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A. D. Services, Inc.
9570 South Woodbine Circle
Sandy, Utah 84092

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ALAN HERRINGS
SUMMIT COUNTY RECORDER

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**DECLARATION
FOR
ELK RUN AT PINEBROOK II
A PLANNED UNIT DEVELOPMENT**

*Declaration of Incorporation of
#312152 Ok. 533 P. 316*

BOOK 488 PAGE 762-821

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DECLARATION
FOR
ELK RUN AT PINEBROOK II,
A PLANNED UNIT DEVELOPMENT

THIS DECLARATION is made and executed by Elk Run Ltd., a Utah limited partnership with A.D. Services, Inc., a Florida corporation serving as its general partner (hereinafter referred to as "Declarant").

1.0. Recitals.

1.1. Declarant is the sole owner of the real property and improvements ("Property") located in Summit County, Utah, hereinafter more particularly as follows:

Beginning at a point on the Southeasterly right-of-way line of Pinebrook Road and the Northeast corner of Elk Run Phase 1, said point also being West 588.83 feet and South 406.53 feet from the East Quarter Corner of Section 11, Township 1 South, Range 3 East, Salt Lake Base and Meridian, said point also being on a 718.83 foot radius curve to the right (radius bears S. 55° 00' 00" E.) and running thence along the arc of said curve 207.01 feet to a point on a 470.00 foot radius curve to the left (radius bears N. 49° 01' 54" E.); thence along the arc of said curve 234.50 feet thence S. 20° 26' 43" W. 60.00 feet; thence S. 20° 00' 00" W. 107.49 feet; thence N. 69° 44' 45" W. 170.17 feet to a point on the Northerly boundary line of Elk Run Phase 1; thence N. 55° 00' 00" W. 140.00 feet along said Northerly line to the point of Beginning.

The property contains 1.171 acres.

1.2. Declarant, by recording this Declaration, intends and desires to create a Deminimis Planned Unit Development, to wit: a residential community with permanent open space, streets, utilities, and other common areas for the benefit of said community.

1.3. The covenants, conditions and restrictions contained in this Declaration and in the appendices hereto shall be enforceable equitable servitudes and shall run with the land.

1.4. Declarant has filed simultaneously herewith a Plat Map ("Map") which is incorporated herein by reference.

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1.5. Declarant has deemed it desirable for the efficient preservation of the values and amenities in said community to create an agency which will be assigned and delegated the powers of maintaining and administering the common area properties and

facilities and administering and enforcing the covenants and restrictions within this Declaration and collecting and disbursing the assessments and charges hereinafter created.

2.0. Dedication.

2.1. Declarant, by filing this Declaration, and the aforesaid Plat Map, does hereby submit the herein described real property and the buildings and other improvements to be constructed thereon to the provisions of this Declaration for the development of a Deminimis Planned Unit Development. Declarant desires and intends to sell fee title to each unit of the planned unit development, as well as in interest in the Association which shall own the common areas and facilities appurtenant thereto. All units, as well as the common areas, shall be subject to the covenants, limitations and restrictions contained herein.

NOW THEREFORE, for such purposes, Declarant hereby makes the following Declaration containing covenants, conditions and restrictions relating to the Deminimis Planned Unit Development which shall be enforceable, equitable servitudes, and shall run with and be a burden on the land.

2.2. The administration of the property shall be governed by Articles of Incorporation and Bylaws which are embodied in separate instruments. True copies of which are appended to and recorded with this Declaration as Appendix A1 and A2.

The Declarant shall make available to owner, lenders, mortgagees copies of the Declaration, Articles of Incorporation and Bylaws of the Association and any other rules and regulations, as well as copies of an annual audited financial statement if any is prepared.

2.3. All terms used in this Declaration and the appended Articles of Incorporation and Bylaws shall have the same definition as provided herein unless the context or other statutory regulation shall require otherwise.

2.4. The property shall be known as Elk Run at Pinebrook II Planned Unit Development. The mailing address of the property and the Declarant is: A.D. Services, Inc., c/o Alan Noertker, 9570 South Woodbine Circle, Sandy, Utah 84092. The approximate address of the property is Pinebrook Road, Park City, Utah.

3.0. Description of the land.

The Property shall be that certain real property located in Summit County, State of Utah containing approximately 1.171 acres as more particularly described in paragraph 1.1 and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

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4.0 Definitions.

The terms used herein shall have the following meanings.

4.1 The words "Association of Unit Owners" or "Association" shall mean and refer to Elk Run at Pinebrook II Homeowners Association, a nonprofit corporation. The Association is charged with and shall have the responsibility and authority to make and to enforce all the reasonable rules and regulations covering the operation and maintenance of the Project.

4.2 The term "Common Areas" and "Common Areas and Facilities" shall mean the property (including the improvements thereon) subject to the Declaration, other than the Property designated as Units upon the Map as more specifically described below. The Common Areas and Facilities shall be owned by the Association of Unit Owners for the common use and enjoyment of Unit Owners.

Beginning at a point on the Southeasterly Right-of-Way line of Pinebrook Road and the Northeast corner of Elk Run Phase 1, said point also being West 588.83 feet and South 406.53 feet from the East quarter corner of Section 11, Township 1 South, Range 3 East, Salt Lake Base and Meridian, said point also being on a 718.83 foot radius curve to the right (radius bears South 50°00'00" East) and thence running along the arc of said curve 147.01 feet; thence South 20°00'00" West 122.77 feet; thence South 70°00'00" East 101.08 feet; thence North 20°00'00" East 79.92 feet to a point on a 530 foot radius curve to the left (radius bears North 49°01'54"); thence along the arc of said curve 20.80 feet; thence South 20°00'00" West 104.51 feet; thence South 70°00'00" East 101.08 feet; thence North 20°00'00" East 80.08 feet to a point on a 530 foot radius curve to the left (radius bears North 49°01'54" East) thence along the arc of said curve 30.02 feet; thence South 20°00'00" West 107.49 feet; thence North 69°44'45" West 170.17 feet to a point on the Northern Boundary Line of Elk Run, Phase 1; thence North 55°00'00" West 140.00 feet along said northern line to the point of beginning.

4.3 The words "Common Expenses" shall mean and refer to: all common expenses of administration, maintenance, repair or replacement of the Common Areas and Facilities including an adequate reserve fund for maintenance, repair and replacement of those Common Areas and Facilities that must be replaced on a periodic basis. Common expenses shall also include all costs and expenses associated with the repair and maintenance of the exteriors of all units, the landscaping maintenance and repair of real property located within a Unit for which the Association

is responsible to maintain and other items which are lawfully assessed to the Unit Owners in accordance with the provisions of this Declaration and the Articles and Bylaws and such rules and regulations pertaining to the P.U.D. Project as the Association may from time to time adopt; and such other expenses incurred pursuant to agreements lawfully made and/or entered into by the Association.

4.4. The word "Declarant" or "Declarants" shall mean Elk Run Ltd., a Utah limited partnership, which has made this Declaration and/or any successor to or assignee of the Declarant which, either by operation of law or through a voluntary conveyance, transfer or assignment, comes to stand in the same relation to the project as did its predecessor.

4.5. The word "Declaration" shall mean this instrument by which Elk Run at Pinebrook II is established as a Planned Unit Development.

4.6. The word "Map" shall mean and refer to the Subdivision Plat Map of Elk Run at Pinebrook II, a Planned Unit Development, recorded by Declarant.

4.7. The "P.U.D. properties" or "Property" shall mean all such existing properties and additions thereto subject to the Declaration.

4.8. The word "Project" or "P.U.D. Project" shall mean and refer to the Property, as defined above, together with all rights and obligations established by this Declaration.

4.9. "Unit" or "Lot" shall mean any plat of land upon which is located a dwelling and is designated as "Private Area" upon the Map. Units are identified upon the recorded Map by number. Units do not include the Common Areas as defined herein which are immediately contiguous or otherwise within the Project.

4.10. The words "Unit Owner" or "Owner" shall mean the entity, person or persons including Contract Sellers owning a Unit within the P.U.D. Project. The term Unit Owner or Owner shall not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such a party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

4.11. The words "Unit Number" shall mean and refer to the number designating the Unit in the Declaration and in the Map.

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5.0. Description of Units.

5.1. The Units shall include the real property together with improvements thereon more particularly described as Private Area upon the Map. The structures and improvements upon the

Units are more particularly described on the Map and shall include wood frames with sheet rock interiors and wood siding exteriors with fiberglass shingle roof. The size of the Units may vary.

5.2. Percentages of Undivided Interest in Common Areas and Facilities.

The percentage of undivided interest in the Association and the Common Areas and Facilities owned by the Association appurtenant to each Unit for all purposes, including voting, shall be equal. Each unit, regardless of size, purchase price or location, shall have an equal interest in the Association as more specifically set forth on Appendix "B".

6.0. Ownership of Common Areas and Facilities.

The Declarant, with the recordation of this Declaration, does hereby convey all of its right, title and interest by means of a Quit Claim Conveyance in the Common Areas as more particularly described upon the Map and in paragraph 4.2 of this Declaration, without warranty, to Elk Run at Pinebrook II Homeowners Association to be held and administered according to the provisions of this Declaration.

The Association shall own all Common Areas and Facilities.

7.0. Purpose of the Property.

7.1. The purpose of the Property is to provide residential housing, parking and recreational facilities for unit owners, their respective families, tenants, guests and servants.

7.2. The Units and Common Areas and Facilities shall be occupied, maintained and used as follows:

7.2.1. A Unit shall be occupied as a permanent single family residence.

7.2.2. A Unit Owner shall not permit his Unit to be occupied or used other than as a private residence for a single family, without the express approval of the Association.

7.2.3. A Unit Owner shall not permit his parking space(s) or carport to be used for any other purposes except to park a vehicle.

7.2.4. A Unit Owner shall keep his lot, including the grounds surrounding his Unit, clean and sightly at all times and shall not use his yard, patio and/or balcony for storage except with the express written approval of the Association.

7.2.5. A Unit Owner shall not obstruct the Common Areas and Facilities. A Unit Owner shall not place or store

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anything within the Common Areas and Facilities without the prior written consent of the Association or its designee.

7.2.6. Without the prior written consent of the Association or its designee, a Unit Owner shall not permit anything to be done or kept in his Unit or upon his Lot that would result in an increase in the cost of insurance on the property, or that would result in the cancellation of insurance on the property, or that would result in the cancellation of insurance with respect to all or any part of the Property, or that would be in violation of any governmental law, ordinance, or regulation.

7.2.7. Without prior written consent of the Association or its designee, a Unit Owner shall not permit any sign of any kind to be displayed to the public view from his Unit except for a small sign, conspicuously placed, stating that the unit is for sale.

7.2.8. A Unit Owner shall not permit any animals of any kind to be raised, bred, or kept in his Unit or upon his Lot, except that the Association may provide in its rules and regulations that dogs, cats, and other household pets may be kept in Units subject to the rules and regulations adopted by the Association. If a dog, cat, or other household pet is kept in the Unit, the Association shall have the right to charge additional common area fees for any Unit having a dog, cat, or other household pet reflecting the cost, if any, to the Association for additional upkeep and maintenance to the Common Areas and Facilities directly attributed to the animal. Said fee shall be applied to all such dog, cat or household pet owners.

7.2.9. A Unit Owner shall not permit any obnoxious or offensive activity or nuisance to be carried on his Unit or upon any other part of the Project. A Unit Owner shall not conduct any activities, including the construction of improvements, in or upon part of the Project which are or may become unsafe or hazardous to any person or property.

7.2.10. A Unit Owner shall not alter, construct in, or remove anything from the Common Areas and Facilities, except with the prior written consent of the Association or its designee.

7.2.11. A Unit Owner shall not violate any of the rules and regulations for the use of Units or Common Areas and Facilities, adopted by the Association and furnished in writing to the Unit Owners.

7.2.12. No boats, trailers, recreational vehicles, trucks, commercial vehicles or inoperable vehicles belonging to Owners or other residents of the Property shall be parked or stored in or upon any of the Common Areas, except in such portions of the Common Areas as the Association may specify, and

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subject to such rules and regulations as the Association may from time to time promulgate.

7.2.13. No Owner shall, without the prior written consent of the Association, make or permit to be made any structural alteration, improvement or addition in or to his Unit or to the Common Areas. No Owner shall, without the prior written consent of the Association, do any act that would impair the structural soundness or integrity of one or more of the buildings or the safety of property or impair any easement or hereditament appurtenant to the Project.

7.2.14. During the course of actual construction of any structures or improvements which are permitted to be located on the Property or upon real property adjacent to the Project, the provisions, covenants, conditions and restrictions contained in this Declaration shall be deemed waived as to the Declarant, its employees, subcontractors, successors or assigns to the extent necessary or convenient to permit such construction; provided, however, that during the course of such construction, nothing shall be done which would result in a continuing violation of any said provisions, covenants, conditions or restrictions following the completion of such construction upon the Project or adjacent Property.

8.0. Association of Unit Owners: Management Committee.

8.1. The management of the Association shall be governed by the Articles and Bylaws of the Association. The Association shall be entitled to choose a Management Committee consisting of three persons who need not be Unit Owners who shall be elected as provided in the Bylaws. All agreements and determinations with respect to the property lawfully made or entered into by the Association shall be binding upon all the Unit Owners, their successors and assigns. All rights and powers referred to in this Declaration as belonging to the Association, unless specifically provided for otherwise, shall belong to the Association and shall be carried out by the Association's Management Committee. The Management Committee is authorized and empowered to take all actions necessary on behalf of the Association unless specifically provided for otherwise in this Declaration.

8.2. The Association and the Management Committee shall have all the powers, duties and responsibilities as are now or may hereafter be provided by this Declaration, the Articles of Incorporation and Bylaws, including but not limited to the following:

8.2.1. To make and enforce all house rules and administrative rules and regulations covering the operation and maintenance of the property.

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8.2.2. To engage the services of a manager or managing company, accountants, attorneys or other employees or agents and to pay to said persons a reasonable compensation therefore; provided, however, that any management agreement may be terminable by the Association for cause upon thirty (30) days written notice and with or without cause with sixty (60) days prior written notice without any penalty, cost or fee, and that the term of any said management agreement may not exceed one (1) year, renewable by agreement for successive one-year periods.

8.2.3. To operate, maintain, repair, improve and replace the Common Areas and Facilities, including the entering into of agreements for the use and maintenance of the Common Areas and Facilities and adjacent, contiguous property for the benefit of the Association.

8.2.4. To determine and pay the Common Expenses.

8.2.5. To assess and collect the proportionate share of Common Expenses from the Unit Owners.

8.2.6. To enter into contracts, deeds, leases and/or other written instruments or documents and to authorize the execution and delivery thereof by the appropriate officers.

8.2.7. To open bank accounts on behalf of the Association and to designate the signatures therefor.

8.2.8. To purchase, hold, sell, convey, mortgage or lease any one or more Units held in the name of the Association or its designee.

8.2.9. To bring, prosecute and settle litigation for itself, the Association and the property, provided that it shall make no settlement which results in a liability against the Association, or the property in excess of \$5,000.00 without prior approval of a majority of Unit Owners.

8.2.10. To obtain insurance for the Association with respect to the Common Areas and Facilities, as well as workman's compensation insurance.

8.2.11. To repair or restore the Common Areas following damage or destruction, or a permanent taking by the power of eminent domain or by an action or deed in lieu of condemnation, not resulting in the removal of the property from provisions of this Declaration.

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8.2.12. To own, purchase or lease, hold and sell or otherwise dispose of, on behalf of the Unit Owners, items of personal property necessary to or convenient in the management of the business and affairs of the Association and in the operation of the property.

8. 2. 13. To keep adequate books and records.

8. 2. 14. To do all other acts necessary for the operation and maintenance of the property, including the maintenance and repair of any Unit as the same is necessary to protect or preserve the property.

8. 3. The Association may delegate to a manager or management company all of its foregoing powers, duties and responsibilities referred to in paragraph 8.2 above subject to the provisions of paragraphs 8.2.2., except: The final determination of common expenses, budgets and assessments based thereon; the promulgation of house rules and administrative rules and regulations; the power to enter into any contract involving more than \$5,000.00 in any one fiscal year; the opening of bank accounts; the power to purchase, hold, sell, convey, mortgage or lease any Units in the name of the Association or to bring, prosecute and settle litigation.

8. 4. Members of the Management Committee, the officers and any assistant officer, agents and employees of the Association (i) shall not be liable to the Unit Owners as a result of their activities as such for any mistake of judgment, negligence or otherwise, except for their own willful misconduct or bad faith; (ii) shall have no personal liability in contract to a Unit Owner or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the Association in their capacity as such; (iii) shall have no personal liability in tort to any Unit Owner or any person or entity direct or imputed, by virtue of acts performed by them, except for their own willful misconduct or bad faith, or acts performed for them in their capacity as such; and (iv) shall have no personal liability arising out of the use, misuse or condition of the property, which might in any way be assessed against or imputed to them as a result or by virtue of their capacity as such.

8. 5. The Association shall indemnify and hold harmless, any person, his heirs, and personal representatives, from and against all personal liability and all expenses including counsel fees, incurred or imposed, or arising out of or in settlement of any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative instituted by any one or more Unit Owners, or any other persons or entities, to which he shall be or shall be threatened to be made a party by reason of the fact that he is or was a member of the Management Committee or an officer or assistant officer, agent or employee of the Association, other than to the extent, if any, that such liability or expense shall be attributable to his willful misconduct or bad faith, provided, in the case of any settlement, that the Management Committee shall have approved the settlement, which approval shall not to be unreasonably withheld. Such right of indemnification shall not be deemed exclusive of any other rights to which such person may be entitled as a matter of law or

agreement or vote of Unit Owners or of the Management Committee or otherwise. The indemnification by the Unit Owners as contained herein shall be paid by the Association on behalf of the Unit Owners and shall constitute a common expense and shall be assessed and collectible as such.

9.0. Association of Unit Owners: Membership and Voting.

9.1. Membership.

Each Owner shall be entitled and required to be a member of the Association; membership shall begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If title to a Unit is held by more than one person, the membership appurtenant to the Unit shall be shared by all such persons in the same proportionate interests and by the same type of tenancy in which title to the Unit is held. An Owner shall be entitled to one membership for each Unit owned by him. Each membership shall be appurtenant to the Unit to which it relates and shall be transferred automatically by conveyance of that Unit. Ownership of a Unit within the Project cannot be separated from membership in the Association appurtenant thereto, and any devise, encumbrance, conveyance or other disposition of a Unit shall be construed to be a devise, encumbrance, conveyance or other disposition, respectively, of the Owner's membership in the Association, and the rights appurtenant thereto. No person or entity other than an Owner may be a member of the Association, and membership in the Association may not be transferred except in connection with the transfer of a Unit.

9.2. Voting.

The Association shall have two (2) classes of voting membership:

Class A. Class A members shall be Owners, with the exception of the Declarant. Each Class A member shall be entitled to the number of votes appurtenant to each respective Unit as shown on Appendix B. In the event more than one Class A member owns an interest in a Unit the votes of such Unit shall be exercised as they themselves determine, but in no case shall more than the applicable number of votes designated on Appendix B be cast with respect to any one Unit by Class A members.

Class B. The Class B member shall be the Declarant who shall be entitled to three times (3x) the number of votes appurtenant to each respective Unit as shown in Appendix B for each Unit owned by the Declarant.

9.3. Declarant's Control of Management Committee.

The Declarant, or some other person or persons selected by the Declarant, may appoint and/or remove all members of the

Management Committee and all officers of the Association, or at the Declarant's option, may exercise the powers and authority otherwise assigned by the Declaration, the Bylaws and the Articles of Incorporation to the Association or the Management Committee from the date of recordation of this Declaration until Declarant shall have conveyed 75% of the Declarant's undivided interest in the Common Areas and Facilities including additional interests which may be annexed to the Project through the amendment of this Declaration and Map, if any, or December 31, 1991, whichever occurs first. The first annual meeting of the Association shall be held within 120 days of the incorporation of the Association.

10.0. Maintenance, Alteration and Improvement.

10.1. The maintenance, alteration, replacement and repair of the Common Areas and Facilities shall be the responsibility of the Association, and the cost thereof shall be a Common Expense. The Association shall maintain to the extent that the same is not provided by utility services, utility mains to the boundary of each Unit. All incidental damages caused to a Unit by the maintenance, alteration, replacement and repair of the Common Areas and Facilities or utility services shall be repaired promptly at the expense of the Association.

10.2. The Unit Owners shall have the responsibility to maintain, repair, replace and keep in a clean and sanitary condition, at the Unit Owner's expense, all portions of the Owner's Unit except as provided in Section 10.4 hereof. The Unit Owners shall keep clean and in a sanitary condition all of their Unit. The Association shall be responsible for cleaning and general maintenance of all parking areas except garages directly appurtenant to the individual units.

10.3. Declarant expressly reserves the right and authority to modify the layout and design of the Common Areas and Facilities, including the provision of additional amenities thereon, without the consent of the Association or the Unit Owners, during any time while Declarant is in control of the Management Committee as provided under Paragraph 9.3 hereof provided the Declarant shall pay all costs, expenses and fees associated with the provision, construction and development of the additional amenities and facilities. Declarant shall have the right, without the consent of the Association or the individual Unit Owners, to amend this Declaration and the Map, as necessary, to maintain technical compliance of applicable laws and regulations and in conjunction with the construction and development of any additional amenities as provided in this paragraph. Declarant shall have sole discretion regarding the style, placement, design and method of construction regarding any additional amenities as provided hereunder provided such is in a good workmanlike manner.

10.4. The Association shall be responsible for and shall provide exterior maintenance upon each Unit within the Project including the paint, repair and replacement of roofs, gutters, downspouts and exterior building surfaces, as necessary which shall be paid for as a Common Expense. However, any damage to the exterior of a Unit in excess of normal wear and tear nor otherwise attributable to the actions of the Association shall be repaired by the Association but shall be paid for by the Unit Owner directly. The cost of such exterior maintenance shall be added to and become part of the assessment applicable to the Unit. The exterior maintenance of the Units for which the Association shall be responsible shall not include glass surfaces. In addition to the maintenance of exterior surfaces, the Association shall be responsible for and shall maintain and provide landscaping upon the Common Areas and upon the open real property located within each Unit. The Association shall have the irrevocable right to have access to each Unit as may be necessary to maintain exterior surfaces and landscape open real property within each Unit as reasonably required under this paragraph and as otherwise permitted in this Declaration. The Association shall maintain such financial reserves as necessary to timely anticipate the expenses and responsibilities provided herein.

10.5. Architectural Control. No building, fence, well or other structure shall be commenced, erected or maintained upon the Project, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Management Committee. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

11.0. Insurance.

11.1. The Association shall obtain and maintain at all times insurance of the type and kind as provided herein and including insurance for such other risks, of a similar or dissimilar nature, covering the Common Areas and Facilities as are or shall hereafter customarily be covered with respect to other properties similar to the property in construction, design and use. The Association shall obtain insurance with the following provisions or endorsements:

11.1.1. Exclusive authority to adjust losses shall be vested in the Association and/or the Management Committee as insurance trustee or any successor trustee as designate by the Association;

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11.1.2. The insurance coverage shall not be brought into contribution with insurance purchased by individual Unit Owners or their respective mortgages;

11.1.3. Each Unit Owner may obtain additional insurance covering his real property interest at his own expense.

11.1.4. The insurer waives its right of subrogation as to any and all claims against the Association, each Unit Owner, and/or their respective agents, employees or tenants, and of all defenses based upon co-insurance or upon invalidity arising from the acts of the insured;

11.1.5. The insurance coverage cannot be canceled, invalidated or suspended because of the conduct of any one or more individual Unit Owners or their respective lessees, employees, agents, contractors, and guests;

11.1.6. The insurance coverage cannot be canceled, invalidated or suspended because of the conduct of any officer or employee of the Management Committee or Association or their employees, agents, or contractors, without prior demand in writing that the Association cure the defect and then only if the defect is not cured within thirty (30) days;

11.1.7. Such policies shall provide that coverage shall not be prejudiced by (a) any act or neglect of the individual Unit Owners or their respective lessees, employees, agents, contractors or guests; or (b) by failure of the Association to comply with any warranty or condition with regard to any portion of the premises over which the Association has no control; and

11.1.8. The insurance coverage shall provide that coverage may not be canceled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days prior written notice to any and all insureds named thereon, including all mortgagees of the Units.

11.2. The Association shall purchase such property insurance as it deems appropriate. The named insured shall show "Elk Run at Pinebrook II Homeowners Association" for the use and benefit of the individual Unit Owners or its insurance trustee. The loss payable clause shall show the Association or its insurance trustee as trustee for each Unit Owner and the mortgage holder of each unit mortgaged.

11.3. The Association shall obtain a policy or policies of insurance insuring the Association, the Unit Owners and their respective lessees, servants, agents or guests against any liability to the public or to the owners of units, members of the households of Unit Owners and their respective invitees or tenants, incident to the ownership and/or use of the property,

and including the personal liability exposure to the Unit Owners, incident to the ownership and/or use of the property, including but not limited to the operation and use of the Common Areas, public ways and any other area under its supervision. Limits of liability under such insurance shall not be less than One Million Dollars (\$1,000,000.00) for any one person injured in any one occurrence, and shall not be less than One Million Dollars (\$1,000,000.00) for property damage in each occurrence. The limits in coverage of said liability policy or policies shall be reviewed at least annually by the Association and increased at its discretion. Said policy or policies shall be issued on a comprehensive liability basis and, if possible, shall provide cross-liability endorsements for possible claims of any one or more or group of insureds, without prejudice to the right of a named insured under the policies to maintain the action against another named insured. To the extent possible, such coverage will include protection against water damage liability, liability for non-owned and hired automobile, liability for property of others, garage-keeper's liability, host liquor liability, legal liability from claims and lawsuits related to employment contracts in which the Association is a party, and such other risks as shall customarily be covered with respect to projects similar in construction, location, and use.

11.4. No Unit Owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount that the Association and/or the unit owners, on behalf of all of the Unit Owners, may realize under any insurance policy that the Association may have in force covering the property or any part thereof at any time.

11.5. There may be obtained a blanket fidelity bond for anyone who handles or is responsible for funds held or administered by the Association. The amount of the bond shall not be less than the greater of (a) the sum of three months assessments on all units plus the Associations reserve funds; or (b) the maximum funds that will be in the Associations hands; (c) 150% of the estimated annual operating expense of the planned unit development, including reserves. The bond must state that at least ten (10) days written notice will be given to the Association or its insurance trustee to each mortgagee and mortgage servicer prior the cancellation or substantial modification for any reason.

12.0. Termination.

12.1. All of the Unit Owners may remove the Property from the provisions of this Declaration by an instrument duly recorded to that effect, provided that the holders of all liens and mortgages affecting any of the units consent or agree by instruments duly recorded, that their liens or mortgages be transferred to the percentage of the undivided interest of the unit owners in the property and the Federal Housing Authority or the Veterans Administration consents to the termination.

12.2. After removal of the property from the Declaration, the Unit Owners shall own the Common Area and all assets of the Association as tenants in common and the respective mortgagees and lienors shall have mortgages and liens upon the respective undivided interests of the Unit Owners, and such undivided interest in the Common Areas and Facilities appurtenant to the Owners' Units prior to removal from the act.

12.3. This paragraph 12 cannot be amended without consent of all Unit Owners, the Federal Housing Authority or the Veterans Administration and all record owners of mortgages on units.

13.0. Eminent Domain.

13.1. Whenever any proceeding is instituted that could result in the temporary or permanent taking, injury or destruction of all or part of the Common Areas and Facilities, or one or more Units or portions thereof by the exercise of the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation (all of which shall be defined as "eminent domain"), the Association, each Unit Owner and every holder of all liens affecting the Units, shall be entitled to timely written notice thereof and the Association shall, and the Unit Owners at their respective expense, may participate in the proceedings incident thereto.

13.2. Any awards by reason of eminent domain or in proceedings in lieu thereof, shall be equitably distributed to the unit owners affected by the eminent domain; provided that the priority of any mortgagee's lien shall remain undisturbed.

14.0. Mortgage Protection.

14.1. The term "mortgage" as used in this Declaration shall mean any recorded mortgage and shall include a recorded deed of trust. The term "mortgagee" shall mean the owner and holder of a mortgage and shall include a beneficiary under a deed of trust.

14.2. The Association shall maintain a roster of Unit Owners from the evidence of change of ownership furnished to the Association, which roster shall include the mailing addresses of Unit Owners. If the Association has been given notice of the necessary information, the Association shall maintain another roster which shall contain the name and address of each mortgagee of a unit. Each notice shall consist of a certified copy of the recorded instrument evidencing the title of the mortgagee. The mortgagee shall be stricken from the roster upon receipt by the Association of a request from the mortgagee or of a certified copy of a recorded release or satisfaction of the mortgage. Notice of such removal shall be given to the mortgagee unless the removal is requested by the mortgagee.

14.3. Any mortgage on any unit is entitled to written notification if so requested from the Association of any default by the mortgagor of such unit in the performance of such mortgagor's obligation under the Declaration which is not cured within thirty (30) days.

14.4. Any mortgagee upon written request shall have the right to examine the books and records of the Association during normal business hours and shall be entitled to receive copies of annual reports and other financial data within ninety (90) days following the end of any fiscal year and shall be entitled to receive notice of all meetings of the Association and may designate a representative to attend all such meetings.

14.5. A mortgagee of any Unit who comes into possession of the Unit pursuant to the remedies provided in the mortgage, foreclosure of mortgage, or deed (or assignment) in lieu of foreclosure, shall take the property free of any claims of unpaid assessments or charges against the mortgaged Unit which accrued prior to the time such mortgagee comes into the possession of the unit (except for claims for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessments or charges to all units, including the mortgaged Unit).

14.6. The liens created pursuant to this Declaration, the Articles or Bylaws, upon any unit shall be subordinate to, and shall not affect the rights of a mortgagee whose interest was recorded prior to the recordation of the Notice of Lien, provided such mortgagee's interest would have priority, by law, over subsequently recorded encumbrances, or liens arising from tax and special assessment liens in favor of the assessing unit or special improvement district.

14.7. No unit may be partitioned or subdivided without the prior written approval of the mortgagee of the affected Unit.

14.8. No amendment to this paragraph shall affect the rights of a mortgagee recorded prior to the recordation of any such amendment not otherwise entitled thereto.

14.9. Notices of Action. A holder, insurer or guarantor of a first mortgage, upon written request to the Association, (such request to state the name and address of such holder, insurer or guarantor and the unit number), will be entitled to timely written notice of:

14.9.1. Any proposed amendment to the Declaration effecting a change in (i) the boundaries of any Unit or the exclusive easement rights appertaining thereto, (ii) the interests in the Common Areas and Facilities appertaining to any Unit or the liability for Common Expenses appertaining thereto; (iii) the number or votes in the Association appertaining to any

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Unit or (iv) the purposes to which any Unit or the Common Elements are restricted;

14.9.2. Any proposed termination of the P.U.D. regime;

14.9.3. Any casualty loss which affects a material portion of the common areas of the P.U.D.;

14.9.4. Any delinquency in the payment of assessments or charges owed by an Owner of a Unit subject to the mortgage of such eligible holder, insurer or guarantor, where such delinquency has continued for a period of 60 days;

14.9.5. Any lapse, cancellation or material modification of any insurance policy maintained by the Association;

14.9.6. Any restoration or repair of the Common Areas after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with the Declaration and the original plans and specifications unless the approval of the eligible holders of first mortgages on units to which at least 51% of the votes of units subject to mortgages held by such eligible holders are allocated, is obtained;

14.9.7. Any election to terminate the P.U.D. after substantial destruction or taking in condemnation of the Common Areas must require the approval of the eligible holders of first mortgages on Units to which at least 51% of the votes of Units subject to mortgages held by such eligible holders are allocated.

14.9.8. Unless the formula for reallocation of interests in the Common Areas after a partial condemnation or partial destruction of the Common Areas is fixed in advance by the Declaration or by applicable law, no reallocation of interests in the Common Areas resulting from a partial condemnation or partial destruction of the Common Areas may be effected without the approval of the eligible holders of first mortgages of Units to which at least 51% of the votes of Units subject to mortgages held by such eligible holders are allocated.

NOTE: As used in this section, the term "eligible holder, insurer or guarantor" shall mean a holder, insurer or guarantor of a first mortgage upon the Unit.

15.0. Leasing of Units.

15.1. All leases of units shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration and Bylaws and

that failure of the lessee to comply with the terms of said documents shall be a default under the lease.

15.2. No Unit Owner shall be permitted to lease his Unit for transient or hotel purposes, nor for a period of less than thirty days.

15.3. No Unit Owner shall lease less than the entire unit.

15.4. The provisions of this paragraph shall not apply to a lender in possession of a Unit following a default in a first mortgage.

16.0. Encroachments.

16.1. None of the rights and obligations of any Unit Owners created by this Declaration or by any deed conveying a Unit shall be affected in any way by an encroachment: (i) by any portion of the Common Areas and Facilities upon any Unit; (ii) by any Unit upon any portion of the Common Areas and Facilities, or (iii) by any Unit upon another Unit due to error in construction, settling or shifting of the building or other structure, including the rebuilding of the building and other structure after fire or other casualty or an eminent domain taking or delivery of a deed in lieu of condemnation, unless there occurs an encroachment that results from the willful act or omission of the Unit Owner of the encroaching Unit, or of the Owners of the Units to which the use of the encroaching Common Areas and Facilities is appurtenant, or of the Association in the event of an encroachment by any portion of the Common Areas and Facilities.

16.2. There are hereby created valid easements for the maintenance of any encroachments permitted by this Declaration so long as such encroachments exist.

17.0. Conveyances. Easements.

17.1. Every deed, lease, mortgage or other instrument may describe a Unit by its identifying number and letter designation set forth upon the Map, as amended. Every such description shall be deemed good and sufficient for all purposes and shall be deemed to convey, transfer, encumber, or otherwise affect the Unit Owner's corresponding percentage in the Association even though the same is not exactly mentioned or described as well as the Unit's Limited Common Areas and Facilities.

17.2. Some of the Common Areas and Facilities or may be conveniently accessible only through the Units. Further, the Association is responsible for the upkeep and maintenance of certain Unit exteriors as well as for the landscaping and maintenance of certain real property within the Units themselves.

The Association shall have the irrevocable right to have access to each Unit and to all Common Areas and Facilities from time to time during normal business hours or upon giving notice to the Owner and during such reasonable hours as may be necessary for the maintenance, landscaping, upkeep, mowing cleaning, repair or replacement thereof or for making emergency repairs at any time herein necessary to prevent damage to the Common Areas and Facilities, or to any Unit or as necessary for the Association to fulfill its obligations under this Declaration. In addition, upon giving notice to the Owner and during such reasonable hours as may be necessary, the Association or its agents may enter any Unit when necessary in connection with any cleaning, maintenance, repair, replacement, landscaping, construction or reconstruction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Association and paid as a Common Expense.

17.3. Each owner shall have the right to ingress and egress and reasonable enjoyment over, upon, and across the Common Areas and shall have the right to horizontal, vertical and lateral support of such Unit, and such rights shall be appurtenant to and pass with the title to each Unit.

17.4. The Association shall have an easement to make such use of the Common Areas and Facilities or the real property within each Unit as may be necessary or convenient to perform the duties and functions that it is obligated or permitted to perform pursuant to this Declaration, including, without limitation, the right to construct and maintain in the Common Areas facilities for use by Owners generally or by the Association and its agents exclusively.

17.5. The Declarant shall have a transferable easement over and on the Common Areas and Facilities and private roads for the purpose of completing construction of the Project and improvements therein as shown on the Map, including the construction and improvements as provided under Paragraph 10.3 or upon real property directly adjacent to the Property regardless whether such adjacent property is annexed into the Project and for the purpose of doing all things reasonably necessary or appropriate in connection therewith. Further, Declarant, together with home or unit owners of adjoining projects, shall have the right and an easement for the construction, connection and use of the private road within the Project should the Declarant elect to connect the private road with other public and/or private roads within the area. To the extent that damage is inflicted on any part of the Project by any person utilizing said easement, the Declarant or the person causing the damage, as applicable, shall be liable for the prompt repair of such damage.

17.6. All conveyances of Units within the Project hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve such reciprocal easements as are

provided herein, even though no specific reference to such easements appears in any such conveyance.

17.7. The Association shall have power to grant and convey to any third party and the Declarant hereby reserves unto itself, easements and rights of way, including but not limited to rights of ingress and egress, in, on, over and/or under the Common Areas and Facilities for the purpose of ordinary use including ingress and egress as well as for the purpose of constructing, erecting, operating or maintaining lines, cables, wires, conduits or other devices for electricity, cable television, power, telephone and other purposes, public sewers, storm drains and pipe, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities to provide common utility services to the project, the Additional Land (as defined in Section 21.0 hereof), regardless whether such adjacent lands are subsequently annexed into the Project. Further, Declarant reserves unto itself, its tenants, assignees, and invitees, whether relative to this Project or Declarant's adjacent Projects a transferable easement over and upon the Common Areas and Common Facilities, access roads or similar property within the Project (including Additional Lands) for the purpose of constructing, developing, maintaining, improving or expanding the Project, the Additional Land or any real property directly adjacent to the Project which may be subsequently developed by the Declarant, its successors or assigns which are adjacent to the Project or Additional Lands together with a perpetual easement of ingress and egress and enjoyment including the right to connect private roads upon the Project, the Additional Lands or adjacent Projects should such roads be constructed and connected. Such easement shall entitle Declarant the use of all access roads within the Project and to tie into all utility lines, sewage and drainage systems within or transversing the Project and/or Additional Lands.

18.0. Combination of Units.

18.1. An Owner of two or more adjoining Units shall have the right upon approval of the Association or the Management Committee and the mortgagees of said Units, to combine one or more adjoining units or portions thereof and to alter or amend the Declaration and Map to reflect such combination.

18.2. Such amendments may be accomplished by the Unit Owner recording an amendment or amendments to this Declaration, together with an Amended Map or Maps containing the same information with respect to the altered units as required in the initial Declaration and Map with respect to the initial Units. All costs and expenses required in such amendments shall be borne by the Unit Owner desiring such combination.

18.3. All such amendments to the Declaration and Map must be approved by attorneys employed by the Association to

insure the continuing legality of the Declaration and the Map. The cost of such review by the attorney's shall be borne by the person wishing to combine the Units.

18.4. Any amendment of the Declaration or Map pursuant to this paragraph 18 shall reflect the changes occasioned by the alteration. Such changes include a change in the percentage of ownership or interest in the Association which are appurtenant to the Units involved in the alterations. The remaining combined Unit will acquire the total percentage of undivided interest in the Association of Units that are combined as set forth on Appendix B. If a portion of one Unit is combined with another, the resulting Units shall acquire a proportionate percentage of the total undivided interest in the Association of the Units involved in the combination on the basis of area remaining in the respective altered Units. All such amendments must, in all instances, be consented to by the Association and also all other persons holding interest in the Units affected. The consent of other Unit Owners need not be obtained to make such amendments or alterations valid, providing the percentages of undivided interest in the Common Areas and Facilities of the other Unit Owners remain unchanged.

19.0. Amendment.

19.1. Except as otherwise provided in this Declaration, the provisions of this Declaration may be amended by an instrument in writing signed and acknowledged by Unit Owners who constitute three-fourths (3/4) of the Unit Owners in the Association, for each class, which amendment shall be effective upon recording, and upon approval of 67% of mortgagees of Units in the Project and the approval of the Federal Housing Authority or the Veterans Administration.

19.2. Within twelve (12) months from the recording date hereof, Declarant reserves the right to amend the Declaration if required by statute, the Federal National Mortgage Association, Federal Housing Authority or the Veterans Administration or some other governmental agency or lending institution or to correct a technical error, provided that such amendment does not materially affect the rights of Unit Owners.

19.3. The Association may from time to time amend the Map and/or Appendix B to reflect the change in assignments of parking spaces or storage spaces; provided, however, that the affected owners, if any, join in the execution of the amendment.

20.0. Assessments.

20.1. The Association and/or the Management Committee shall have the power and authority as prescribed by law and set forth herein to make and collect regular and special assessments from the Unit Owners for their share of Common Expenses pursuant to the Articles and Bylaws and as further set forth below. All

rights, powers and authority conferred hereunder to the Association shall also apply to the Management Committee as provided herein.

20. 2. Agreement to Pay.

Declarant, for each unit owned by it, covenants and agrees, and each purchaser of a Unit by his acceptance of a deed, covenants and agrees, for each Unit so owned to pay to the Association regular assessments and special assessments, such assessments to be established, made and collected as provided in this Declaration. Each Owner shall be liable for a proportionate share of the Common Expenses, such shares being the same as the percentage of undivided interest in the Common Areas and Facilities appurtenant to the Unit owned by the Unit Owner as set forth in Appendix "B". Such assessments shall accrue from the date the first Unit is conveyed to a purchaser and will be due and payable in advance.

20. 3. Personal Obligations.

Each assessment or installment, together with any interest, collection costs and reasonable attorney's fees, shall be the personal obligation of the person or entity who was an Owner at the time such assessment, or installment, became due and payable. If more than one person or entity was the Owner of a Unit, the personal obligation to pay such assessment, or installment, respecting such Unit shall be both joint and several. The voluntary Grantee of a Unit, by his acceptance of a Deed subject to the terms and conditions of this Declaration, including personal liability for assessments but shall not be liable for previous unpaid assessments unless expressly assumed by him. Any lien as provided hereunder shall continue to encumber the Unit despite the Unit's conveyance. No Unit Owner may exempt himself from payment of assessments, or installments, by waiver of the use or enjoyment of all or any portion of the Common Areas and Facilities or by waiver of the use or enjoyment of, or by abandonment of his Unit.

20. 4. Purpose of Assessments: Maintenance of Reserves.

The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Members of the Association, the improvement, replacement, repair, operation and maintenance of the Common Areas and Facilities and the performance of the duties of the Association as set forth in this Declaration. Assessments may also be used to cover expenses for repair of defects or failures in the Development. The regular assessments shall include adequate reserve funds for contingencies and for maintenance, repairs, and replacement of the Common Area improvements and facilities. This limitation shall not affect the liability of any supplier or manufacturer of any product included in the Development. Unless the Association is exempt from federal or

state taxes, all reserves shall be accounted from as contributions to the capital of the Association and as trust funds segregated from the regular income of the Association or in any other manner authorized by law or regulations of the Internal Revenue Service and the Utah State Tax Commission that will prevent such funds from being taxed as income of the Association. Each Unit's share of the working capital fund should be collected at the time the sale of the Unit is closed and then transferred to the Association for deposit to a segregated fund.

20.5. Determination of Amount of Assessments.

20.5.1. Regular Assessments. Each Unit Owner shall pay the Association his allocated portion of the cash requirement, as set forth upon Appendix "B" hereof, required to manage in the manner herein provided without any deduction on account of any set-off or claim which the Owner may have against the Association. If the Unit Owner shall fail to pay any installment within thirty (30) days of the time when the same becomes due, the Owner shall pay interest thereon at the rate of nine percent (9%) per annum from the date when such installment shall become due to the date of the payment thereof.

20.5.2. The cash requirements above referred to for each year, or portion of the year, are hereby defined and shall be deemed to include an adequate reserve fund for maintenance, repairs and replacement of those common areas and facilities that must be replaced on a periodic basis, plus such aggregate sum as the Association or the Management Committee from time to time shall determine, in its judgment, is to be paid by all the Owners of the Planned Unit Development then in existence to enable the Association to pay all estimated expenses and outlays of the Association to the close of such year, growing out of or in connection with the maintenance and operation of such land, buildings, and improvements; which sum may include, among other things, the cost of management, special assessments, fire, casualty, flood, fidelity, public liability and other insurance premiums, common lighting, landscaping and the care of the grounds, repairs and renovations to Common Areas and Facilities, snow removal, wages, water charges, natural gas charges and all other utility services (except telephone, electricity and other services which are separately billed or metered to the individual Units by the utility or party furnishing such service), legal and accounting fees, management fees, expenses and liabilities incurred by the Association under or by reason of this Declaration, the payment of any deficit remaining from the previous period, the creation of a reasonable contingency or other necessary reserve or surplus fund, as well as all other costs and expenses relating to the P. U. D. Project. Subject to the limitations set forth in paragraph 20.5.5, the Association or the Management Committee may, from time to time, up to the close of the year for which such cash requirements have been so fixed or determined, increase or diminish the amount previously fixed

or determined for such year. It may include in the cash requirements for any year, any liabilities or items of expense which accrued or became payable in the previous year, or which might have been included in the cash requirements for a previous year, but were not included therein; and also any sums which the Association may deem necessary or prudent to provide a reserve against liabilities or expenses then accrued or thereafter to accrue although not payable in that year.

20.5.3. The portion payable with respect to each Unit in and for each year or for a portion of a year shall be multiplied by the fraction as shown on Appendix "B". Such assessments, together with any additional sums accruing under this Declaration, shall be payable monthly in advance, or in such payments and installments as shall be provided by the Association or the Management Committee. The percentage attributable to each Unit is set forth on Appendix "B" as the percentage of undivided interest.

20.5.4. The Association through the Management Committee shall have discretionary powers to prescribe the manner of maintaining and operating the Planned Unit Development and to determine the cash requirements of the Association to be paid as aforesaid by the Owners under this Declaration. Except as provided in paragraph 20.5.5 below, every such reasonable determination by the Association within the bounds of this Declaration shall be final and conclusive as to the Owners, and any expenditures made by the Association, within the bounds of the Act and this Declaration shall as against the Owner be deemed necessary and properly made for such purpose.

20.5.5. Maximum Annual Assessment. Notwithstanding the foregoing, any increase or modification of the regular annual assessment shall be subject to the following limitations: (a) From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased each year by not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership; (b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above five percent (5%) by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose; and (c) the Management Committee may fix the annual assessment at an amount not in excess of the maximum.

20.6. Special Assessments.

In addition to the annual regular assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area and Facilities including fixtures and

personal property related thereto, provided that any such assessment shall have the vote or written assent of a majority of each class of Members of the Association; provided, however, that following the conversion of the Class B membership to Class A membership, any such assessment shall have the vote or written assent of (i) holders of a majority of the voting power of the Association, and (ii) holders of a majority of the voting power of the Association excluding the Declarant. All proceeds from any special assessment shall be segregated and deposited into a special account and shall be used solely for the purpose or purposes for which it was levied or it shall be otherwise handled and used in a manner authorized by law or regulations of the Internal Revenue Service and the Utah State Tax Commission in order to avoid, if possible, its taxation as income of the Association.

20.7. Member Action.

Any action authorized under Section 20.6 above requiring membership approval shall be taken at a meeting called for that purpose, written notice of which shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. A quorum for such meeting shall be fifty-one percent (51%) of each class of members of the Association. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum for the preceding meeting. If the proposed action is favored by a two thirds (2/3) majority of the votes cast at such meeting, but such vote is less than required, members who were not present in person or by proxy may give their assent in writing, provided the same is obtained by the appropriate officers of the Association not later than thirty (30) days from the date of such meeting.

20.8. Uniform Rate of Assessment.

A special assessment against members to raise funds for the repair or major rebuilding of a portion of the Common Areas and Facilities shall be based upon the Unit's percentage interest set forth in Appendix "B".

20.9. Assessment Period.

The initial assessment period for all units, including those owned by Declarant, (other than those upon which units have not yet been constructed or for which a Certificate of Occupancy has not been obtained) shall commence on the first day of the calendar month following the date on which the first sale of a Unit to a purchaser is closed and recorded (the "initiation date") and shall terminate on December 31 of the year in which the initial sale is closed and recorded. Thereafter, the regular assessment period shall commence on January 1 of each year and shall terminate on December 31 of such year, and regular

assessments shall be payable in equal monthly installments unless the Management Committee adopts some other basis for collection.

The Association shall not change the pro rata interest or obligation of any unit for purposes of levying assessments unless 75% of the Owners and Mortgagees holding 75% of all first Mortgages and the Federal Housing Authority or Veterans Administration have given their prior written consent. Voting rights attributable to the respective units shall not vest until assessments against such Units have been paid.

20. 10. Notice and Assessment Installation Due Dates.

A single thirty (30) day prior written notice of each annual regular assessment and each special assessment shall be given to any Owner of every Unit subject to assessment in which the due dates for the payments of installments shall be specified. The due dates for the payment of installments normally shall be the first day of each month unless some other due date is established by the Management Committee. Each installment, regular assessment and special assessment shall become delinquent if not paid within thirty (30) days after its due date. There shall accrue with each delinquent installment a late charge which shall include any late charge previously assessed and unpaid, and which shall be computed on the outstanding balance from month to month as follows: (i) three quarters of a percent (.75%) per month of any delinquent assessments.

20. 11. Estoppel Certificate.

The Association or the Management Committee, on not less than twenty (20) days' prior written request and upon the payment of a handling fee not exceeding \$50.00 per certificate, shall execute, acknowledge and deliver to the party making such request a statement in writing stating whether or not to the knowledge of the Association, a particular Owner is in default as to his Unit assessments under the provisions of this Declaration and further stating the dates to which installments of assessments, regular or special, have been paid as to such unit. Any such certificate delivered pursuant to this Section may be relied on by any prospective purchaser or mortgagee of the Unit. The Estoppel Certificate shall not supersede any default in the payment of regular or special assessments of which the requesting party had actual knowledge.

20. 12. Lien.

All sums assessed to any Unit pursuant to this Declaration, together with interest, collection costs and attorney's fees as provided herein, shall be secured by a lien on such Unit in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Unit, except only for: (a) valid tax and special assessment liens on the Unit in favor of any governmental assessing authority; and (b) a lien for all sums unpaid on a first Mortgage, or any Mortgage to Declarant, duly

recorded in the Official Records of Summit County, Utah, including all unpaid obligatory advances to be made pursuant to such Mortgage and all amounts advanced pursuant to such Mortgage and secured by the lien thereof in accordance with the terms of such instrument. All other lienors acquiring liens on any Unit after this Declaration shall have been recorded in said records shall be deemed to consent that such liens shall be inferior to future liens for assessments, as provided herein, whether or not such consent be specifically set forth in the instruments creating such liens.

To evidence a lien for sums assessed hereunder, the Association may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Unit and a description of the Unit. Such a notice shall be signed by the Association, or its designee, and may be recorded in the office of the County Recorder of Summit County, Utah. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by judicial foreclosure by the Association in the same manner in which mortgages on real property may be foreclosed in Utah. In the event foreclosure or any method of collection other than foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding, the costs and expenses of filing the notice of lien and all reasonable attorneys fees. All such costs, expenses and fees shall be secured by the lien being foreclosed. The Owner shall also be required to pay the Association any assessments against the Unit which shall become due during the period of foreclosure. The Association shall have the right and power to bid an amount equal to its then existing lien at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the same as the Owner thereof.

A release of notice of lien shall be executed by the Association and recorded in the Office of the County Recorder of Summit County, Utah, upon payment of all sums secured by a lien which has been made the subject of a recorded notice of lien.

Any encumbrancer holding a lien on a Unit may pay, but shall not be required to pay, any amounts secured by the lien created hereunder, and upon such payment such encumbrancer shall be subrogated to all rights of the Association with respect to such lien, including priority.

The Association shall report to any encumbrancer of a Unit any unpaid assessments remaining unpaid for thirty days after the same shall have become due; provided, however, that such encumbrancer first shall have furnished to the Association written notice of such encumbrance and shall request such notice of delinquency in writing.

20. 13. Foreclosure.

In any foreclosure of a lien for assessments, the Unit Owner subject to the lien shall be required to pay a reasonable rental for the Unit, and the Association shall be entitled to the appointment of a receiver to collect the same.

20. 14. Capital Accounts.

The Association may include in the monthly assessments amounts representing contributions to the capital of the Association to be used for the replacement of or additions to capital items or improvements in the property, or for reserves for improvements to or replacement of capital items or improvements in or to the property. Said amounts shall be set up as capital accounts for each unit. In the event of transfer of a unit, the capital account shall be deemed transferred to the unit transferee.

20. 15. Capital Improvements.

In assessing the Unit Owners for capital improvements to the Common Areas and Facilities, for which there are not sufficient amounts in the respective capital accounts, there shall be no single improvement exceeding the sum of Five Thousand Dollars (\$5,000.00) made by the Association or the Management Committee without the same having been first voted on and approved by a majority of those present in person or by proxy of the Association at a meeting duly called for that purpose. The foregoing shall not apply in connection with damage or destruction referred to in Article 13 hereof or to such structural alterations, capital additions to or capital improvements of the Common Areas and Facilities as are necessary in the Association's reasonable judgment to preserve or maintain the integrity of the Common Areas and Facilities of the property.

20. 16. Assignment of Rents.

If the Unit Owner shall, at any time, let or sublet his unit and shall default for a period of one month in the payment of assessments, the Association may, at its option, so long as such default shall continue, demand and receive from any tenant or subtenant of the owner the rent due or becoming due and the payment of such rent to the Association shall be sufficient payment and discharge of such tenant or subtenant and the owner to the extent of the amount so paid. The Unit Owner does hereby assign to the Association any such rent in the event of a default by Owner in paying an assessment.

21. 0. Annexation of Additional Land.

The Declarant, its successor or assign, expressly reserves the option unto itself, until the date seven years from the recordation of the original Declaration, to expand the Project

through the annexation of additional land within the Project. The additional land to be annexed to the Project shall be directly adjacent or otherwise appurtenant to the original Elk Run Project (hereinafter "Additional Land"). Within the time period provided, the Declarant may annex all, part or none of the Additional Land into the Project without the consent of the Association, the Management Committee, or any individual Unit Owners or other limitation. The Declarant shall have the right and shall be required to amend the Map and this Declaration (including Appendix B hereof) to appropriately reflect all relevant information, as required by law or otherwise, in conjunction with annexation of Additional Land within the Project. The required amendment of this Declaration shall: (1) be duly executed and acknowledged by the Declarant and by all other Owners and lessees of the Additional Land to be annexed to the project; (2) contain a metes and bounds description of the Additional Land to be annexed; and (3) shall reallocate on an equitable basis the undivided interests in the Common Areas than contained within the amended Project. There are no other limitations upon Declarant's right to expand the Project. The Declarant is under no obligation, if it in fact proceeds to develop the adjacent real property, to annex the developed property into the Project.

22.0. Notices.

Any notice permitted or required to be delivered as provided herein may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to be delivered twenty-four (24) hours after a copy of the same has been deposited in the U.S. postal service, postage prepaid, return receipt requested. Notice to Unit Owners shall be addressed to each unit owner at the address given by such Unit Owner to the Association for the purpose of service of such notice or to the Unit of such Unit Owner if no such address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association. Notice to the Association shall be addressed to Alan Noertker, c/o 9570 South Woodbine Circle, Sandy, Utah 84092.

23.0. No Waiver.

The failure of the Declarant, Association, Management Committee or any of their contractors to insist, in one or more instances, upon the strict performance of any of the terms, covenants, conditions, or restrictions of this Declaration or the Bylaws, or to exercise any right or option herein contained, or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment, for the future, of such term, covenant, condition or restriction; but such term, covenant, condition or restriction shall remain in full force and effect. The receipt and acceptance by the Association or its contractor of the payment of any assessment from a Unit Owner, with knowledge of the breach of any covenant hereof, shall not be

deemed a waiver of such breach, and no waiver by the Association or the Management Committee of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Association.

24.0. Enforcement.

Each Unit Owner shall strictly comply with the provisions of the Declaration, the Articles, the Bylaws, the administrative rules and regulations and decisions issued pursuant thereto. Failure to so comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Association or its designee on behalf of the unit owners, or in an appropriate case, by an aggrieved unit owner.

25.0. Declarant's Sales Program.

25.1. Sales, Models, Etc.

Notwithstanding any other provisions of this Declaration, until Declarant ceases to be a Unit Owner (hereinafter referred to as the "Occurrence"), Declarant, its successors or assigns shall have the following rights in furtherance of any sales, promotional, or other activities designed to accomplish or facilitate the sale of all units owned by Declarant.

25.1.1. Declarant, its successor or assigns shall have the right to maintain a sales office and/or model Units. Such office and/or model Units may be Units (at any location) owned by Declarant.

25.1.2. Declarant, its successor or assigns shall have the right to maintain a reasonable number of promotional, advertising and/or directional signs, banners or similar devices at any place or places on the Project, or upon real property directly adjacent to the Project owned by the Declarant, but any such device shall be of a size and in a location as is reasonable and customary.

25.1.3. Declarant shall have the right to use the Common Areas and Facilities of the Project to entertain prospective purchasers or to otherwise facilitate Unit sales, provided said use is reasonable as to both time and manner.

25.1.4. Declarant shall have the right from time to time to locate or relocate its sales office, model Units and/or signs, banners or similar devices, but in connection with each such location or relocation shall observe the limitations imposed by the preceding portion of this Article. Within a reasonable period of time after the happening of the Occurrence, Declarant shall have the right to remove from the project any signs, banners or similar devices.

26. 0. Miscellaneous.

26. 1. Severability.

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

26. 2. Captions.

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

26. 3. Law Controlling.

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

26. 4. Effective Date.

This Declaration shall be effective as of the date of its recording.

26. 5. Declarant's Rights Assignable.


All of the rights of Declarant under this Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer or assignment. Any mortgage covering all Units in the Project, title to which is vested in the Declarant, shall, at any given point in time and whether or not such Mortgage does so by its terms, automatically cover, encumber, and include all of the then unexercised or then unused rights, powers, authority, privileges, protections and controls which are accorded to Declarant (in its capacity as Declarant herein).

27. 0. Agent for Service of Process.

The name and address of the person in Summit County, State of Utah, appointed as first agent to receive service of process in matters pertaining to the property is: Alan Noertker, whose address is: Elk Run at Pinebrook II, Pinebrook Road, Park City, Utah 84060.

IN WITNESS WHEREOF, the undersigned has executed this instrument on this 26 day of October, 1988.


ELK RUN LTD., A UTAH LIMITED PARTNERSHIP by A. D. Services, its general partner


ALAN NOERTKER
Its President

STATE OF UTAH)
 : ss (Corporate acknowledgement)
COUNTY OF SALT LAKE)

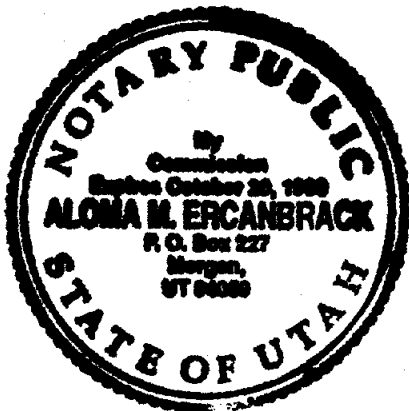
This day, before me, a Notary Public of the State and County aforesaid, personally appeared Alan Noertker, who being by me duly sworn, did say that he is the President of A. D. Services, Inc. a Florida corporation, and that said instrument was signed in behalf of said corporation by authority of its bylaws and said Alan Noertker acknowledged to me that said corporation executed the same.

Witness my hand and official seal this 26th day of October, 1988.


NOTARY PUBLIC
Residing in: Morgan, UT

My commission expires:
10-20-90

(td/rmb/elkrun.pud)



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APPENDIX "B"

<u>Unit #</u>	<u>% of Interest</u>	<u># of Votes</u>
401	.125	1
402	.125	1
403	.125	1
404	.125	1
501	.125	1
502	.125	1
503	.125	1
504	.125	1
	<hr/>	<hr/>
TOTAL	100%	8

ARTICLES OF INCORPORATION

OF

ELK RUN AT PINEBROOK II

HOMEOWNERS ASSOCIATION

In compliance with the requirements of Utah Nonprofit Corporation and Cooperative Association Act, §16-6-12, et seq., Utah Code Annotated, 1953, as amended, the undersigned all of whom are residents of the State of Utah and all of whom are of full age, hereby certify that the following are the Articles of Incorporation of Elk Run at Pinebrook II Homeowners Association.

ARTICLE I

The name of the corporation is Elk Run at Pinebrook II Homeowners Association, hereinafter called the "Association".

ARTICLE II

The period of duration of the Association shall be perpetual.

ARTICLE III

The initial principal office of the Association is located at 9570 South Woodbine Circle, Sandy, Utah 84092.

ARTICLE IV

Alan Noertker, whose address is 9570 South Woodbine Circle, Sandy, Utah 84092 is hereby appointed the initial registered agent of the Association.

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ARTICLE V

PURPOSE AND POWERS OF THE ASSOCIATION

This Association does not contemplate pecuniary gain or profit to the members thereof, and the specific purposes for which it is formed are to provide, for maintenance, preservation and control of the Planned Unit Development known as Elk Run at Pinebrook II within this certain tract of property described on Exhibit "A", attached hereto and hereby incorporated by reference, and to promote the health, safety and welfare of the residents within the above-described property and any additions thereto as may hereafter be brought within the jurisdiction of this Association for this purpose to:

(a) Exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in that certain Declaration of Covenants, Conditions and Restrictions, hereinafter called the "Declaration", applicable to the property and recorded or to be recorded in the Office of the Summit County Recorder, State of Utah, and as the same may be amended from time to time as therein provided, said Declaration being incorporated herein as set forth at length;

(b) Fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental

charges levied or imposed against the property of the Association.

(c) Acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association;

(d) Borrow money, and with the assent of two-thirds (2/3) of each class of members mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(e) Dedicate, sell or transfer all or any part of the common area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument has been signed by two-thirds (2/3) of each class of members, agreeing to such dedication, sale or transfer;

(f) Participate in mergers and consolidations with other nonprofit corporations organized for the same purposes or annex additional residential property and common area, provided that any such merger, consolidation or annexation shall have the assent of two-thirds (2/3) of each class of members;

(g) Have and to exercise any and all powers, rights and privileges which a corporation organized under the Utah Nonprofit Corporation and Cooperative Association Act by law may now or hereafter have or exercise.

ARTICLE VI

MEMBERSHIP

Every person or entity who is a record owner of a fee or undivided fee interest in any lot which is subject to the declaration of record or to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to any may not be separated from ownership of any unit which is subject to assessment by the Association.

ARTICLE VII

VOTING RIGHTS

The Association shall have two (2) classes of voting membership;

Class A. Class A members shall be all owners, with the exception of the Declarant, and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all persons shall be members. The vote for such unit shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any lot.

Class B. The Class B member(s) shall be the Declarant (as defined in the Declaration), and shall be entitled to three (3) votes for each lot owned. The Class B membership shall cease to be converted to Class A. membership on the happening of either of the following events, whichever occurs earlier:

800. 498 PAGE 801

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(b) On December 31, 1991, provided, however, that the Declarant shall transfer control of the Association after 75% of the units in the project have been conveyed to unit purchasers.

ARTICLE VIII

MANAGEMENT COMMITTEE

The affairs of this Association shall be managed by a Board of Directors consisting of three (3) individuals, who need not be members of the Association. The number of Board of Directors may be exchanged by amendment of the Bylaws of the Association. The names and addresses of the persons who are to act in the capacity of Board of Directors until the selection of their successors are:

Name Address

Alan Noertker	9570 South Woodbine Circle Sandy, Utah 84092
Deborah Noertker	9570 South Woodbine Circle Sandy, Utah 84092
DOUGLAS NOERTER	3118 W. Elk Run Drive Park City, Utah 84060

At the first annual meeting, the Declarant under the Declaration or members shall elect one (1) Member of the Board of Directors for a term of three (3) years, one member of the Board of Directors for a term of one (1) year, and one member for a term of one (1) year. At each annual meeting thereafter, the

BOOK 498 PAGE 802

members shall elect a number of memberships then becoming vacant for a term of two (2) years.

ARTICLE IX

DISSOLUTION

The Association may be dissolved with the assent given in writing and signed by not less than three quarters (3/4) of each class of members. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization to be devoted to such similar purposes.

ARTICLE X


BYLAWS

The initial affairs of the corporation shall be regulated by the Bylaws adopted by the Board of Directors.

DATED this 26th day of October, 1988.

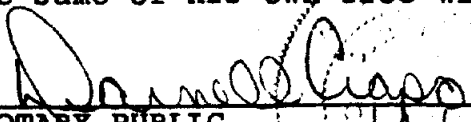

ALAN NOERTKER, individually
and as registered agent


DEBORAH NOERTKER


DOUGLAS NOERTKER

STATE OF UTAH)
 : ss
COUNTY OF ~~SALT LAKE~~)
Summit

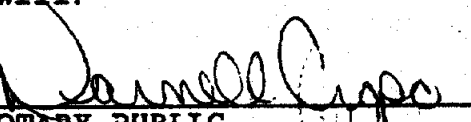
On the 26th day of October, 1988 personally appeared before me Alan Noertker, the signer of the foregoing instrument individually and as registered agent and after being duly sworn, acknowledged to me that he signed the same of his own free will.


NOTARY PUBLIC
Residing in: Summit County

My commission expires:
2/25/90

STATE OF UTAH)
 : ss
COUNTY OF ~~SALT LAKE~~)
Summit

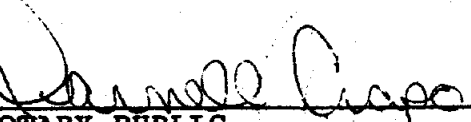
On the 26th day of October, 1988 personally appeared before me Deborah Noertker, the signer of the foregoing instrument and after being duly sworn, acknowledged to me that she signed the same of her own free will.


NOTARY PUBLIC
Residing in: Summit County

My commission expires:
2/25/90

STATE OF UTAH)
 : ss
COUNTY OF ~~SALT LAKE~~)
Summit

On the 26th day of October, 1988 personally appeared before me DOUGLAS NOERTKER the signer of the foregoing instrument and after being duly sworn, acknowledged to me that he signed the same of his own free will.


NOTARY PUBLIC
Residing in: Summit County

My commission expires:
2/25/90

(ld/rmb/elkrun. asc)

BY-LAWS OF

ELK RUN AT PINEBROOK II

HOMEOWNERS ASSOCIATION

ARTICLE I

Offices. The principal offices of the Corporation in the State of Utah shall be located at Elk Run, Pine Brook Road, Park City, Utah 84060.

ARTICLE II

Section 1. Annual Meeting. The annual meeting of the shareholders shall be held during the month of December of each year beginning with the year 1987, for the purpose of electing directors and for the transaction of such other business as may come before the meeting. In the event that such annual meeting is omitted by oversight or otherwise during the month provided for, the directors shall cause a meeting in lieu thereof to be held as soon thereafter as may be convenient, and any business transacted or elections held at such meeting shall be as valid as if transacted or held during the month in which the annual meeting was to be called. If the election of directors shall not be held during the month designated herein for the holding of the annual meeting of shareholders or at any adjournment of any meeting so called, such subsequent meetings

shall be called in the same manner as is provided for the calling of the annual meeting of the shareholders. Such meeting may also be called without the required advance notice if the quorum of shareholders calling such meeting shall obtain from the shareholders of the company, written waiver of notice of such meeting, and such waiver shall be attached to the minutes of the annual shareholders' meeting so called, in the corporate minute book.

Section 2. Special Meetings. Except as otherwise provided by law, special meetings of the stockholders of this Corporation shall be held whenever called by the President or by the Treasurer or by a majority of the Board of Directors, or whenever one or more stockholders who are entitled to vote and who hold at least ten percent (10%) of the capital stock issued and outstanding shall make written application therefor to the Secretary or to an Assistant Secretary, stating the time, the place and the purpose of the meeting called.

Section 3. Place of Meeting. The Board of Directors may designate any place, either within or without the State of Utah, unless otherwise prescribed by statute, as the place of meeting for any annual meeting or for any special meeting called by the Board of Directors. A waiver of notice signed by all shareholders entitled to vote at a meeting may designate any place, either within or without the State of Utah, unless otherwise prescribed by statute, as the place for the holding of such meeting. If no designation is made, or if a special meeting be otherwise called, the place of meeting shall be the principal office of the Corporation in the State of Utah.

BOOK 498 PAGE 806

Section 4. Notice of Shareholders' Meeting. Notice of all shareholders' meetings stating the time and the place and the objects for which such meeting(s) are called shall be given by the President or by a Vice-President or by the Treasurer or by

the Secretary or an Assistant Secretary or by any one or more shareholders entitled to call a special meeting of the shareholders not less than ten (10) days nor more than thirty (30) days prior to the date of the meeting. The notices shall be sent by first class mail, postage prepaid, to each shareholder of record at his address as it appears on the stock record books of the Corporation unless he shall have filed with the Secretary of the Corporation a written request that notice intended for him be mailed to some other address, in which case it shall be mailed to the address designated in such request. The person giving such notice shall make an affidavit in relation thereto.

Any meeting of which all shareholders shall, at any time, waive or have waived notice in writing shall be a legal meeting for the transaction of business notwithstanding that notice has not been given as hereinbefore provided.

Section 5. Waiver of Notice. Whenever any notice whatever is required to be given by these By-Laws, or by the Certificate of Incorporation of this Corporation, or by any of the Corporation laws of the State of Utah, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated herein, shall be deemed equivalent thereto.

BOOK 498 PAGE 807

Section 6. Quorum of Shareholders. Except as herein provided and as otherwise provided by law, at any meeting of shareholders a majority in interest of all the capital stock issued and outstanding represented by shareholders of record in person or by proxy shall constitute a quorum, but a less interest may adjourn any meeting, and the meeting may be held as adjourned without further notice; provided, however, that directors shall not be elected at the meeting so adjourned. When a quorum is present at any meeting, a majority in interest of the stock represented thereat shall decide any question brought before such meeting, unless the question is one upon which by express

provision of law or of the Certificate of Incorporation or of these By-Laws a larger or different vote is required, in which case such express provision shall govern and control the decision of such question.

Section 7. Closing of Transfer Books or Fixing Record Date. For the purpose of determining shareholders entitled to notice or vote at any meeting of shareholders or at any adjournment thereof, or shareholders entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the Board of Directors of the Corporation may provide that the stock transfer books shall be closed for a period not to exceed, in any case, five (5) days. If the stock transfer books shall be closed for the purpose of determining shareholders entitled to notice or to vote at a meeting of shareholders, such books shall be closed for at least two (2) days immediately preceding the date determined to be the date of record. In lieu of closing the stock transfer books, the Board of Directors may fix in advance a date as the record date for any such determination of shareholders, such date in any case to be not more than fifty (50) days, and in the case of a meeting of shareholders, not less than ten (10) days prior to the date on which the particular action requiring such determination of shareholders is to be taken. If the stock transfer books are not closed and no record date is fixed for the determination of shareholders entitled to notice or to vote at a meeting of shareholders or shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the Board of Directors declaring such dividend is adopted, as the case may be, shall be deemed the date of record for such determination of shareholders. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, such determination shall apply to any adjournment thereof.

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Section 8. Voting Lists. The officer or agent having charge of the stock transfer books for the share of the Corporation shall make, at least five (5) days before each meeting of shareholders, a complete list of the shareholders entitled to vote at such meeting, or any adjournment thereof, arranged in alphabetical order, with the addresses of and the number of shares held by each shareholder. For a period of five (5) days prior to such meeting, this list shall be kept on file at the registered office of the Corporation and shall be subject to inspection by any shareholder at any time during normal business hours. Such lists shall also be produced and displayed at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting. The original stock transfer books shall be prima facie evidence as to who the shareholders are who are entitled to examine such lists or transfer books, or to vote at any meeting of shareholders.

Section 9. Proxy and Voting. Shareholders of record may vote at any meeting, either in person or by proxy in writing. All proxies shall be filed with the Secretary of the meeting before being voted. Such proxy shall entitle the holders thereof to vote at any adjournment of such meeting but shall not be valid after the final adjournment thereof. No proxy shall be valid after the expiration of eleven (11) months from the date of execution unless the shareholder executing it shall have specified herein the length of time said proxy is to continue in force, which shall be for some limited period of time. Each shareholder, except as otherwise provided, shall be entitled to one vote for each share of capital stock held by him.

ARTICLE III

Board of Directors.

Section 1. General Powers. The business and the affairs of the Corporation shall be managed by its Board of Directors.

Section 2. Number, Tenure and Qualifications. The number of directors shall be not less than three (3), nor more than (5) directors. Each director shall hold office until the next annual meeting of shareholders or until his successor shall have been duly elected and qualified.

Section 3. Election of Board of Directors. The Board of Directors shall be chosen by ballot at the annual meeting of shareholders or at any meeting held in place thereof, as provided by law.

(Every election of directors by the shareholders (in the event there are more than 100 shareholders) shall be conducted by two (2) inspectors, neither of whom shall be a candidate for the office of director. Said electors to be appointed by the presiding officer of the meeting, but inspectors of the first election of directors and all previous meetings of the shareholders shall be appointed by the Board of Directors.) Before entering upon the discharge of their duties, the inspectors shall be sworn as provided by law. There shall be no inspectors appointed where there is less than 100 shareholders of record attending a meeting or where proxies have not been solicited. The appointment of such inspectors may be waived by the unanimous consent of all shareholders present or represented by proxy at any given meeting. Voting shall be by secret ballot, or if there is no contest for positions on the board, then by voice vote upon motion from the floor for such a vote.

Section 4. Powers of Directors. The Board of Directors shall have the responsibility for the entire management of the business of this Corporation. In the management and control of the property, business and affairs of the Corporation, the Board of Directors is vested with all of the powers possessed by the Corporation itself insofar as this delegation of authority is not inconsistent with the laws of the State of Utah and with the Certificate of Incorporation or with these By-Laws. The Board of Directors shall have the power to determine what constitutes net earnings, profit and surplus, respectively, and what amounts shall be reserved for working capital and for any other purpose and what amounts shall be declared as dividends and such determination by the Board of Directors shall be final and conclusive.

Section 5. Meeting of Directors. Regular meetings of the Board of Directors shall be held at such places and at such times as the Board of Directors by vote may determine, and if so determined, no notice thereof need be given. Special meetings of the Board of Directors may be held at any time or any place within or without the State of Utah whenever called by the President, Vice-President, Treasurer, Secretary and Assistant Secretary or two (2) directors, notice thereof being given to each director by the Secretary or an Assistant Secretary or by the officer calling the meeting, or by delivering the same to him personally or telegraphing the same to him at his residence or business address not later than forty-eight (48) hours prior to the date on which the meeting is to be held. In case of emergency, the chairman of the Board of Directors or the President may prescribe a shorter notice to be given personally or by telegraphing each director at his residence or business address. Such special meeting shall be held at such time and place as the notice thereof or waiver shall specify. The officers of the Corporation shall be elected by the Board of Directors after its election by the shareholders, and a meeting may be held without notice for this purpose immediately after the annual meeting of shareholders and at the same place.

Section 6. Quorum of Directors. A majority of the members of the Board of Directors as constituted for the time being shall constitute a quorum for the transaction of business, but a lesser number not less than two (2) may adjourn any meeting and the meeting may be held as adjourned without further notice. When a quorum is present at any meeting, the majority of the members present thereat shall decide any question brought before such meeting except as otherwise provided by law or by these By-Laws.

Section 7. Vacancies. Any vacancy occurring in the Board of Directors may be filled by an affirmative vote of the majority of the remaining directors though not less than a quorum of the Board of Directors, unless otherwise provided by law or by the Certificate of Incorporation. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. Any directorship to be filled by reason of an increase in the number of directors shall be filled by election at the annual meeting or at a special meeting of shareholders called for the purpose.

Section 8. Compensation. By resolution of the Board of Directors, directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for such attendance at each meeting of the Board of Directors or a stated salary as director. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

Section 9. Presumption of Assent. A director of the Corporation who is present at a meeting of the Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent of such action with the person acting as secretary of the meeting or the adjournment thereof, or

shall forward such dissent by registered mail to the Secretary of the Corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

Section 10. Formal Action by Directors. Unless otherwise provided by law, any action required to be taken at a meeting of the Board of Directors or any other action which may be taken at a meeting of the Board of Directors may be taken without a meeting if a consent in writing, setting forth the action so taken shall be signed by all the directors entitled to vote with respect to the subject matter thereof.

ARTICLE IV

Officers.

Section 1. Officers of the Corporation. The officers of this Corporation shall be a President, a Vice-President or Vice-Presidents, as the case may be, a Secretary, and an Assistant Secretary, if so required, and a Treasurer. The Board of Directors who, when present, shall preside at all meetings of the Board of Directors, shall have other such powers as the Board of Directors may, from time to time, prescribe.

Section 2. Eligibility of Officers. The President and chairman of the Board of Directors need not be shareholders but shall be directors of the Corporation. The Vice-President or Vice-Presidents, Secretary and/or Assistant Secretary, Treasurer, and such other officers as may be elected or appointed, need not be shareholders or directors of the Corporation. Any person may hold more than one office provided the duties thereof can be consistently performed by the same person; provided, however, that no person shall, at any time, hold the three (3) offices of President, Vice-President and Secretary-Treasurer.

Section 3. Additional Officers and Agents. The Board of Directors at its discretion, may appoint a General Manager, one or more Assistant Treasurers and one or more Assistant Secretaries and such other officers or agents as may be deemed advisable and prescribe the duties thereof.

Section 4. Election and Term of Office. The officers of the Corporation to be elected by the Board of Directors shall be elected annually by the Board of Directors at the first meeting of the Board of Directors held after each annual meeting of the shareholders. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as may be convenient. Each officer shall hold office until his successor shall have been duly elected and shall have qualified or until his death or until he shall resign or have been removed in the manner hereafter provided.

Section 5. President. The President shall be the chief executive officer of the Corporation and, when present, shall preside at all meetings of the shareholders and unless a chairman of the Board of Directors has been elected and is present, shall preside at meetings of the Board of Directors. The President or Vice-President, unless some other person is specifically authorized by vote of the Board of Directors, shall sign all certificates of stock, bonds, deeds, mortgages, extension agreements, modification of mortgage agreements, leases and contracts of the Corporation. He shall perform all the duties commonly incident to his office and shall perform such other duties as the Board of Directors shall designate from time to time.

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Section 6. Vice-President or Vice-Presidents. Except as specifically limited by vote of the Board of Directors, any Vice President shall perform the duties and have the powers of the President during the absence or disability of the President and shall have the power to sign all certificates of stock, bonds, deeds and contracts of the Corporation. He shall perform such other duties and have such other powers as the Board of Directors shall, from time to time, designate.

Section 7. Secretary or Assistant Secretary. The Secretary shall keep accurate minutes of all meetings of the shareholders of the Board of Directors and shall perform such other duties and have such other powers as the Board of Directors shall, from time to time, so designate. The Secretary shall have the power, together with the President or Vice-President(s), to sign certificates of stock of the Corporation. In his absence at any meeting, an Assistant Secretary or a Secretary Pro Tempore shall perform his duties thereat. The Secretary, any Assistant Secretary, and any Secretary Pro Tempore shall be sworn to the faithful discharge of their duties.

Section 8. Treasurer. The Treasurer, subject to the order of the Board of Directors, shall have the care and custody of the money, funds, valuable papers, and documents of the Corporation (other than his own bond, if any, which shall be in the custody of the President), and shall have and exercise, under the supervision of the Board of Directors, all the powers and duties commonly incident to his office and shall give bond in such form and with such sureties as shall be required by the Board of Directors. He shall deposit all funds of the Corporation in such bank or banks, trust company or trust companies, or with such firm or firms doing a banking business as the directors shall, from time to time, so designate. The Treasurer may endorse for deposit or collection all checks and notes payable to the Corporation or to its order, may accept drafts on behalf of the Corporation and, together with the President or Vice-President,

may sign certificates of stock. He shall keep accurate books of account of the Corporation's transactions which shall be the property of the Corporation and, together with all property in his possessions, shall be subject at all times to the inspection and control of the Board of Directors.

All checks, drafts, notes or other obligations for the payment of money shall be signed by such officer or officers or agent or agents as the Board of Directors shall, by general or special resolution, direct. The Board of Directors may also in its discretion, require by general or special resolutions, that checks, drafts, notes and other obligations for the payment of money shall be countersigned or registered as a condition to their validity by such officer or officers or agent or agents as shall be directed in such resolution.

Section 9. Resignations and Removals. Any director or officer of the Corporation may resign at any time by giving written notice to the Corporation, to the Board of Directors, or to the Chairman of the Board, or to the President or Secretary of the Corporation. Any such resignation shall take effect at the time specified therein or, if the time be not specified therein, upon its acceptance by the Board of Directors.

The shareholders at any meeting called for the purpose by vote of a majority of the stock issued and outstanding, may remove from office any director or other officer elected or appointed by the shareholders or Board of Directors and elect or appoint his successor. The Board of Directors, by vote of not less than a majority of the entire board, may remove from office any officer or agent elected or appointed by it.

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Section 10 Vacancies. If the office of any director or officer or agent becomes vacant by reason of death, resignation, removal, disqualification or otherwise, the directors may, by vote of a majority of a quorum, choose a successor or successors who shall hold office for the unexpired term. Vacancies in the Board of Directors may be filled for the unexpired term by the shareholders at a meeting called for the purpose unless such vacancy shall have been filled by the directors. Vacancies resulting from an increase in the number of directors may be filled in the same manner.

Section 11. Salaries. The salaries of the officers shall be fixed from time to time by the Board of Directors, and no officer shall be prevented from receiving such salary by reason of the fact that he is also a director of the Corporation.

ARTICLE V

Contracts, Loans, Checks and Deposits.

Section 1. Contracts. The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name and on behalf of the Corporation, and such authority may be general or confined to specific instances.

Section 2. Loans. No loans shall be contracted on behalf of the Corporation and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

Section 3. Checks, Drafts, Etc. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or officers, agent or agents of the Corporation, and in such manner as shall, from time to time, be determined by a resolution of the Board of Directors.

Section 4. Deposits. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors may, in its sole discretion, select.

Section 5. Nothing contained in this Article V shall, in any way conflict, or in any way otherwise, hamper the duties and obligations as set forth for the Treasurer of the Corporation, as provided in Article IV, Section 8 hereof.

ARTICLE VI

Certificates for Shares and Their Transfer

Section 1. Certificates of Stock. Every shareholder shall be entitled to a certificate or certificates of the common stock of the Corporation in such form as may, from time to time, be prescribed by the Board of Directors; such shares shall be duly numbered and sealed with the corporate seal of the Corporation and set forth the number and kind of shares. Such certificates shall be signed by the President or a Vice-President and by the Treasurer or an Assistant Treasurer or by the Secretary or an Assistant Secretary.

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Section 2. Transfer of Stock. Shares of stock may be transferred by delivery of the certificate accompanied either by an assignment in writing on the back of the certificate or by a written power of attorney to sell, assign and transfer the same on the books of the Corporation, signed by the person appearing by the certificates to be the owner of shares represented thereby, together with all necessary federal and state transfer tax stamps affixed, and shall be transferable on the books of the Corporation upon surrender thereof so assigned or endorsed. The person registered on the books of the Corporation as to the owner of any shares of stock or subordinated convertible debentures shall be entitled to all rights of ownership with respect to such shares or subordinated convertible debentures. It shall be the duty of every shareholder or registered debenture holder to notify the Corporation of his present post office address.

Section 3. Transfer Books. The transfer books of the stock of the Corporation may be closed for such period, not exceeding fifty (50) days, unless such period of time shall otherwise be limited by these By-Laws, by the laws of the State of Utah, or by the Certificate of Incorporation, in anticipation of shareholders' meetings as the Board of Directors may, from time to time, determine. In lieu of closing the transfer books, the Board of Directors may fix a day not more than fifty (50) days prior to the day of holding any meeting of the shareholders as the day as of which the shareholders entitled to notice of and to vote at such meeting shall be determined; and only shareholders of record on such day shall be entitled to notice of or to vote at such meeting. The holders of the subordinated convertible debentures shall be responsible for all of the duties and obligations under this paragraph and be subject to the rights and privileges afforded shareholders under this paragraph and any other paragraph of these By-Laws except that the holder of a subordinated convertible debenture will have no voting rights in the Corporation.

Section 4. Loss of Certificate. In case of the loss, mutilation or destruction of a certificate of stock or a certificate representing a subordinated convertible debenture, a duplicate certificate may be issued upon such terms as the Board of Directors shall, from time to time prescribe.

Section 5. Seal. The seal of this Corporation shall consist of a flat-faced circular die with the imprint engraved thereon, which appears below this paragraph on this page of the By-Laws:

ARTICLE VII

Fiscal Year. The fiscal year of the Corporation shall be determined by the Board of Directors of the Corporation.

ARTICLE VIII

Waiver of Notice. Unless otherwise provided by law, whenever any notice is required to be given to any shareholder or holder of a certificate evidencing ownership of a subordinated convertible debenture, or director of the Corporation under the provisions of these By-Laws or under the Certificate of Incorporation, a waiver of notice thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

ARTICLE IX

Miscellaneous.

Section 1. The Board of Directors shall have the power to fix, and from time to time, to change the fiscal year of the Corporation. Unless otherwise fixed by the Board of Directors, the calendar year shall be the fiscal year.

Section 2. The Board of Directors shall, at all times, keep themselves informed and take such steps and necessary actions as a reasonable, prudent man would do to serve the best interest of the Corporation.

ARTICLE X

Amendments. The By-Laws of the Corporation, regardless of whether made by the shareholders or by the Board of Directors, may be amended, added to or replaced by a vote of the holders of not less than two-thirds (2/3) of the issued and outstanding capital stock. The capital stock shall bear a vote on the basis of one vote for each share of stock, and voting on such resolutions or amendments to these By-Laws may take place at any meeting of the shareholders, provided notice of the proposed change is given and the notice of the meeting, or notice thereof, is waived in writing.

The foregoing By-Laws were adopted by Elk Run at Pine Brook Homeowners Association at a meeting of the Incorporators of said Corporation held on the 26 day of Oct., 1988.

Deborah Koertner
SECRETARY