

When Recorded Mail To:  
The Boyer Company, Attn: Dick Moffat  
127 South 500 East, #310  
SLC, Utah 84102

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09 AUGUST 91 10:05 AM  
KATIE L. DIXON  
RECORDER, SALT LAKE COUNTY, UTAH  
WESTERN STATES TITLE  
REC BY: DOROTHY SINFIELD, DEPUTY

SECOND AMENDMENT TO DECLARATION OF  
COVENANTS, CONDITIONS & RESTRICTIONS

OF

EMIGRATION OAKS, A PLANNED UNIT DEVELOPMENT

THIS SECOND AMENDMENT (the "Second Amendment") is made and entered into this 8<sup>th</sup> day of August, 1991, by THE BOYER COMPANY, a Utah general partnership (the "Declarant").

RECITALS:

- A. Declarant previously executed and recorded the following:
- (i) A Declaration of Covenants, Conditions & Restrictions of Emigration Oaks, a ~~Utah general partnership~~ <sup>Planned Unit Development</sup>, dated February 4, 1985 which was recorded April 26, 1985 as entry No. 4078735, in Book 5648, at Page 2997, of the official records of Salt Lake County, State of Utah (the "Declaration").
  - (ii) A plat for Emigration Oaks Phase 1A, a Planned Unit Development, recorded April 26, 1985 as entry No. 4078734 in Book 85-4 at Page 77 of the official records of Salt Lake County, State of Utah (the "Plat").
  - (iii) An Amendment to Declaration of Covenants, Conditions & Restrictions of Emigration Oaks, a Planned Unit Development dated July 3, 1985 which was recorded July 10, 1985 as entry No. 4108691 in Book 5670, at Page 816, of the official records of Salt Lake County, State of Utah (the "Amendment").
- B. Declarant desires to amend the Declaration in certain respects.

NOW, THEREFORE, in consideration of the foregoing covenants and promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant agrees as follows:

1. The following sections of the Declaration shall be amended as follows:
- (a) Article V of the Declaration shall be amended to add an entirely new and additional Paragraph 10, to read as follows:

10. Approval of, and Right of Nonparticipation in Certain Amenities. Approval by vote of Association members is required for any decision or action to approve or provide for recreational or social facilities, fixtures, structures or buildings, or related access or utility requirements, whose acquisition, construction or operation would involve or result in any expenses that could be included in any assessments payable by lot owners or Association members, or which could be

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included in any assessments that could become a lien against any lot. Upon approval, except as provided hereafter, lot owners and members shall be entitled to use of and participation in such recreational or social programs, facilities, fixtures, structures or buildings under rules approved by the Association, and shall be subject to assessment for all related costs and expenses.

(a) Approval for any such recreational or social facilities, fixtures, structures or buildings, or related access or utility requirements and assessments therefore must be assented to by a majority of the written, signed votes actually cast by lot owners exercising their right to vote as members of the Association, cast in person or by authorized proxy, in the manner hereafter provided. A meeting for this purpose shall be called by written notice, setting forth the purpose of the meeting, which shall be sent to all members by certified mail at least thirty (30) days, but not more than fifty (50) days, prior to the noticed meeting date. Votes may be cast by delivery to the Association of a signed written vote cast at the meeting, or by a signed and witnessed vote delivered to the Association on the date of the meeting. Notice of approval of any such decision or action, stating the number of approving votes and the total votes cast, shall be mailed by certified mail to all lot owners or members within ten (10) days following the above meeting.

(b) Within thirty (30) days following the date that notice of approval was mailed, any lot owner or member may deliver or mail by certified mail to the Association a notice of nonparticipation in any approved recreational or social facilities, fixtures, structures or buildings, and related access or utility requirements. Thereafter, upon receipt by the Association of any notice of nonparticipation, a statement advising as to the total number of notices of nonparticipation shall be mailed by certified mail to all lot owners within forty-five (45) days of the date that notice of approval was mailed. If more than fifteen percent (15%) of all record lot owners filed a notice of nonparticipation, any lot owner of record who did not file such a notice may require a new meeting and new vote on approval or disapproval of any proposed recreational or social facilities, fixtures, structures or buildings, or related access or utility requirements. Demand therefor must be made in writing by personal delivery or certified mail to the Association within 30 days following the Association's mailing of the statement advising as to the number of notices of nonparticipation.

(c) No lot owner or member shall be subject to any special, monthly or other assessment that includes any charge for any expense or cost attributable to construction, operation, repair, maintenance, or abandonment of any recreational or social facilities, fixtures, structures or buildings, or related access or utility requirements, with

respect to which such owner or member, or the owner or member's predecessor in interest, gave effective notice of nonparticipation; and no such owner or member shall be entitled to the use or enjoyment thereof, except as an occasional guest of a participating member in compliance with Association rules.

(d) Any nonparticipating lot owner and member shall become entitled to use and enjoyment of any recreational or social program, facilities, fixtures, structures or buildings, and may be assessed for the expenses thereof, upon execution of a form of agreement prescribed by the Association which provides for payment, through special individual assessments or otherwise (at the option of the Association), of an initial recreational participation fee in addition to the uniform assessments applicable to all participating lot owners and members. The initial recreational participation fee shall be calculated in compliance with rules approved by the Association, to be based upon the lot owner's equal share with other participating lot owners of the Association's expenses for initial construction or acquisition of the recreational program, facilities, fixtures, structures or buildings in which participation is desired, together with any capitalized expenses for improvements or additions and any depreciation or reserve account for replacement established by the Association.

(e) The foregoing provisions shall be applicable only to those recreational or social facilities, fixtures, structures or buildings, or related access or utility requirements proposed to be located within common areas, or whose costs of acquisition, construction or operation are to be imposed as assessments charged to all lot owners or Association members (except owners or members who elect not to participate). The foregoing provisions shall not prohibit or prevent any number of agreeing lot owners or Association members from entering into an agreement to acquire a lot within the project for such purposes and distributing the costs and expenses thereof among themselves through a supplemental assessment.

(b) Article XII, Subparagraph 5 shall be amended by adding an entirely new and additional paragraph, which shall constitute a new Subparagraph 5(e), to read as follows:

(e) No amendment of this Declaration shall operate to deny or limit the right of nonparticipation by any lot owner in assessment for (and use of) any recreational or social facilities, fixtures, structures, or buildings and related access or utility requirements that may be approved by the Association, provided the lot owner asserting that right purchased his lot prior to such amendment.

(c) Article V, Paragraph 3 of the Declaration shall be amended to read as follows:

3. Maximum Monthly Assessment. As of the date set for the commencement of monthly assessments under Section 7 of this Article V, each Lot shall be subject to a maximum monthly assessment of not more than Fifty Dollars and 00/100 (\$50.00). From and after January 1, 1986, the maximum monthly assessment may be increased by no more than fifteen percent (15%) in any single full year thereafter without the approval of the members. From and after January 1, 1986, the maximum monthly assessment may be increased by more than 15% in any single full year only if the increase is assented to by a majority of the votes which members present in person or represented by proxy are entitled to cast at a meeting duly called for such purpose. Written notice setting forth the purpose of the meeting shall be sent to all members at least thirty (30) days but not more than fifty (50) days prior to the meeting date. The Board of Trustees of the Association may from time to time and in its discretion set the amount of the monthly assessment at any sum not in excess of the then applicable maximum amount.

(d) That Article IV of the Declaration shall be amended by deleting the existing Subparagraph 7, and substituting an entirely new Subparagraph 7, as follows:

7. Encroachments and Easements. An easement for encroachments is hereby created in the following circumstances:

(1) Where provision for drainage or a drain field on an owner's lot is infeasible or will not comply with governmental regulatory requirements because of the impermeability of soils or other unavoidable obstacles on the owner's lot, a drain field may encroach upon a common area or upon an adjacent owner's lot only to the minimum extent necessary to establish a functioning and lawful drain field. Any lot owner undertaking construction of such an encroachment shall be responsible for assuring that all damage to land and vegetation on the affected common area or adjacent lot is fully reclaimed. Except with permission of the adjacent lot owner, no such encroachment shall be so located or designed that the drain field reaches within fifteen (15) feet of any Living Unit on any adjacent lot, or within ten (10) feet of any water line, septic tank or drain field on such adjacent lot or common area.

(2) Encroachment is authorized for buildings, structures, or support only temporarily in the course of construction or stabilization of earth or structures. Such encroachments are authorized only if an encroachment is unavoidable despite compliance with the Building Location requirements prescribed by applicable provisions of Paragraph VIII ("Architectural Control"). Any lot owner undertaking activities that result in such an encroachment shall be responsible for assuring that all damage to structures, land and vegetation on the encroached property is fully repaired or reclaimed; and shall fully indemnify the owner of the encroached property (or the Association, if the encroachment is upon common areas) for any

liability to third persons that may result from injuries or damage to persons or property caused by the encroaching building or structure.

(3) Where shifting, settlement or other unintended physical movement of roads or access easements encroaches on a lot or common area, the encroachment is authorized for such reasonable period as is necessary to provide for repair or reconstruction.

(e) That Article IV, Paragraph 3, of the Declaration shall be amended to read as follows:

3. Transfer of Title. Declarant agrees that it shall convey the platted Common Areas in Emigration Oaks to the Association by Quit Claim Deed.

(f) That Article XI, Paragraph 3(g), of the Declaration shall be amended to read as follows:

(g) A statement that Declarant agrees, at or prior to the time it conveys to an Owner the first lot located on the portion of the Additional Land being added to Project, that Declarant shall convey the platted Common Areas in such portion to the Association by Quit Claim Deed.

2. In all other respects the Declaration and Plat are ratified and affirmed.

3. The vote required for amendment of the declaration of covenants has occurred, in accordance with Part XII, Paragraph 5, of the Declaration of Covenants, Conditions, and Restrictions of Emigration Oaks, a Planned Unit Development, as made and executed on February 4, 1985.

EXECUTED by Declarant on this 8<sup>th</sup> day of August, 1991.

"DECLARANT"

THE BOYER COMPANY,  
a Utah general partnership

By [Signature]

Its General Partner

and as President of Pioneer Fork Road  
Owners Association.

NOTARY

STATE OF UTAH            )  
                                  :    ss.  
COUNTY OF SALT LAKE    )

On this 8<sup>th</sup> day of August, 1991, personally appeared before me St. Roger Bohart, who duly acknowledged to me that he executed the foregoing instrument as one of the Partners of THE BOYER COMPANY, a Utah general partnership, and that the statements contained therein are true.

My commission expires:

4-28-93

De Neese D. Balli  
NOTARY PUBLIC

Residing at: Salt Lake County

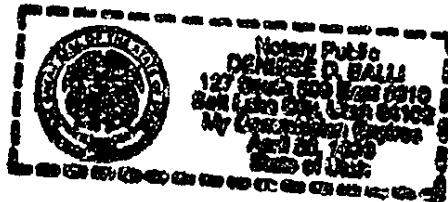


EXHIBIT "A"

Real property situated in Salt Lake County, State of Utah and more particularly described as follows:

Lots 1 through 40, inclusive, EMIGRATION OAKS PHASE 1A, a planned unit development, located in the Southwest Quarter of Section 32, Township 1 North, Range 2 East, Salt Lake Base and Meridian, Salt Lake County, State of Utah, according to the official plat thereof, filed in Book "85-4" of Plats at Page 77 of the Official Records of the Salt Lake County Recorder.

TOGETHER WITH a right and easement of use and enjoyment in and to the common areas and facilities as described in and provided for in the Declaration of Covenants, Conditions & Restrictions of Emigration Oaks, a planned unit development, recorded April 26, 1985 as Entry No. 4078735 in Book 5648 at Page 2996 of the Official Records.