations.** The Board of Trustees may from time to time adopt, amend, repeal, and enforce reasonable rules and regulations governing the use and operation of the Project, to the extent that such rules and regulations are not inconsistent with the rights and duties set forth in the Articles of Incorporation, the Declaration, or these Bylaws. The Members shall be provided with copies of all rules and regulations adopted by the Board of Trustees, and with copies of all amendments and revisions thereof.

ARTICLE X

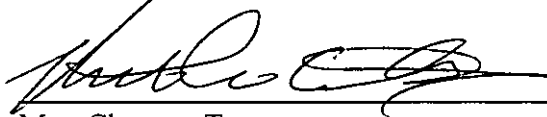
AMENDMENTS

10.01 **Amendments.** Except as otherwise provided by law, by the Articles of Incorporation, by the Declaration, or by these Bylaws, these Bylaws may be amended, altered, or repealed and new Bylaws may be made and adopted by the Members upon the affirmative vote or approval of sixty-six and two-thirds percent (66-2/3%) Unit Owners; provided, however, that such action shall not be effective unless and until a written instrument setting forth (i) the amended, altered, repealed, or new bylaw, (ii) the number of votes cast in favor of such action, and (iii) the total voting power of the Members of the Association, shall have been executed and verified by the current President of the Association.

IN WITNESS WHEREOF, the undersigned, constituting all of the Trustees of EASTGATE HOMEOWNERS ASSOCIATION, INC., have executed these amended Bylaws, to replace in entirety all previously recorded Bylaws, on the 8 day of FEBRUARY, 2005.



Alan Cornwell, Trustee



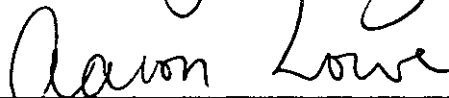
Matt Chantry, Trustee



Larry Furf, Trustee



Christy King, Trustee



Aaron Lowe, Trustee



Clinton Paulson, Trustee



Jessica Ribble, Trustee

EXHIBIT C

DECLARATION & BYLAWS CERTIFICATION

Article XIV of the Declaration of Easements, Covenants, Conditions and Restrictions - Eastgate Townhomes - A Planned Unit Development (Expandable) - Provo, Utah County, Utah allows that "this Declaration may be amended by, but only by, an instrument recorded in Utah County, Utah, which is executed by Owners . . . who collectively hold at least sixty percent (60%) of the total outstanding votes in the Association."

Having received ballots greater than 60% in favor of replacing in entirety, any and all previously recorded Declarations and their attached Exhibits, the members approved ratification of the above mentioned amendments.

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DATED: February 8, 2005

EASTGATE HOMEOWNERS ASSOCIATION

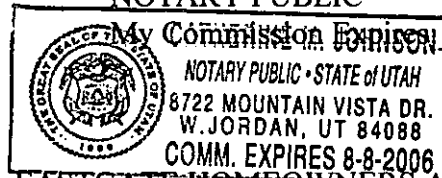
Jessica Ribble
Jessica Ribble, President

STATE OF UTAH)
: ss.
County of Utah)

On this 8 day of February 2005, personally appeared before me Jessica Ribble, whose identity is personally known to me (or proved to me on the basis of satisfactory evidence) and who by me duly sworn, did say that she is the President of the Eastgate Homeowners Association and that said document was signed by her in behalf of said Association by authority of the corresponding governing documents, and said Jessica Ribble acknowledged to me that said Association executed the same.

Catherine M. Johnson
NOTARY PUBLIC
8-8-06

DATED: February 8, 2005



EASTGATE HOMEOWNERS ASSOCIATION

Aaron Lowe
Aaron Lowe, Secretary

STATE OF UTAH)
: ss.
County of Utah)

On this 8 day of February 2005, personally appeared before me Aaron Lowe, whose identity is personally known to me (or proved to me on the basis of satisfactory evidence) and who by me duly sworn, did say that they are the Secretary of the Eastgate Homeowners Association and that said document was signed by them in behalf of said Association by authority of the corresponding governing documents, and said Aaron Lowe acknowledged to me that said Association executed the same.

Catherine M. Johnson
NOTARY PUBLIC
My Commission Expires: 8-8-06

DATED: February 8, 2005

