

119  
11

When Recorded, Mail To:  
Eaglepointe Development, L.C.  
C/O SKY Properties, Inc.  
585 West 500 South #110  
Bountiful, Utah 84010

**RETURNED**  
**OCT 01 2003**

E 1916775 B 3386 P 747  
RICHARD T. MAUGHAN, DAVIS CNTY RECORDER  
2003 OCT 1 11:36 AM FEE 49.00 DEP LHL  
REC'D FOR EAGLEPOINTE DEV LC

*Eaglepointe Estates 5*

*01 - 384 - 0501 thru  
0520*

Above the Line for Recorder's Use Only

**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,  
RESTRICTIONS, AND RESERVATION OR GRANT OF EASEMENTS  
FOR EAGLEPOINTE ESTATES PHASE 5**

This Declaration of Covenants, Conditions, Restrictions and Reservation or Grant of Easements (hereinafter referred to as the "Declaration"), is made this 22nd day of September, 2003, by **B&E PACE INVESTMENT, LTD.**, a Utah limited partnership ("Pace"); **EAGLEPOINTE DEVELOPMENT, L.C.**, a Utah limited liability company ("Eaglepointe"); **STAN GOODELL**, an individual ("Stan"); and **RONDA T. GOODELL**, an individual ("Ronda"); Pace, Eaglepointe, Stan, and Ronda are hereinafter collectively referred to as the "Declarant"; in contemplation of the following facts and circumstances:

A. Declarant is the fee title owner of certain real property situated in the City of North Salt Lake, County of Davis, State of Utah known as all of **EAGLEPOINTE ESTATES PHASE 5**, as such Plat is shown on the Official Records of the Davis County Recorder, (hereinafter collectively the "Property"). The legal description of the Property is attached hereto as Exhibit "A" and by this reference thereto, is made a part hereof.

B. Declarant desires that the Subdivision be developed and the improvements thereon be constructed generally in accordance with a master plan and general scheme of development into a residential community known as Eaglepointe.

**THEREFORE**, to further the general purposes herein expressed, Declarant for itself, its successors and assigns, hereby declares that all of the Property shall at all times, be owned, held, used, and occupied subject to the provisions of this Declaration and subject to: (i) the covenants, conditions, and restrictions herein contained; and (ii) the easements herein reserved or granted.

**1. DEFINITIONS.**

1.1 "Committee" shall mean that committee as described in Section 4, herein, that is charged with the responsibility of review and approval of all items set forth in said Section 4.

1.2 "Lot" shall mean any area of real property within the Subdivision designated as a Lot on any subdivision plat recorded or approved by Declarant.

1.3 "Maintenance Charges" shall mean any and all costs assessed against an Owner's Lot and to be reimbursed to the Committee for work done pursuant to Section 3 and fines, penalties and collection costs incurred in connection therewith.

1.4 "Owner" shall mean (when so capitalized) the record holder of legal title to the fee simple interest in any Lot. If there is more than one owner of record of legal title to a Lot then notice to any one of such owners of record shall be deemed notice to all owners of record.

1.5 "Park Strip" shall mean the area in front of a Lot bordering the street beginning with the front line of the lot and extending to the public asphalt roadway. The Park Strip shall include the sidewalk, the dirt planting area, and the curb and gutter.

1.6 "Subdivision" shall mean, collectively, all of the lots situated within EAGLEPOINTE ESTATES PHASE 5 SUBDIVISION as recorded in the Official Records of the Davis County Recorder that is expressly made subject to the terms and conditions of this Declaration.

## 2. OWNERS BOUND BY COVENANTS, RESTRICTIONS, AND EASEMENTS

2.1 Each Owner Bound By Terms of Declaration. Each Owner, by acceptance of a deed to a Lot, is deemed to have read and agreed to be bound by the terms and conditions of this Declaration.

## 3. MAINTENANCE

3.1 Purpose of Maintenance Charge. In order to create, maintain and improve the Subdivision as a pleasant and desirable environment, to establish and preserve a harmonious design for the community and to protect and promote the value of the Subdivision, each Owner covenants and agrees to maintain its Lot in accordance with the terms of this Declaration, or be subject to the assessment of Maintenance Charges to be levied by the Committee as hereinafter provided.

3.2 Maintenance of Park Strip. Each Owner shall be responsible to landscape and maintain the Park Strip fronting on each Owner's Lot. This maintenance will include, without limitation, the mowing and watering of the designated park strips, removal of weeds, clearing of debris, and other general care, removal of snow from the sidewalk, but not the removal of snow from the planted area of the Park Strip. In the event that any Owner shall fail to landscape or maintain the Park Strip, whether such failure is caused through the failure to act or the willful or negligent act of any Owner, his family, guests or invitees, or otherwise, then, subject to the provisions of Section 3.4, the Committee shall have the right to cause such landscaping and maintenance to be performed and the cost of such maintenance or repairs, shall constitute a Maintenance Charge to which such Owner's Lot shall be subject and the Maintenance Charge shall be secured by the Maintenance Charge Lien as set forth herein.

3.3 Improper Maintenance of Lot. Each Lot within the Subdivision shall be maintained by its Owner without regard to whether or not any improvements have been constructed thereon by said Owner. In the event that: (a) any portion of any Lot is so maintained as to present a public or private nuisance; or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Subdivision which are substantially affected thereby or related thereto; or (b) any portion of a Lot is being used in a manner which violates this Declaration; or (c) any Owner fails to maintain acceptable vegetation on any slope greater than 30% on said Owner's Lot; or (d) any Owner fails to perform any of its obligations under this Declaration or the architectural guidelines and standards of the Committee; then, subject to the provisions of Section 3.4, the Committee shall have the right to cause such landscaping and maintenance to be performed and the cost of such maintenance or repairs, shall constitute a Maintenance Charge to which such Owner's Lot shall be subject and the Maintenance Charge shall be secured by the Maintenance Charge Lien as set forth herein.

3.4 Notice to Owner. In the event that any Park Strip or Lot is not maintained or repaired as set forth herein, then the Committee may, by resolution, make a finding to such effect. Said Resolution shall specify the particular condition or conditions which exist on said Lot. Upon adoption of such a Resolution, the Committee shall give written notice thereof to the Owner of the applicable Lot, that, unless the conditions stated in the Resolution are corrected within fourteen (14) days of the date of such notice, the Committee shall have the right, without further notice or demand, to cause the conditions set forth in the Resolution to be corrected said Owner's cost. If at the expiration of said fourteen (14) days the requisite corrective action has not been taken, the Committee shall be authorized and empowered to cause such action to be taken and the cost thereof shall be added to and become part of the Maintenance Charge levied against

said Lot and shall be secured by the Maintenance Charge Lien. The Maintenance Charge shall be levied against only the Lot set forth in the Resolution adopted by the Committee. Written notice of the amount of Maintenance Charge levied shall be given to the Owner of the Lot. The Maintenance Charge shall be due and payable in full within five (5) days of the date of such notice.

3..5 Maintenance Charge Lien. The Maintenance Charges, together with interest, costs, and reasonable attorneys' fees, shall be secured by a lien (the "Maintenance Charge Lien"), on the Lot to which such charges relate in favor of the Committee, and such charges, costs, expenses shall be a continuing servitude and lien upon the Lot against which each such charge is made until paid in full. The Maintenance Charge Lien shall be a charge on the Lot, shall attach from the date when the unpaid charge shall become due and shall be a continuing lien upon the Lot against which each such assessment is made until paid in full. Each such Maintenance Charge, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time the Maintenance Charge becomes due. The Maintenance Charge Lien may be foreclosed by the Committee in the same manner as a mortgage on real property upon the recording of a Notice of Delinquent Maintenance Charge as set forth in Section 3.6 hereof, provided, however, there shall be no right to redeem the Lot from the purchaser of the Lot at any foreclosure sale conducted pursuant to such action. The Committee shall be entitled to purchase the Lot at any such foreclosure sale.

3.6 Effect of Nonpayment. Any Maintenance Charge not paid within five (5) days of the date of written notice of the amount thereof shall be deemed delinquent and shall bear interest at the rate of eighteen percent (18%) per annum from due date until paid. The Owner of the applicable Lot shall be liable for all costs, including attorneys' fees, which may be incurred by the Committee in collecting the same. The Committee may also record a Notice of Maintenance Charge Lien against any Lot as to which a Maintenance Charge is delinquent. The Notice shall be executed by a member of the Committee, set forth the amount of the unpaid assessment, the name of the delinquent Owner and a description of the Lot. The Committee may establish a fixed reasonable fee to reimburse the Committee for the Committee's cost in recording such Notice, processing the delinquency and recording a release of said lien, which fixed fee shall be treated as part of the Maintenance Charge of the Committee secured by the Maintenance Charge Lien. The Committee may bring an action at law against the Owner personally obligated to pay the delinquent assessment and/or foreclose the lien against said Owner's Lot. Commencement of an action against said Owner shall not be deemed to be a waiver of the right to foreclose the lien granted herein unless and until all amounts due are paid in full. No Owner may waive or otherwise avoid liability for the assessments provided for herein by non-use or abandonment of his Lot.

3.7 Priority of Lien. The Maintenance Charge Lien provided for herein shall be subordinate to any first mortgage lien held by, or first deed of trust of which the beneficiary is a lender (or its successors or assigns) who has previously lent funds the security of which is the Lot against which the Maintenance Charge Lien is assessed, and shall also be subject to and subordinate to liens for taxes and other public charges. Except as provided above, the Maintenance Charge Lien shall be superior to any and all charges, liens or encumbrances which may in any manner arise or be imposed upon the applicable Lot after the date and time of the recordation of the Notice of Maintenance Charge Lien. Sale or transfer of any Lot shall not affect the Maintenance Charge Lien.

#### 4. DESIGN REVIEW COMMITTEE

4..1 Purpose. In order to create, maintain and improve the Subdivision as a pleasant and desirable environment, to establish and preserve a harmonious design for the community, to establish procedures for the enforcement of the terms and conditions of this Declaration to protect and promote the value of the Subdivision, the exterior design of all improvements constructed within the Subdivision, landscaping and changes or alterations to existing use, landscaping and exterior design and development shall be subject to the prior review and approval of the Committee.

4.2 Creation of Design Review Committee. The Design Review Committee (the "Committee") shall consist of two (2) members. The initial Design Review Committee will consist of: Wilford W. Cannon, Steven E. Smoot, and Stanley M. Smoot. A majority of the committee may designate a representative to act for it. In the event of death or resignation of any member of the Committee, the remaining members shall have full authority to designate a successor by majority vote.

4.3 Committee Duties. The Committee shall be responsible for the review and approval of all plans for the construction of any improvements upon any Lot, for the enforcement of the provisions of this Declaration, and for such other matters as shall be reasonably necessary to give effect to the purpose of this Declaration. In addition to the authority herein expressly given, the Committee shall have such rights, powers, and privileges as shall be reasonably necessary to give effect to this Declaration and the enforcement thereof.

4.4 Use of Consultants. The Committee is hereby authorized to retain the services of one or more consulting architects, landscape architects or urban designers, licensed to practice in the State of Utah, to advise and assist the Committee in performing; the design review functions prescribed in this Declaration and to carry out the provisions set forth herein.

4.5 Construction Cleaning and Design Review Deposit. Concurrent with submittal of the proposed home plans for each Lot, each Owner shall be required to pay a Construction Cleaning and Design Review Deposit (the "Deposit") in the amount of two hundred dollars (\$200.00) to the Committee before any home plans shall be reviewed or approved by the Committee. The Deposit will be held and used by the Committee as set forth in this Section. Upon completion of the construction of improvements upon the Owner's lot, the Owner shall be entitled to a refund of One Hundred Dollars (\$100.00), provided that the Lots and public improvements adjacent to the Owner's Lot are free of construction debris and damage resulting from construction on Owner's Lot. Said Owner shall be required to cause said adjacent Lots and public improvements to be free from construction debris and damage and no refund shall be made until the Owner has so complied. In the event such Owner shall not so comply, then the Committee shall be entitled to use said funds in payment of costs and expenses incurred to do so. In the event that the cost of removal of said construction debris and/or repair of damage is in excess of One Hundred Dollars (\$100.00) then any such amount in excess of One Hundred Dollars (\$100.00) shall constitute a Maintenance Charge that is subject to repayment pursuant to Section 3, by the Owner of the applicable Lot. The balance of the deposit shall be retained by the Committee to pay costs and expenses incurred in reviewing plans, including payment to consultants, architects, planners or members of the Committee.

## 5. COVENANTS, CONDITIONS, AND RESTRICTIONS

5.1 Use of Lots. All Lots within the Subdivision shall be used only for the construction and occupancy of one single family dwelling, not to exceed two and one-half (2 1/2) stories in height, together with a private attached garage for not less than two vehicles. Off-street parking must be provided for an equivalent number of vehicles to the number of vehicles garaged and parking aprons as approved or required by the Committee. Lots may also be used for the construction of typical residential amenities such as a family swimming pool, tennis court, etc. All Lots shall be used, improved and devoted exclusively for such single family residential use. No gainful occupation, profession, trade or other nonresidential use shall be conducted on any such property and no person shall enter into any Lot for engaging in such uses or for the purpose of receiving products or services arising out of such usage without review and approval by the Committee and the appropriate officials of the City of North Salt Lake.

5.2 Architectural Control. No grading, excavation, building, fence, wall, residence or other structure, or alteration of any kind shall be commenced, erected, maintained, improved, altered, or made until the construction plans and specifications thereof showing the location of all improvements has been approved in writing by the Committee. The Committee, at its sole option, may also require the Owner to also submit a topographical plan and/or a detailed landscaping plan for review and approval. All subsequent additions to or changes or alterations in any building, fence, wall or other structure, including exterior color scheme, and all changes in the grade of any Lot shall be subject to the prior written approval of the Committee. Subsequent to receiving approval of the Committee and prior to the commencement of construction, each Owner will be responsible for obtaining a building permit from the City of North Salt Lake.

5.3 Design Review Deadlines. Upon receipt by the Committee of a written request for approval provided for or required by this Agreement, the Committee shall, within thirty (30) days after receipt of such request for approval, either: (a) approve the plans and specifications as submitted; or (b) notify the party making such request of any

objections thereto (such objections to be specifically stated) and such party may within fifteen (15) days thereafter resubmit its request for approval rectifying any such objections to the Committee. The Committee shall then have an additional fifteen (15) days after receipt of said revisions to approve or disapprove same. Failure to give any written notice of disapproval within the periods provided for above shall constitute approval thereof by the Committee.

5.4 Construction Quality, Size, and Height. The Committee will base its approval of construction plans, specifications, landscaping plans and other alterations on the acceptability and harmony of the external design of the proposed structures with respect to topography and grade, quality of materials, size, height, color, etc.

5.4.1 Materials; Quality. All structures constructed within the Subdivision shall be of acceptable materials and shall be of good quality workmanship and materials. All dwellings constructed shall have seventy percent (70%) of all exterior construction composed of either new brick, stone, or stucco. Masonry (brick, stone and stucco) exterior is strongly encouraged. For purposes of this Section, concrete siding or concrete impregnated siding shall not be considered to be masonry. Log structures are prohibited. All roof materials and colors must be approved by the Committee. The typical roof pitch shall be at least 4/12. The Committee may grant a variance of the roof pitch. A minimum width of six (6) inches shall be required on the fascia. The Committee may grant a variance on the width of the fascia. All stacks and chimneys from fireplaces in which combustible materials other than natural gas, are burned shall be fitted with spark arresters. All Owners shall strictly comply with all state laws and city ordinances pertaining to fire hazard control.

5.4.2 Minimum Size of Dwelling. No dwelling shall be permitted on any Lot wherein the stacking is more than two and one-half (2 1/2) stories in height, and the ground floor area of the main structure, exclusive of garages and open porches, is less than the following area measurements:

5.4.2.1 For a single story dwelling, 1,700 square feet, not including basement area;

5.4.2.2 For a two story dwelling, 1,100 square feet on the main floor with the aggregate footage of above ground floors of the structure to total a minimum of 2,300 square feet;

5.4.2.3 For a multi-level dwelling, 1,450 total square feet for the upper two (2) main living levels, provided however that no multi-level dwelling shall have less than 2,300 finished square feet, excluding basement, as measured from the level of the sidewalk in front of the dwelling.

The foregoing notwithstanding, the Committee may grant to any Lot within the Subdivision a variance from the above Minimum Size Requirements if the Committee determines, in its sole discretion, that due to the unique configuration and topography of such Lot, it would be unfeasible to construct upon such Lot a structure that would conform with the Minimum Size Requirements.

5.5 Construction Time. The Committee shall have final control for approval of all color and material plans. The construction time for the exterior portion of any structure, shall not exceed twelve (12) months from start to finish. "Start" shall be the instant any foliage is cut or removed in anticipation of the landscaping or construction to be built. All building debris, excavation, dirt, etc. associated with the building process shall be removed within the twelve (12) month period. Such debris and excavation dirt shall not be permitted on any of the streets or sidewalks.

5.6 Building Location. All setbacks, side yards, and rear yards shall be in conformance with North Salt Lake City Ordinance in effect at the time of construction of any building on any Lot.

5.7 Landscaping. Trees, lawns, shrubs and other plantings provided by the Owner either before or after construction of a residence upon said Lot shall be properly nurtured and maintained or replaced at the Owner's expense upon request of the Committee. No fence, wall, or screen shall be erected without prior written approval of the Committee. No fence, wall, hedge or screen shall be erected that would obstruct sight lines or otherwise constitute a traffic hazard, particularly near driveways and street intersections. Topsoil is to be scraped and stockpiled before excavation for foundations or footings. The topsoil is to be replaced at the time of finish grading on each Lot. No

planting or structures shall be placed or permitted which may damage or interfere with established slope ratios, create erosion or change the direction of drainage channels. All materials used to retain and contour the slope of any Lot or improvement must conform with the natural beauty and color of the Subdivision and must be approved by the Committee. Each dwelling unit shall have installed surrounding it an outdoor sprinkler system for fire protection and irrigation.

5..8 Deadline for Completion of Landscaping. The front yard of each Lot (from the street to the front line of the residence on the Lot) shall be landscaped within one (1) year of the occupancy date of any structure built upon said Lot. The remainder of the Lot shall be landscaped within two (2) years of the occupancy date of any structure built upon said Lot.

5..9 Revegetation of Slopes. Where any slope on any Lot has a slope of 30% or greater the Owner thereof shall be required to immediately revegetate said slope and present a revegetation plan to the Committee for review and approval.

5..10 Temporary Occupancy and Temporary Buildings. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary buildings or structures used during the construction of a dwelling on any property shall be removed immediately after the completion of construction.

5..11 Out Buildings. It is understood that out buildings such as swimming pool and tennis court dressing facilities may be constructed on any Lot as long as they are in conformity with the requirements of this Declaration and are approved by the Committee. All pools must be fenced in strict compliance with local ordinances.

5..12 Exterior Antennas, Lights and Power Lines. Exterior antennas are prohibited. The location of T.V. dishes must be approved by the Committee. Exterior lighting that is detached from a residence will not be allowed unless approved by the Committee. It is anticipated that variances for exterior lights, detached from a residence, that are positioned above a one-story level (i.e. tennis court lighting) will rarely be given. All power lines and similar type cables shall be buried underground.

5..13 Nuisances; Construction Activities. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such Lot or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other Lot in the vicinity thereof or to the occupants of such other Lot. No other nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other Lot in the vicinity thereof or to its occupants. Normal construction activities and parking in connection with the building of improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick block, lumber and other building materials will be piled neatly. In addition, any construction equipment and building materials stored or kept on any Lot during construction of improvements may be kept only in areas approved by the Committee, which may also require screening of the storage areas.

5..14 Parking or Storage of Vehicles. No articles, material, equipment or vehicles of any nature shall be parked or stored on any street located within the Subdivision. Licensed, regularly used passenger vehicles (i.e. visitor vehicles) may be parked in the streets of the Subdivision for brief periods of time (i.e. less than twenty-four hours). Overnight parking of such vehicles should generally be restricted to the driveway of the dwelling being visited. No automobiles, trailers, boats, racks, snowmobiles, motorhomes, recreational vehicles or any other type of vehicles shall be stored on driveways, unless behind the front line of the house. Such vehicles that are properly licensed and in running condition may be stored on side Lots if properly screened from view.

5..15 Garbage and Refuse Disposal. No Lot shall be used as or maintained as a dumping ground for rubbish, trash, garbage or other waste and such materials shall not be kept except in covered containers. All Trash containers shall be covered and kept screened from view from the street in suitable enclosed areas, except during collection. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition.

The burning of rubbish, leaves or trash within the Subdivision is prohibited. Each Lot and its abutting street is to be kept free of trash, weeds, and other refuse by the Lot Owner. No unsightly material or objects are to be stored on any Lot in view of the general public.

5..16 Signs. No signs, posters, displays or other advertising devices of any character shall be erected or maintained on, or shown or displayed to the public view on any Lot without the express written consent of the Committee; provided however that the restrictions of this paragraph shall not apply to any sign or notice which states that the premises are for rent or sale. The Committee may cause all unauthorized signs to be removed. This section shall not apply to any signs used by Declarant or its agents in connection with the original construction and sale of the Lots.

5..17 Repair of Improvements. No improvements on any Lot shall be permitted to fall into disrepair and such improvements shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any building or structure is damaged or destroyed, then, subject to the approvals required by Section 5.2 above, such building or structure shall be immediately repaired or rebuilt or shall be demolished.

5..18 Restriction on Further Subdivision, Property Restrictions and Rezoning. No Lot shall be further subdivided or separated into smaller Lots by any Owner, and portion less than all of any such Lot, nor any easement or other interest therein, shall be conveyed or transferred by any Owner, without the prior written approval of the Committee, which approval must be evidenced on the plat or other instrument creating the subdivision, easement, or other interest. No further covenants, conditions, restrictions or easements shall be recorded by any Owner or other person against any Lot without the provisions thereof having been first approved in writing by the Committee and any covenants, conditions, restrictions or easements recorded without such approval being evidenced thereon shall be null and void. No application for rezoning of any Lot, and no applications for variances or use permits, shall be filed with any governmental authority unless the proposed use of the Lot has been approved by the Committee and the proposed use otherwise complies with this Declaration.

5..19 Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of temporary structures, trailers, improvements or signs necessary or convenient to the development, marketing or sale of property within the Subdivision.

## 6. EASEMENTS

6..1 Drainage and Public Utility Easements. Easements for installation and maintenance of utilities and drainage facilities and other uses are reserved as shown on the recorded plat. Within these easements no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction or flow of drainage channels in the area, or which may obstruct or retard the flow of water through drainage channels or easements. The easement area of each of the Lots and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

6.2 Police, Fire and Ambulance Service. An easement is hereby granted to all police, fire protection, ambulance services and similar persons to enter upon the Lot in the reasonable performance of their duties.

## 7. TERM AND AMENDMENTS

7..1 Term; Method of Termination. This Declaration shall be effective upon the date of recordation hereof and, as amended from time to time, shall continue in full force and effect for a term of twenty (20) years from the date of recordation. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by the then Owners (based upon one vote per Lot) casting seventy-five percent (75%) of the total votes cast at an election held for such purpose within six (6) months prior to the expiration of the initial effective period hereof or any ten (10)

year extension. The Declaration may be terminated at any time if at least ninety percent (90%) of the votes cast by all Owners shall be cast in favor of termination at an election held for such purpose. No vote to terminate this Declaration shall be effective unless and until the written consent to such termination has been obtained, within a period from six (6) months prior to such vote to six (6) months after such vote, from the holders of recorded first mortgages or deeds of trust on seventy-five percent (75%) of the Lots upon which there are such recorded first mortgages and deeds of trust. If the necessary votes and consents are obtained, the Committee shall cause to be recorded in the Davis County records a "Certificate of Termination", duly signed by a member of the Committee and acknowledged before a Notary Public. Thereupon the covenants herein contained shall have no further force and effect, and the Committee shall be dissolved pursuant to the terms set forth in its articles.

7.2 Amendments. This Declaration may be amended by recording in the Davis County records a "Certificate of Amendment", duly signed and acknowledged as required for a Certificate of Termination. The Certificate of Amendment shall set forth in full the amendments adopted, and shall certify that at an election duly called and held pursuant to the provisions of the articles and bylaws of the Committee the Owners casting seventy-five percent (75%) of the votes at the election, voted affirmatively for the adoption of the amendment. Any amendment shall be effective only if the written consent from the holders of recorded first mortgages or deeds of trust on seventy-five percent (75%) of the Lots upon which there are such recorded first mortgages or deeds of trust is obtained.

## 8. MISCELLANEOUS

8.1 Interpretation of the Covenants. Except for judicial construction, the Committee shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Committee's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefitted or bound by this Declaration and provisions hereof.

8.2 Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability or any of the other provisions hereof.

8.3 Rule Against Perpetuities. Each provision contained in this Declaration which is subject to the laws or rules sometimes referred to as the rule against perpetuities or the rule prohibiting unreasonable restraints or alienation shall continue and remain in full force and effect for the period of 21 years following the death of the last survivor of the issue of President Bill Clinton, and the now living children of said issue, or until this Declaration is terminated as hereinafter provided, whichever first occurs. All other provisions contained in this Declaration shall continue and remain in full force and effect in accordance with Section 7.1 hereof.

8.4 Rules and Regulations. The Committee shall have the right to adopt rules and regulations with respect to all aspects of the Committee's rights, activities and duties, provided said rules and regulations are not inconsistent with the provisions of this Declaration.

8.5 General Reservations. Declarant reserves the right to grant, convey, sell, establish, amend, release and otherwise deal with easements, reservations, exceptions and exclusions which do not materially interfere with the best interests of Owners and/or the Committee including, but not limited to, access and utility easements, road easements, pedestrian and equestrian easements, pedestrian and hiking trails and easements and drainage easements.

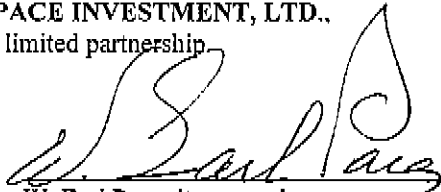
8.6 Run with the Land. Declarant for itself, its successors and assigns, hereby declares that all of the Subdivision shall be held, used and occupied subject to the provisions of this Declaration, and to the covenants and restrictions contained herein, and that the provisions hereof shall run with the land and be binding upon all persons who hereafter become the Owner of any interest in the Subdivision.

IN WITNESS WHEREOF, Declarant has herunto caused its name to be signed by the signature of its duly



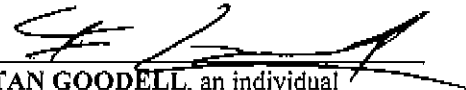
authorized official as of the day and year written.


**B&E PACE INVESTMENT, LTD.,**  
a Utah limited partnership

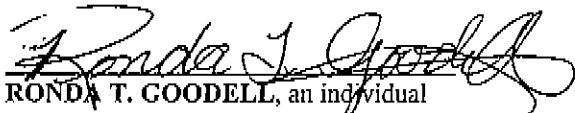
By:   
W. Earl Pace, its general partner

**EAGLEPOINTE DEVELOPMENT, L.C.,**  
a Utah limited liability company

By: **Its Manager**  
**EXCEL INVESTMENT CORPORATION,**  
a Utah corporation

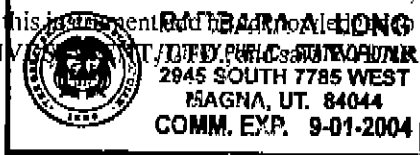
  
**STAN GOODELL, an individual**

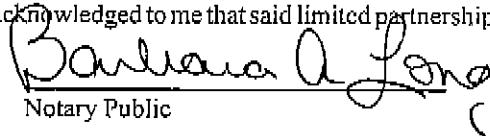
By:   
Steven E. Smoot, its President

  
**RONDA T. GOODELL, an individual**

STATE OF UTAH )  
 ) ss.  
COUNTY OF DAVIS )

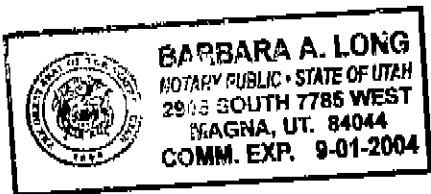
On this 22<sup>nd</sup> day of Sept., 2003, personally appeared before me **W. EARL PACE**, who is the general partner of **B&E PACE INVESTMENT, LTD.**, a Utah limited partnership, which limited partnership is the signer of this instrument and he acknowledged to me that the foregoing instrument was signed by him in behalf of **B&E PACE INVESTMENT, LTD.** and he acknowledged to me that said limited partnership executed the same.



  
Notary Public

STATE OF UTAH )  
 : ss.  
COUNTY OF DAVIS )

On the 22<sup>nd</sup> day of ~~August~~ Sept, 2003, personally appeared before me **STAN GOODELL** and **RONDA T. GOODELL**, signers of the foregoing instrument, who duly acknowledged to me that they executed the same.

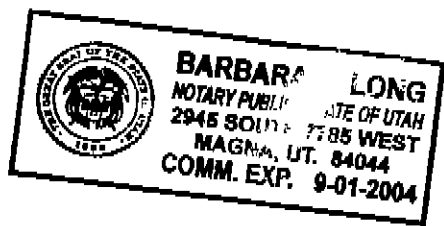


Barbara A. Long  
Notary Public

STATE OF UTAH )  
 : ss.  
COUNTY OF DAVIS )

The foregoing instrument was acknowledged before me this 22<sup>nd</sup> day of ~~August~~ Sept, 2003, by **STEVEN E. SMOOT**, whose identity is personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn, did say that he is the President of **EXCEL INVESTMENT CORPORATION**, a Utah corporation, the manager of **EAGLEPOINTE DEVELOPMENT, L.C.**, a Utah limited liability company, and that said document was signed by him in behalf of said corporation by authority of its bylaws (or a resolution of its board of directors, as the case may be) in its capacity of Manager of **EAGLEPOINTE DEVELOPMENT, L.C.**, and said **STEVEN E. SMOOT** acknowledged to me that said corporation executed the same on behalf of said limited liability company.

Barbara A. Long  
Notary Public



**Exhibit "A"**  
**to**  
**EAGLEPOINTE PHASE 5 DECLARATION**

---

Legal Description of Property

**EAGLEPOINTE ESTATES PHASE 5 SUBDIVISION:** All of Lots 501 through and including 520 of **EAGLEPOINTE ESTATES PHASE 5**, according to the official plat thereof, on file and of record in the Davis County Recorder's Office.