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RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
10/19/2011 12:11 PM  
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DEP RTT REC'D FOR NORTH SALT LAKE  
CITY

When Recorded Please Return To:

Eaglewood Village, Inc.  
c/o Steven F Lowe  
13525 South Venicia Way  
Draper, Utah 84020

01-443 - 0001 thru 0008

DECLARATION OF <sup>D</sup>  
HILLSIDE RESTRICTIVE COVENANT

THIS DECLARATION OF HILLSIDE RESTRICTIVE COVENANT (the "Declaration") is dated as of the 19<sup>th</sup> day of July, 2011, and is executed and recorded by Eaglewood Village, Inc., a Utah corporation (the "Developer").

RECITALS

- A. The Developer is the owner and developer of certain real property located in North Salt Lake, Davis County, State of Utah, known as Eaglewood Village (the "Property"); and
- B. Located within the Property is a certain visible, steep hillside (the "Hillside").
- C. The Hillside divides the upper portion of the Property, which will be developed as a residential townhome project currently anticipated to consist of approximately 160 units (the "Upper Property"), as more particularly described on Exhibit A, from the lower portion of the Property, which will be developed as a mixed use commercial and residential project ("Lower Property"), as more particularly described on Exhibit B.
- D. The Hillside is more particularly depicted on the map attached hereto and made a part hereof as Exhibit C.
- E. Developer desires to establish certain easements over the Hillside for the use and enjoyment of such Hillside by the future owners of all or any portion of the Upper Property or the Lower Property and their respective guests, and further, desires to provide for the future maintenance of such Hillside.

DECLARATION

In consideration of the foregoing, Developer hereby declares as follows:

- 1. Definitions. As used in this Declaration, the following terms shall have the meanings given to them in this Section, unless the context expressly requires otherwise.

- a. "City" means the City of North Salt Lake, Utah.
- b. "City Trail(s) Easement" means that certain easement providing, among other things, a public access easement to the trails and pathways to be constructed by the City upon the Hillside pursuant to that certain Trails Easement Agreement recorded or to be recorded against the Hillside.
- c. "Hillside" has the meaning given to such term in Recital C above.
- d. "Hillside Expenses" means all costs and expenses associated with the maintenance of the Hillside (exclusive of the expenses associated with the construction, maintenance, and insurance of the Hillside Improvements, if any, and costs incurred by the City in connection with the exercise of its rights under the City Trail(s) Easement), including but not limited to the removal of trash, maintenance of landscaping, erosion control, and the insurance carried by the Manager with respect to the Hillside.
- e. "Hillside Improvements" means those landscaping and beautification improvements, if any, performed on the Hillside by one or more Owners pursuant to the terms of this Declaration, including but not limited to the planting of trees, grass, and other plants; installation of trails, pathways and sitting areas (i.e. benches, gazebos, etc.); lighting; and other similar improvements designed to beautify and improve the aesthetics of the Hillside.
- f. "Hillside Owners" mean those Owner(s) of the fee simple title to the Hillside.
- g. "Homeowners Association" refers to a homeowners or similar association created under Utah law pursuant to recorded covenants, conditions and restrictions (i.e. "CC&Rs") and other related documents, for the purpose of managing and maintaining "common areas" of property (i.e., property made available for the general use, convenience and benefit of the owners and guests within the applicable Homeowners Association) within the Property.
- h. "Guest" means any family member, employee, agent, independent contractor, lessee, customer, patron, invitee, guest or licensee of an Owner.
- i. "Lower Property" has the meaning given to such term in Recital D above.
- j. "Lower Property CC&Rs" shall mean and refer to that certain Declaration of Covenants, Conditions and Restrictions and Grant of Easements for Eaglewood Village dated of even date herewith, recorded with the Davis County Recorder's Office against the Lower Property, as the same may be amended from time to time.
- k. "Manager" shall have the meaning given to such term in the Lower Property CC&Rs.
- l. "Owner" means the record holder of legal title to the fee simple interest in any portion of the Property. With respect to any portion of the Upper Property or the Lower Property within which a Homeowners Association is created, in lieu of the foregoing

definition of "Owner," the term Owner shall mean any such homeowners association created with respect to such portion of the Property.

- m. "Property" has the meaning given to such term in Recital A above.
- n. "Upper Property" has the meaning given to such term in Recital D above.

2. Improvements and Maintenance of Hillside. Any Hillside Owner may perform at its sole discretion and expense, and in accordance with applicable law, Hillside Improvements upon the portion of the Hillside owned by such Hillside Owner, provided that in such event, the Hillside Owner(s) installing such Hillside Improvements shall be solely responsible for the ongoing maintenance and insurance relating to such Hillside Improvements (and shall maintain such Hillside Improvements in good condition and repair, ordinary wear and tear excepted). Moreover, any other Owner owning real property immediately adjacent to the Hillside may perform, at such Owner's sole expense, Hillside Improvements designed to beautify and improve the aesthetics of the Hillside, provided that such Owner (A) shall first submit plans of the desired Hillside Improvements to the Hillside Owner owning the portion of the Hillside contemplated to be improved by such Owner, and obtained such Hillside Owner's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, and (B) shall be solely responsible for the ongoing maintenance and insurance relating to such Hillside Improvements (and shall maintain such Hillside Improvements in good condition and repair, ordinary wear and tear excepted). To the extent necessary to accomplish the purposes of the previous sentence, and subject to the requirement for written consent described in part (A) of the previous sentence, the Developer hereby reserves an easement in favor of such other Owners, their agents, employees, and independent contractors, to access the Hillside to the extent reasonably necessary to perform such Hillside Improvements and related ongoing maintenance.

a. Nothing in this Section 2 shall obligate the Hillside Owners, or any other Owner, to provide any Hillside Improvements. Moreover, other than the improvements to be provided by the City to the Hillside pursuant to the City Trail(s) Easement, and any Hillside Improvements, it is anticipated that the Hillside shall remain in its natural vegetative condition, without substantial landscaping or other improvements. The Hillside shall be maintained in a good, clean and orderly manner. Except with respect to the improvements provided by the City pursuant to the City Trail(s) Easement, and Hillside Improvements (if any), the Owners within the Lower Property, through their then-appointed Manager, shall be responsible for the ongoing maintenance of the Hillside. The Manager shall oversee such maintenance, and for this purpose, the Developer hereby reserves an easement in favor of the Manager, its agents, employees, and independent contractors, to access the Hillside to perform such services.

b. All Hillside Expenses shall be shared by the Owners of the Lower Property and the Owner(s) of the Upper Property as follows: the Owners of the Lower Property shall be responsible for seventy five percent (75%) of such Hillside Expenses, and the Owner(s) of the Upper Property shall be responsible for twenty five percent (25%) of such Hillside Expenses.

c. The Hillside Expenses allocable pursuant to subsection 2(a) above to (i) the Owners of the Lower Property above shall be treated as "Common Expenses" under the Lower Property CC&Rs, and (ii) the Owner(s) of the Upper Property shall be paid by the Owner(s) of the Upper Property to the Manager within thirty (30) days following receipt of an invoice from the Manager, provided that such invoice is accompanied by reasonable supporting documentation

evidencing such Hillside Expenses. Unless no Hillside Expenses are incurred in a given calendar year, the Manager shall bill the Owner(s) of the Upper Property no less frequently than annually. In the event that the Owner(s) of the Upper Property do not timely pay its share of the Hillside Expenses, interest shall accrue on the entire sum then due and owing at the rate of twelve percent (12%) per annum from the due date until paid in full.

3. Insurance. The Manager shall also maintain all-risk / property policy with special form insurance coverage on the Hillside, including loss or damage by fire and such other risks as are from time to time included in the all-risk / property policy with special form coverage insurance policies customarily issued in Utah in an amount not less than one hundred percent (100%) of the full replacement cost of any improvements on the Hillside (excluding the improvements constructed by the City pursuant to the City Trail(s) Easement, and any Hillside Improvements, any of which improvements shall be insured by the City and the applicable Hillside Owner, respectively). Such insurance policies shall be maintained with good and solvent insurance companies authorized to do business in the State of Utah. Such policies shall name the Hillside Owners, and the Manager (for the benefit of all other Owners of the Property), as loss payees on all such all-risk insurance policies.

4. Failure to Maintain the Hillside.

a. If a Hillside Owner(s) (or any other Owner performing Hillside Improvements in accordance with Section 2 above) (as applicable, a "defaulting Owner") fails to properly maintain the Hillside Improvements as required under Section 2 above, then the Manager (on behalf of the Owners of the Lower Property), or any of the other Hillside Owner(s) shall give such defaulting Owner written notice of the claimed default, and such defaulting Owner shall have thirty (30) days following the receipt of such written notice to cure such default. If the default remains uncured following the thirty (30) day period, or if such default is not curable within the thirty (30) day period and the defaulting Owner has failed to begin to cure such default within the thirty (30) day period, the Manager (on behalf of the Owners of the Lower Property) or any of the other Hillside Owner(s) may, but shall not be required to, cure the default itself, and then bill the defaulting Owner for the reasonable costs incurred in curing such default. Each such bill shall contain an itemized description of the work performed and the total costs and expenses incurred for such work. The defaulting Owner shall pay all such bills within thirty (30) days after receipt of the bill. In the event the defaulting Hillside Owner fails to timely pay any bill, the unpaid amount shall bear interest at the rate of twelve percent (12%) per annum from the due date until the date such amount is paid in full.

b. If the Manager fails to properly maintain the Hillside as required under Section 2 above, then a Hillside Owner shall give such Manager written notice of the claimed default, and the Manager shall have thirty (30) days following the receipt of such written notice to cure such default. If the default remains uncured following the thirty (30) day period, or if such default is not curable within the thirty (30) day period and the Manager has failed to begin to cure such default within the thirty (30) day period, the Hillside Owner providing written notice of the claimed default may, but shall not be required to, cure the default itself, and then bill the Manager for the reasonable costs incurred in curing such default. Each such bill shall contain an itemized description of the work performed and the total costs and expenses incurred for such work. The Manager shall pay all such bills within thirty (30) days after receipt of the bill. In the event the Manager fails to timely pay any bill, the unpaid amount shall bear interest at the rate of twelve percent (12%) per annum from the due date until the date such amount is paid in full. Any

amounts billed to the Manager pursuant to this subsection shall be paid by the Owners pursuant to their proportionate shares, as set forth in Section 2(b) above.

5. Indemnification. Each Owner shall indemnify and hold the other Owner(s) from and against all claims, demands, liabilities, losses, costs, damages, penalties and expenses, including, but not limited to, reasonable attorneys' fees and legal costs, arising out of or resulting from the use by such Owner (including but not limited to the individual homeowners within a Homeowners Association), or its Guests of the Hillside, including but not limited to any claims made against any of the Owners as a result of any Hillside Improvements performed by any such Owner upon the Hillside.

6. Public Dedication. Nothing in this Section or elsewhere in this Declaration shall be deemed to be or constitute a gift or dedication of all or any portion of the Hillside to the general public or for any public use or purpose whatsoever; provided, however, that notwithstanding anything to the contrary herein, the Hillside Owners shall have the right at their sole discretion to dedicate such Hillside to the City, provided that the City shall accept such dedication and shall assume the maintenance obligations relating to existing Hillside Improvements, and provided further, that the Hillside will continue to be used and enjoyed as open space for the benefit and enjoyment of the general public, including but not limited to the Owners (and to the individual homeowners within a Homeowners Association, and to each of such persons' respective Guests). The Hillside Owners shall provide written notice to all other Owners in the event that they dedicate the Hillside to the City, and in such event, this Declaration shall immediately and automatically terminate, and the Owners and Manager shall be released from their respective obligations hereunder.

7. Amendment or Modification. This Declaration may be amended or modified from time to time only by a recorded document executed by all of the Hillside Owners and the then-acting Manager. The consent or approval of no other person shall be required to accomplish any amendment or modification hereto.

8. Covenants Run with the Land. All of the provisions, agreements, rights, powers, covenants, conditions, obligations, and easements contained in this Declaration shall be binding upon and inure to the benefit of the Owners of the Property, their respective successors, assigns, heirs, devisees, executors, administrators, subsidiaries, representatives, lessees, sublessees, members and all other persons or entities acquiring either tenement, or any portion thereof or interest therein. All of the provisions, agreements, rights, powers, covenants, conditions, obligations and easements contained in this Declaration shall be covenants running with the Property, both for the benefit of each tenement and as a burden upon each, pursuant to the applicable laws of the State of Utah.

9. Attorneys' Fees. If a lawsuit is commenced or any other action taken to enforce or interpret any of the provisions of this Declaration, the prevailing or non-defaulting party, as applicable, shall have the right to recover its reasonable attorneys' fees and legal costs from the unsuccessful or defaulting party, as applicable, including all such fees and costs incurred in bankruptcy proceedings and in any appellate process.

10. Governing Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Utah. The courts of Davis County, State of Utah shall have exclusive jurisdiction over any and all disputes arising out of this Declaration.

11. Severability. The invalidity or unenforceability of any provision of this Declaration with respect to a particular party or set of circumstances shall not in any way affect the validity or enforceability of any other provision hereof, or the same provision when applied to another party or to a different set of circumstances.

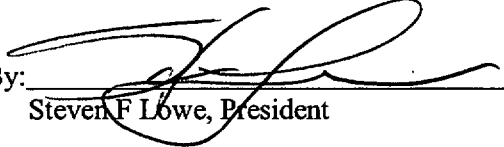
12. Entire Declaration. This Declaration, including the attached exhibits, contain the entire agreement with respect to the subject matter of this Declaration, and all prior negotiations and agreements with respect to such subject matter are merged herein.

13. Notices. Notices, demands, and statements required or desired to be given hereunder shall be in writing and shall be by personal delivery thereof or by deposit in the United States mail, certified mail, return receipt requested, postage prepaid, addressed to a good and sufficient address for the intended recipient. The date notice is deemed to have been given shall be the date of actual delivery to the party concerned.

14. Exemption from the Act. The parties hereto acknowledge that this Declaration is not subject to the Utah Condominium Ownership Act, Utah Code Sections 57-8-1 through 57-8-37, as the same may be amended from time to time.

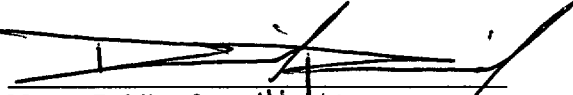
IN WITNESS WHEREOF, Eaglewood Village, Inc. has hereunto caused its name to be signed by the signature of its duly authorized officer as of the day and year first written above.

**EAGLEWOOD VILLAGE, INC., a Utah corporation**

By:   
Steven F. Lowe, President

STATE OF UTAH                    )  
  : ss  
COUNTY OF SALT LAKE        )

On the 17<sup>th</sup> day of October, 2011, personally appeared before me Steven F Lowe, the signer of the foregoing instrument, who duly acknowledged to me that he executed the same in his capacity as President of Eaglewood Village, Inc., a Utah corporation, for its stated purpose.

  
Notary Public of Utah  
Residing at: 348 E. 12300 S. Draper UT 84020  
Commission Expires: 9/1/2013

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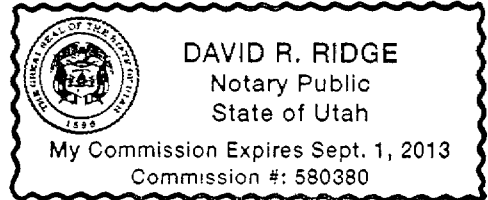


EXHIBIT A

(Legal Description of the Upper Property)

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

**EXHIBIT B**

(Legal Description of the Lower Property)

LOTS 1 THROUGH 5, AND PARCEL "A" AND PARCEL "B", EAGLEWOOD VILLAGE  
SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD  
IN THE DAVIS COUNTY RECORDER'S OFFICE.



**EXHIBIT C**  
(Depiction of the Hillside)

See attached.



