

DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
OF
EASTGATE UNIT 11
(A PLANNED UNIT DEVELOPMENT)

Amended April 16, 2003

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PATSY CUTLER - IRON COUNTY RECORDER
2003 NOV 12 10:53 AM FEE 960.00 BY DBJ
REQUEST: EASTGATE HOMEOWNERS ASSOCIATION

This Declaration is amended and executed this 16th day of April, 2003 by Eastgate Unit 11 Homeowner's Association, a Utah Corporation (hereinafter referred to as "Declarant").

RECITALS

- A. Declarant is the record owner of the parcel of real property (the Property) described in the Addendum of this Declaration.
- B. Declarant desires to provide for preservation and enhancement of the property values and amenities of the Property and for maintenance of the Common Areas. To this end and for the benefit of the Property and the Owners thereof, the Declarant desires to subject the Property described in the Addendum of this Declaration to covenants, restrictions, easements, charges, and liens hereinafter set forth, each and all of which are for the benefit of the Property and each Owner thereof.
- C. Declarant possesses the power to maintain and administer the Common Areas, to collect and disburse the assessments and charges hereinafter provided for, and otherwise to administer and enforce the provisions of this Declaration.

NOW, THEREFORE, for the foregoing purposes, Declarant declares that the Property and each Owner is and shall be subject to the covenants, restrictions, easements, charges and liens hereinafter set forth, as set forth in the plat perimeters recorded concurrently herewith.

1. DEFINITIONS

When used in this Declaration (including in that portion hereof under "RECITALS"), the following terms shall have the meaning indicated.

1. Declaration shall mean and refer to this document which may be modified, amended, supplemented, or expanded in accordance with the provisions hereof (and in particular in accordance with the provisions of Article IX).
2. Plat shall mean and refer to the plat of EASTGATE UNIT 11, a Planned Unit Development consisting of one page, executed and acknowledged by Declarant, prepared and certified by Douglas B. Grimshaw, a registered Utah Land Surveyor, and recorded in the office of the County Recorder of Iron County, Utah on the 30th day of January, 1996 in Book 554 at page 486 as Entry No. 360024, as the

same will hereafter be modified, amended, supplemented or expanded in accordance with the provisions of Article IX concerning amendments of supplements to this Declaration which are to occur in conjunction with the expansion of the Development as herein provided.

3. Property shall mean and refer to all of the real property which is covered by the Plat, a description of which is stated in the Addendum of this Declaration.
4. Lot shall mean and refer to any of the separately numbered and individually described plots of land.
5. Common Areas shall mean and refer to that portion of the property which is not included within the Lots, including all improvements other than utility lines now or hereafter constructed or located thereon.
6. Living Unit shall mean and refer to a structure which is designed and intended for use and occupancy as a single family residence, together with all improvements located on the Lot concerned which are used in conjunction with such residence.
7. Owner shall mean and refer to the person who is the owner of record in the office of the County Recorder of Iron County, Utah.
8. Association shall mean and refer to EASTGATE UNIT 11 HOME OWNERS ASSOCIATION, Inc., a Utah non-profit corporation.
9. Articles and Bylaws shall mean and refer to the Articles of Incorporation and the Bylaws of the Association.
10. Board of Trustees and the Board shall mean and refer to the Board of Trustees of the EASTGATE UNIT 11, HOME OWNERS ASSOCIATION, Inc.
11. Member shall mean and refer to every person who holds membership in the Association, through ownership.
12. Development shall mean and refer to the EASTGATE UNIT 11, a Planned Unit Development created by this Declaration as it exists at any given time.
13. Declarant shall mean and refer to EASTGATE UNIT 11 HOME OWNERS ASSOCIATION, Inc.
14. Front Yard Area shall mean and refer to the yard area of each Living Unit extending from the street to the front line of the Living Unit, or as otherwise deemed or described by legal descriptions on each Lot or Living Unit.

II. DESCRIPTION OF PROPERTY

The property which is and shall be subject to the provisions of the Declaration consists of the real property situated in Iron County, Utah and more particularly described in the Addendum attached hereto and incorporated herein by this reference. Together with all easements, rights-of-way, and other appurtenances rights incident to, appurtenant to, or accompanying the above-described parcel of real property.

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III. MEMBERSHIP AND VOTING RIGHTS

1. Membership: Every Owner shall be a Member of the Association. Membership is mandatory and shall be appurtenant to the Lot in which the Owner has the necessary interest, and shall not be separated from the Lot to which it pertains.
2. Voting Rights: Members shall be entitled to one vote for each Lot in which the interest required for membership in the Association is held. In the event there is more than one Owner of a particular Lot, the single vote relating to such Lot shall be exercised as determined by the Owners. If Owners of the Lot cannot agree on a vote, the vote will count only in determining if a quorum is present.

IV. PROPERTY RIGHTS IN COMMON AREAS

1. Easement: Each member shall have a right and easement to and from the said Lot to the Common Areas. Any member may permit any person to use the easement described herein to any tenant, lessee, or contract purchaser who resides on such Member's Lot.
2. Limitations on Easement: A Member's use of the easement and Common Areas are subject to the following:
 - a) the right of the Association to suspend a Member's right to the use of the Common Areas for any period during which an assessment on such Member's Lot remains unpaid;
 - b) the right of the Association to impose reasonable limitations on the number of guests per Member who at any given time are permitted to use the Common Areas;
 - c) the right of Iron County and any other governmental or quasi-governmental body having jurisdiction over the property to access and rights of ingress and egress over and across any street, parking area, walkway, or open spaces contained within the Property for purposes of providing police and fire protection and providing any other governmental or municipal services; and
 - d) the right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association, approved by a 2/3 vote from the Members.

V. ASSESSMENTS

1. Personal Obligation: Each owner covenants and agrees to pay to the Association the monthly and the special assessments described in the Article VII, together with the hereinafter provided for interest and cost of collection.
2. Purpose of Assessment: Assessments levied by the Association shall be used exclusively for the purpose of promoting the maintenance, health, safety, and welfare of residents of the Property. The use made by the Association of funds

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obtained from assessments may include payment of the cost of: taxes and insurance on the Common Areas; maintenance, repair, replacement, and improvement of the Common Areas; establishing and funding a reserve to cover major repair or replacement of improvements within the Commons Areas; and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under the Declaration or its Articles of Incorporation.

3. Base for Assessment: Each living unit shall be assessed at a same and equal rate.
4. Special Assessments: In addition to the annual assessments authorized above, the Association may levy special assessments for the purpose of defraying, in whole or part: a) any expense or expenses not reasonably capable of being fully paid with funds generated by monthly assessments; or b) the cost of any construction, reconstruction, or unexpected repair or replacement in connection with the Common Areas. Any such special assessment must be assented to by more than fifty percent of all votes cast by Members, in person or by proxy, at a meeting duly called for the purpose. Written notice of the meeting must be given at least 10 day but not more than 30 days prior to the meeting.
5. Monthly Assessment Dates: The monthly assessments are due on the 15th of each month. Any payment not recorded by the last day of the month shall be considered late. At least 15 days prior to the effective date of any change in amount of the monthly assessment, the Associations will give each Owner written notice of the amount and the first due date of the assessment concerned.
6. Effect of Non-Payment: Any assessment not paid when due will be subject to interest, costs of collection and having a lien placed against the Property. The Association may, but is not required to, record a notice of its lien in the records of the Iron County Recorder at any time an assessment against a Lot is more than 30 days past due. The person who is the Owner at the time the assessment falls due shall be and remain personally liable for payments. Such personal liability shall not pass to the Owner's successors in title unless expressly assumed by them. Any assessment not paid by the specified due date will incur a late payment charge in the amount of 10% of each delinquent amount due. The Association may, at its discretion, bring an action either against the Owner who is personally liable or to foreclose the lien against the Lot which shall include reasonable attorney fees, court costs, and every other expense incurred by the Association in enforcing its rights.

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VI. OPERATION AND MAINTENANCE

1. Maintenance of Lots and Living Units: Each Lot and Living Unit shall be maintained by the Owner so as not to detract from the appearance of the Property and not to affect adversely the value or use of any other Lot or Living Unit.

2. Operation and Maintenance by Association: The Association shall provide for such maintenance and operation of the Common Areas as may be necessary to make them usable in conjunction with the Lots. The Association shall maintain and repair the Front Yard Area of each Lot, including, but not limited to, grass, landscaping, shrubs, watering, and the sprinkling system.
3. Neglect of Operation and Maintenance by Owners: In the event that repair or maintenance of the Front Yard Area should be necessitated through willful or negligent acts of the Owner, his family or guests or tenants, the cost of such maintenance will be added to and become a part of assessment to which such Lot is subject. In the event an Owner of any Lot fails to maintain his Lot and the exterior of his Living Unit including fencing around the backyard, situated thereon in a manner satisfactory to the Board, the Association shall have the right to repair, maintain and restore the portion of the Lot maintainable by the Owner and the exterior of the Living Unit and any other improvements erected thereon (but not the interior of the Living Unit). The cost shall be added to and become part of the assessment to which the Lot is subject.
4. Water and Garbage Removal: The Association shall pay for all water and garbage removal services furnished to each Lot. Each Lot Owner shall pay for all utility services which are separately billed or metered.
5. Insurance: The Association shall secure and at all times maintain the following insurance coverages:
 - a) A policy or policies of fire and casualty insurance, with extended coverage endorsement, for the full insurable replacement value of all improvements comprising a part of the Common Areas. The name of the insured under each policy shall be "EASTGATE PHASE II, a Planned Unit Development, Home Owners Association for the use and benefit of the individual Lot Owners and Mortgagees, as their interests may appear".
 - b) A comprehensive policy or policies insuring the Owners, the Association and its directors, officers, agents, and employees against any liability incident to the ownership, use or operation of the Common Areas which may arise among themselves, to the public, and to any invitee or tenants of the Property or of the Owners. Limits of liability under such insurance shall not be less than \$1,000,000 for all claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against water damage, liability for non-owned or hired automobile, liability for property of others, and such other risks shall customarily be covered with respect to projects similar in construction, location and use.

The following additional provisions shall apply with respect to insurance:

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- 1) Underwriter Requirements: All policies shall be written by a company holding a rating of Class IV or better from Best's Insurance Reports and be specifically licensed for Utah.
- 2) Adjustment: The Association shall have the authority to adjust losses.
- 3) Contribution: Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners or their mortgages.
- 4) Miscellaneous Requirements: Each policy of insurance obtained by the Association shall, if reasonably possible, provide: A waiver of the insurer's subrogation rights with respect to the Association, the Owner and their respective directors, officers, agents, employees, invitees,, and tenants; that it cannot be cancelled, suspended, or invalidated due to the conduct of any particular Owner or Owners; that it cannot be cancelled, suspended, or invalidated due to the conduct of the Association or of any director, officer, agent or employee of the Association without prior written demand that the defect be cured; that any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Owners.
- 5) Lot Owner Insurance: Each Owner shall carry an insurance policy for the Living Unit. The policy shall provide, as a minimum, fire and extended coverage insurance on a replacement cost basis not less than the full value of the Lot and Living Unit. Proof of owner insurance to be given at annual meeting or at the request of the Board of Trustees.
- 6) Review of Insurance: The Board shall periodically, and whenever requested by 20% or more of the Owners, review the adequacy of the Associations insurance program and shall report in writing, to be given to the Owners who requested the review. Copies of every insurance policy procured by the Board shall be available for inspection by the Owners.
- 7) Flood Hazard: In the event that at some future time the Development should be declared in a flood zone, a blanket policy of flood insurance on the Development should be obtained using the maximum limit of coverage available under the National Flood Insurance Act of 1968, as amended.

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VII. USE RESTRICTIONS

1. Use of Common Areas: The Common Areas shall be used only in a manner consistent with their community nature and with the use and restrictions applicable to Lots and Living Areas. No admission fees, charges for use, leases, or other

- income-generating arrangement of any type shall be entered into with respect to any portion of the Common Areas.
2. Use of Lots and Living Units: No Lot or Living Unit shall be used, occupied, or altered in violation of law, so as to create a nuisance or interfere with the rights of any Owner or in a way which would result in an increase in the cost of any insurance covering the Common Areas.
 3. Parking Lot: Parking stalls shall not be appurtenant to any unit, however, the Association may assign one parking stall per unit if it deems advisable by adoption of a rule or regulation to that effect.
 4. Fences: Fences will be allowed in the front and side yards to a maximum of 40". These fences must be constructed of wood, vinyl, wrought iron or masonry. Rear yard fences must follow the same format with a maximum of 60" allowable. Any and all fencing plans must be submitted in plot plan form to the Association Board along with a description of materials, schedule of completion, etc. for approval BEFORE construction commencement.
 5. Non-Residential Use: No part of the Property shall be used for any commercial, manufacturing, mercantile, storing, vending, or other such non-residential purposes.
 6. Quiet Enjoyment: No noxious or offensive activity shall be carried on any Lot or any part of the Property, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owners.
 7. Temporary Structures, Equipment, Motor Vehicles, Etc.: No structure of a temporary nature such as trailer, tent, shack garage, barn or toher out building shall be used on any Lot at any time as a residence, either temporarily or permanently. No trailer, camper, boat, truck larger than 3/4 ton, or similar equipment shall be permitted to be parked upon any Lot, unless placed or maintained with a covered parking stall and written approval given by the Board. No motor vehicle whatsoever may be parked on any street but shall be kept in the Owner's garage or driveway. All clotheslines, refuse containers, woodpiles, storage areas and machinery and equipment shall be prohibited upon any Lot unless obscured from view of adjoining Lots and streets by a fence, building, or appropriate screen.
 8. Animals: Dogs, cats and other household pets may be kept on the Lots provided they are not kept, bred or maintained for commercial purposes or in unreasonable numbers. All pets must be kept in a fenced Yard of the Lot or on a leash in the Common Area. Unit owners must comply with all state and local laws.
 9. Garbage Removal: All rubbish, trash and garbage shall be regularly removed from the Property, and shall not be allowed to accumulate thereon.

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VIII. Condemnation

If at any time or times the Common Areas or any part thereof shall be taken or

condemned by any authority having the power of eminent domain, all compensation and damages shall be payable to the Association and shall be used by the Association to the extent necessary and possible for restoring or replacing any improvements on the remainder of the Common Areas. Upon completion of such work and payment in full thereof, any proceeds of condemnation then or thereafter in the hands of the Association which are proceeds for the taking of any portion of the Common Areas shall be disposed of in such manner as the Association shall reasonable determine; provided, however that the event of a taking in which any Lot is eliminated, the Association shall disburse the portion of the proceeds of the condemnation award allocable to the interest of the Owner of such Lot to such Owner after deducting the proportionate share of said Lot in the cost of debris removal.

IX. - MISCELLANEOUS

1. Notices: Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly furnished if delivered or mailed, postage prepaid, to the person named as the Owner, at the latest address for such person as reflected in the records of the Association at the time of delivery or mailing. Any notice required or permitted to be given to the Association may be given by delivering or mailing the same to a member of the Association board.
2. Rules and Regulations: The Association shall have authority to promulgate and enforce such reasonable rules, regulations and procedures as may be necessary or desirable to aid the Association in carrying out any of its functions or to insure that the Property is maintained and used in a manner consistent with the interests of the Owners.
3. Amendment: Any amendment to this Declaration, except as otherwise set forth herein, shall require the affirmative vote of at least two-thirds of all membership votes which Members present in person or by proxy are entitled to cast at a meeting duly called for such purpose. Written notice setting forth the purpose of the meeting and the substance of the amendment proposed shall be sent to Members at least 10 days, but not more than 30 days prior to the meeting date.
4. Consent in Lieu of Vote: In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meetings, consents in writing to such transaction from Members
 - a) All necessary consents must be obtained prior to the expiration of 90 days after the first consent is given by any Member.
 - b) The total number of votes required for authorization or approval under this section shall be determined as of the date on which the last consent is signed.

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ADDENDUM

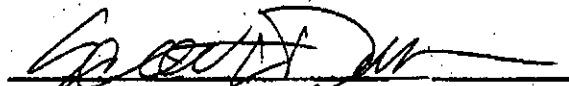
All lots 1&18, Block 20, Plat B, Cedar City Town Survey. Contains 1.2000 Acres.
The East 66.03 feet of the North ½ Lot 4, the South ½ and the West 78.05 Feet of the
North ½ Lot 16 and all of Lot 17, Block 20, Plat B, Cedar City Town Survey.
Contains 1.118 Acres. EASTGATE UNIT II, A PLANNED UNIT DEVELOPMENT.
Eastgate

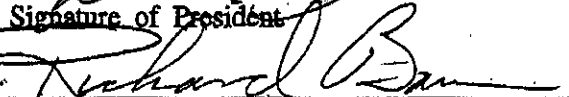
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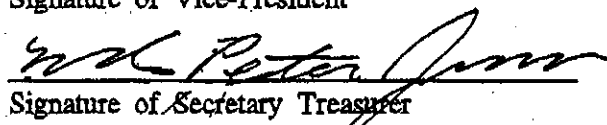
- c) For a Lot with multiple owners, consent must be obtained from all Owners or the consent shall not be effective.
- 5. Reserve Fund: The Association shall establish adequate reserve to cover the cost of reasonably predictable and necessary major repairs and replacements of the Common Areas and exterior maintenance and shall cause such reserve to be funded by regular monthly or other periodic assessments.
- 6. Lease Provisions: Any Owner may lease his Lot and Living Unit, provided that any lease agreement must be in writing and must provided that: a) the terms of the lease are subject to the provisions of this Declaration, Articles of Incorporation and the Bylaws; b) Any failure by the Lessee to comply with the terms of such documents shall constitute a default under the lease, and c) The minimum time period of any lease is 30 days. If there is a direct violation, a fine or other enforcement as deemed necessary by the Association may be pursued.
- 7. Interpretation: The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

By acquiring any interest in a Lot or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

This Declaration and any amendment hereof shall take effect upon its being filed for record in the office of the County Recorder of Iron County, Utah executed the day and year first written above.


Signature of President


Signature of Vice-President


Signature of Secretary Treasurer

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9-12-03
Date

9-12-03
Date

9-12-03
Date

STATE OF UTAH

COUNTY OF IRON

ON THIS 12 DAY OF September, IN THE YEAR 2003 BEFORE
ME Deanna Urie A NOTARY PUBLIC, PERSONALLY APPEARED
Scott Leon Dabb, PERSONALLY KNOWN TO ME (OR PROVED ON
THE BASES OF SATISFACTORY EVIDENCE) TO BE THE PERSON (S) WHOSE
NAME(S) IS (ARE) SUBSCRIBED TO THIS INSTRUMENT, AND ACKNOWLEDGED
HE (SHE) (THEY) EXECUTED THE SAME.

MY COMMISSION EXPIRES ON 8-8-07



Deanna Urie
NOTARY PUBLIC

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STATE OF UTAH

COUNTY OF IRON

ON THIS 12th DAY OF September, IN THE YEAR 2005 BEFORE
ME, Deanna Urie, A NOTARY PUBLIC, PERSONALLY APPEARED
Richard Thom Bauer, PERSONALLY KNOWN TO ME (OR PROVED ON
THE BASES OF SATISFACTORY EVIDENCE) TO BE THE PERSON (S) WHOSE
NAME(S) IS (ARE) SUBSCRIBED TO THIS INSTRUMENT, AND ACKNOWLEDGED
HE (SHE) (THEY) EXECUTED THE SAME.

MY COMMISSION EXPIRES ON 8-8-07



Deanna Urie
NOTARY PUBLIC

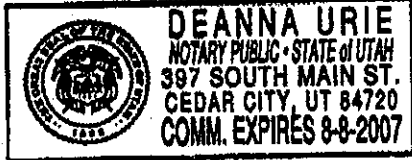
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STATE OF UTAH

COUNTY OF IRON

ON THIS 12th DAY OF September, IN THE YEAR 2003 BEFORE
ME Deanna Urie A NOTARY PUBLIC, PERSONALLY APPEARED
Nels Peter Jensen, PERSONALLY KNOWN TO ME (OR PROVED ON
THE BASES OF SATISFACTORY EVIDENCE) TO BE THE PERSON (S) WHOSE
NAME(S) IS (ARE) SUBSCRIBED TO THIS INSTRUMENT, AND ACKNOWLEDGED
HE (SHE) (THEY) EXECUTED THE SAME.

MY COMMISSION EXPIRES ON 8-8-2007



Deanna Urie
NOTARY PUBLIC

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