

Declaration of Covenants, Conditions and Restrictions Of Eagle Park Subdivision Phases I & II

ENL 42432 BK 4618 PG 388
RANDALL A. COVINGTON
UTAH COUNTY RECORDER
1998 Apr 30 10:26 am FEE 224.00 BY JW
RECORDED FOR FOUNDERS TITLE

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made and executed this 27 day of APRIL, 1998, by M & J Development L.L.C. a Utah Corporation. (hereinafter referred to as "DECLARANT").

- A. Declarant is the record owner of a certain parcel of real property located in Utah County, Utah. Declarant desires to develop the parcel as a subdivision that will be more particularly described as Eagle Park Subdivision phase I and II, (the "Property"). The Town of Eagle Mountain is included as a party Declarant in this Declaration of Covenants, Conditions and Restrictions; the Town of Eagle Mountain is not the record owner of property but is included as a Declarant for the purpose of permitting the Town of Eagle Mountain to enforce certain Covenants, Conditions and Restrictions concerning architectural guidelines.
- B. Declarant intends to establish a common scheme and plan for the possession, use, enjoyment and improvement of the Project.

NOW, THEREFORE, it is hereby declared that the Project shall be held, sold, conveyed, leased, rented, encumbered and used subject to the following Declaration as to easements, rights, covenants, servitude's, restrictions, limitations, conditions and uses to which the Property may be put.

1. **DEFINITIONS**, when used in this Declaration, including the recitals, each of the following terms shall have the meaning indicated, unless the context clearly indicates otherwise:
- 1.1 **Declarant** shall mean and refer to M & J Development L.L.C. or any successors to or grantees of such company who either by operation of the law or through a voluntary conveyance, transfer, or assignment, come to stand in the same relation to the Project, as the original Declarant. The Town of Eagle Mountain is included as an additional Declarant and shall be treated as a Declarant in all circumstances.
- 1.2 **Declaration** shall mean and refer to this instrument as amended from time to time.
- 1.3 **Dwelling** shall mean and refer to a residential dwelling unit together an attached garage located on a Lot within the Project.
- 1.4 **Lot** shall mean and refer to those single family residential building lots identified and referred to in this Declaration and on the Map.
- 1.5 **Map** shall mean and refer to the subdivision plat entitled Eagle Park Phase I & II at Eagle Mountain, filed in the office of the Utah County Recorder, as the same may be amended from time to time.

- 1.6 **Owner** shall mean the person or entity holding the record fee simple ownership interest in a Lot or Dwelling, including Declarant and purchasers under installment contracts. Owner shall not include persons or entities that hold an interest in a Lot or Dwelling merely as security for the performance of an obligation.
- 1.7 **Project** shall mean the real property described on the Subdivision Plat referred to above together with all improvements thereon.
- 1.8 **City** means Town of Eagle Mountain.
- 1.9 **Accessory Building** shall mean any structure on a lot other than the dwelling.

2. MUTUAL AND RECIPROCAL BENEFITS.

All of the restrictions, conditions, covenants and agreements shall be made for the direct and mutual benefit of each and every Lot created on the Property and shall be intended to create a mutual equitable servitude on each Lot in favor of every other Lot, to create reciprocal rights and obligations between the owners, and to create privity of contract and privity of estate between the Owners and their heirs, successors and assigns.

3. PERSONS BOUND.

This Declaration shall be binding on and for the benefit of Declarant, its successors and assigns, and all subsequent Owners of all or part of the Project, together with their grantees, successors, heirs, executors, administrators, devisees and assigns. The restrictions, conditions, covenants and agreements contained herein shall run with the land, and all Owners, purchasers and occupants of Lots shall, by acceptance of contracts, deeds or possession, be conclusively deemed to have consented to conform to and observe all such restrictions, conditions, covenants and agreements. Any mortgage or other encumbrance of any Lot or Dwelling in the Project shall be subject to and subordinate to all of the provisions of this declaration, and in the event of foreclosure, the provisions of this Declaration shall be binding upon any Owner whose title is derived through the foreclosure, whether such foreclosure is by private power of sale, judicial foreclosure or otherwise.

4. LAND USE AND BUILDING TYPE

- 4.1 No Lot shall be used except for single family residential use.
- 4.2 No building shall be erected, altered or permitted to remain on any Lot other than one single family Dwelling and a private garage (either attached or as an Accessory Building) for not more than two vehicles.
- 4.3 No building shall be used, rented or leased for commercial purposes, except for a temporary sales office to be maintained by Declarant for the purpose of selling and marketing the Lots or Dwelling thereon.
- 4.4 Every Dwelling, exclusive of garages and porches or decks, shall have a minimum main or ground floor living area as follows:

Single story dwelling

8,000-9,999 sq ft Lots	1,000 sq ft home
10,000-0.49 acre	1,200 sq ft home
0.50-1.49 acre	1,500 sq ft home
1.50 – 2.50 acre	2,000 sq ft home

Minimum size of each two story, bi-level, or tri-level dwelling shall be no less than 1,500 sq ft on Lots less than of which no less than 900 sq ft on main floor.

- 4.5 Homes to be constructed must contain, at a minimum, the following characteristics:
- a. **Roofs**...25 year (240 lb min) architectural grade asphalt shingles, tile, metal roofing with a min of 6:12 pitch; lots less than 6,000 sq ft with 8' combo berms/walls and 10' trees spaced every 10' are exempt from 6:12 pitch.
 - b. Homes must have some form of exterior siding, including brick, wood, aluminum siding, metal siding, stone, or stucco. Homes may not have unfinished plywood, sheet or other metal, concrete, or cinder block as exterior finish, except that aluminum may be used on soffits and fascia. Split face may be used if approved by the architectural review. New materials must be used.
 - c. Some form of exterior lighting shall be included on each home.
 - d. No geodesic domes or A-frame structures may be constructed on any Lot.
 - e. Pre-manufactured housing is permitted provided it otherwise meets the criteria of these declarations.
 - f. All **exterior colors** to be earth tones.
 - g. **Driveways** to be hard surface (concrete or asphalt).
 - h. **Landscaping** is required at the completion of the construction of the home, or bond to complete when weather permits (no more than 6 months).
 - i. All construction shall be in accordance with **the Uniform Building Code** and all City and County codes applicable at the time construction is commenced.
 - j. Each yard must have two living trees incorporated into its landscaping.
 - k. **Garages**...minimum 400 sq ft enclosed; side loaded or set back at least **50' from curb for front entry**. Front entry allowed when closer than 50' from curb if garage is set back at least 50% of the depth of the home (garage is set back from the front elevation of the home). Detached garages permitted, subject to design approval if less than 2,000 sq ft home.

- l. **Front Porches**....100 sq ft covered, at least 8' deep. If home set back at least 50' from curb, no porch required. See seller for porch waiver on certain designs.
 - m. **All home plans need to be approved by the Developer:** contact M & J Development L.L.C. 435-654-0939.
- 4.6 Up to one accessory building may be allowed on any lot but only if it is consistent in design, construction, color and appearance with the dwelling, which sits on the lot. No metal sheds are allowed. Any accessory building must comply with all zoning and other land use regulations then in effect for Utah County and the Town of Eagle Mountain or any successor government entity.
 - 4.7 No trailer, basement, tent, shack or other accessory building shall be used at any time within the Project as a temporary or permanent residence.
 - 4.8 All structures shall comply in all respects with existing building and zoning codes, ordinances and architectural design guidelines of the Town of Eagle Mountain, Utah.
 - 4.9 No building shall be permitted to remain incomplete for a period in excess of one (1) year from the date the building permit was issued.

5.0 NUISANCE AND RELATED MATTERS

- 5.1 No noxious or offensive activity shall be carried on upon a Lot, nor shall anything be done thereon which may be an annoyance or nuisance to the neighborhood.
- 5.2 No barn, coop, shed, stall or building of any type shall be constructed for the purpose of housing pigs, cows, sheep, goats, horses, poultry or livestock, and none of the foregoing shall be kept, maintained or permitted at any place within the limits of the Project. Common household pets shall be allowed so long as such pets are not kept, bred or maintained for any commercial purpose, are restricted to the owners control and do not create a nuisance. "Control" for the above purpose shall only mean on a leash or lead, within a vehicle, within the residence of the owner, or within the fenced confines on the premises of the owner. Dog runs may be constructed so long as they otherwise comply with this declaration, and so long as no part of the run is within 20 feet of an adjoining Lot. Fierce, dangerous or vicious animals shall not be permitted.
- 5.3 All passenger cars and light trucks shall be parked within a garage or driveway. All other vehicles, boats, snowmobiles, motor homes or other large vehicles if stored on property, shall be screened from view in the backyard by either landscaping or approved fencing. No vehicles shall be stored or parked on any lot or street except during actual use in construction on lot or maintenance for the subdivision.
- 5.4 No metals, bulk materials, scrap, trash, refuse, equipment of other unsightly articles shall be permitted to remain on a Lot so as to be visible

- from an other Lot. Trash receptacles need to be enclosed or in hidden areas not visible from the front or side yard.
- 5.5 Except for signs displayed by the Declarant for the sale of Lots or Dwellings, no signs other than name plates shall be displayed to the public view on any Lot, except one sign for sale of the Lot or Dwelling. All signs shall comply with relevant governmental ordinances and regulations.
 - 5.6 No oil or gas drilling, mining, quarrying or related operations of any kind shall be permitted on any Lot.
 - 5.7 No rubbish shall be stored or allowed to accumulate anywhere in the Project, except in sanitary containers.
 - 5.8 No external radio, citizen's band, ham radio or other transmitting or receiving antennas or equipment shall be placed on any structure or Lot. Provided, however, that satellite dishes may be placed in the back yard of a lot, small satellite dishes may be installed on roof.
 - 5.9 An owner shall not, by deed, plat or otherwise, subdivide tracts or parcels smaller than the whole Lot as shown on the Map, nor shall any owner cause, suffer or permit the fee ownership of his or her Lot or Dwelling to be separated or divided into annually recurring time share units or time share units of any other duration, from or kind whatsoever.
 - 5.10 No lot Owner or occupant of a lot may conduct a yard sale on any lot more than two (2) days per calendar year.

6. EASEMENTS

Such easements and rights of way shall be reserved to the Declarant, its successors and assigns, in and over the property and the Lots for the erection, construction, maintenance and operation of pipes, conduits, poles, wires and other means of conveying to and from Lots and Dwellings gas, electricity, power, water, telephone and telegraph services, sewage, storm drain and other things for the convenience of the Owners of Lots and the Association, as may be shown on the subdivision plat or otherwise. No structures of any kind shall be erected over any such easements.

7. SET BACKS

- 7.1 All Dwelling shall be set back from any street 30' in the front, 15' side total (5' min.), 10' rear.
- 7.2 No fence, wall, hedge or shrub planting which obstructs site lines at elevations between two and six feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the roadway property line and the line connecting them at points 25 feet from the intersection of the roadway property line or, in the case of a round property corner, from the intersection of the roadway property line extended. The same site line limitations shall apply on any lot within ten (10) feet from the intersection of a roadway property line with the edge of a driveway or ally pavement. No trees shall be permitted to remain within

such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such site lines.

8. AMENDMENT

Except as otherwise provided in this Declaration and except as prohibited by law, the provisions of this Declaration may be amended by the affirmative vote or approval and consent of Owners who own two-thirds (2/3) or more of the Lots in the Project. Notwithstanding any other provision contained herein, no amendment to the Map or to any provision of this Declaration which has or may have the effect of diminishing or impairing any right, power, authority, privilege, protection or control given to Declarant, in its capacity as Declarant, shall be accomplished or effective unless the instrument through which such amendment is purported to be accomplished is consented to in writing by Declarant. The provisions of this declaration concerning enforcement by the Town of Eagle Mountain of architectural guidelines, building and zoning ordinances and codes may not be amended without the express written consent of the Town of Eagle Mountain.

9. VOTING

By any meeting of Lot Owners, each Owner, including Declarant, either in person or by proxy, shall be entitled to cast one vote for each Lot owned by him. Provided, however, where there is more than one record Owner of a Lot, all of such Owners must act unanimously in order to cast a vote for that Lot.

10. ACCEPTANCE OF RESTRICTIONS

By acceptance of contracts or deeds for a Lot or Lots or any portion thereof, all purchasers of Lots shall be conclusively deemed to have consented and agreed to all restrictions, conditions, covenants and agreements in this declaration and shall be bound thereby.

11. VIOLATIONS OF RESTRICTIONS; PENALTIES

Each Owner shall strictly comply with the provisions of this Declaration. Failure to so comply shall be grounds for an action to recover sums due for damages or injunctive relief or both maintainable by Declarant or its agent, or designee on behalf of the Owners, or by an aggrieved Owner, or by the City. In the event any lot owner breaches these covenants and restrictions, he shall be liable to a non-breaching lot owner for all cost and attorney's fees reasonably incurred by the non-breaching owner, with or without litigation. The result of every action or omission whereby any restriction, condition, covenant or agreement is violated, in whole or in part, is hereby declared to be and constitute a nuisance and every remedy allowed by law against a nuisance, either public or private, shall be

applicable against such result. Such remedy shall be deemed cumulative and not exclusive.

12. **NO WAIVER**

The failure of the Owner or the Declarant to insist, in one or more instances, upon the strict performance of any of the terms, covenants, conditions of this Declaration to exercise any right or option herein contained, to serve any notice or to institute any action shall not be construed as a waiver or relinquishment of such term, covenant, condition or restriction; but such term, covenant, condition or restriction shall remain in full force and effect.

13. **SEVERABILITY**

The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision hereof shall not effect the validity or enforceability of any other provisions hereof.

14. **CAPTIONS**

The captions in this Declaration are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration or the intent of any provision hereof.

15. **LAW CONTROLLING**

This Declaration and the Map shall be construed under and controlled by the laws of the State of Utah.

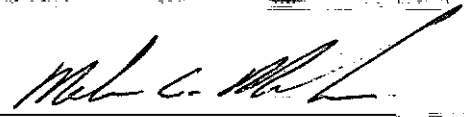
16. **EFFECTIVE DATE**

This Declaration shall take effect when recorded.

17.

These Covenants are to run with the land and shall be binding on all Owners of Lots within the subdivision and on all persons claiming under them for a period of forty (40) years from the date these covenants are recorded; thereafter, these covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a two-thirds (2/3) majority of the then Owners of the Lots has been recorded, agreeing to change the covenants in whole or in part.

IN WITNESS WHEREOF, the undersigned has executed this instrument this 27 day of APRIL, 1998.



By: Melvin C. McQuarrie
M & J Development L.L.C.

STATE OF UTAH)

COUNTY OF WASATCH)

On this 27th day of April, 1998, personally appeared before me Melvin C. McQuarrie, who being by me duly sworn, did say that he is the Managing Member of M & J Development, L.L.C. and that the within and foregoing instrument was signed in behalf

My Commission Expires:
9/15/98



NOTARY PUBLIC

Residing at: 575 N. Main
Heber City, UT 84032

