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Tennis Club, Inc.

IN THE SECOND JUDICIAL DISTRICT COURT IN AND FOR
DAVIS COUNTY, STATE OF UTAH

SANKIS LLC, a Utah limited liability
company, and EAGLERIDGE TENNIS
CLUB, INC., a Utah corporation,

Plaintiffs,

v.

CITY OF NORTH SALT LAKE, a Utah
political subdivision; B & E PACE
INVESTMENT, LLC, a Utah limited
liability company; EXCEL INVESTMENT
CORP., a Utah corporation; SKY
PROPERTIES, INC., a Utah corporation;
EAGLEPOINTE DEVELOPMENT, L.C.,
a Utah limited liability company; SMOOT
REAL ESTATE, a Utah sole
proprietorship; RALPH CANNON REAL
ESTATE, a Utah sole proprietorship;
WILFORD W. CANNON, individually;
and JOHN DOES 1-20,

Defendants.

COMPLAINT

[Jury Trial Demanded]

Tier III

Civil No.

The Honorable

Plaintiffs Sankis LLC and Eagleridge Tennis Club, Inc. (collectively, “Eagleridge”), by and through their undersigned counsel, hereby complain against defendants City of North Salt Lake (“North Salt Lake”), B & E Pace Investment, LLC (“B & E”), Excel Investment Corp. (“Excel”), Sky Properties, Inc. (“Sky Properties”), Eaglepointe Development, L.C. (“Eaglepointe”), Smoot Real Estate, Ralph Cannon Real Estate, Wilford W. Cannon, and John Does 1-20 (collectively, “Defendants”) as follows:

PARTIES AND JURISDICTION

1. Sankis LLC is a Utah limited liability company with its principal place of business in Bountiful, Utah, and is the grantee of certain real property, which is the subject matter of this lawsuit.

2. Eagleridge Tennis Club, Inc. is a Utah corporation with its principal place of business in North Salt Lake, Utah, which is the subject matter of this lawsuit, and is the successor in interest to certain LLCs by means of merger.

3. The City of North Salt Lake is a Utah political subdivision located in Davis County, Utah.

4. B & E Pace Investment, LLC is a Utah limited liability company with its principal place of business in Salt Lake City, Utah.

5. Excel Investment Corp. is a Utah corporation with its principal place of business in Bountiful, Utah.

6. Sky Properties, Inc. is a Utah corporation with its principal place of business in Bountiful, Utah.

7. Eaglepointe Development, L.C. is a Utah limited liability company with its principal place of business in Bountiful, Utah.

8. Smoot Real Estate was a licensed Utah sole proprietorship with its principal place of business in North Salt Lake, Utah. Its Utah business license expired on February 25, 2009, for failure to file renewal.

9. Ralph Cannon Real Estate was a licensed Utah sole proprietorship with its principal place of business in Bountiful, Utah. Its Utah business license expired on May 21, 2001, for failure to file renewal.

10. Wilford W. Cannon is a citizen of the State of Utah.

11. John Does 1-20 include but are not limited to: other companies, individuals, contractors, design professionals or agents or employees of those companies who may have caused or contributed to the cause of the landslide that is the subject of this lawsuit, or owners, members, shareholders, officers or directors of any Defendant companies identified herein if it becomes evident that any such company is undercapitalized, dissolved or has otherwise failed to establish and maintain proper corporate formalities.

12. This Court has jurisdiction over this matter, and venue is proper before this Court pursuant to Article I, Section 22 of the Utah Constitution and Sections 78A-5-102, 78B-3-301, and 78B-3-307 of the Utah Code Annotated.

GENERAL ALLEGATIONS

A. The Eagleridge Tennis & Swim Club.

13. Eagleridge is the owner and operator of the Eagleridge Tennis & Swim Club (the “Club”), which is currently located at 711 South Parkway Drive, North Salt Lake, UT 84054, between Parkway Drive to the north and Eaglepointe Drive to the south.

14. Eagleridge has maintained an active business license since August 14, 2003, and is the successor in interest to the Club by means of merger.

15. On February 28, 2007, Sisanki LLC (“Sisanki”), the original purchaser of the property where the Club is located, and Eagleridge Club Inc., merged with and into Eagleridge.¹

16. The Club consists of parking lots along the northwestern and western boundaries; a main building situated between two large, metal-framed tents covering three tennis courts each; a large pool and patio area; and an outbuilding.

B. Early Development of the Eaglepointe Estates.

17. B & E’s principal is W. Earl Pace, as sole manager.

18. Excel is a Utah-based real estate investment and development firm.

19. Excel’s principals are W. Scott Kjar, as Director, Vice President, Secretary, and registered agent; Steven E. Smoot, as Director and President; and Stana S. Kjar, as Treasurer.

20. Sky Properties is a property management and residential and commercial development company that has been operating in Utah for over 30 years.

¹ Any reference that could be made to “Sisanki” will be made hereafter to Eagleridge, unless otherwise noted.

21. Sky Properties' principals are W. Scott Kjar, as Director, President, and registered agent, and Steven E. Smoot, as Director, Vice President, and Treasurer.

22. Upon information and belief, Eaglepointe is a local real estate development company that was set up by Excel and Sky Properties to facilitate the development of the Eaglepointe Estates residential development in North Salt Lake, Utah (as further defined below).

23. Eaglepointe's principals are Excel, as manager, and W. Scott Kjar, as registered agent.

24. Smoot Real Estate was a registered DBA for Stanley M. Smoot, who has been deceased since approximately January 2012. Smoot Real Estate's principal is Stanley M. Smoot, whose daughter Stana S. Kjar is married to W. Scott Kjar.

25. Upon information and belief, since the late 1990s, B & E, Excel, Sky Properties, and Eaglepointe (collectively, the "Developers") have been the owners and developers of certain land in North Salt Lake, Utah, which was portioned out in development phases containing residential lots to be sold as part of a residential real estate development (the "Eaglepointe Estates").

26. Upon information and belief, the Developers established recurring business relations with Smoot Real Estate, Ralph Cannon Real Estate, and Wilford W. Cannon to sell the Eaglepointe Estates properties.

27. The Eaglepointe Estates is located in the foothills of North Salt Lake on land that, from approximately 1952 until sometime in 1997, was part of the Concrete Products Company's White Hill sand and gravel quarry.

28. Upon information and belief, by virtue of its use as a sand and gravel quarry, land within the Eaglepointe Estates, and the grade (or slope) thereof, was continually disturbed, creating a substantial potential for geological instability.

29. Upon information and belief, the Developers began steepening and regrading operations in the Eaglepointe Estates area in anticipation of future residential developments sometime between 1998 and 2003.

30. Upon information and belief, the regrading and steepening of the Eaglepointe Estates area further disturbed the stability of the soil composition, leading to increased destabilization.

31. Upon information and belief, geological studies analyzing historical aerial photographs of the Eaglepointe Estates area found that the area had not experienced landslides until it was used as a sand and gravel quarry.

C. The Eagleridge Tennis & Swim Club Purchases Property in the Eaglepointe Estates Area from the Developers.

32. In the early 2000s, while the Developers were in the early phases of developing the Eaglepointe Estates, Eagleridge began searching for a plot of land on which to construct the Club.

33. While discussing the potential of another site within the Eaglepointe Estates to build its Club, Eagleridge asked the Developers, Smoot Real Estate, Ralph Cannon Real Estate, and Wilford W. Cannon for geotechnical plans for that site because it sat atop a hill and appeared to be formed out of mostly fill dirt.

34. Eagleridge communicated to the Developers, Smoot Real Estate, Ralph Cannon Real Estate, and Wilford W. Cannon that it feared this first location was not stable due to the fill dirt.

35. The Developers, Smoot Real Estate, Ralph Cannon Real Estate, and Wilford W. Cannon refused Eagleridge's request for geotechnical reports.

36. After being refused a geotechnical report and determining that the location was unsuitable for the Club due to fill dirt's tendency to settle and cause cracking in cement structures such as tennis courts and swimming pools, Eagleridge selected the site where the Club currently sits—lot numbers 508, 509, and 510 of the Eaglepointe Subdivision plat 5 (the "Property").

37. On or about August 13, 2003, the Developers negotiated and entered into an Eaglepointe Earnest Money Sales Agreement (the "Agreement") with Eagleridge for the sale of the Property. A copy of the Agreement is attached hereto as Exhibit 1.

38. The Agreement lists B & E and Eaglepointe as owners and sellers of the Property. *See Id.*

39. Ralph Cannon Real Estate, Smoot Real Estate, and Sky Properties are designated on the Agreement as listing agents that "represent the Seller." *See Id.*

40. Wilford W. Cannon, who at the time was working for Ralph Cannon Real Estate, is listed on the Agreement as a "Selling agent" who represented as a real estate agent both the buyer (Eagleridge) and the sellers (B & E and Eaglepointe). *See Id.*

41. By virtue of representing Eagleridge as a real estate agent in the purchase of the Property and the negotiation of the Agreement, Wilford W. Cannon was an agent and a fiduciary of Eagleridge.

42. For the sellers, the Agreement was signed by W. Scott Kjar, in his capacity as Vice President of Excel, Eaglepointe's sole manager, and by W. Earl Pace, the managing member of B & E. *See Id.*

43. For the buyer, the Agreement was signed by Brad Ferreira, manager of Sisanki. *See Id.*

44. On or about September 16, 2004, Eaglepointe conveyed the Property to Eagleridge by Special Warranty Deed. A true and correct copy of the Special Warranty Deed from Eaglepointe to Eagleridge is attached hereto as Exhibit 2.

45. Sisanki is the predecessor in interest to Eagleridge, the owner of the Club.

46. On June 9, 2005, Sisanki conveyed by Quit Claim Deed to Sankis LLC "all of [Sisanki's] rights, titles interest in (and to)" the Property.

47. On February 28, 2007, Sisanki, the original purchaser of the property where the Club is located, and Eagleridge Club Inc. merged with and into Eagleridge Tennis Club, Inc.

D. The Hillside.

48. Between the Club on Parkway Drive to the north and Eaglepointe Drive to the south lies a hillside that is up gradient from the Club (the "Hillside").

49. Upon information and belief, it is estimated that prior to August 5, 2014, the Hillside had a 200-foot vertical height with an approximate 45 percent average grade, or a 1:1

slope (horizontal over vertical), and extended over 2,000 feet between Parkway Drive and Eaglepointe Drive.

50. The Hillside has very little to no plantings, terracing, walls, or combinations thereof to protect it from erosion or sloughing.

51. The Club sits at the bottom, or toe, of the Hillside. A true and correct copy of the Eaglepointe Estates' development site map is attached hereto as Exhibit 3.

52. On or about December 21, 2006, Pace-Platt Investment Company, LTD. ("Pace-Platt") and B & E deeded by Special Warranty Deed and Quit Claim Deed, respectively, certain acres of land in the Eaglepointe Estates development to North Salt Lake, parts of which form the Hillside.

53. Upon information and belief, since December 21, 2006, North Salt Lake has had exclusive ownership, control, and possession of the Hillside and any activity done upon the Hillside.

54. Both the Club and the Hillside are located in the Eaglepointe Estates development in North Salt Lake.

55. The Club is located in Phase 5 of the Eaglepointe Estates. *See Id.*

56. The Hillside sits at the center of Phases 5, 13, 16, 18, and 19 of the Eaglepointe Estates. *See Id.*

E. The 2003 Geotechnical Report.

57. Upon information and belief, sometime in 2003, the Developers sought approval from North Salt Lake to develop its various phases of residential developments in the Eaglepointe Estates.

58. Upon information and belief, in order to obtain North Salt Lake's approval, the Developers commissioned a geological study.

59. Upon information and belief, the Developers received this report on or about April 29, 2003 (the "2003 Geotechnical Report").

60. Upon information and belief, the purpose of the 2003 Geotechnical Report was to evaluate the geologic conditions of the area, as well as determine the presence of any geological hazards.

61. Upon information and belief, the proposed development referenced in the 2003 Geotechnical Report involves the Hillside and areas surrounding the Hillside, including the Property where Eagleridge built the Club.

62. Upon information and belief, the Eaglepointe Estates development was composed mostly of undeveloped hillside that was formerly a sand and gravel quarry.

63. The 2003 Geotechnical Report noted that the proposed development site, especially the Hillside, was mostly covered in loosely compacted and poorly graded fill dirt.

64. In assessing the developability and soil integrity of the area, the 2003 Geotechnical Report referenced a landslide that occurred in 1998 in the Springhill residential development, also located in North Salt Lake, which was likely caused by heavy rain combined with a particular type of tuffaceous bedrock clay that, when wet, becomes weak and highly plastic.

65. Upon information and belief, the Springhill landslide occurred approximately one mile downhill from the Hillside.

66. The 2003 Geotechnical Report concluded that it was the area's former use as a sand and gravel pit that likely caused the Springhill landslide.

67. Upon information and belief, the Eaglepointe Estates development is composed of the same soil and bedrock material as the Springhill area.

68. The 2003 Geotechnical Report warned of slope failure in the Eaglepointe Estates development, as it found portions to be poorly graded.

69. The 2003 Geotechnical Report determined that the appropriate slope for the Eaglepointe Estates development should at no point be steeper than 2:1 (horizontal over vertical).

70. Upon information and belief, contrary to the 2003 Geotechnical Report, the Developers graded the Hillside to a slope of approximately 45 degrees, or 1:1 (horizontal over vertical).

71. Because portions of the Eaglepointe Estates development, especially the Hillside, were located in potential landslide areas, the 2003 Geotechnical Report suggested the Developers conduct an additional study to determine the potential for landslide and debris flow.

72. Upon information and belief, though the Developers commissioned various studies relating to different areas in and phases of the Eaglepointe Estates as the development progressed, it did not commission a more detailed study for the 2003 Geotechnical Report's study area until 2013, prior to development of Phase 19 of the Eaglepointe Estates, but well after the Property was developed and sold to Eagleridge.

73. The 2003 Geotechnical Report was sufficient to put the Developers on notice that the Eaglepointe Estates development contained a material latent defect—i.e., poorly compacted and dangerously graded fill dirt on the Hillside that had the potential for sliding.

F. A North Salt Lake Ordinance Required the Hillside to Be at a Slope of 2:1.

74. North Salt Lake has developed certain ordinances regarding land use and subdivision development.

75. Ordinance No. 10-7-6(F)(15)(a)(1) provides that “[n]o fill slope shall exceed a vertical height of one hundred feet (100') unless horizontal benches with a minimum width of thirty feet (30') are installed at each one hundred feet (100') of vertical height.”

76. Ordinance No. 10-7-6(F)(15)(a)(2) provides that “[n]o fill shall be made which creates an exposed surface steeper in slope than two horizontal to one vertical (2:1) unless the fill material is of such a nature that a one to one (1:1) slope may be permitted with the permission of the zoning administrator.”

77. All fill slopes in North Salt Lake are required to be “smoothly graded” and “protected by approved planting, crib walls or walls and planting or terracing, or combinations thereof.” Ordinance No. 10-7-6(F)(7).

78. The “Purpose and Intent” of the North Salt Lake ordinances governing fill slope is to “promote public safety and the general public welfare; to protect property against loss from erosion, earth movement and flooding; to maintain a superior community environment; to provide for the continued orderly growth of the city; and to ensure the maximum preservation of the natural scenic character of major portions of the city by establishing minimum standards and requirements relating to land grading, excavations and fills, and procedures by which these standards and requirements may be enforced.” Ordinance No. 10-7-6(A).

79. Ordinance No. 10-7-6 (the “Ordinance”) is applicable to the Eaglepointe Estates development and, specifically, to the Hillside.

80. Because the Hillside was not graded to a slope of 2:1 or less prior to August 5, 2014, the Developers developed the Eaglepointe Estates and the Hillside in violation of the Ordinance.

81. Because the Hillside was not graded to a slope of 2:1 or less prior to August 5, 2014, North Salt Lake failed to enforce the Ordinance when it approved development of the Hillside and surrounding phases.

G. The Developers and Real Estate Companies Knew of the Threat of and Potential for Landslides Near the Hillside.

82. By virtue of the 2003 Geotechnical Report and the Ordinance, the Developers knew the danger that the Hillside as graded prior to August 5, 2014 presented to real estate development and subsequent real estate purchasers in the Eaglepointe Estates area, in the form of landslides and debris flow.

83. As sellers of real property, the Developers and their respective representatives were under an affirmative duty to disclose to buyers the 2003 Geotechnical Report and its conclusions regarding the nature of the soil and the threat of and potential for landslides near the Hillside, as well as the violation of the Ordinance.

84. Ralph Cannon Real Estate, Smoot Real Estate, and Wilford W. Cannon, by virtue of their relationships as real estate agents to the Developers, knew or should have known of the potential for landslides near the Hillside and the threat the Hillside posed to real estate development and subsequent real estate purchasers in the Eaglepointe Estates.

85. As real estate agents with knowledge of a material defect in real property they were selling, Ralph Cannon Real Estate, Smoot Real Estate, and Wilford W. Cannon had a duty to disclose to buyers the 2003 Geotechnical Report and its conclusions regarding the nature of

the soil and the threat of and potential for landslides in the Eaglepointe Estates development, and the violation of the Ordinance.

86. Because of his position as selling agent, Wilford W. Cannon knew or reasonably should have known of the threat of and potential for landslides near the Hillside when he acted as Eagleridge's agent in buying the Property.

87. As the real estate agent representing the sellers B&E and Eaglepointe, and the buyer Eagleridge, Wilford W. Cannon had a fiduciary duty to disclose to Eagleridge his knowledge about the threat of and potential for landslides near the Hillside.

88. Eagleridge, as a purchaser of real estate, would have been unable to discover the threat of and potential for landslides affecting the Eaglepointe Estates development, and specifically affecting the Property and the Club, without disclosure of the 2003 Geotechnical Report or the information contained therein.

89. At no point in the negotiation or signing of the Agreement did any representative of B & E, Excel, Sky Properties, Eaglepointe, Ralph Cannon Real Estate, Smoot Real Estate, or Wilford W. Cannon disclose to Eagleridge the 2003 Geotechnical Report or the threat of and potential for landslides in the Eaglepointe Estates development, or the Developers' violation of the Ordinance despite all Defendants being aware of Eagleridge's concerns about instability and requests for applicable geotechnical reports.

90. Furthermore, nothing in the Agreement referred to any knowledge of or facts pertaining to the threat of and potential for landslides.

91. Had Eagleridge known about the 2003 Geotechnical Report or its contents pertaining to the instability of the Hillside and threat of landslides that could affect the Club, or

the Developers' violation of the Ordinance, Eagleridge would not have purchased the Property, just as it opted to not purchase other sites it knew to be susceptible to landslides and/or debris flow.

H. Maintenance of the Hillside and Development of the Eaglepointe Estates.

92. Upon information and belief, from 2006 until the summer of 2014 when residents of the Eaglepointe Estates began to notice giant fissures and cracks in the Hillside, North Salt Lake owned, possessed, maintained, and controlled the Hillside as it was originally developed from its sand and gravel quarry state.

93. Upon information and belief, during the nearly 10 years North Salt Lake has owned, possessed, and controlled the Hillside, it failed to enforce the Ordinance, properly maintain the Hillside, take any steps to secure and/or stabilize the Hillside despite being on notice of its potential for instability, or protect downhill property owners.

94. Upon information and belief, despite the 2003 Geotechnical Report advising the Eaglepointe Estates development not to maintain a slope steeper than 2:1 (horizontal over vertical) and the Ordinance prohibiting a slope steeper than 2:1, North Salt Lake did not take action to correct the slope of the Hillside that could have prevented future slope failure.

95. Upon information and belief, despite being fully aware of the threat of and potential for landslides outlined in the 2003 Geotechnical Report, the Developers continued to develop residential real estate properties in the Eaglepointe Estates development.

96. Between 2003 and 2014, Sky Properties and Eaglepointe developed many phases of the Eaglepointe Estates development, comprising hundreds of lots, finished single-family homes, and various businesses.

97. Upon information and belief, despite the obvious, well-established threat of and potential for landslides, North Salt Lake allowed the Developers to move forward with developing land atop the Hillside on Eaglepointe Drive as part of Phases 18 and 19 of the Eaglepointe Estates development.

98. Phase 18 was approved by the Planning Commission on July 23, 2013 and by the City Council on August 8, 2013.

99. Phase 19 was approved by the Planning Commission on March 11, 2014 and by the City Council on March 18, 2014.

100. Upon information and belief, the Developers had been developing Phases 18 and 19 north of Eaglepointe Drive between approximately 2010 and the summer of 2014.

101. Upon information and belief, the Developers' development of Phases 18 and 19 at the crest of the Hillside involved pouring many additional feet of fill dirt and compacting that fill dirt using large excavation machinery and equipment.

102. Upon information and belief, development of Phases 18 and 19 at the crest of the Hillside caused further destabilization and deterioration of the Hillside, creating greater potential for surface rupture and debris flow of the Hillside downhill toward the Club and other residential homes.

103. Upon information and belief, in June of 2014, residents of Eaglepointe Estates noticed and informed North Salt Lake officials of a large crack forming on the Hillside.

104. Eagleridge became aware of the threat and risks of a landslide that would affect the Club in late June 2014, when it noticed the large crack forming on the Hillside behind the Club.

105. Upon information and belief, beginning in approximately late June 2014, the Developers attempted to stabilize the sliding Hillside by excavating the western portion of the Hillside to a 2:1 (horizontal over vertical) grade and by placing landscaping meshing to hold the newly excavated surface ground in place.

106. Upon information and belief, this was the first time the Developers or North Salt Lake took efforts to regrade the Hillside to a shallower 2:1 slope.

107. Upon information and belief, these regrading efforts continued to increase the Hillside's instability.

108. Upon information and belief, in mid-July 2014, the Developers continued to pour fill dirt atop the eastern portion of the Hillside as part of the development of Phases 18 and 19.

109. Upon information and belief, in mid-July 2014, North Salt Lake officials ordered the Developers to stop pouring and compacting fill dirt, and to remove the dirt they had laid as part of Phases 18 and 19.

110. On July 31, 2014, residents who lived downslope from the Hillside received a letter from North Salt Lake advising them of the movement and cracking of the Hillside, calling it a "slow moving landslide."

111. On August 4, 2014, North Salt Lake experienced rainfall that deposited water onto the Hillside.

112. Also on August 4, 2014, Steven E. Smoot, President and Director of Excel and Vice President, Director, and Treasurer of Sky Properties, spoke with Brad Ferreira of Eagleridge to discuss using one of the Club's parking lots as a "staging area" for Eaglepointe to deposit excess surface dirt after regrading the Hillside.

113. Mr. Smoot also stated to Mr. Ferreira that Sky Properties and Eaglepointe would take full responsibility for repairing any damage from sliding and would make the Hillside safe.

I. The Parkway Drive Landslide.

114. On the morning of August 5, 2014, the landslide ceased to be slow moving when a volume of roughly 300,000 to 400,000 cubic yards (or a mass of roughly 500 feet long by 500 feet wide and 60 feet deep) of surface earth and debris sloughed off the Hillside, sliding downhill toward the Club and other residential properties on Parkway Drive before settling (the “Parkway Drive Landslide”).

115. The Parkway Drive Landslide crashed into the Club and one residential home, pushing that dwelling off its foundation.

116. The Parkway Drive Landslide caused significant damage to the Club by pushing earth and debris onto the southern portion of the Club, damaging three separate retaining walls, encroaching onto a swimming pool area, covering and damaging an outbuilding, covering and damaging a parking lot, colliding with and irreparably damaging a large metal-framed tent structure that covers the three southernmost tennis courts, and damaging the tennis courts therein.

117. The Parkway Drive Landslide has compromised the structural integrity of the tent by bending the interior metal frame. The damage to the tent has rendered the tent and three tennis courts unsafe, necessitating the removal of the damaged tent and construction of a new tent before employees and patrons of Eagleridge will be allowed to utilize those courts or surrounding facilities.

118. Eagleridge is currently able to use the northern three tennis courts and main building.

119. Construction of a new tent, and thus the reopening of the three southern tennis courts, cannot begin unless and until the earth and debris are removed from the Property.

120. Currently, the tent covering the tennis courts at the Club is acting as an unintended barrier of sorts, preventing additional sliding from the Hillside.

121. After the landslide, the South Davis Metro Fire Marshal temporarily condemned the Club, rendering it unusable and preventing Eagleridge from generating revenue.

122. The South Davis Metro Fire Marshal also required Eagleridge to drain all pools located on the Club.

123. To this day, the earth and debris from the Parkway Drive Landslide remain on Eagleridge's property.

124. Eagleridge is unable to utilize a sizeable portion of its premises to generate the business it would have had the Parkway Drive Landslide not occurred.

125. As a result of the Parkway Drive Landslide, Eagleridge had to cancel or reschedule, at a significant cost financially and to its reputation in the community, the OF LOVE tennis tournament, many previously scheduled tennis lessons and clinics, aerobics classes, special events, and other revenue-generating appointments.

126. Eagleridge's lost revenue continues to grow while it is unable to utilize a sizeable portion of its premises.

127. Eagleridge has demanded that North Salt Lake and the Developers remove the earth and debris from the Club and compensate Eagleridge for the damages it has sustained, but North Salt Lake and the Developers have refused.

128. In addition, North Salt Lake has effectively taken Eagleridge's property in order to brace the Hillside and prevent it from moving farther downhill, damaging other residential homes.

129. Eagleridge understands that North Salt Lake and the Developers have been working to develop several remediation plan options.

130. Furthermore, upon information and belief, North Salt Lake has published on its website a bid regarding the "Eaglepointe Landslide Remediation" (the "Bid").²

131. The Bid describes the work a winning contractor will perform on an unspecified and unidentified remediation plan as follows: "The work to be performed consists of furnishing all labor, tools, materials, equipment, transportation, and services required for construction of the above described project as included in the Contract Documents; consisting of the following items of work: excavating and hauling away soil material from the upper scarp area of the landslide, re-grading of remaining landmass area, constructing a reinforced earthen buttress at the lower area of the landslide, constructing drainage facilities, abandoning roadway at top of slope and relocating utilities, and other miscellaneous work to complete project; all in accordance with the Drawings and Specifications prepared by Gilson Engineering."

² The webpage describing the remediation plan and soliciting bids from contractors can be found on North Salt Lake's website: <https://ut-northsaltlake.civicplus.com/bids.aspx?bidID=34>.

132. Upon information and belief, North Salt Lake published the Bid on December 29, 2014, soliciting bids to build structures securing and stabilizing the Parkway Drive Landslide on Eagleridge's Property. The Bid closed on March 24, 2015.

J. Notice to North Salt Lake Pursuant to Utah Code § 63G-7-101, et seq.

133. Since North Salt Lake is a government entity covered under the Governmental Immunity Act of Utah, Utah Code § 63G-7-101, et seq., North Salt Lake was entitled to a Notice of Claims from Eagleridge.

134. On September 10, 2014, Eagleridge, by and through its counsel, provided North Salt Lake with notice of Eagleridge's claims against North Salt Lake that are covered by the Governmental Immunity Act.

135. In its notice to North Salt Lake, Eagleridge demanded that North Salt Lake remove the earth and debris from the Club and compensate Eagleridge for the damages it sustained.

136. Pursuant to Utah Code Ann. § 63G-7-403, North Salt Lake, or its insurance carrier, had 60 days within the filing of a Notice of Claim to either approve or deny the claim.

137. On November 9, 2014, North Salt Lake effectively refused Eagleridge's demands by failing to respond.

FIRST CAUSE OF ACTION
(Inverse Condemnation – Utah Const. Art. I, § 22 – Against North Salt Lake)

138. Eagleridge hereby incorporates and realleges the foregoing paragraphs of the Complaint as though fully set forth herein.

139. North Salt Lake's refusal to respond to Eagleridge's demands amounts to a decision to leave the Parkway Drive Landslide as it sits, covering the Property and Club.

140. Because North Salt Lake has decided to keep the earth and debris from the Parkway Drive Landslide on the Property and Club in order to stabilize the landslide and prevent further damage to North Salt Lake residents, North Salt Lake has taken Eagleridge's property.

141. North Salt Lake's taking of Eagleridge's property was for public use.

142. Furthermore, North Salt Lake's Bid demonstrates the city's plans to take Eagleridge's Property in order to carry out an unspecified and unidentified remediation plan that will inevitably result in the taking of additional portions of Eagleridge's Property.

143. North Salt Lake is not authorized by law to take Eagleridge's Property, because it failed to file an eminent domain action pursuant to Utah Code § 78B-6-504 and § 78B-6-506 before the Parkway Drive Landslide occurred and/or before North Salt Lake decided to let earth and debris from the Hillside remain on the Property and Club.

144. Because North Salt Lake has taken and is occupying Eagleridge's property for public use, North Salt Lake must pay Eagleridge just compensation as required by Article I, Section 22 of the Utah Constitution.

145. North Salt Lake has refused to pay Eagleridge just compensation for the fair market value of the Property and Club.

146. Without just compensation, North Salt Lake has violated Article I, Section 22 of the Utah Constitution.

147. Eagleridge seeks a determination that North Salt Lake's actions herein constitute an unlawful taking and seeks an order from the Court of an affirmative injunction compelling North Salt Lake to comply with Utah Code § 78B-6-501, *et seq.* (Eminent Domain), thereby

awarding Eagleridge just compensation for North Salt Lake's illegal taking of the Property and Club.

148. Eagleridge is entitled to all damages allowed in law or equity including the value of lands taken as well as severance damages to the remainder property.

SECOND CAUSE OF ACTION
(Fraudulent Non-Disclosure – Against B & E, Excel, Sky Properties, Eaglepointe, Ralph Cannon Real Estate, Smoot Real Estate, and Wilford W. Cannon)

149. Eagleridge hereby incorporates and realleges the foregoing paragraphs of the Complaint as though fully set forth herein.

150. Eagleridge, by virtue of being a successor in interest to Sisanki through merger, was in a buyer/seller relationship that gave the Developers an affirmative duty to disclose important, material information to Eagleridge regarding the Property.

151. The Developers knew, by virtue of the 2003 Geotechnical Report and the Ordinance, that the Eaglepointe Estates development was susceptible to landslides and that the Hillside was not graded according to specifications of the 2003 Geotechnical Report.

152. The Developers also knew that the Hillside was graded with fill dirt in violation of the Ordinance.

153. As sellers of real property, the Developers had a legal duty to disclose material known defects relating to the Property that Eagleridge could not have discovered by a reasonable inspection.

154. Ralph Cannon Real Estate, Smoot Real Estate, and Wilford W. Cannon held themselves out as real estate professionals, having particular skills and knowledge in the real estate field.

155. By virtue of being the listing agents for the Property—and because of their close business ties to the Developers—Ralph Cannon Real Estate, Smoot Real Estate, and Wilford W. Cannon knew of the contents of the 2003 Geotechnical Report and had knowledge of the threat of and potential for landslides that could affect the Property.

156. By virtue of their status as real estate agents, Ralph Cannon Real Estate, Smoot Real Estate, and Wilford W. Cannon had a duty to disclose facts that would materially affect the value or desirability of the Property.

157. The 2003 Geotechnical Report's information regarding the threat of and potential for landslides that could affect the Property was material information to Eagleridge that the Developers, Ralph Cannon Real Estate, Smoot Real Estate, and Wilford W. Cannon did not disclose to Eagleridge.

158. The violation of the Ordinance was material information to Eagleridge that the Developers, Ralph Cannon Real Estate, Smoot Real Estate, and Wilford W. Cannon did not disclose to Eagleridge.

159. Eagleridge was unaware of the threat of and potential for landslides the Hillside posed to the Property at the time it entered into the Agreement with B & E and Eaglepointe.

160. Eagleridge was also unaware the Hillside was graded in violation of the Ordinance.

161. Furthermore, when Eagleridge did request geotechnical reports from the Developers, Smoot Real Estate, Ralph Cannon Real Estate, and Wilford W. Cannon, Eagleridge's requests were refused or ignored.

162. As a proximate result of B & E, Excel, Sky Properties, Eaglepointe, Ralph Cannon Real Estate, Smoot Real Estate, and Wilford W. Cannon's failure to disclose material information regarding the Property, Eagleridge has been damaged in an amount to be determined at trial.

THIRD CAUSE OF ACTION
(Breach of Fiduciary Duty and Violation of – Utah Code Ann. § 61-2F-203 – Against Wilford W. Cannon)

163. Eagleridge hereby incorporates and realleges the foregoing paragraphs of the Complaint as though fully set forth herein.

164. Wilford W. Cannon owed Eagleridge, by virtue of Eagleridge being a successor in interest to Sisanki through merger, a fiduciary duty, including, but not limited to, the duty of care, the duty of loyalty, the duty of good faith, and the duty to avoid conduct adverse to Eagleridge.

165. Wilford W. Cannon breached his fiduciary duties owed to Eagleridge by, among other things:

- a. Failing to provide Eagleridge with requested geotechnical reports, specifically the 2003 Geotechnical Report;
 - b. Failing to disclose material information he possessed regarding the slope stability of the Hillside;
 - c. Failing to disclose the Hillside was graded in violation of the Ordinance;
- and

- d. Failing to represent Eagleridge's interest before B & E and Eaglepointe in association with the Agreement, and failing to negotiate on Eagleridge's behalf.

166. As a direct and proximate result of Wilford W. Cannon's breaches of his fiduciary duties, Eagleridge has been damaged in an amount to be proven at trial.

FOURTH CAUSE OF ACTION
(Negligence –Against B & E, Excel, Sky Properties, and Eaglepointe)

167. Eagleridge hereby incorporates and realleges the foregoing paragraphs of the Complaint as though fully set forth herein.

168. The Hillside was and is an unnatural condition as a result of regrading of a former gravel pit into a residential development—the Eaglepointe Estates.

169. By virtue of the Hillside's prior state as a gravel pit, the 2003 Geotechnical Report, and the Ordinance, the Developers knew or had reason to know the Hillside was unstable and posed a danger of sloughing off and sliding towards downhill residents and property owners.

170. As a result of this knowledge, the Developers had a duty of care to protect downhill property owners, including Eagleridge, from the unreasonable risk of harm posed by the Hillside, the slope of which was in excess of that required by the Ordinance and the 2003 Geotechnical Report.

171. Despite knowledge of such risks, the Developers breach duty to Eagleridge as a downhill property owner by negligently developing atop the Hillside in Phases 18 and 19 of the Eaglepointe Development.

172. As a direct and proximate result of the foregoing negligent actions and/or omissions, the Parkway Drive Landslide's resulting destruction has caused Eagleridge to suffer

damages in an amount to be determined at trial.

FIFTH CAUSE OF ACTION
(Negligence – Against North Salt Lake)

173. Eagleridge hereby incorporates and realleges the foregoing paragraphs of the Complaint as though fully set forth herein.

174. The Hillside was and is in an unnatural condition as a result of regrading of a former gravel pit.

175. The Hillside was graded to a slope in violation of the Ordinance.

176. North Salt Lake knew or had reason to know of the potential for dangers on the Hillside because North Salt Lake failed to properly enforce the Ordinance and maintain, secure, and/or repair the Hillside.

177. Additionally, North Salt Lake knew—and indeed had received numerous warnings—that as a result of its failures, Eagleridge and other property owners living below the Hillside were under the threat of a landslide.

178. As a result of this knowledge, North Salt Lake had a duty of care to protect downhill property owners, including Eagleridge, from the unreasonable risk of harm posed by the Hillside, which slope was and is in excess of the recommended grade in the 2003 Geotechnical Report and the Ordinance, and permitting the Developers to grade the Hillside in violation of the Ordinance and to continue development atop the crest of the Hillside.

179. Despite that, North Salt Lake breached its duty to Eagleridge as a downhill property owner from such harm by negligently failing and/or refusing to enforce the Ordinance during the Hillside's development, and by failing and/or refusing to maintain, secure, or repair the Hillside in accordance with the Ordinance after being deeded the Hillside.

180. As a direct and proximate result of the foregoing negligent actions and/or omissions, the Parkway Drive Landslide's resulting destruction has caused Eagleridge to suffer damages in an amount to be determined at trial.

SIXTH CAUSE OF ACTION
(Private Nuisance – Against B & E, Excel, Sky Properties, and Eaglepointe)

181. Eagleridge hereby incorporates and realleges the foregoing paragraphs of the Complaint as though fully set forth herein.

182. Eagleridge owns, occupies, and controls the Property and the Club, by virtue of Eagleridge being the grantee of the Property and the successor in interest to Sisanki through merger.

183. The Developers, by developing Eaglepointe Estates in spite of the known risk of landslides and in violation of the Ordinance, unreasonably, wrongfully, and recklessly created a condition and/or permitted a condition to exist in an unstable and poorly graded Hillside that has proximately caused a substantial and unreasonable interference with the private use and enjoyment of the Club.

184. The Developers' actions directly and proximately caused or contributed to the Parkway Drive Landslide.

185. The earth and debris from the Parkway Drive Landslide currently resting on the Property and the threat of and potential for future landslides have substantially and unreasonably interfered and are interfering with Eagleridge's use and enjoyment of the Property and the Club in a substantial manner.

186. Eagleridge did not consent to the Developers' conduct resulting in the landslide and the continuing threat of additional landslides.

187. Any ordinary person would be reasonably disturbed in the free use and comfortable enjoyment of his or her property by the Developers' conduct in developing a former sand and gravel pit into lots for real estate development, maintaining those are in a poorly graded status in violation of the Ordinance, failing to take reasonable measures to eliminate the risk of landslides, and continuing to develop atop the crest of the Hillside in spite of obvious slope failures and landslide risks.

188. In addition, there is no public benefit of the Developers' actions.

189. As a result of the Developers' conduct, Eagleridge has suffered damages in an amount to be determined at trial.

SEVENTH CAUSE OF ACTION
(Private Nuisance – Against North Salt Lake)

190. Eagleridge hereby incorporates and realleges the foregoing paragraphs of the Complaint as though fully set forth herein.

191. Eagleridge owns, occupies, and controls the Property and the Club, by virtue of Eagleridge being the grantee of the Property and the successor in interest to Sisanki through merger.

192. North Salt Lake, by approving development permits for the Eaglepointe Estates area, failing to enforce the Ordinance during and after development of the Hillside, and failing to take any remedial measures on the Hillside in spite of the known risk of landslides, unreasonably, wrongfully, and recklessly created a condition and/or permitted a condition to exist on an unstable and poorly graded Hillside that has caused a substantial and unreasonable interference with Eagleridge's private use and enjoyment of the Club.

193. North Salt Lake's actions directly and proximately caused or contributed to the Parkway Drive Landslide.

194. The earth and debris from the Parkway Drive Landslide currently resting on the Property and the threat of and potential for future landslides have substantially and unreasonably interfered with Eagleridge's use and enjoyment of the Property and the Club.

195. Eagleridge did not consent to North Salt Lake's conduct resulting in the Parkway Drive Landslide and the continuing threat of additional landslides.

196. Any ordinary person would be reasonably disturbed in the free use and comfortable enjoyment of his or her property by North Salt Lake's conduct in approving development of a former sand and gravel pit into lots for real estate development, maintaining land deeded to it in a poorly graded status in violation of the Ordinance, failing to take reasonable measures to eliminate the risk of landslides on the Hillside, and continuing to permit development atop the crest of the Hillside in spite of obvious slope failures and landslide risks.

197. In addition, there was no public benefit to North Salt Lake's actions prior to the Parkway Drive Landslide.

198. As a result of North Salt Lake's actions, Eagleridge has suffered damages in an amount to be determined at trial.

EIGHTH CAUSE OF ACTION
(Public Nuisance – Utah Code § 76-10-803 – Against B & E, Excel, Sky Properties, and Eaglepointe)

199. Eagleridge hereby incorporates and realleges the foregoing paragraphs of the Complaint as though fully set forth herein.

200. The Hillside was and is in an unnatural condition as the result of the land being part of Concrete Products Company's former sand and gravel pit and of the Developers' efforts to regrade the land for residential development.

201. The Developers developed a former sand and gravel pit into lots for real estate development, graded the Hillside in violation of the Ordinance, failed to take reasonable measures to eliminate the risk of landslides, and continued to develop atop the crest of the Hillside in spite of obvious slope failures and landslide risks.

202. The Developers' actions directly and proximately caused the Parkway Drive Landslide.

203. By virtue of the effects of the Parkway Drive Landslide, and the threat of and potential for additional landslides, the Developers' actions and failures to act have created a substantial and unreasonable condition on Eagleridge's Property that is an obstruction to the free use of the Club and the Property, so as to interfere with the comfortable enjoyment of the Club and the Property.

204. The Developers' actions have affected Eagleridge and are threatening a substantial number of people in the surrounding residential area with loss of life or property.

205. An ordinary person would be reasonably disturbed by the threat of and potential for landslides or by earth and debris from a landslide on his or her property.

206. In addition to the damages to the Club, the Parkway Drive Landslide completely destroyed one family home and is immediately threatening other many residences along and above Parkway Drive.

207. As a result, Eagleridge has been unable to freely use and comfortably enjoy the use of its property.

208. In addition, Eagleridge did not consent to the Developers' conduct.

209. Eagleridge has suffered and is suffering harm that is different from the type of harm suffered by the general public in that it is unable to freely use and comfortably enjoy the use of a substantial portion of its Property because the Parkway Drive Landslide has rendered that portion unusable. Moreover, the entire Property is under a constant threat of a future landslide that will destroy any and all economic value in the Property and the Club.

210. The Developers' conduct was a substantial factor in causing a substantial and unreasonable interference with the private use and enjoyment of the Club and the Property, and in leaving a substantial number of people insecure in life or the use of their property.

211. As a proximate result of the Developers' conduct, Eagleridge has suffered damages in an amount to be determined at trial.

NINTH CAUSE OF ACTION
(Public Nuisance – Utah Code § 76-10-803 – Against North Salt Lake)

212. Eagleridge hereby incorporates and realleges the foregoing paragraphs of the Complaint as though fully set forth herein.

213. The Hillside was and is in an unnatural condition as the result of the land being part of Concrete Products Company's former sand and gravel pit, and as a result of many regrading efforts to turn the land into a residential development.

214. North Salt Lake granted the Developers permits to develop the Eaglepointe Estates area, in particular, the Hillside, despite the Hillside being graded in violation of the Ordinance.

215. North Salt Lake, once deeded the Hillside, maintained the unnatural grading and dangerous slope of the Hillside, in spite of the known and obvious risk of landslides to which the Hillside was susceptible. Moreover, North Salt Lake failed to enforce the Ordinance and to reasonably maintain, secure, and/or repair the Hillside.

216. North Salt Lake's actions were a substantial factor causing the Parkway Drive Landslide to occur, and pose a threat of continuing sliding.

217. North Salt Lake's actions have affected and are affecting Eagleridge and a substantial number of people in the surrounding residential area at the same time.

218. In addition to the damages to the Club, the Parkway Drive Landslide completely destroyed one family home and is immediately threatening other many residences along and above Parkway Drive.

219. As a result, Eagleridge has been unable to freely use and comfortably enjoy the use of its property.

220. Eagleridge did not consent to North Salt Lake's conduct.

221. Eagleridge has suffered and is suffering harm that is different from the type of harm suffered by the general public in that unable to freely use and comfortably enjoy the use of a substantial portion of its Property because the Parkway Drive Landslide has rendered that portion unusable. Moreover, the entire Property is under a constant threat of a future landslide that will destroy any and all economic value in the Property and the Club.

222. North Salt Lake's conduct was a substantial factor in causing a substantial and unreasonable interference with the private use and enjoyment of the Club and the Property, and in leaving a substantial number of people insecure in life or the use of their property.

223. As a proximate result of North Salt Lake's conduct, Eagleridge has suffered damages in an amount to be determined at trial.

TENTH CAUSE OF ACTION
(Trespass – Against B & E, Excel, Sky Properties, and Eaglepointe)

224. Eagleridge hereby incorporates and realleges the foregoing paragraphs of the Complaint as though fully set forth herein.

225. At all relevant times, Eagleridge was the owner, possessor, occupier, and controller of the Property and the Club, by virtue of Eagleridge being the grantee of the Property and by virtue of Eagleridge being a successor in interest to Sisanki through merger, and was so at all times relevant to this cause of action.

226. The Developers intended to perform the creation, maintenance, steepening, development, and regrading of the Hillside in violation of the Ordinance, and development atop the Hillside.

227. The Developers interfered and are interfering with Eagleridge's exclusive right to possession of the Property by intentionally, recklessly, or negligently causing earth and debris from the Hillside to enter the Property and crash into the Club.

228. The Developers' actions directly and proximately resulted in the unlawful invasion of Eagleridge's Property by means of the Parkway Drive Landslide.

229. Eagleridge did not give permission for the Developers to take any of the above-alleged actions, whether intentionally, recklessly, or negligently, to cause the earth and debris from the Hillside to enter the Property or crash into the Club.

230. The Parkway Drive Landslide harmed Eagleridge by covering a large portion of the Property and crashing into and damaging certain structures of the Club, rendering those portions of the Property and the Club unusable.

231. By failing and refusing to remove the earth and debris deposits from the Parkway Drive Landslide, the Developers are committing a continuing trespass upon Eagleridge's property.

232. As a direct and proximate result of the Developers' actions, Eagleridge has suffered damages in an amount to be determined at trial.

ELEVENTH CAUSE OF ACTION
(Trespass – Against North Salt Lake)

233. Eagleridge hereby incorporates and realleges the foregoing paragraphs of the Complaint as though fully set forth herein.

234. At all relevant times, Eagleridge was the owner, possessor, occupier, and controller of the Property and the Club, by virtue of Eagleridge being the grantee of the Property and by virtue of Eagleridge being a successor in interest to Sisanki through merger, and was so at all times relevant to this cause of action.

235. North Salt Lake intentionally, recklessly, and/or negligently failed to enforce the Ordinance and to reasonably maintain, secure, and/or repair the Hillside.

236. North Salt Lake knew or should have known of the substantial likelihood that its acts and omissions would result in a landslide given its knowledge of the 2003 Geological Report, its failure to enforce the Ordinance, its approval of development atop the crest of the Hillside, the many warning signs of an imminent landslide, and the actions North Salt Lake took to abate the danger of a landslide.

237. North Salt Lake's actions and omissions directly and proximately resulted in the unlawful invasion of Eagleridge's Property by means of the Parkway Drive Landslide, which deposited large amounts of earth and debris onto Eagleridge's Property.

238. Eagleridge has not consented and does not consent to the presence of earth and debris from the Hillside upon its property.

239. As a result, North Salt Lake has trespassed Eagleridge's property.

240. By failing to remove and/or choosing to leave the earth and debris deposits from the Parkway Drive Landslide on the Property, North Salt Lake is committing a continuing trespass upon Eagleridge's property.

241. As a direct and proximate result of North Salt Lake's actions, Eagleridge has suffered damages in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants North Salt Lake, B & E, Excel, Sky Properties, Eaglepointe, Smoot Real Estate, Ralph Cannon Real Estate, and Wilford W. Cannon as follows:

1. For a determination of its inverse condemnation claim in favor of Eagleridge, a determination that North Salt Lake's actions herein constitute an unlawful taking, and an order from the Court of an affirmative injunction compelling North Salt Lake to comply with Utah Code Ann. § 78B-6-501, *et seq.* (Eminent Domain), thereby awarding Eagleridge just compensation for North Salt Lake's illegal taking of the Property, including but not limited to the value of Eagleridge's property taken, severance damages to the remainder property, and reimbursement of damaged or destroyed improvements.

2. Entry of judgment for Eagleridge on all its causes of action against Defendants (as set forth above);

3. For actual damages, including general and consequential damages, in an amount to be determined at trial plus pre- and post-judgment interest which continues to accrue thereon;

4. For all attorneys' fees, expenses, and costs incurred in an amount according to proof; and

5. For such other and further relief as the Court deems just and equitable.

DATED: April 21, 2015.

STOEL RIVES LLP

/s/ Andrew T. Wojciechowski

D. Matthew Moscon

Andrew T. Wojciechowski

*Attorneys for Plaintiffs Sankis LLC and
Eagleridge Tennis Club, Inc.*

Plaintiffs' Address:

711 South Parkway Drive
North Salt Lake, UT 84054

EXHIBIT 1

EAGLEPOINTE EARNEST MONEY SALES AGREEMENT

Date: August 8, 2003 1999/2000

The undersigned Buyer SISANTI LLC hereby deposits as EARNEST MONEY with Wilford W. Cannon of RALPH CANNON REAL ESTATE; () SMOOT REAL ESTATE; () SKY PROPERTIES, INC. or () the amount of \$ 3,000 in the form of () Check; () Cash; () Other which shall be deposited in accordance with State Law.

OFFER TO PURCHASE

1. Property Description. The above stated EARNEST MONEY is given to secure and apply on the purchase of the improved residential LOT NUMBER 510 of EAGLEPOINTE SUBDIVISION PLAT 5 (the "Property") in the City of North Salt Lake, County of Davis, State of Utah. Said Property is owned by Eaglepointe Development, L.C., a Utah limited liability company as Seller. Seller represents that the Property includes the following improvements available to the Property in the Purchase Price: public sewer, public water, dedicated road, and curb and gutter. Natural gas, electrical, and cable tv service has been or shall be installed by the respective utility companies responsible for same.

2. Purchase Price. The total purchase Price for the property is: \$ Two hundred seventy five thousand and 00/100 which shall be paid as follows: \$ 3,000 which represents the aforescribed Earnest Money Deposit \$ 273,000 representing the approximate balance of the Purchase Price to be paid at Closing \$ 275,000 other TOTAL PURCHASE PRICE

3. Inspection of Title; Condition and Conveyance of Title. Seller represents that, as of the Closing Date, Seller shall hold title to the Property in fee simple. In accordance with Section C, Buyer shall have the opportunity to inspect the title status of the Property prior to closing. Transfer of Seller's ownership interest shall be made by Special Warranty Deed. Seller agrees to furnish good and marketable title to the property subject to the DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS, AND RESERVATION OR GRANT OF EASEMENTS (the "Restrictive Covenants") relating to the Property and easements and rights of way of record, as evidenced by a current policy of title insurance in the amount of Purchase Price. Buyer acknowledges that he/she have received the Restrictive Covenants prior to executing this Agreement and that by accepting a Deed to the Property from Seller. Buyer agrees to be bound by the terms and conditions of said Restrictive Covenants.

4. Vesting of Title. Title shall vest in Buyer as directed by Buyer at Closing.

5. Special Considerations and Contingencies. This offer is subject to the following special conditions and/or contingencies which must be satisfied prior to Closing:

5(a) Financing Contingency. In the event Buyer is required to obtain financing, Buyer agrees to use best efforts to procure same and this offer is made subject to Buyer qualifying for and lending institution granting said financing. Buyer agrees to make application to obtain the new financing at an annual interest rate not to exceed 9 Percent within 30 days after final acceptance of this Agreement by all parties hereto. If Buyer does not qualify for said financing within 30 days after final acceptance of this Agreement by all parties hereto this Agreement shall be voidable at the option of the Seller upon written notice to Buyer.

5(b) Other Contingencies. Subject to final Plat approval and coordination. Seller has First Right of Refusal to repurchase lots at this price should buyer not construct a tenor. Check on them within 12 months begin to

6. Closing of Sale. This Agreement shall be closed on or before October 31, 2003 at a reasonable location to be designated by Seller, subject to the conditions of Section K, herein. Upon demand, Buyer shall deposit with the escrow closing office all documents necessary to complete the purchase in accordance with this Agreement. Prorations set forth in Section L, herein, shall be made as of the date of Closing.

7. Possession. Seller shall deliver possession of the Property to Buyer on date of Closing unless otherwise agreed by written agreement of parties hereto.

8. Agency Disclosure. At the signing of this Agreement the listing agents RALPH CANNON REAL ESTATE and SMOOT REAL ESTATE and SKY PROPERTIES, INC. represent Seller and the Selling agent Wilford W. Cannon represents Buyer & Seller. It is also further acknowledge by Buyer that the managers of Seller are real estate agents, duly licensed with the State of Utah. Buyer and Seller confirm that prior to signing this Agreement written disclosure of the agency relationships was provided to him/her. () Buyer's Initials;

() Seller's Initials

9. General Provisions. Unless otherwise indicated above, the General Provisions Sections attached hereto have been accepted by the Buyer and Seller and are incorporated into this Agreement by reference.

10. Agreement to Purchase and Time Limit for Acceptance. Buyer offers to purchase the property on the above terms and conditions. Seller shall have until 6:00 (AM/PM) August 30 1999/2000 to accept this offer. Unless timely accepted, this offer shall lapse and the Agent shall return the EARNEST MONEY DEPOSIT to the Buyer.

BUYER: SISANTI LLC by Ben Kerevia (manager)

Address: 3819 BOUNTIFUL BLVD BOUNTIFUL UTAH 84010 Phone: (801) 560-5564

CHECK ONE

ACCEPTANCE OF BUYER'S OFFER TO PURCHASE: Seller hereby ACCEPTS the foregoing offer on the terms and conditions specified above. REJECTION: Seller hereby REJECTS the foregoing offer. (Seller's Initials) COUNTER OFFER: Seller hereby ACCEPTS the foregoing offer SUBJECT TO the exceptions or modifications as specified below or in the attached Addendum and presents said COUNTER OFFER for Buyer's acceptance. Buyer shall have until (AM PM) 1999/2000 to accept the terms specified below:

SELLER: EAGLEPOINTE DEVELOPMENT, L.C., a Utah limited liability company Its Manager, Excel Investment Corporation, a Utah corporation

By: W. Scott Kyar (PRINT NAME) Its [] President or [X] Vice President/Secretary 13 Aug 2003

Buyer's Agent: B+E Real Estate Investment LLC aka Utah Limited Liability Co. Date: 8.13.03 1999/2000 S. Paul B+E Real Estate, Inc. Co. LLC Managing Member

CHECK ONE

ACCEPTANCE OF SELLER'S COUNTER OFFER: Buyer hereby ACCEPTS Seller's COUNTER OFFER on the terms and conditions specified above.

REJECTION: Seller hereby REJECTS Seller's COUNTER OFFER. _____ (Buyer's Initials)

COUNTER OFFER: Buyer hereby ACCEPTS the foregoing COUNTER OFFER SUBJECT TO the exceptions or modifications as specified below or in the attached Addendum and presents said COUNTER OFFER for Seller's acceptance. Seller shall have until _____ (AM PM) _____ 1999/2000 to accept the terms specified below: _____

BUYER:

Date _____, 1999/2000

Date _____, 1999/2000

DOCUMENT RECEIPT

State Law requires Broker to furnish Buyer and Seller with copies of this Agreement bearing all signatures. The undersigned acknowledge receipt of a final copy of the foregoing Agreement bearing all signatures.

SELLER:
EAGLEPOINTE DEVELOPMENT, L.C.,
a Utah limited liability company

BUYER:

By: Its Manager
Excel Investment Corporation, a Utah corporation

By: W. Scott Kjar

W. Scott Kjar
(PRINT NAME)
Its President or Vice President/Secretary

Sisanki LLC by Brad Ferreira (MANAGER)

Date: 08/13/03, 1999/2000

Date: _____, 1999/2000

**GENERAL PROVISIONS SECTIONS
TO EAGLEPOINTE EARNST MONEY AGREEMENT**

A. INSPECTION. Unless otherwise indicated it is agreed that Buyer is purchasing said property upon Buyer's own examination and judgment and not by reason of any representation made to Buyer by Seller or the Listing or Selling Brokerage as to its condition, size, location, present value, future value, income therefrom or as to its production. Buyer accepts the property in "as is" condition subject to Seller's warranties as outlined herein.

B. SELLER WARRANTIES. Seller warrants that (i) Seller has received no claim nor notice of any building or zoning violation concerning the property which has not or will not be remedied prior to closing; and (ii) all obligations against the property including taxes, assessments, mortgages, liens or other encumbrances of any nature shall be brought current on or before closing.

C. TITLE INSPECTION. Prior to closing Seller shall provide to Buyer a preliminary title report on the subject property. Prior to closing, Buyer shall give written notice to Seller or Seller's agent specifying reasonable objections to the condition of title. Thereafter, Seller shall be required, through escrow at closing, to cure the defects to which Buyer has objected. If said defects are not curable through an escrow agreement at closing, either Buyer or Seller may elect to terminate this Agreement, and in the event of such a termination this Agreement shall thereafter be null and void and all monies received herewith shall be returned to the respective parties.

D. TITLE INSURANCE. Seller authorizes the Listing Broker to order a preliminary commitment for a policy of title insurance to be issued by such title insurance company as Seller shall designate. The title policy to be issued shall: (i) contain no exceptions other than the standard owners' exceptions provided for in said form; and (ii) shall set forth any restrictive covenants, zoning, regulations, utility or other easements or rights of way of record. If title cannot be made so insurable through an escrow agreement at closing, the earnest money deposit shall, unless Buyer elects to waive such defects or encumbrances, be refunded to Buyer, and this Agreement shall thereupon be terminated.

E. AUTHORITY OF SIGNATORY. If Buyer or Seller is a corporation, partnership, trust, estate, or other entity the person executing this Agreement on its behalf warrants his or her authority to do so and to bind Buyer or Seller.

F. COMPLETE AGREEMENT - NO ORAL AGREEMENTS. This instrument constitutes the entire agreement between the parties and supersedes and cancels any and all prior negotiations, representations, warranties, understandings or agreements between the parties. There are no oral agreements which modify or affect this agreement. This Agreement cannot be changed except by mutual written agreement of the parties.

G. COUNTER OFFERS. Any counter offer made by Seller or Buyer shall be in writing and, if attached hereto, shall incorporate all the provisions of this Agreement not expressly modified or excluded therein.

H. DEFAULT, INTERPLEADER, AND ATTORNEY'S FEES. In the event of default by Buyer, Seller may elect to either retain the earnest money as liquidated damages or to institute suit to enforce any rights of Seller. In the event of default by Seller, or if this sale fails to close because of the non-satisfaction of any express condition or contingency to which the sale is subject pursuant to this Agreement (other than by virtue of any default by Buyer), the earnest money deposit shall be returned to Buyer. Both parties agree that should either party default in any of the covenants or agreements herein contained the defaulting party shall pay all costs and expenses, including a reasonable attorney's fee, which may arise or accrue from enforcing or terminating this Agreement or in pursuing any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise. In the event the principal broker holding the earnest money deposit is required to file an interpleader action in court to resolve a dispute over the earnest money deposit referred to herein, the Buyer and Seller authorize the principal broker to draw from the earnest money deposit an amount necessary to advance the costs of bringing the interpleader action. The amount of deposit remaining after advancing these costs shall be interpleaded into court in accordance with state law. The Buyer and Seller further agree that the defaulting party shall pay the court costs and reasonable attorney's fees incurred by the principal broker in bringing such action.

I. ABROGATION. Except for express warranties made in this Agreement, execution and delivery of: (i) the final closing document; and (ii) recordation of the deed conveying title, shall abrogate this Agreement.

J. RISK OF LOSS. All risk of loss or damage to the property shall be borne by the Seller until closing. In the event there is loss or damage to the property between the date hereof and the date of closing, Buyer may, at his or her option either: (i) proceed with this transaction; or (ii) declare this Agreement null and void.

K. TIME IS OF ESSENCE - UNAVOIDABLE DELAY. Time is of the essence herein. In the event that this sale cannot be closed by the date provided herein due to interruption of transport strikes, fire, flood, extreme weather, governmental regulations, delays caused by lender, acts of God, or similar occurrences beyond the control of Buyer or Seller, then the closing date shall be extended seven (7) days beyond cessation of such condition, but in no event more than fifteen (15) days beyond the closing date provided herein. Thereafter, time is of the essence. This provision refutes only to the extension of closing dates. "Closing" shall mean the date on which all necessary instruments are signed and delivered by all parties to the transaction.

L. CLOSING COSTS. Seller and Buyer shall each pay one-half (1/2) of the escrow closing fees. Costs of providing title insurance, referenced in Section D, above, shall be paid by Seller. Taxes and assessments for the current year shall be prorated as of the Closing Date.

M. NOTICE. Unless otherwise provided in this Agreement, any notice expressly required by it must be given no later than two days after the occurrence or non-occurrence of the event with respect to which notice is required. If any such timely required notice is not given, the contingency with respect to which the notice was to be given is automatically terminated and this Agreement is in full force and effect. If a person other than the Buyer or the Seller is designated to receive notice on behalf of the Buyer or the Seller, notice to the person so designated shall be considered notice to the party designating that person for receipt of notice.

N. BROKERAGE. For purposes of this Agreement, any references to the term "Brokerage" shall mean the respective listing or selling real estate office.

O. DAYS. For the purposes of this Agreement any references to the term "days" shall mean calendar days including weekends and holidays.

EXHIBIT 2

When Recorded, Mail To:

Sisanki, L.L.C.
 3819 Bountiful Blvd.
 Bountiful, UT 84010

Lot Serial # 01-304-0508, 0509, 0510, 0511

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED is made and executed this 16th day of September, 2004 by and between **EAGLEPOINTE DEVELOPMENT, L.C.**, a Utah Limited Liability Company, (hereinafter referred to as the "Grantor"), and **SISANKI, L.L.C.**, a Utah Limited Liability company, whose address is 3819 Bountiful Blvd., Bountiful, Utah 84010 (hereinafter referred to as the "Grantee"):

WITNESSETH:

THAT the Grantor, for and in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, does hereby convey and warrant to Grantee, against all those claiming by, through or under Grantor, but not otherwise, the following described real property (the "Property") situated in the County of Davis, State of Utah:

All of Lot 508, 509, 510, 511, EAGLEPOINTE ESTATES, PHASE 5, according to the official plat thereof, on file and of record in the Davis County Recorder's Office.

Said property is also known by the street address of:

699, 711, 721, and 735, South Parkway Drive, North Salt Lake, Utah 84054.

The conveyance provided hereby is subject to the following:

1. Ad valorem real estate taxes and assessments for the year 2004.
2. Easements and rights-of-way of record.
3. **GRANTOR'S OPTION TO REPURCHASE THE PROPERTY.** Grantor hereby reserves the option (the "Option") to repurchase the Property conveyed herein at the same price that Grantee paid Grantor in the event that the Property is used for anything but a tennis and fitness facility containing at least six fully developed and improved tennis courts and an

EPD L.C. → Sisanki Lots 508,509,510,511

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indoor fitness facility (collectively the "Tennis Facility") or in the event that Grantee fails to construct the Tennis Facility upon the Property on or before September 30, 2005. Grantor's right to so purchase the Property shall expire upon satisfactory completion of the construction of the Tennis Facility upon the Property. Purchasers of any portion of the Property conveyed herein shall purchase the Property subject to Grantor's Option to so repurchase the Property.

4. Declaration of Covenants and Restrictions, executed by Davis County, recorded November 10, 1997 as Entry No. 1359781 in Book 2200 at Page 799 of Official Records. First Amendment to Declaration of Covenants and Restrictions recorded July 2, 1999 as Entry No. 1529716 in Book 2528 at Page 455 of Official Records.
5. Declaration of Covenants and Restrictions recorded June 19, 1998 as Entry No. 1415004 in Book 2310 at Page 1614 of Official Records.
6. Any covenants, conditions, restrictions, easements, assessments, liens, charges, terms and provisions contained within those certain declarations recorded October 1, 2003 as Entry No. 1916775 in Book 3386 at Page 747 of Official Records, and any amendments thereto.
7. Grantor hereby reserves a temporary construction easement for ingress and egress across the property conveyed herein to install, repair and maintain any improvements that Grantor deems necessary to the development. Grantor also reserves the right to perform further grading on the property which will, in Grantor's sole discretion, provide for acceptable grades with adjoining lots. This temporary construction easement will expire on the earlier to occur of twelve (12) months after the date hereof or issuance of a building permit by the City of North Salt Lake and commencement of construction of a residence on the property subsequent to the issuance of said building permit. Dated as of the date first above written.

Grantor:

EAGLEPOINTE DEVELOPMENT, L.C.,

a Utah limited liability company

By: Its Manager

Excel Investment Corporation,

a Utah corporation

By: 

W. Scott Kjar, Its Vice President

ACCEPTANCE

The undersigned Grantee, by execution of this Deed, hereby accepts that grant of the real property conveyed herein upon the conditions stated in this Deed and Grantee covenants and agrees that the use and ownership of the Property conveyed herein shall be subject to the provisions of the above-referenced Declaration and the Amendment.

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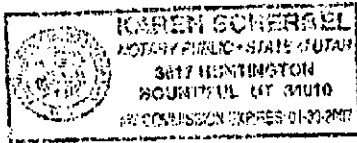
-2-

Grantee:
SISANKI L.L.C.,
a Utah limited liability company

By: *[Signature]*
Bradley Ferreira
Its: Managing Member

STATE OF UTAH)
 : ss.
COUNTY OF DAVIS)

On this 16th day of September, 2004, personally appeared before me W. SCOTT KJAR, and who, being by me duly sworn, says that he is the Vice President of EXCEL INVESTMENT CORPORATION, which corporation is the manager of EAGLEPOINTE DEVELOPMENT, L.C., the limited liability company that executed the above and foregoing instrument and that said instrument was signed by him by authority of its by-laws, (or by authority of a resolution of its board of directors, as the case may be) in behalf of said corporation in its capacity of manager of said limited liability company.



Karen Schabel
Notary Public

STATE OF UTAH)
 : ss.
COUNTY OF DAVIS)

On this 17th day of September, 2004, personally appeared before me Bradley Ferreira, who is one of the managers of SISANKI, L.L.C., a Utah limited liability company and he acknowledged to me that the foregoing instrument was signed in behalf of said limited liability company, and said Bradley Ferreira acknowledged to me that said limited liability company executed the same.



Marilyn W. Carr
Notary Public

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EXHIBIT 3

