

TRAVIS TAYLOR
95 S River Bend Way - Suite A
North Salt Lake, UT 84054



EASEMENT AND MAINTENANCE AGREEMENT

DATED: this 2 day of February, 2018

PARTIES: Eagle View Owner's Association ("Eagle View") and BPA – II, LLC ("BPA"), collectively the "Parties" or individually a "Party".

RECITALS

- A. Eagle View Owner's Association is a Utah nonprofit corporation governing a residential planned unit development in Brigham City, Box Elder County, Utah ("Eagle View"), as more fully described in the development's Declaration of Covenants Conditions and restrictions ("Declaration") and as depicted on the Eagle View Subdivision –P.U.D. plat maps ("Plats") recorded with the Box Elder County Recorder more particularly the Eagle View Phase II subdivision.
- B. BPA is a Utah limited liability company. BPA owns a parcel of land on the westerly border of, and immediately adjacent to the Eagle View Phase II subdivision as depicted on the Plat.
- C. The Parties acknowledge an easement consistent with the easement noted on the Eagle View Phase II subdivision Plat, as depicted and recorded with the Box Elder County Recorder on April 30, 1998 (the "Easement").
- D. The Parties desire to further define the rights, obligations of the Parties, and to establish an agreement for the maintenance and upkeep of the improvements located within the Easement depicted on the Plat.

AGREEMENT/EASEMENT

In consideration of the foregoing and the mutual covenants of the Parties contained in this Easement and Maintenance Agreement ("Agreement"), the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. **Easement to Eagle View.** The scope of the easement is strictly limited to utilities, parking, vehicular access, and access to individual end units and access to rear common area for Eagle View Subdivision Phase II. The Easement is granted for the right, benefit, and use of Eagle View and Eagle View's successors, heirs, assigns, owners, guests, managers, mortgagees, lessees, and beneficiaries under any deeds of trust (collectively the "Eagle View permitted users"), subject to the provisions of this

Agreement.

- 2. Maintenance, Repair, and Replacement.** Eagle View shall have the right and obligation to maintain, repair, and replace the sidewalk and landscaping ("Easement Improvements") located within the boundaries of the Easement as depicted on the Plat. Notwithstanding the foregoing, BPA shall have the right and obligation to maintain, repair, and replace the asphalt within the boundaries of the Easement. Eagle View and BPA shall keep the same in good condition and repair and in accordance with all applicable laws, ordinances, rules, regulations, covenants, conditions and restrictions, and governmental requirements. All maintenance, repair and replacement obligations shall be performed in a prompt, diligent, and regular manner.

Either Party shall have the power and authority to maintain and repair the Easement Improvements as specified herein if the responsible Party fails to maintain and repair the same, or for the purpose of removing or altering any improvement constructed, reconstructed, refinished, altered or maintained in violation of this Agreement, and the cost of such work shall be recoverable by the other Party.

In the event that the need for maintenance or repair of the Easement Improvements as specified herein is caused through the willful or negligent acts of either Party, or through the willful or negligent acts of the family, guests, tenants, or invitees of any unit owner of either Party, either Party may cause such repairs to be made by the negligent party and the cost of such maintenance or repair work shall be recoverable by other Party.

- 3. Cost Allocation.** Eagle View shall be responsible to cover all maintenance, repair, and replacement costs of the sidewalk and landscaping portion of the Easement Improvements. BPA shall be responsible to cover all maintenance, repair, and replacement costs of the asphalt within the boundaries of the Easement. Further, BPA and Eagle View and/or their successors and assigns shall be entitled to recoup any costs advanced or incurred as a result of any unauthorized improvements, or as a result of the other party's negligence, abuse, neglect, or failure to maintain, repair, or replace the improvements located within the boundaries of the Easement.
- 4. Necessary Alterations.** Eagle View hereby acknowledges that certain landscaping, including irrigation pipes and sprinklers were installed outside the boundaries of the Easement, and hereby agrees to promptly remove and modify the same to ensure that such improvements are contained wholly within the boundaries of the Easement, and that the same do not spray outside the Easement. BPA acknowledges that its construction activities have impacted the landscaped portion of the Easement and agrees to remediate such impact. Further, Eagle View hereby acknowledges that the current entrance from 850 South Street to the BPA and the Eagle View parcels will need to be altered and relocated in a manner as approved by the city and/or county, or other applicable governing body.
- 5. Restriction on Use.** Neither Eagle View nor BPA, nor any permitted users of either Party, shall place any obstruction to or upon the easement area whatsoever, except

as is necessary in connection with the Parties' maintenance, repair, and replacement obligations. Neither Party shall erect or place any building or other improvement upon or over the Easement area, except as agreed to by both Parties and their permitted users shall be bound by any posted or published rules governing the Easement.

6. **Condemnation.** In the event the Parties' respective property or any portion thereof is taken by power of eminent domain, or is conveyed under threat of condemnation, the obligations hereunder of the Party owning such property shall be abated to the extent of the taking. Proceeds from any taking of the respective properties shall belong exclusively to the respective Party over or owning such property.
7. **Non-Use.** No obligation arising from or out of this Agreement or any right granted under this Agreement, shall lapse because of non-use.
8. **Easements Run with the Land.** The Easement shall run with the land as to all property benefitted and burdened thereby, including any partition or division of such property. The rights, covenants, and obligations contained in this Agreement shall bind, burden, and benefit the Parties and their respective successors, assigns, heirs, lessees, mortgagees, and beneficiaries under any deeds of trust.
9. **Conformance with Governmental Requirements.** Both Parties shall cause all their respective uses of the easement area to be in conformance with all applicable federal, state, county, and municipal laws, ordinances, regulations, and requirements.
10. **Recording.** This Agreement shall be recorded in the official records of Box Elder County, Utah.
11. **Waiver.** Failure of either Party at any time to require performance of any provision of this Agreement shall not limit such Party's right to enforce such provision, nor shall any waiver of breach of any provision of this Agreement constitute a waiver of any succeeding breach of such provision or waiver of such provision itself.
12. **Mediation and Attorneys' Fees.** The Parties agree that any dispute related to this Agreement shall first be submitted to mediation through a mediation provider mutually agreed upon by the Parties. Each Party agrees to bear its own costs of mediation. If Mediation fails, or either Party refuses to mediate, other legal remedies may then be pursued. If a suit, action, or other proceeding of any nature whatsoever is instituted in connection with any controversy arising out of this Agreement or to enforce any rights hereunder, the prevailing Party shall be entitled to recover its attorneys' fees and expenses and all other fees and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court at trial or on any appeal or review, in addition to all other amounts provided by law.
13. **Remedies.** In the event that either Party fails to perform any obligation under this Agreement, the other Party shall be entitled to require specific performance of such obligation, to obtain appropriate injunctive relief (without the necessity of showing inadequate remedies at law), to cure the default of such obligation and recover the costs thereof from the Party breaching such obligation, or to pursue any other remedy available at law or equity. The remedies authorized throughout this Agreement are not

mutually exclusive and may be maintained independently of each other.

14. Amendment and Termination. This Agreement may be amended and/or terminated only by a written agreement signed by representatives of both Parties, their successors, or assigns. Said amendment and/or notice of termination shall be recorded in the official records of Box Elder, Utah.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

[Notaries and Signatures on the Following Page]

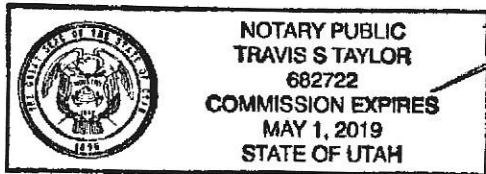
Eagle View Owner's Association

By: ~~_____~~
Its: ~~_____~~

By: Lynn T. Tugans
Its: Pres of Eagle View HOA.

STATE OF UTAH)
COUNTY OF Box Elder) SS:

On the 2 day of February 2016, personally appeared before me Lynn T. Tugans, who by me being duly sworn, did say that he/she is a representative of the Eagle View Owner's Association., and that he/she is authorized to execute this Agreement.



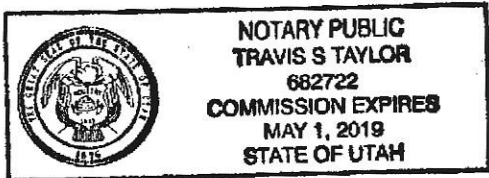
[Signature]
Notary Public

BPA - II, LLC

By: [Signature]
Its: Manager

STATE OF UTAH)
COUNTY OF Davis) SS:

On the 1st day of February 2018, personally appeared before me Stan T. Rowland, who by me being duly sworn, did say that he/she is a representative of BPA - II, LLC and that he/she is authorized to execute this Agreement.



[Signature]
Notary Public

EXHIBIT A

LEGAL DESCRIPTION AS DEPICTED ON THE EAGLE VIEW SUBDIVISION - PUD
PHASE II PLAT AMENDED

