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Jeff Graf
1761 S 1480 E
St George, UT
84790
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SG-ELRG

**Second Amendment to and Restatement of the
Declaration of Covenants, Conditions, and Restrictions for the
EAGLE RIDGE SUBDIVISION**

Pursuant to Section 7(b) of the Covenants and Restrictions for the Eagle Ridge Subdivision ("**Original Declaration**") which was recorded in the Office of the Washington County Recorder on August 2, 1994, as Entry No. 00474725, in Book 0839, at Pages 0521-0528 as to Phase 1, and on August 8, 1994, as Entry No. 00475324, in Book 0841, at Pages 0094-0100 as to Phase 2, and affects certain real property in Washington County, Utah, which is more particularly described as:

See Exhibit "A" attached hereto and incorporated herein by this reference

the Eagle Ridge Homeowner's Association hereby amends and restates in its entirety the Original Declaration, and the amendment thereto recorded on September 6, 1994, as Entry No. 00477856, at Book 0848, at Page 0161 as follows:

**ARTICLE I
DEFINITIONS**

The following definitions and concepts shall control in this Declaration. Any terms used in this Declaration that are not defined shall have their plain and ordinary meaning.

1.1. "**Articles**" means and refers to the Articles of Incorporation of the Eagle Ridge Homeowner's Association. The purpose of the Articles is to establish the Association as a non-profit corporation under Utah law.

1.2. "**Association**" means the Eagle Ridge Homeowner's Association, a Utah non-profit corporation, its successors and assigns.

1.3. "**Bylaws**" means and refers to the Bylaws of Eagle Ridge Homeowner's Association. The purpose of the Bylaws is to govern the Association's internal affairs, such as (for purposes of example but not limitation) voting, elections, and meetings.

1.4. "**Common Area**" means all real property, including the improvements thereto and facilities thereon, owned or hereafter acquired by the Association for the common use and enjoyment of the Owners. As designated on the Plat, the Common Area consists of the 20-foot common area on the River Road frontage, as well as both entrance ways and perimeter fence for the Subdivision. The front Common Area on River Road, which is the west boundary of Lot 21 is partially owned by the State of Utah as road right

of way and at some time in the future the State could widen River Road, which would partially alter and change that part of the Common Area.

1.5. **"Declaration"** means this instrument and any amendments, restatements, supplements, or annexations thereto, which are recorded in the office of the Washington County Recorder.

1.6. **"Directors," "Board of Directors,"** or **"Board,"** means the governing body of the Association.

1.7. **"Lot"** means a separately numbered and individually described plot of land shown on the Plat designated as a Lot for private ownership.

1.8. **"Lot Owner"** means and is synonymous with the term **"Owner."**

1.9. **"Owner"** means the entity, person, or group of persons owning fee simple title to any Lot which is within the Property.

1.10. **"Plat"** means the recorded subdivision Plat for the Property and any replacements thereof or additions thereto.

1.11. **"Property"** means that certain real property hereinbefore described, and such annexations and additions thereto as may hereafter be subjected to this Declaration. The term **"Subdivision"** is synonymous with the term **Property**.

1.12. **"Single Family"** means an individual living alone, a group of two or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three persons not all so related, who maintain a common household within a home.

1.13. **"Subdivision"** means that certain real property hereinbefore described, and such annexations and additions thereto as may hereafter be subjected to this Declaration. The term **"Property"** is synonymous with the term **Subdivision**.

ARTICLE 2 USE RESTRICTIONS AND REQUIREMENTS

2.1. **Land Use and Building Type.** All Lots, and the homes constructed thereon, shall be used only for Single Family residential purposes. Except as otherwise expressly provided for hererin, no professional, business or commercial use shall be made of the same, or any portion thereof; provided, however, that the Lot restrictions contained in this section shall not be construed in such a manner as to prohibit an Owner or resident from (a) maintaining a personal professional library therein; (b) keeping personal business

or professional records or accounts therein; or (c) handling personal, business or professional telephone calls or correspondence therefrom.

2.2. **Lot Size.** Lot sizes as described on the Plat are considered minimum Lot sizes and no person shall further subdivide any Lot other than as shown on the recorded plat of said subdivision. Lots may not be combined for construction of a single home.

2.3. **Care and Maintenance of Lots.** Each Owner shall be responsible for maintenance and upkeep of his Lot and shall keep the same free from rubbish, litter and noxious weeds. All structures, landscaping and improvements shall be maintained in good condition and repair at all times. In the event any Owner fails to perform this maintenance in a manner so as not to detract from the appearance of the property, or affect adversely the value or use of any other Lot, the Directors shall have the right to have maintenance performed on the Lot and the cost of said maintenance shall be added to and become part of the assessment to which such Lot is subject.

2.4. **Care and Maintenance of Common Area.** The Association shall be responsible for care and maintenance of the Common Area and improvements thereon. Any damage caused to the Common Areas and/or improvements by any Lot Owner and/or their agents, guests or invitees must be repaired by the Lot Owner as soon as possible after such damage is discovered, and in the event of failure of the Owner to make such repairs, the Association may make such repairs and the expense of such repair shall be borne by the Lot Owner. Any fence, rocks, sprinkler system, trees, shrubs, plants, lights or other items within the Common Area belong to the Association and cannot be altered without a majority vote of all Owners.

2.5. **Hazardous Activities.** No activities shall be conducted on the Property and no improvements shall be constructed on the Property which are or might be unsafe or hazardous to any person or property.

2.6. **Safe Condition.** Without limiting any other provision of these covenants, each Owner shall maintain and keep such Owner's Lot at all times in a safe, sound and sanitary condition and repair and shall correct any condition or refrain from any activity which might endanger the health of or interfere with the safety or reasonable enjoyment of other Owners of their respective Lots.

2.7. **Weed Control.** Each Lot Owner shall, to the extent reasonably feasible, control the growth and proliferation of noxious weeds and flammable materials on his Lot so as to minimize weeds, fire and other hazards to surrounding Lots, Homes, the Common Areas, and surrounding properties, and shall otherwise comply with any applicable ordinances, laws, rules, or regulations pertaining to the removal and/or control of noxious weeds. Noxious weeds shall mean and refer to those plants which are injurious to crops, animals, land, or the public health.

2.8. **Pest Control.** No Lot Owner shall permit any thing or condition to exist upon his Lot which would induce, breed, or harbor infectious plant diseases or noxious insects. Each Owner shall perform such pest control activities on his Lot as may be necessary to prevent insects, rodents, and other pests from being present on his Lot.

2.9. **Signs.** No builder's commercial signs will be allowed larger than 4'x8' and said sign must be placed on the Lot which is being built on. No other signs will be allowed within the Subdivision. On re-sale of homes and/or Lots no signs larger than standard Real Estate signs will be permitted.

2.10. **Commercial Activity.** No commercial activities of any kind whatever shall be conducted in any building or on any portion of the Subdivision unless approved by the Board. Any businesses which are approved by the Board must be in compliance with applicable St. George City ordinance. The standard by which the Board shall consider any request to operate a commercial business in the Subdivision, shall be based in part on avoidance of equipment traffic, avoidance of the generation of business traffic into the Subdivision, the avoidance of equipment traffic and storage of equipment on the requesting Owner's Lot, and the obstructive nature of the requested activity viz., the other Lot Owners. Notwithstanding anything herein to the contrary, the Board shall not allow any business that is not allowed and licensed by St. George City.

2.11. **Nuisances.** No noxious or offensive activity shall be carried on upon any Lot, part or portion of the Property, nor shall anything be done thereon which may be or may become an annoyance to the Subdivision, including but not limited to noise, obtrusive light, lewdness, or offensive language.

2.12. **Animals, Livestock, Poultry, and Agriculture.** No animals, livestock or poultry of any kind shall be raised or kept on any Lot, except dogs, cats and other domesticated household pets, two (2) or less in total number, may be kept provided that they are not kept or maintained for commercial purposes, and provided further that all pets, kept outside must be restrained in a humane and sanitary manner. Kennels, runs, and leash areas must be kept clean and sanitary and may not be located less than 20 feet from any neighboring dwelling. No pets may be kept in any unreasonable number and the Board may establish rules and restrictions from time to time concerning breeds, types and number of dogs and cats and all animals. Without limiting the Board's authority to restrict other types and breeds and animals and reptiles, the keeping of exotic animals, pit bulls (dogs), and mini-pigs is expressly prohibited within the Subdivision.

2.13. **Temporary or Other Structures.** Except as otherwise provided herein, no structure of a temporary nature, and no trailer, bus, basement, outhouse, tent, shack, barn, garage, shed, or other outbuilding shall be used at any time as a home either temporarily or permanently, nor shall any such structures be erected or placed on the Property at any time. No old or second-hand structures shall be moved onto any of said Lots.

2.14. **Garbage and Refuse Disposal.** No Lot or part or portion of the Property shall be used or maintained as a dumping ground for rubbish, rubble, trash, garbage or other waste. Such trash, rubbish, rubble, garbage or other waste as produced within the Property shall be kept in sanitary containers. Such containers shall not be visible from the street.

2.15. **Sewage Disposal.** Each home shall be connected to and use the municipal sewage disposal system. No individual sewage disposal system shall be permitted on any Lot, part or portion of the Property.

2.16. **RVs, Boats, and Vehicles.** No automobiles, trucks, campers, trailers, boats, equipment, recreational vehicles, motor homes, or other similar vehicles shall be parked or stored on a public street or right of way for more than 72 consecutive hours. No inoperative vehicles may be parked on a public street or right of way. All mechanical repairs must be performed on motor vehicles inside an enclosed garage. The intent of this provision is to keep the public streets and right of ways open to daily traffic, and to avoid unsafe and unsightly conditions of vehicles parked on the street for long periods of time. Said vehicles and equipment may be stored on site as long as it is stored along side the garage or behind the garage but cannot be stored in front of the garage. The Association may enforce this provision by giving notice of the violation to the offending Lot Owner, or when the Lot Owner is not readily available, by giving notice in the form of a written request placed on the vehicle in question and subsequently by notifying proper City authorities, and as per City ordinance instructs to have said vehicle towed, at the Owner's expense, as to city ordinance. None of the above referenced vehicles or equipment may be kept or stored on any Lot unless in a garage or parking stall (pad). Vehicles and equipment used for commercial and business purposes are not allowed to be parked within the Subdivision except for use in the construction of homes and other approved structures within the Subdivision.

2.17. **Rules and Regulations.** The Board of Directors shall have the authority to promulgate rules and regulations for the governance of the Property and persons within the Property. These rules of the Association shall be compiled and copies shall be made available by the Directors for inspection and copying at a reasonable cost.

ARTICLE 3 ARCHITECTURAL CONTROL

3.1. **Architectural Control Committee.** Prior to the commencement of any excavation, construction, reconstruction or remodeling of any structure or of any addition to any structure within the Subdivision, or modification of the natural topography of any Lot, or installation of fences or landscaping elements, approval of the Architectural

Control Committee ("ACC") is required. Any repairing or refinishing of the exterior of any structure shall constitute a remodeling requiring approval of the ACC hereunder.

3.1.1. Appointment and Membership. The ACC shall consist of the Board of Directors or a minimum of three (3) persons appointed by the Board. Persons appointed by the Board to serve on the ACC must be members of the Association.

3.1.2. Procedural Rules and Regulations. If the ACC deems it necessary, it may adopt reasonable rules and regulations for the conduct of its proceedings and to carry out its duties and may fix the time and place for its regular meetings and such extraordinary meetings as may be necessary, and keep written minutes of its meetings, which, if so kept, shall be open for review and inspection upon request. If the ACC conducts formal meetings to review plans, notice of such meetings shall be given to Owners who have made application to the ACC for approval of plans. If the ACC consists of members appointed by the Board, the ACC shall, by majority vote, elect one of its members as chairman and one of its members as secretary and the duties of each will be such as usually appertain to such offices.

3.1.3. Submission of Plans. One complete set of building plans and specifications shall be filed with the ACC, together with any and all proposed improvements, the creation or alteration of which is desired, placed or maintained upon any lot unless and until the final plans, elevations, and specification therefore have received such approval as herein provided. Such plans shall include a Plot Plan showing the location on the lot of the buildings, walls, fences, or other structures proposed to be built, altered, placed or maintained, together with the proposed construction materials, color schemes for roofs, brick, stucco and such other supporting material as the ACC deems necessary. In the absence of the adoption of formal rules and regulations by the ACC, filing with the ACC as required by this section shall mean providing a copy of the plans to at least one member of the ACC. No work shall commence unless and until the ACC has approved such plans in writing thereby certifying that such plans are in compliance with the covenants herein set forth and with the standards herein or hereafter established by said ACC pursuant to the authority of this Declaration.

3.1.4. Rights of Approval; Membership Veto. The ACC shall have the right to disapprove any plans, specification or designs submitted to it in the event the same are not in accordance with all of the provisions of these restrictions and any guidelines established by the ACC: If the plans and specifications submitted are incomplete, or in the event the ACC deems the plans specification or details, or any part thereof, to be contrary to the interests, welfare, or rights of all or part of the property owners of the Subdivision, then the ACC shall have the right to disapprove said plans, specifications and/or details submitted to it. To obtain ACC approval a majority of the ACC must vote in favor of approving a set of plans; provided however, that in no event shall approval be made by less than three ACC members. The decision of the ACC shall be final, subject to a veto by a two-thirds vote of all Lot Owners within the Subdivision, based on one vote per Lot.

3.1.5. Time Frame for Action. In the event the ACC fails to approve or disapprove in writing any plans within ten (10) days after such plans are properly submitted to it for consideration in accordance with Section 3.1.3, then approval shall be deemed to have been given.

3.1.6. Additional Architectural Standards. In addition to the architectural standards and guidelines established in this Article, the ACC may promulgate and maintain a list of standards for guidance in approving or disapproving plans and specifications pursuant to this Article.

3.1.7. Non-Liability. The ACC, Board, and Association and the officers and members thereof shall not be held liable for any damages arising out of or connected with any action, inaction, approval, or disapproval by the ACC with respect to any request made pursuant to this Article, even where approval of any design may technically violate this Declaration. Any errors or omissions in the design of any building, other improvement or landscaping and any violation of any governmental ordinance are the sole responsibility of the Lot Owner and the Lot Owner's designer, architect, or contractor. The ACC's review of plans shall in no way be concerned with structural or mechanical integrity or soundness.

3.1.8. Waiver. The approval of the ACC of any plans and specifications for any work done or proposed shall not constitute a waiver of any right of the ACC to disapprove any similar plans and specifications subsequently submitted.

3.1.9. Disapproval of Similar Plans. No two exterior designs that are of the same design, shape and size, shall be approved by the ACC. All houses must be of a different design.

3.1.10. ACC Enforcement. The ACC may levy a fine or penalty of up to One Hundred Dollars (\$100.00) per day against any Owner who fails to refrain from violating the provisions of this Article 3 or any rule or regulation duly adopted by the ACC. The ACC shall provide five (5) days written notice and opportunity for the Owner to cure the violation prior to levying such fine or penalty. There shall be added to the amount of any fine or penalty the costs and expenses of any action, sale or foreclosure, and reasonable attorney fees incurred in enforcing and collecting the fine or penalty. All fines and penalties levied and attorney fees, expenses, and costs incurred in collecting such fines and/or penalties shall constitute a lien on the Owner's Lot and shall also be a personal obligation of the Owner, enforceable at law, until the Owner pays the fine or penalty. In addition to levying a fine, the ACC may bring an action to enjoin the construction of or abate any alterations of any structure that is constructed without the ACC's prior written approval. This means that the ACC may bring an action to require, without limitation, the removal of any structure that has been constructed without the ACC's approval as provided for herein, regardless of whether the structure has been completed. Enforcement

under this provision shall be in addition to any mechanism of enforcement provided in this Declaration or by applicable law.

3.2. Governmental Permit Required. No home, accessory or addition to a home, other structure or building shall be constructed or maintained, and no grading or removal of natural vegetation or change in natural or approved drainage patterns or installation of fencing or landscaping elements shall occur on a Lot until any required permit or required approval therefor is obtained from the appropriate governmental entity following submission to the appropriate governmental entity of such information as it may require. The granting of a permit or approval by any governmental entity with respect to any matter shall not bind or otherwise affect the power of the ACC to refuse to approve any such matter.

3.3. Design Restrictions and Guidelines. In order to promote a harmonious community development and protect the character of the Property, the following guidelines, together with any guidelines hereafter established by the ACC, are applicable to the Property:

3.3.1. Purpose and Intent. The purpose and intent of these standards is to allow design latitude and flexibility, while ensuring that the value of the Property will be enhanced through the control of site planning, architecture and landscape elements. The restrictions and guidelines provided by and any established and adopted by the ACC pursuant to this Declaration serve as an evaluative aid to Owners, builders, project developers, design professionals, City staff, the Planning Commission, City Council and the ACC in the design review of individual, private and public developments within the Subdivision.

3.3.2. Permitted Structures. The only building or structure permitted to be erected, placed or located on any Lot within the Subdivision shall be a detached single family home placed within the building envelope for each Lot and not to exceed two stories in height (in addition to the basement level, if any) consistent with the height requirements found in this section. Provided however, that the homes constructed on Lots 35, 36, and 37 within the Subdivision are restricted to one story "rambler" style construction. Each home must include a minimum two car, private, enclosed and attached garage. All construction shall be of new materials. All structures shall be constructed in accordance with the zoning and building ordinances of St. George City, Utah, in effect from time to time.

3.3.3. Prohibited Structures. Dome structures, log homes, pre-manufactured homes, re-located homes, modular homes, adobe homes, basement homes, round homes, octagon homes, adobe homes, all wood homes, geodesic design, steel exterior homes, concrete homes, or Earth or Berm homes of any type are not allowed. No four level split entry homes shall be permitted unless approved by the ACC. No solar homes are allowed without the prior approval of the ACC.

3.3.4. Minimum Area. The minimum total square footage of living area on the ground floor located within the building envelope and foundation for any single-story residential home constructed on any Lot within the Property shall be not less than 2,000 square feet, exclusive of porches, balconies, patios and garages. Two-story homes shall have a minimum of 1,400 square feet on the main level, with a total square footage of not less than 2,500 square feet, exclusive of porches, balconies, patios and garages.

3.3.5. Setbacks. Minimum setback standards shall be in accordance with the setback standards established by the applicable zoning and subdivision ordinances of St. George City.

3.3.6. Building Height. Maximum building height shall be in accordance with the standards established by the applicable zoning and subdivision ordinances of St. George City.

3.3.7. Facades; Exterior Materials. Facades on all homes, garages, and other structures shall be stucco, masonry, brick or stone, with accents of brick, stone, or such other material as approved by the ACC. The exterior of the remainder of the home may be all brick, all stucco, all rock, or a combination of the three. All stucco homes must be of a high quality with pop outs around windows, doors, and trim. Any other materials would have to be approved by the ACC. Aluminum for soffits and eaves will be allowed.

3.3.8. Colors. Base building colors shall be those colors in harmony with the general surroundings of the Lot at issue and its surrounding structures. Complementary accent colors can be used on facia, window trim, shutters and doors. The ACC may disapprove of any design or color scheme if a proposed building or structure which it determines, in its sole discretion, is not in harmony with the general surroundings of a Lot or with adjacent buildings or structures. If any Owner uses a color which has not been approved by the ACC or is otherwise different from the color that was approved by the ACC, the ACC may levy a fine in accordance with this Article and otherwise require the Owner to replace the nonconforming color with a color that has been approved by the ACC.

3.3.9. Roof Materials and Color. Roof material shall be limited to concrete Bartiles. Roof color and material shall match the design and color of the home.

3.3.10. Accessory Buildings. Storage or utility buildings are allowed, provided, however, that such buildings are of new construction, of a color that complies with the architectural guidelines set forth in this Declaration and matches the design, color scheme, and materials used in the construction of the home. Accessory buildings shall be approved by the ACC prior to construction or placement on any Lot. The ACC may establish reasonable rules, regulations and guidelines, including height and size limitations, to govern the placement and construction of such buildings.

3.3.11. Fencing and Walls. Walls and fence design within a Lot and on Lot lines should be integral extension of the design and materials used in the construction of the home. Fence and wall colors shall conform to the same standards as the home. All fences, walls, hedges and other dividing structures shall be submitted to the ACC prior to construction or modification. No wood or chain link fences shall be allowed. Lot line walls and fencing shall be constructed so that they can be used by both Lot Owners. It is the responsibility of the Owners of the adjoining Lots to come to an agreement as to the design and construction of any wall or fence on a Lot line. Signatures of agreement to proposed wall on a Lot line must be obtained prior to and included on the plans submitted to the ACC for approval. Interior surfaces of perimeter walls may be painted or stucco applied to match the home and adjoining walls. Lot Owners shall not modify in any way perimeter walls constructed by the Developer. The height of the wall is defined by St. George City ordinance.

3.3.12. External Television or Other Antennas. To the extent not prohibited by law, no radio or shortwave antenna's will be allowed. All TV antennas must be placed on the back side of the roof (or in the attic) so no part of the antenna can be seen from the front street location. To the extent not prohibited by law, all satellite antenna systems (dishes) must be obscured from the view from the street and cannot be placed in the front yard or side yard.

3.3.13. Location of HVAC and other Apparatus. Swamp coolers will not be allowed. No roof mounted air conditioners or furnaces will be allowed. Alternate energy equipment must be placed out of view from the street. Apparatus affixed to the exterior of any structure cannot be visible from the street.

3.3.14. Mailboxes. All Lots must have a brick mailbox and it must be located on the spot designated on the master plan of the Subdivision as approved by the U.S. post office. The Developer of the Subdivision will install this mailbox prior to occupancy and the Lot buyer will be billed for this cost and said funds will be collected at the closing of the Lot.

3.3.15. Landscaping. All front yard landscaping, including grass, trees, and shrubs must be completed at time of occupancy or necessary funds must be put in escrow to complete landscaping as soon as possible. The front yard must be a minimum of 60% grass. No zero maintenance front landscaping will be allowed. Back yard landscaping must be completed within 12 months of occupancy. All landscaping must be maintained, watered, trimmed, and in a well kept manner.

3.4. Construction and Contractor Provisions. The following provisions apply to any new construction as well as any construction undertaken for the purpose of remodeling, renovating, or replacing any existing structure within the Subdivision.

3.4.1. Completion of Construction. Unless otherwise approved in writing by the ACC, construction of any primary dwelling must be completed, construction

materials and equipment removed and ground graded within 12 months from the when the ground is broken for the structure. Maintenance of external appearance shall be done so that renovations, modifications must be completed in a timely manner but in no event longer than the time necessary to construct a new home.

3.4.2. Building Materials Storage. No Lot, part or portion of the Property shall be used or maintained as storage for building materials except during a construction phase. Once a home is occupied or made available for sale all building materials shall be removed or stored inside such home, out of public sight.

3.4.3. Landscaping. Front yard landscaping shall be complete prior to occupancy.

3.4.4. Damages. Any damage inflicted on existing improvements such as curbs, gutters, streets, concrete sidewalks and such, by the Owner and/or their agents of any particular Lot in the subdivision must be repaired within thirty (30) days after such damage is discovered, and the expense of such repair shall be borne by the purchaser or Owner.

3.4.5. Maintenance of Lot During Construction. Contractors or subcontractors as owner/builders must provide on-site dumpsters during construction and are required to clean up the site daily to maintain a clean work site during construction. Dirt or mud from the construction site or elsewhere, dispersed, directly or indirectly, on the public streets within the Property must be cleaned up within twenty-four (24) hours by the contractor or subcontractor as owner/builder. The ACC may levy up to a Five Hundred Dollar (\$500) fine against a violator of this subsection and/or the Owner of the Lot for each day of a continuing violation. The fine shall be a charge on the land and shall be a continuing lien on the Lot.

3.4.6. Use of Other Lots During Construction. No Contractor shall use another Lot to hold topsoil, any gravel or building materials, without the express written consent of that Lot Owner.

ARTICLE 4

ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

4.1. **Membership.** Each Lot Owner shall be a member of the Association. Membership in the Association automatically transfers upon conveyance of a Lot by the recorder Owner thereof to another person or entity.

4.2. **Young Rights; Classes.** The Association shall have one class of voting membership. All members are entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, the group of such persons shall be a member. The

vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

ARTICLE 5
FINANCES AND OPERATIONS

5.1. **Creation of Lien and Personal Obligation of Assessment.** Each Owner of any Lot by acceptance of a deed or conveyance therefor, whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to pay to the Association, assessments or charges and interest, costs of collection and reasonable attorney fees, as hereinafter provided. All such amounts shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment or amount is charged. Such assessments and other amounts shall be the personal obligation of (a) the person who was the Owner of such Lot at the time when the assessment fell due and (b) successors-in-title who took title when assessments were delinquent.

5.2. **Purpose of Assessments.** The assessments levied by the Association shall be used by the Association for the improvement, maintenance, repair, and preservation of the Common Area. The assessments must provide for but are not limited to, the payment of taxes on Association property and insurance maintained by the Association; the payment of the cost of repairing, replacing and maintaining the Common Area; the payment of administrative expenses of the Association; payment of insurance deductible amounts; the establishment of a reserve account for repair, maintenance and replacement of the Common Area which must be replaced on a periodic basis; the payment of any professional services deemed necessary and desirable by the Board; and other amounts required that the Board shall determine to be necessary to meet the primary purposes of the Association.

5.3. **Annual Assessment.** The maximum annual assessment shall be One Hundred Twenty Dollars (\$120.00) per Lot. This amount shall be the basis of calculation for future maximum annual assessments. The Association may change the basis and maximum of the assessments fixed by this Section prospectively for any annual period provided that any such change shall have the assent of sixty percent (60%) of the votes of members, voting in person or by proxy, at a meeting duly called for this purpose.

5.4. **Special Assessments for Capital Improvements.** In addition to the annual assessments, the Association may levy in any assessment year a special assessment, applicable to that year only. Special assessments may only be levied to defray, in whole or in part, the cost of any construction, reconstruction, repair or replacement of the Common Area. Special assessments must have the assent of sixty percent (60%) of the votes of the Lot Owners voting in person or by proxy, at a meeting duly called for this purpose.

5.5. **Uniform Rate of Assessment.** Assessments must be fixed at a uniform rate for all Lots.

5.6. **Effect of Nonpayment of Assessment; Remedies of Association.**

5.6.1. Any assessment or installment thereof not paid within thirty (30) days after the due date therefor shall be delinquent and shall bear interest from the due date at the rate of twelve percent (12%) per annum (or such lesser rate as the Directors shall set by resolution) until paid. In addition, a late fee for each delinquent installment that shall not exceed twenty percent (20%) of the delinquent installment. There shall be added to the amount of any delinquent assessment the costs and expenses of any action, sale or foreclosure, and reasonable attorney fees incurred in enforcing and collecting said delinquent assessment.

5.6.2. To enforce payment of the assessment, interest, and late fees, the Directors may, in the name of the Association: (a) bring an action at law against the Owner personally obligated to pay any such delinquent assessment without waiving the lien of assessment; (b) foreclose the lien against the property in accordance with the laws of the State of Utah applicable to the exercise of powers of sale in deeds of trust or to the foreclosure of mortgages, or in any other manner permitted by law; (c) restrict, limit, or totally terminate any or all services performed by the Association in behalf of the delinquent member; (d) suspend the voting rights of the Owner for any period during which any assessment or portion thereof against the Owner's Lot remains unpaid; and/or (e) accelerate all assessment installments that will become due within the subsequent twelve months so that all such assessments for that period become due and payable at once. The acceleration provision in subsection (e) may only be invoked against an Owner who has been delinquent in paying any assessment or installment two or more times within a twelve month period.

5.6.3. A power of sale is hereby conferred upon the Association that it may exercise. Under the power of sale the Lot of an Owner may be sold in the manner provided by Utah law pertaining to deeds of trust as if said Association were beneficiary under a deed of trust. The Association may designate any person or entity qualified by law to serve as Trustee for purposes of power of sale foreclosure.

5.6.4. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or by abandonment of the Lot.

5.7. **Subordination of Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage held by an institutional lender. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of a first mortgage or any proceeding in lieu thereof, shall extinguish the assessment lien as to payments which

became due prior to such sale or transfer. No sale or transfer, however, shall relieve an Owner from personal liability for assessments coming due after he takes title or from the lien of such later assessments.

5.8. **Books, Records, and Audit.** The Association shall maintain current copies of the Declaration, Articles, Bylaws, any rules and regulations, and other similar documents, as well as its own books, records and financial statements which shall all be available for inspection by Lot Owners and insurers as well as by holders, insurers and guarantors of first mortgages during normal business hours upon reasonable notice. Charges shall be made for copying, researching or extracting from such documents. A Lot Owner or holder, insurer or guarantor of a first mortgage may obtain an audit of Association records at its own expense so long as the results of the audit are provided to the Association.

ARTICLE 6 LEASING

6.1. **Leasing Prohibited.** To maintain the character of the Subdivision as an owner occupied residential subdivision and to protect the value, desirability, and character of the Subdivision as a harmonious and attractive residential community and to prevent and avoid any deterioration of the same into a transient-apartment like community, except as expressly authorized in this Article 6, the leasing of any Lot or home located thereon (collectively referred to as "**Residence**" for purposes of this Article) within the Subdivision is expressly prohibited. This prohibition on leasing includes prohibition of offering, selling, or using any Residence or interest therein under a "timesharing" or "interval ownership" plan, or any similar plan.

6.2. **Hardship Exemption.** If an Owner believes he is suffering or will suffer a hardship and believes it necessary to lease his Residence as a direct result of that hardship the Owner may apply to the Board for a hardship exemption from the leasing prohibition. An application for a hardship exemption must be submitted in writing to the Board and shall set forth in detail the reasons why the Owner seeking the exemption believes hardship necessitates that he be allowed to lease his Residence. The application shall also contain such other materials as are necessary to document the hardship.

6.2.1. **Recognized Hardships.** The following categories of hardships shall be recognized by the Board as categories of hardships for which a hardship exemption shall be approved, provided that the Owner provides sufficient proof to the Board that he falls within one or more of these categories: (1) religious service; (2) government or military service; or (3) if the Owner is a bona fide lending institution which has secured the Residence under a first trust deed or mortgage and has acquired title to the Residence through foreclosure or otherwise. The third category shall be deemed to include the Association, in the event it acquires any Residence through foreclosure or otherwise. These categories of hardships shall be approved for the maximum period of time that the

Owner, with the consent of the Board, certifies and documents is necessary to complete the hardship.

6.2.2. Discretionary Hardships. Approval of any application for a hardship exemption that does not fall within one or more of the categories of recognized hardship shall be determined on a case by case basis and shall be in the Board's sole discretion. On such discretionary hardships, the Board may grant a waiver of the lease prohibition for a maximum initial exemption period of one year with the opportunity to obtain an extension of a maximum of three years. The Board may establish and publish factors and guidelines to assist it and future Boards, as well as Owners, in determining what factors and information the Board might deem relevant or necessary in determining whether to grant an exemption; however, in no event shall such guidelines limit the Board's discretion or require approval in any given case. The grant or denial of a hardship by the Board to one Owner, shall not entitle any other Owner to a grant of a hardship nor shall it require the Board to deny any similar hardship request. No Owner shall be entitled to or receive more than three discretionary hardship exemptions. This limitation does not include any authorized extension of a hardship exemption.

6.3. Lease Requirements. Any lease that is expressly authorized under the terms of this Article shall be subject to the following requirements:

6.3.1. Lease Agreement. Any lease or rental agreement shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation, Bylaws and any rules or regulations of the Association and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. Any lease or rental agreement, whether an initial agreement or any renewal thereof, shall provide for a minimum lease term of not less than six (6) months; provided however that the Board shall have the power to allow leases for a term of less than six months upon a showing by the Owner that such a lease term is required to avoid undue hardship in accordance with Section 6.2 above. Residences may be leased only in their entirety. There shall be no subleasing of Residences or assignment of leases without the prior written approval of the Board. To further the intent of the leasing restrictions contained in this Article, Owners may only lease their Residence to Single Families as defined herein.

6.3.2. Notice of Lease to Board. An Owner who enters into a lease or rental agreement must notify the Board of the same, in writing, within fifteen (15) days after execution of the lease or rental agreement and along with such notification must provide to the Board a copy of the lease or rental agreement. An Owner must comply with the foregoing notice provision for each tenant with which it enters into a lease or rental agreement and for each renewal of any existing lease or rental agreement.

6.3.3. Enforcement Against Owner. The Association may impose a fine, not to exceed fifty percent (50%) of the amount of the maximum annual assessment, on an

Owner, which shall constitute a lien upon such Owner's Lot and shall be added to the annual assessment for that Owner's Lot as provided for herein, for each violation of the Declaration, the Bylaws, or any rules or regulations committed by the Owner's lessee or the lessee's occupants or guests. Any such fine shall be imposed after a ten day notice is given to the Owner of such violation. The Association may impose an additional fine on the Owner for each day such violation continues after the ten day notice period provided herein, which additional fines shall constitute a lien upon such Owner's Lot and shall be added to the annual assessment. The Association need not provide any additional notice prior to fining an Owner for a continuing violation. The Board may terminate an Owner's right to lease his Residence if the Owner (1) fails to cure any continuing violation within thirty days after first being notified of the violation, (2) fails to pay any fine assessed under the authority of this subsection, or (3) receives three notices of violation within any six month period. The enforcement remedies provided herein are in addition to any other rights of enforcement provided in this Declaration, the Bylaws, Articles, any rules or regulations, or by applicable law.

6.3.4. Enforcement of Lease by Association. Any lease or rental agreement for any Residence within the Property shall include the following language, and, if such language is not expressly contained in such lease or rental agreement, the Owner leasing his Residence hereby agrees that such language shall be deemed incorporated into the lease:

Any violation of the Declaration of Covenants, Conditions, and Restrictions of the Eagle Ridge Subdivision ("Declaration") and/or any rules and regulations adopted pursuant thereto (collectively "**Violations**"), by the lessee, any occupant, or any guest of lessee, is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease and evict the lessee in accordance with and to the extent authorized by Utah law. The Owner hereby delegates and assigns to the Board of Directors of the Eagle Ridge Homeowner's Association the power and authority of enforcement against the lessee for breaches resulting from any Violations, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms hereof. In the event the Board proceeds to evict the lessee, any costs, including reasonable attorney fees, court costs, and any other expenses incurred by the Association associated with the eviction shall be an assessment and lien against the Residence.

6.3.5. Lease Exemptions. Notwithstanding anything herein to the contrary, an Owner who has established a hardship as set forth herein, may allow his immediate family member(s) to occupy his Residence during the period of the hardship without the necessity of a written lease agreement. However, the Owner shall remain responsible, in all respects, for any violation of this Declaration, the Bylaws, or applicable rules and regulations by such occupant(s).

ARTICLE 7

ENFORCEMENT

7.1. **Violation Constitutes Nuisance.** Every act or omission whereby any restriction, covenant or condition set forth in this Declaration or any rule or regulation established pursuant to the authority of this Declaration is violated in whole or in part, is declared to be and shall constitute a nuisance, and may be abated by appropriate legal action by the Association, or a Lot Owner or Owners. The remedies provided for hereunder shall be deemed cumulative and not exclusive.

7.2. **Enforcement.**

7.2.1. Each and all of the restrictions, covenants and conditions contained in this Declaration is and are for the benefit of the Association and each Owner of any Lot, part or portion of the Property. Each such restrictive covenant and condition shall inure to the benefit of and pass with each and every Lot, part or portion of the Property and shall apply to and be binding upon each and every successor in interest. Said restrictions, covenants and conditions are and shall be deemed covenants of equitable servitude, and the actual or threatened breach thereof, or the continuance of any such breach, or compliance therewith, may be enforced, enjoined, abated, or remedied by appropriate proceedings at law or in equity by the Association or any Lot Owner; provided, however, that no such breach shall affect or impair the lien of any bona fide mortgage or trust deed which shall have been given in good faith and for value, except that any subsequent Owner of said Lot, part or portion of the Property shall be bound and obligated by the said restrictions, covenants and conditions, whether such ownership is obtained by foreclosure, at a trustee's sale, or otherwise.

7.2.2. The Board may levy a fine not to exceed fifty percent (50%) of the amount of the maximum annual assessment against any Owner who fails to refrain from violation of these covenants or any rule of the Association. A fine may be levied for each day of a continuing violation. There shall be added to the amount of any fine the costs and expenses of any action, sale or foreclosure, and reasonable attorney fees incurred in enforcing and collecting the fine or penalty. All attorney fees and costs incurred in any such action, and all expenses incurred and any fines levied, shall constitute a lien on such Owner's Lot, and shall also be a personal obligation of said Lot Owner, enforceable at law, until such payment therefor is made. The Board shall provide five (5) days written notice and opportunity for the Owner to cure the violation prior to levying such fine. For purposes of this section, any violation that continues for more than fifteen (15) days after written notice of the violation is provided constitutes a separate and continuing violation. No further notice or cure period is required to be given to an Owner for a continuing violation.

ARTICLE 8

EASEMENTS

8.1. **Easements.** Easements for installation and maintenance of utilities are reserved as noted on the recorded Plat. Within these easements no structure or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities and easement rights. The easement areas of each Lot and improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements, if any, for which a public authority or utility company is responsible.

ARTICLE 9
AMENDMENT

9.1. **Amendment.** This Declaration may be amended, modified, extended, or revoked, in whole or in part, by an affirmative vote of not less than seventy-five percent (75%) of the Owners present at the meeting at which the amendment is proposed. A quorum must be present at such meeting for any vote to be effective. Any proposed amendment shall be sent to every Owner at least thirty days in advance of the meeting at which the amendment is to be voted on. Unless a later effective date is specified in the amendment, any amendment shall be immediately effective, upon recording in the office of the Washington County Recorder a copy of such amendment accompanied by a verified certificate of the Secretary of the Association stating that the required number of votes was obtained at a duly called meeting in which a quorum was present; provided however that any proposed amendment receiving the requisite number of affirmative votes must be recorded within thirty (30) days following the date on which the vote is held.

9.2. **Written Consent in Lieu of Meeting.** This Declaration may be amended, modified, extended, or revoked, in whole or in part, by written ballot in lieu of the meeting referenced in Section 8.1 in accordance with the procedures, if any, set forth for such written consent in the Bylaws or as otherwise provided in the Utah Revised Non-Profit Corporation Act, Utah Code Ann. § 16-6a-709 (Supp. 2004, as amended).

ARTICLE 10
GENERAL PROVISIONS

10.1. **Duration of Covenants.** The covenants, conditions, and restrictions contained herein shall run with and bind the land for a period of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each, subject to amendment as herein set forth.

10.2. **Notices.** Any notice required under the provisions of this Declaration to be sent to any Lot Owner shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of such Owner. Lot Owners shall be responsible for providing their addresses to the Board, and, unless otherwise indicated by a Lot Owner, the address for notice to Lot Owners shall be the mailing address designated for the Owner's Lot.

10.3. **Construction and Severability.** All of the covenants, conditions, and restrictions contained in this Declaration shall be construed together. Invalidation of any one of said restrictions, covenants or conditions, or any part thereof, shall not affect the enforceability or applicability any of the remaining restrictions, covenants or conditions, or parts thereof.

10.4. **Gender and Grammar.** 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, men or women, shall in all cases be assumed as though in each case fully expressed.

10.5. **Waivers.** No provision contained herein or any rule or regulation established pursuant to the authority hereof shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations that may occur.

10.6. **Topical Headings.** The topical headings contained herein are for convenience only and do not define, limit, or construe the contents of this Declaration.

* * *

IN WITNESS WHEREOF, the undersigned hereby certifies that not less than three-fourths of the Association members voted to adopt the foregoing amendment at a meeting duly called and attended by a sufficient number of Association members to constitute a quorum for such purpose.

DATED THIS 31 day of March, 2006.

Eagle Ridge Homeowner's Association

By: _____
Its: President

Attested to:

By: Karen Spitzer
Its: Secretary

STATE OF UTAH)
) ss.
COUNTY OF WASHINGTON)

On the 31st day of March, 2006 personally appeared before me
Jeffery Graf, who being by me duly sworn did say that he/she is
President of the Eagle Ridge Homeowner's Association, a Utah non profit corporation,
and that said instrument was signed on behalf of said institution by authority of its
organizational documents or a resolution of its management or directors and
acknowledged to me that said institution executed the same and attested to by

Kandice Hansen
NOTARY PUBLIC
Address: 15 Main St. St George, UT 84770
My Commission Expires: Mar 14, 2008

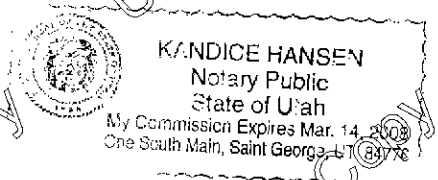




EXHIBIT "A"

PHASE #1

BOUNDARY DESCRIPTION

BEGINNING AT A POINT N 00°12'45" W 1363.59 FEET ALONG THE SECTION LINE AND
N 90°00'00" W 205.96 FEET FROM THE EAST 1/4 CORNER OF SECTION 5, TOWNSHIP
43 SOUTH, RANGE 15 WEST, SALT LAKE BASE & MERIDIAN AND RUNNING THENCE
S 73°39'45" W 188.11 FEET; THENCE N 16°20'15" W 50.77 FEET TO A 750.00
FOOT RADIUS CURVE TO THE LEFT (LC BEARING N 16°26'25" W 2.69 FEET);
THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE 2.69 FEET; THENCE S 88°11'57" W
922.25 FEET TO A POINT ON THE CENTERLINE OF RIVER ROAD; THENCE S 00°08'08" E
136.06 FEET ALONG SAID CENTERLINE; THENCE N 88°11'57" E 1173.20 FEET ALONG THE
NORTHERLY BOUNDARY OF "QUAIL VALLEY ESTATES SUBDIVISION"; THENCE N 23°09'40" W
141.16 FEET TO THE POINT OF BEGINNING.

CONTAINING 3.448 ACRES.


LLOYD RIED POPE - PROFESSIONAL ENGINEER NO. 4401
REGISTERED LAND SURVEYOR NO. 5921

6-8-79
DATE:



00474725 BK0839 P0527

EXHIBIT "A"

PHASE 2

BOUNDARY DESCRIPTION

BEGINNING AT A POINT N 00°12'45" W 1363.59 FEET ALONG THE SECTION LINE AND N 90°00'00" W 200.96 FEET FROM THE EAST 1/4 CORNER OF SECTION 5, TOWNSHIP 43 SOUTH, RANGE 15 WEST, SALT LAKE BASE & MERIDIAN AND RUNNING THENCE S 73°39'45" W 188.11 FEET; THENCE N 18°20'15" W 80.27 FEET TO A 750.00 FOOT RADIUS CURVE TO THE LEFT (LC BEARING N 18°28'25" W 2.69 FEET); THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE 2.69 FEET; THENCE S 88°11'37" W 822.25 FEET TO A POINT ON THE CENTERLINE OF RIVER ROAD; THENCE N 00°06'08" W 432.14 FEET ALONG SAID CENTERLINE; THENCE LEAVING SAID CENTERLINE S 88°46'51" E 49.29 FEET; THENCE N 01°30'08" E 181.33 FEET TO THE SOUTH BOUNDARY OF "THE BOULDERS SUBDIVISION - PHASE 1"; THENCE N 88°40'35" E 853.82 FEET ALONG THE SOUTH BOUNDARY OF SAID SUBDIVISION; THENCE LEAVING SAID SUBDIVISION BOUNDARY S 13°32'08" E 71.43 FEET; THENCE S 00°18'30" E 47.59 FEET; THENCE S 03°43'24" W 72.87 FEET; THENCE S 11°18'00" E 24.00 FEET; THENCE S 24°20'19" E 24.00 FEET; THENCE S 32°44'32" E 24.00 FEET; THENCE S 43°13'44" E 73.91 FEET; THENCE S 23°05'40" E 306.97 FEET TO THE POINT OF BEGINNING CONTAINING 13.856 ACRES

[Signature]
 LLOYD RIED POPE - PROFESSIONAL ENGINEER NO. 4401
 REGISTERED LAND SURVEYOR NO. 5921

6-8-94
 DATE:



L.R. POPE ENGINEERING
1036 S Main, Ste 102B
St. George, Utah 84770
628-1676

ATTACHMENT "B"

**DESCRIPTION OF COMMON AREA TO BE DEEDED TO
THE ASSOCIATION REGARDING EAGLE RIDGE SUBDIVISION**

Common area bordering lot 1

Beginning at a point North 00°12'45" West 1363.59 feet along the Section line and North 90°00'00" West 205.96 feet and South 73°39'45" West 188.11 feet and North 16°20'15" West 50.77 feet and North 16°26'25" West 2.69 feet and South 88°11'57" West 862.22 feet to the TRUE POINT OF BEGINNING from the East Quarter Corner of Section 5, Township 43 South, Range 15 West, Salt Lake Base and Meridian, and running thence South 88°11'57" West 20.01 feet to a point on the east line of River Road; thence South 00°06'08" East 87.15 feet along River Road to the point of a 30.00 foot radius curve to the left; thence southeasterly along the arc of said curve 36.93 feet; thence North 00°06'08" West 116.03 feet to the TRUE POINT OF BEGINNING.

Containing 2,161 square feet

Common area bordering lots 22-25

Beginning at a point North 00°12'45" West 1363.59 feet along the Section line and North 90°00'00" West 205.96 feet and South 73°39'45" West 188.11 feet and North 16°20'15" West 50.77 feet and North 16°26'25" West 2.69 feet and South 88°11'57" West 862.22 feet to the TRUE POINT OF BEGINNING from the East Quarter Corner of Section 5, Township 43 South, Range 15 West, Salt Lake Base and Meridian, and running thence South 88°11'57" West 20.01 feet to a point on the east line of River Road; thence North 00°06'08" West 417.22 feet along River Road to the point of a 30.00 foot radius curve to the right; thence northeasterly along the arc of said curve 18.90 feet; thence leaving said right of line South 88°46'51" East 3.52 feet; thence North 01°13'09" East 4.19 feet to a point on extended 30.00 foot radius curve to the right; thence northeasterly along the arc of said curve 12.55 feet; thence South 00°06'08" East 444.91 feet to the point of beginning.

Containing 8,743 square feet

Common area bordering lot 21

Beginning at a point North 00°12'45" West 1957.42 feet along the Section line and South 89°40'55" West 1268.76 feet from the East Quarter Corner of Section 5, Township 43 South, Range 15 West, Salt Lake Base and Meridian, and running thence South 00°06'08" East 117.18 feet to a point on a 30.00 foot radius curve to the right (long chord bearing is N 60°34'00" W 10.49 feet); thence northwesterly along the arc of said curve 10.54 feet; thence North 01°13'09" East 111.02 feet; North 89°40'55" East 6.54 feet to the point of beginning.

Containing 904 square feet

prepared by L. Ried Pope, PE, PLS



00474725 BK0839 P0528