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UTAH COUNTY RECORDER
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DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR
THE COTTAGES AT EAGLE POINTE
(AND BYLAWS)

Community Associations assume many forms and take on various maintenance and enforcement obligations. The Cottages at Eagle Pointe have been created with a Community Wide Standard for issues such as architectural design, landscaping, fencing and other important aesthetic concerns. The resulting homeowners association ("Association"), created pursuant to this Declaration and the Bylaws, is vested with the authority to maintain a consistent architectural, landscaping and common area maintenance plan consistent with this Community Wide Standard. It is intended that all actions and decisions of the Board of Directors or its Committees be consistent with this Community Wide Standard.

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (hereafter "Declaration") is made on the date evidenced below by Eagle Point Developers, LLC, and CDC Constructors, LLC. (hereafter "Declarant").

RECITALS

A. The Declarant is the owner of certain land in Utah County, Utah, shown on the plat entitled, "Eagle Crest No. 4 at Suncrest" recorded among the Recorder's Office of Utah County, Utah, Recorder's Office (the "Recorder's Office"), in Plat Book 10716.

B. The property subjected to this Declaration is also subjected to the covenants, conditions, easements and restrictions for Suncrest, a planned community, recorded as Entry Number 7543075, Salt Lake County Recorder, Utah.

C. It is the intention and desire of the Declarant to develop the land subject to this Declaration, as a single family residential community to help insure a uniform plan and scheme of development.

D. It is further intended that seventy-one (71) single family homes will be constructed. Declarant, however, has no legal obligation to construct the number of homes set forth herein, but does provide this information as an initial projection to homeowners.

E. A single homeowners association shall manage the affairs of the single family lots.

F. The Declarant has adopted, imposed and subjected the property hereinafter described to certain covenants, conditions, restrictions, easements, charges and liens (collectively, the "Covenants"), as set forth herein for the following purposes:

(1) To insure uniformity in the development of the Lots (as hereinafter defined) in the Community (as hereinafter defined).

(2) To facilitate the sale by the Declarant, its successors and assigns, of the land in the Community by reason of its ability to assure such purchasers of uniformity.

(3) To make certain that the Covenants shall apply uniformly to all Lots for the mutual advantage of the Declarant, the Owners and any Mortgagee (as such capitalized terms are defined herein) and to all those who may in the future claim title through any of the above.

NOW, THEREFORE, the Declarant does hereby establish and impose upon the Property (as hereinafter defined), the Covenants for the benefit of, and to be observed and enforced by, the Declarant, its successors and assigns, the Association, as well as by all purchasers of Lots, to wit:

ARTICLE I

DEFINITIONS

The following words when used in this Declaration (unless the context otherwise requires) shall have the following meanings:

1.1 "Architectural Review Committee" or "ARC" means that committee constituted and acting pursuant to Article VIII below. It is the intent, however, that the Board of Directors shall serve in all respects as the ARC unless otherwise appointed as outlined herein.

1.2 "Assessment" means any charge imposed or levied by the Association on or against an Owner or Lot pursuant to the terms of this Declaration, the Bylaws or applicable law.

1.3 "Association" means and refers to The Cottages at Eagle Pointe Homeowners Association. Said Association shall administer the affairs of all common areas, Lots and single family homes within the Property.

1.4 "Builder" means any person or entity, if any, other than the Declarant, which shall, in the ordinary course of such person's business, construct a dwelling on a Lot and sell or lease it to another person to occupy as such person's residence.

1.5 "Bylaws" means the Bylaws of the Association and recorded simultaneously with this Declaration, as they may be amended from time to time.

1.6 "Common Areas" means:

(a) Those areas of land intended to be devoted to the common use and enjoyment of the Owners and designated as common area

on any Plat Map of the Property, or in this Declaration.

(b) Any other real property or other facilities which the Association owns or in which the Association acquires a right of use for the benefit of the Association and its members.

1.7 "Community" means all of the land described in attached **Exhibit A**.

1.8 "Community Wide Standard" means the standard of conduct, maintenance, or other activity/aesthetics generally prevailing in the community, as originally established by the Declarant.

1.9 "Declarant" means Eagle Pointe Developers, LLC and CDC Constructors, LLC and any successor or assigns thereof to whom it shall expressly (a) convey or otherwise transfer all of its right, title and interest in the Property as an entirety, without reservation of any kind; or (b) transfer, set over and assign all of its right, title and interest under this Declaration, or any amendment or modification thereof.

1.10 "Development Period" means the time between the date of recordation of this Declaration with the Recorder's Office and the date on which the responsibilities for managing the common affairs of the Association to turned over to the Owners.

1.11 "Improvements" means every structure or improvement of any kind, (which may be "approved" improvements or "violating" improvements) including but not limited to landscaping required under Section 8.3 below and any Living Unit, deck, porch,

awning, fence, garage, carport, driveway, storage shelter or other product of construction efforts on or in respect to the Property (but does not include any exterior antenna or satellite dish, authorized in accordance with the Declaration).

1.12 "Living Unit" or "Unit" means a Lot with a structure situated upon it that is designated and intended for use and occupancy as a residency by a single family.

1.13 "Lot" or "Lots" means a subdivided parcel, lot or plot of ground (exclusive of the Common Area) and designated on the Plat.

1.14 "Mortgage" means any mortgage or deed of trust encumbering any Lot or any or all of the Common Area, and any other security interest existing by virtue of any other form of security instrument or arrangement, provided that such mortgage, deed of trust or other form of security instrument, and an instrument evidencing any such other form of security arrangement, has been recorded among the Recorder's Office.

1.15 "Mortgagee" means the person or entity secured by a Mortgage.

1.16 "Owner" means the person or persons owning any Lot (including the holder of a vendee's interest under a land sale contract, unless otherwise stated in the contract), but does not include a tenant or holder of a leasehold interest or person holding only a security interest in a Lot (including the holder of a vendor's interest under a land sale contract, unless otherwise stated in the contract).

1.17 "Plat" means the plat entitled, "Eagle Crest No. 4 at Suncrest" to be recorded among the Recorder's Office of Utah County, Utah, and any plats recorded among the

Recorder's Office in substitution thereof or amendment thereof.

1.18 "Property" means all of the real property described in attached **Exhibit A**.

1.19 "Single Family Lot" shall mean those Lots upon which there are constructed a single family detached dwelling.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

The real property which is, and shall be, transferred, held, sold, conveyed and occupied subject to this Declaration is located in Utah County, Utah, also known as "the Community," and is described on **Exhibit "A"** attached hereto, all of which real property is referred to herein as the "Property."

NOTES

Declarant declares that all of the Property shall be owned, conveyed hypothecated, encumbered, used, occupied and improved subject to this Declaration. The easements, covenants, conditions, restrictions and charges, described in this Declaration shall run with the Property and shall be binding upon all parties having or acquiring any right, title or interest in such property or any part thereof and shall inure to the benefit of the Association, and each Owner thereof. Declarant shall have continuing easement right, after turnover of administrative control to the Owners, as set forth hereafter and as necessary to complete the Community Wide Standard described herein.

ARTICLE III

EXPANSION OF COMMUNITY

3.1 Additions to Property. No additional property will be added to the Community.

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ARTICLE IV**PROPERTY RIGHTS IN LOTS**

4.1 Use and Occupancy.

Except as otherwise expressly provided in this Declaration or the Bylaws, the Owner of a Lot shall be entitled to the exclusive use and benefit of such Lot and Living Unit. Each Lot shall be bound by, and the Owner shall comply with, the restrictions contained in all of the provisions of this Declaration and the Bylaws for the mutual benefit of the Owners.

4.2 Restriction on Lot Division.

All Owners are prohibited from dividing any and all Lots subject to this Declaration.

4.3 Easements Reserved.

In addition to the easements shown on the Plat or provided for under this Declaration, the Bylaws or law, the following easements are hereby reserved for the benefit of Declarant, its successor and assigns, the Owners and the Association:

(a) Right of Entry. The Declarant, the Association and any person authorized by the same may at any reasonable time, and from time to time at reasonable intervals, enter upon any Lot for the purpose of performing maintenance referred to in this Declaration and determining whether or not the Lot is in compliance with this Declaration and Bylaws.

Requests for entry shall be made in advance and at a time convenient to the Owner, except in the case of an emergency, when such right shall be immediate. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Lot. The right of entry granted by the subsection applies only to Lots upon which the

Association has maintenance responsibilities as provided for in this Declaration or any supplement thereto.

(b) Utility Easements. Declarant, its successors and assigns, the Association, or any public utility provider shall have an easement over all Lots for the installation, maintenance and development of utilities and drainage facilities. The easement area of each Lot and all Improvements therein shall be maintained continuously by the Owner of the Lot of the Association in accordance with this Declaration, except for those improvements for which a public authority or utility provider is responsible.

(c) Additional Declarant Easement and Rights. From the date of recording this Declaration and for an additional period of two (2) years from the date of the closing the sale of the last Lot within the Community, the Declarant shall retain the right to enter upon the Common Areas and/or upon any Lot, without any claims of trespass or nuisance, for the purposes of fulfilling, modifying, erecting or correcting any Declarant installed Improvements (including but not limited to drainage systems, retaining walls, etc.). If any excavation or disruption to any landscaping is caused, the Declarant shall restore the premises to its condition immediately prior to utilizing the rights granted under this provision.

4.4 Easements Shown on the Plat.

Lots shall be subject to the easements shown on the Plat.

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ARTICLE V

PROPERTY AND USE RIGHTS IN COMMON AREA

5.1 Title to Common Area.

Title to the Common Area shall be conveyed to the Association by the Declarant not later than the Turnover Date set forth herein free and clear of all monetary encumbrances.

5.2 Member's Right of Enjoyment.

(a) Every member of the Association shall have a non-exclusive right and easement for the use, benefit and enjoyment, in common with others, in and to the Common Area and such nonexclusive right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the restrictions herein set forth.

(b) Except as otherwise permitted by the provisions of this Declaration, the Common Area shall be retained in the original state and condition as created by the Declarant.

(c) No portion of the Common Area may be used exclusively by any Owner or Owners for personal gardens, storage facilities or other private uses.

5.3 Nuisance.

No noxious or offensive activity shall be carried on upon the Common Area nor shall anything be done thereon which will become an annoyance or nuisance to the Community.

5.4 Restrictions.

The right of each member of the Association to use the Common Area shall be subject to the following:

(a) Any rule or regulation now or hereafter set forth in this Declaration and, further, shall be subject to any rule or regulation now or hereafter adopted by the Board of Directors for the safety, care, maintenance, good order and cleanliness of the Common Area. All such rules shall promote the Community Wide Standard;

(b) The right of the Association to dedicate or transfer all or any part of the Common Area to any public or municipal agency, authority or utility for purposes consistent with the purpose of this Declaration and subject to such conditions as may be agreed to by the members; and further subject to the written consent of the transferee or any relevant municipality; provided, however, that except no dedication, transfer, mortgage, or determination as to the purposes or as to the conditions thereof, shall be effective unless two-thirds (2/3) of the members (excluding the Declarant) of the Association consent to such dedication, transfer, purpose and conditions; and

(c) The right of the Association, acting by and through its Board of Directors, to grant licenses, rights-of-way and easements for access or for the construction, reconstruction, maintenance and repair of any utility lines or appurtenances, whether public or private, to any municipal agency, public utility, the Declarant or any other person; provided, however, that no such license, right-of-way or easement shall be unreasonably and permanently inconsistent with the rights of the members to the use and enjoyment of the Common Area.

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5.5 Compliance with Covenants and Restrictions and Rules and Regulations.

Each Owner shall comply with the covenants and restrictions imposed by this Declaration on the use and enjoyment of their Lots and the Common Area. Further, each Owner shall fully and faithfully comply with the rules, regulations and restrictions applicable to use of the Lots and Common Area, as such rules, regulations and restrictions are from time to time adopted by the Association for the safety, care, maintenance, good order and cleanliness of the Community.

ARTICLE VI
ENCROACHMENTS

6.1 *No Encroachment*

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No Lot or Living Unit shall encroach upon an adjoining Lot, Living Unit or the Common Area.

6.2 *Conveyance of Easements*

The conveyance or other disposition of a Lot shall be deemed to include and convey, or be subject to, any easements arising under the provisions of this Article without specific or particular reference to such easement.

6.3 *Owner Liability*

Nothing in this section shall relieve an Owner of liability in the case of the Owner's willful misconduct or failure to adhere to the Plat.

ARTICLE VII

*BUDGET, EXPENSES AND ASSESSMENTS***7.1 Covenant for Assessment.**

(a) Each Owner, for each Lot owned by it within the Property, hereby covenants by acceptance of a deed hereafter conveying any such Lot to it, whether or not so expressed in the deed or other conveyance, shall be deemed to have covenanted and agreed to pay the Association the following types of assessments:

(1) Annual assessments ("Annual Assessment") as provided in Section 7.2 below.

(2) Special assessments ("Special Assessments") as provided in Section 7.7 below.

(3) Emergency assessments ("Emergency Assessments") as provided in 7.10 below.

(4) Individual assessments ("Individual Assessments") as provided in Section 7.11 below.

(b) Assessments shall be established and collected as provided in this Article. Such collection procedures may be augmented by a "collection policy" adopted by the Board.

(c) No member may exempt itself from liability for Assessments by abandonment of any Lot owned by such member or by the abandonment of the member's right to the use and enjoyment of the Common Area.

7.2 Annual Budget and Assessment.

(a) Adoption of Budget.

(1) The Board of Directors shall prepare, or cause the preparation of, an annual budget for the Association, which shall provide, without limitation, for the maintenance of the Common Area and for the administration, management and operation of the Association. If Board fails to adopt an annual budget, the last adopted budget shall continue in effect.

(b) Determination of Annual Assessment.

(1) The Board of Directors of the Association shall fix the amount of the annual assessment ("Annual Assessment") against each Lot for each assessment period at least thirty (30) days in advance of the beginning of the period. Written notice of the Annual Assessments shall be sent to all members of the Association at least thirty (30) days in advance of the beginning any assessment period.

(2) The omission by the Board of Directors, before the expiration of any assessment period, to fix the amount of the Annual Assessment for that or the next period, shall not be deemed a waiver or modification in any respect of the provisions of this Article or a release of any member from the obligation to pay the Annual Assessment, or any installment thereof, for that or any subsequent assessment period. In the event of such omission, the Annual Assessment fixed for the preceding period shall continue until a new assessment is fixed.

7.3 *Apportionment of Assessments.*

Subject to Subsection (f) of this section, assessments shall be apportioned as follows:

(a) Annual, Special and Emergency Assessments. Subject to the following, all Lots shall pay a pro rata share of the Annual Assessment, Special Assessments and Emergency Assessments commencing upon the date the Lots are made subject to this Declaration.

(b) Individual Assessments. Individual Assessments shall be apportioned exclusively against the Lots benefitted or to which the expenses are attributable as provided in Section 7.11 below.

(c) Lot Assessments. Lot Assessments shall include common expenses and equal assessments for any areas and property of the Association which benefit all Single Family Lot residents.

(d) Payment of Assessments. Upon resolution of the Board of Directors, installments of Annual Assessments may be levied and collected on a quarterly, semi-annual or annual basis rather than on the monthly basis. Any member may prepay one or more installments of any Assessment levied by the Association, without premium or penalty.

(e) Declarant Assessments. The Declarant shall be exempt from all assessments for any Lots owned by the Declarant until such time as a Living Unit and its landscaping are completed and a final inspection/certificate of occupancy has been issued by the City. Thereafter, the Declarant shall pay all assessments under this Article.

(f) Deferral of Payment of Assessment for Reserves. After a the date a Use and Occupancy Permit is issued by the proper authorities of the Draper City, Utah, for any Lot owned by Declarant, the Declarant may elect to defer payment to the Association of that portion of the Annual Assessment or Emergency Assessment attributable to reserves or any Individual Assessment for the particular Lot until the closing of the sale of the Lot.

7.4 *Lien.*

The Annual Assessment and all other Assessments imposed shall be a charge and continuing lien upon each of the Lots against which the assessment is made in accordance with the terms and provisions of this Article VII and shall be construed as a real covenant running with the land.

7.5 *Personal Obligation and Costs of Collection.*

(a) Assessments imposed under this Declaration, together with interest at a rate to be established by resolution of the Board of Directors, not to exceed the maximum permitted by law, and costs and reasonable attorneys' fees incurred or expended by the Association in the collection thereof, shall also be the personal obligation of the Owner holding title to any Lot at the time when the assessment became due.

(b) The personal obligation for any delinquent Assessment, together with interest, costs and reasonable attorneys' fees, however, shall not pass to the Owner's successor or successors in title unless expressly assumed by such successor or successors.

7.6 *Purpose of Assessments.*

The Assessments levied by the Association shall be used exclusively for the purpose of promoting the Community Wide Standard as it relates to aesthetic, architectural, recreational, health, safety, and welfare concerns of the residents of the Community, including, but not limited to:

- (a) The improvement and maintenance, operation, care, services and facilities related to the use and enjoyment of the Common Area;
- (b) The payment of any taxes on the Common Area (except to the extent that proportionate shares of the public charges and assessments on the Common Area may be levied against all Lots by the tax collecting authority so that the same is payable directly by the Owners thereof, in the same manner as real property taxes are assessed or assessable against the Lots);
- (c) The payment of insurance premiums on the Common Area;
- (d) The costs of repair, replacement and additions to the Common Area and improvements thereon;
- (e) The cost of obtaining, planting and thereafter maintaining street trees or other common area landscaping, if any, throughout the Community if required by Draper City.
- (f) The cost of maintaining any area determined by the Declarant, to further the Community Wide Standard, to be a community expense whether located on private property or municipal property.

(f) The costs of utilities and other services which may be provided by the Association for the Community as may be approved from time to time by a majority of the members of the Association;

(g) The cost of labor, equipment, insurance, materials, management, legal and administrative fees incurred or expended in performing the duties under this Declaration or the Bylaws;

(h) The cost of maintenance, insurance and replacement of any playground equipment, trails, or lighting, if any;

(i) Unless otherwise dedicated to Draper City, the cost of maintaining, insuring and replacing the private roads, parks and common area sidewalks of the Association;

(j) The cost of funding all reserves established by the Association, including a general operating excess and a reserve for replacements in accordance with Section 7.16 below; and

(k) Any other items properly chargeable as an expense of the Association.

7.7 *Special Assessments.*

In addition to the Annual Assessments authorized in this Article, the Association may levy in any assessment year, a special assessment ("Special Assessment"), applicable for that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement located on the Common Area, including fixtures and personal property related thereto; provided that such assessment shall first be approved by two-thirds (2/3) of the votes of members of the Association other

than the Declarant, voting in person or by proxy at a meeting duly called for such purpose and the written consent of Declarant until the Turnover Meeting and thereafter as long as Declarant owns at least one Lot.

7.8 Notice and Quorum for any Action Authorized Under Section 7.7 and 7.10.

(a) Written notice of any meetings of members of the Association called for the purpose of taking any action authorized under Sections 7.7 and 7.10 of this Article shall be sent to all members not less than thirty (30) days, nor more than sixty (60) days, in advance of the meeting. At the first such meeting called, the presence at the meeting of members or of proxies, entitled to cast sixty percent (60%) of all of the votes of the members, other than the Declarant, entitled to be cast at such a meeting shall be necessary and sufficient to constitute a quorum.

(b) If the required quorum is not present to adopt a special assessment, another meeting may be called subject to the same notice requirements, and the required quorum at any subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting, provided that no subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

7.9 Commencement and Due Date of Assessments.

(a) Commencement of Assessments. Except for the Declarant as stated above, the full Annual Assessment or Emergency Assessment as to any Lot shall commence the date the Lot is conveyed to any person or entity other than the Declarant or a Builder.

(b) Dues Dates.

(1) The Annual Assessments shall be due and payable on a monthly basis on the first (1st) calendar day of each month, unless otherwise provided by resolution of the Board of Directors, and shall be delinquent if not paid within thirty (30) days after the due date.

(2) The due date of any Special Assessment, Emergency Assessment or other Assessment shall be fixed in the resolution authorizing the Assessment.

(c) Commencement of Assessment for Replacement Reserves.

(1) The portion of the Annual or Individual Assessments allocated for major maintenance and replacement reserves as described in Section 7.16 below shall commence to accrue upon the closing of the sale of the first Lot in the Community for which the reserve is established.

(2) After the date a Use and Occupancy Permit is issued by the proper authorities of the Draper City, Utah, for any Lot owned by the Declarant, the Declarant may elect to defer payment to the Association of that portion of the Annual Assessment or any Emergency Assessment attributable to reserves or any Individual Assessment for the particular Lot until the closing of the sale of the Lot.

However, the Declarant may not defer payment of accrued assessments for reserves beyond the Turnover Meeting or if the Turnover Meeting is not held, the date the Owners assume administrative responsibilities of the Association.

(3) Declarant shall deposit the balance due the Association within thirty (90) days after the date due specified in paragraph (2) of this subsection.

7.10 Emergency Assessments.

(a) If the Annual Assessments levied at any time are, or will become, inadequate to meet all expenses incurred under this Declaration for any reason, including nonpayment of any Owner's Assessments on a current basis, the Board of Directors shall, as soon as practicable, determine the approximate amount of the inadequacy and adopt a resolution which establishes a supplemental budget and levies the additional assessment ("Emergency Assessment"). The resolution shall specify the reason for the Emergency Assessment.

(b) Any Emergency Assessment in the aggregate in any fiscal year that would exceed an amount equal to five percent (5%) of the budgeted expenses of the Association for the fiscal year may be levied only if approved by not less than a majority of the members other than the Declarant voting in person or by proxy, at a meeting duly called for such purpose and the written consent of Declarant until the Turnover Meeting and thereafter as long as Declarant owns at least one Lot.

(c) Emergency Assessments shall be apportioned as provided in Section 7.3 above.

7.11 Individual Assessments.

(a) Any expenses benefitting or attributable to fewer than all of the Lots may be assessed exclusively against the Lots affected or benefitted ("Individual Assessment"). Individual Assessments shall

include, but are not limited to:

(1) Assessments levied against any Lot to reimburse the Association for costs incurred in bringing the Lot or its Owner into compliance with the provisions of this Declaration or rules and regulations of the Association and for fines or other charges imposed pursuant to this Declaration for violation of this Declaration, the Bylaws or any rules and regulations of the Association.

(2) Expenses relating to the cost of maintenance, repair, replacement and reserves of the Lots as may be specified in this Declaration.

(3) Any reasonable services provided to an unimproved or vacant Lot by the Association due to an Owner's failure to maintain the same in order to protect the health, safety and welfare of adjoining Lot Owners and the Association in general.

(4) Costs attributable to secondary, non-culinary water usage that exceeds a Board determined standard and/or average for each Lot.

7.12 Nonpayment of Assessments.

Any assessment or portion thereof not paid within thirty (30) days after the (1st calendar day of month due:

(a) Shall be delinquent and shall bear interest from the date of delinquency at the rate, established by resolution of the Board of Directors, not to exceed the maximum rate permitted by law, and

(b) Shall be subject to a late charge of Twenty-Five Dollars (\$25.00) per month until paid, or ten percent (10%) of the assessment, whichever is greater; and

(c) If paid by installments, may, in the discretion of the Board, be accelerated (including interest as provided for above) and the entire balance declared due and payable upon not less than ten (10) days' written notice to the Owner.

7.13 Subordination of Lien to Mortgages.

(a) The lien of the Assessments provided for in this Article shall be subordinate to the lien of any first mortgagees or deeds of trust now or hereafter placed upon the Lot subject to assessment, except as provided in subsection (b) of this section.

(b) The sale or transfer of any Lot pursuant to mortgage or deed of trust foreclosure, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. Such sale or transfer shall not relieve the Lot from liability for any Assessments thereafter becoming due, nor from the lien of any future assessment.

7.14 Enforcement of Lien.

The Association may establish and enforce the lien for any Assessment, including Annual, Special, Individual (including fines) or otherwise, pursuant to the provisions of this Declaration. The lien is imposed upon the Lot against which the Assessment is made. The lien may be established and enforced for damages, interest, costs of collection, late charges permitted by law, and attorneys' fees provided for in this Declaration or by law or awarded by a court for breach of any provisions of this Declaration, the Bylaws or any rules and regulations of the Association.

The lien may foreclosed judicially in the manner of mortgages or non-judicially in the manner of deeds of trust. In all such non-judicial foreclosures, the Association's attorney shall be the Trustee authorized to effectuate the foreclosure proceedings.

7.15 Exempt Property.

The Common Area and all Lots owned by the Association or dedicated to and accepted by a public authority and all property owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Utah shall be exempt from the assessments created under this Declaration.

7.16 Reserve Funds.

(a) The Association shall establish and maintain a reserve fund for repairs and replacements of the Common Area by the allocation and payment monthly to such reserve fund of in an amount to be designated from time to time by the Board of Directors. The fund shall be conclusively deemed to be a common expense of the Association and may be deposited with any banking institution, the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board of Directors, be invested in obligations of, or fully guaranteed as to principal by, the United States of America.

(b) The Association may establish such other reserves for such other purposes as the Board of Directors may from time to time consider to be necessary or appropriate.

(c) The proportional interest of any member of the Association in any reserve fund established under this section shall be considered an appurtenance of such Owner's Lot and shall not be separated from the Lot to

which it appertains and shall be deemed to be transferred with the Lot.

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7.17 Initial Capital Contribution.

At settlement for each Lot, an amount equal to two (2) months of the current monthly Assessment amount for that type of Lot shall be paid from each prospective member of the Association (other than the Declarant), for the purpose of start-up expenses and operating contingencies. Such amount shall be in addition to any pro rata share of Assessments due and adjusted at settlement.

7.18 Certificate of Assessment.

The Association shall, upon demand at any time, furnish to any Owner liable for assessment a certificate in writing signed by an officer of the Association setting forth whether Assessments has been paid. The certificate shall be conclusive evidence of payment of any assessment therein stated as having been paid. A reasonable charge, determined by resolution of the Board, may be levied in advance by the Association for each certificate so delivered.

ARTICLE VIII

COMMUNITY WIDE STANDARD / ARCHITECTURAL REVIEW COMMITTEE
ARCHITECTURAL CONTROL PROVISIONS

It is intended that The Cottages at Eagle Pointe shall maintain, in perpetuity, the same Community Wide Standard as originally created by the Declarant. The following is not an exhaustive list of the relevant Community Wide Standard for specific maintenance items. Any issue not addressed herein shall be maintained, to the extent reasonable and practical, at the same Community Wide Standard as originally constructed/installed.

8.1 Community Wide Standard

In addition to any "use restrictions" set forth in this Declaration and additional rules and regulations subsequently adopted by the Declarant and/or Board, the following shall be considered the Community Wide Standard:

(a) Landscaping. The design, layout, materials, vegetation, plant and flora species as originally installed and landscaped by the Declarant.

(b) Irrigation / Sprinkling Systems. The design, layout and coverage, and the type of irrigation system (i.e., drip versus sprinklers) on the private Lots and Common Areas as originally installed and designed by the Declarant. Some areas on a private lot may be covered by an irrigation system and other areas may not be. It is critical to note that all Lots are not of equal size and that any such irrigation/sprinkling system determined "best suited" for each Lot may vary. In the event that, over time, Owners permissibly alter the original irrigation and/or sprinkling system scheme, such Owners shall be financially responsible, pursuant to an Individual

Assessment, for such increased costs of irrigation and secondary water use.

(c) Parking. Due to their width, the private roads within the Association are not intended for general parking use. Driveways have been extended to accommodate "out of garage" parking and shall be used for such purposes.

If an Owner, tenant, guest or invitee thereof, is deemed by the Board to be engaged in pattern of regular parking on the roads, the Board shall give the Owner notice (oral or written) of a parking violation. Thereafter, no further notice is required and if the violation continues, the offending vehicle(s) may be towed. All costs of towing shall be the responsibility of the Owner.

(d) Roads, Driveways, Sidewalks and Curbs. Subject to periodic maintenance and repair, the type, materials, size and location of the roads, driveways, sidewalks and curbs shall remain as originally installed by the Declarant. Additional hard surface parking areas (i.e., RV pads, carports, etc.), other than driveways, are not permitted. Any necessary maintenance shall be done

pursuant the standards of the American Public Works Association or locally accepted standards.

(e) Gates and Entry Features. Gates and entry features may or may not be installed by the Declarant. If installed, the same shall maintain the original character as installed by the Declarant. The gate, if any, may be left open during the daytime, as determined by the Board to be in the Community's best interests. Neither the Association nor its Board shall be liable for any losses that occur during periods of time when the gate is open. The gate shall, at a minimum, be closed between the hours of 8:00 pm to 8:00 am.

(f) Plantings, Flowers, Vegetation. It is the intent to create a community standard of consistency with respect to landscaping. Therefore, the original type, layout and location of all plantings, flowers, vegetation and all other flora, as originally installed by the Declarant, shall be the Community Wide Standard and shall not be removed unless necessary to replace the same. In such cases, any replacement vegetation, etc., shall be done with the same or similar species as originally planted.

Owners may plant flowers and ground covering to supplement and fill in landscaped areas and existing flower and shrub beds, but shall first obtain Architectural Review Committee approval - such approval not to be unreasonably withheld.

(g) Exterior Attachments to Living Unit. The location and placement of all satellite dishes must be approved by the Architectural Review Committee. All other attachments to the exterior of a Living Unit shall not be permitted, other than as originally constructed.

(h) Fencing. All fencing shall strictly comply with the fencing materials and location as originally installed by the Declarant. Attached hereto as **Exhibit "B"** is the permissible "fencing zone" applicable to all Lots.

8.2 *Architectural Review.*

(a) Unless delegated to a separate body of Lot Owners, the Board of Directors shall serve as the Architectural Review Committee ("ARC"). Any and all determinations by the ARC shall be consistent with the Community Wide Standard.

(b) No Improvement shall be commenced, erected, placed or altered on any Lot until an application, construction plans and specifications, showing the nature, shapes, heights, materials, colors and proposed location of the Improvements or changes have been submitted to and approved in writing by the ARC as provided in this Article.

It is the intent and purpose of this Declaration to assure quality of workmanship and materials and to assure harmony of exterior design with the existing improvements and landscaping and as to

location with respect to topography and finished grade elevation.

(c) In all cases in which approval of the ARC is required by this Declaration or the Bylaws, the provisions of this Article shall apply.

8.3 Membership, Appointment and Removal.

The initial Architectural Review Committee shall be comprised of the Declarant or any persons or entities appointed by the Declarant as it determines.

After the Turnover Meeting, or at an earlier date if Declarant so elects, the Board of Directors shall function as the ARC and their terms as an ARC member shall be for as long as their Board of Director term. However, the Board of Directors may elect to delegate the ARC functions to a separate committee. In such an event, the committee shall consist of no fewer than three (3) members and no more than five (5) members. The terms of office for each member of the ARC, appointed by the Board, shall be for one (1) year unless lengthened or shortened by the Board of Directors at the time of appointment. The Board may appoint any or all of its members for the ARC and there shall be no requirement for non-Board members to serve on the ARC.

8.4 Architectural Standards and Guidelines.

(a) The architectural standards of the

Community are the architectural styles and designs, the landscape designs, and overall theme of the Community as originally constructed/installed by the Declarant, referred to above as the "Community Wide Standard." These standards may be further clarified and supplemented in design guidelines and standards ("Architectural Standards and Guidelines") adopted from time to time by resolution of the Board of Directors at its sole discretion.

All such standards and guidelines, however, shall (to the extent reasonable and practical) be consistent with the original Community Wide Standard and shall be made applicable to all Lots and Owners.

8.5 Majority Action.

A majority of the members of the ARC shall have the power to act on behalf of the ARC, without the necessity of a meeting and without the necessity of consulting the remaining member or members of the ARC. All decisions rendered by the ARC must be by written instrument setting forth the action taken by the members consenting thereto.

8.6 ARC Decision.

The ARC shall render its approval or denial decision with respect to the proposal within sixty (60) business days after it has received all material required by it with respect to the application. All decisions shall be in writing. If the ARC fails to render its decision of approval or denial in writing within such sixty (60) business days of

receiving all material required by it with respect to the proposal, the application shall be deemed approved.

8.7 ARC Discretion.

The ARC may, at its sole discretion, withhold approval of any proposal if the ARC finds the proposal would be inappropriate for the particular Lot or incompatible with the Community Wide Standard. Considerations such as siting, shape, size, color, design, height, solar access or other effects on the enjoyment of other Lots or Common Area, and any other factors which the ARC reasonably believe to be relevant, may be taken into consideration by the ARC in determining whether or not to approve any proposal.

8.8 Nonwaiver, Precedent and Estoppel.

Approval or disapproval by the ARC of any matter proposed to it or within its jurisdiction shall not be deemed to constitute precedent, waiver or estoppel impairing its right to withhold approval or grant approval as to any similar matter thereafter proposed or submitted to it.

8.9 Appeal.

(a) After the Turnover Meeting, or any earlier date that Declarant may designate by written notice to the Association, any Owner adversely impacted by action of the ARC may appeal such action to the Board of Directors. If, however, the ARC's duties are being carried out by the Board of Directors,

then no such right to appeal shall exist.

(b) Appeals shall be made in writing within ten (10) days of the ARC's action and shall contain specific objections or mitigating circumstances justifying the appeal. A final, conclusive decision shall be made by the Board of Directors within twenty (20) days after receipt of such appeal. The determination of the Board shall be final and shall be consistent with the Community Wide Standard.

8.10 Effective Period of Consent.

The ARC's approval of any proposal shall automatically be revoked within three (3) months after issuance unless construction or other work relating to the proposal has been commenced or the Owner has applied for and received an extension of time from the ARC.

8.11 Determination and Notice of Compliance.

(a) Inspection. The ARC may inspect from time to time, all work performed and determine whether it is in substantial compliance with the approval granted.

(b) Notice of Noncompliance. If the ARC finds that the work was not performed in substantial conformation with the approval granted, or if the ARC finds that the approval required was not obtained, the ARC shall notify the Owner in writing of the noncompliance. The notice of noncompliance shall specify the particulars

of noncompliance and shall require the owner to remedy the noncompliance by a specific date.

8.12 Noncompliance.

(a) Notice of Hearing. If after receipt of a notice of noncompliance pursuant to Section 8.11 above, the Owner fails to diligently commence to remedy such noncompliance in accordance with the provisions of the notice of noncompliance, at the expiration of the third (3rd) day from the date of such receipt of notice, the ARC shall provide notice of a hearing to consider the Owner's continuing noncompliance. The hearing shall be set not less than seven (7) or more than thirty (30) days from receipt of the notice of noncompliance.

(b) Hearing. At the hearing, if the ARC finds that there is no valid reason for the continuing noncompliance, the ARC shall determine the estimated costs of correcting it and may fine the Owner for such noncompliance. After such determination, the ARC shall require the Owner to remedy or remove the same within a period the ARC determines reasonable.

(c) Continued Noncompliance. If the Owner does not comply with the ARC's ruling within the specified period or within any extension of such period as the ARC, at its discretion, may grant, the ARC may either remove the non-complying improvement or otherwise remedy the noncompliance. The cost of any such action shall be assessed

against the Owner either before or after any remedied action as provided in the Bylaws.

8.13 Liability.

Neither the Board of Directors, ARC nor any member thereof shall be liable to any Owner, occupant, builder or other person for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the ARC or a member thereof, provided only that the member has in accordance with the actual knowledge possessed by him or her, acted in good faith. The ARC is not responsible for determining compliance with structural and building codes, solar ordinances, zoning codes or other governmental regulations, all of which are the responsibility of the Owner.

8.14 Estoppel Certificate.

(a) Within fifteen (15) business days after written request is delivered to the ARC by an Owner, and upon payment to the ARC of a reasonable fee fixed by the ARC to cover costs, the ARC shall provide such Owner with a certificate executed by the chairman, or other authorized member of the ARC certifying with respect to any Lot owned by the Owner, that as of the date thereof either:

(1) All improvements made or done upon or within such Lot by the Owner that are subject to the requirements of this Article comply with the Declaration and the Bylaws; or

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(2) Such improvements do not comply, in which event, the certificate shall also identify the non-complying improvements and set forth with particularity the nature of such noncompliance.

(b) The Owner, Owner's heirs, devisees, successors and assigns shall be entitled to rely on the certificate with respect to the matters set forth. The certificate shall be conclusive as between and among Declarant, the ARC, the Association and all Owners and such persons deriving any interest through any of them.

8.15 Fees.

The ARC may charge a reasonable application fee and charge applicants additional costs incurred or expected to be incurred by the ARC to retain architects, attorneys, engineers, landscape architects and other consultants to advise the ARC concerning any aspect of the application or compliance with any appropriate architectural criteria or standards. Such fee shall schedule shall be adopted by Board resolution and shall be collectible as assessments pursuant to this Declaration and the Bylaws.

ARTICLE IX

RESTRICTIONS ON USE

9.1 Restrictions and Requirements.

The following restrictions and requirements are in addition to all other restrictions and requirements contained in this Declaration (the Community Wide Standard for example) and the Bylaws:

(a) Residential Use. Lots shall be used for residential purposes in accordance with, and subject to, the other provisions of this Declaration and the Bylaws and rules and regulations adopted pursuant thereto. Except as provided in this subsection, no trade, craft, business, profession, commercial or similar activities of any kind shall be conducted on any Lot or in any other portion of the Planned Community without the written consent of the Board of Directors pursuant to rules and regulations adopted by the Association. Nothing in this section shall be construed so as to prevent or prohibit:

(1) Activities relating to the rental or sale of Lots or Living Units;

(2) An Owner from maintaining his or her professional personal library; keeping his or her personal business or professional records or accounts; handling his or her personal business or professional telephone calls; or conferring with business or professional associates, clients, or customers, in such Owner's Living Unit; or

(3) The right of Declarant, its successors and assigns or any contractor or homebuilder to construct a Living Unit on any Lot and to store construction materials, place sales offices and equipment on such Lots in the normal course of construction in accordance with the other provisions of this Declaration.

(b) Drainage System. There shall be no interference with the established drainage patterns or systems over or through any Lot so as to affect any other Lot or Common Property or any real property outside the Property unless adequate alternative provision is made for proper drainage and is approved by the ARC. The term "established drainage" shall mean the drainage swales, conduits, inlets and outlets designed and constructed for the Property.

(c) Offensive Activities. No noxious, offensive or unsightly conditions, including, but not limited to, the placement or storage of car parts and appliances, or activities shall be permitted on any Lot or other portion of the Property, nor shall anything be done in or placed upon any Lot which interferes with or jeopardizes the enjoyment of other Lots or the Common Property or which is a source of annoyance to residents.

(d) Unlawful Activities. No unlawful use shall be made of the Property or any part thereof, and all valid laws, zoning ordinances

and regulations of all governmental bodies having jurisdiction thereof shall be observed.

(e) Animals.

(1) No animals, livestock, or poultry of any kind may be raised, bred, kept or permitted within any Lot, except dogs, cats, or other household pets provided that they are not kept, bred, or maintained for any commercial purpose or in any unreasonable numbers. The Owner of any dog or cat must keep such dog or cat on a leash or keep it confined within the Lot and no cat or dog shall be allowed to run free in the Community.

(2) Those animals which are permitted shall not cause any noise or disturbance that would be deemed a nuisance to other Owners or residents within the Property. Any inconvenience, damage or unpleasantness caused by such pets shall be the responsibility of the respective Owners thereof and Owners shall be responsible for removal of wastes of their animals from other Lots or the Common Property.

(3) An Owner may be required to remove a pet upon receipt of a written notice from the Board of Directors given pursuant to a resolution relating to rules and regulations governing pets within the Community and enforcement of such rules and regulations and provisions of this subsection.

(f) Rubbish and Trash. No part of the Property may be used or maintained as a dumping ground for rubbish, trash, garbage, or any other waste. No garbage, trash, or other

waste may be kept or maintained on any part of the Property except in a sanitary container as specified by the Association or within a trash enclosure screened from public view. All such waste and garbage must be promptly and periodically removed.

(g) Vehicles in Disrepair.

(1) No Owner shall permit any vehicle which is in an extreme state of disrepair to be abandoned or to remain parked upon any part of the Property unless such vehicle is within a garage. A vehicle shall be deemed in an "extreme state of disrepair" when the Board of Directors reasonably determines that its presence offends the occupants of the other Lots.

(2) If an Owner fails to remove a vehicle deemed to be in an extreme state of disrepair within seventy-two (72) hours after the date and time on which written notice is securely placed on such vehicle or delivered to the responsible Owner by the Board of Directors, the Board may have such vehicle removed from the Property and assess the Owner the expense of such removal and any storage necessitated thereby.

(h) Fences and Hedges. No fences or boundary hedges shall be installed by an Owner without the prior written approval of the Architectural Review Committee in accordance with Article VIII. The Architectural Review Committee, with the approval of the Board of Directors, may establish a common fencing and hedge

standard to be applied to all Lots (See **Exhibit "B"**).

(i) Parking of Automobiles and Other Vehicles.

(1) Except as otherwise provided in this subsection, parking of boats, trailers, commercial vehicles, motorcycles, commercial trucks, truck campers, motor homes, golf carts and like vehicles and equipment and the parking of automobiles shall be allowed only within the confines of a garage. No portion of such vehicle or equipment or automobile may project beyond the enclosed garage area.

(2) As established in the Community Wide Standard of Article VIII above, no parking is permitted on any street within The Cottages at Eagle Pointe.

(3) The Board of Directors shall adopt rules to govern the enforcement of this subsection which rules may include assessing an Owner the expense of removing any automobile, vehicle or equipment parked in violation of this subsection and the cost of any storage thereof.

(j) Clothes Lines and Clothing and Materials. No clothes lines, clothes racks, or other apparatus on which clothes, rags, or similar items are exposed for the purpose of drying or airing shall be located on the Property except within a Living Unit, unless in an area screened from public view. No garments, rugs, rags, laundry, or other clothing or materials shall be allowed to hang from the windows or from any of the facades or any

other part of a Living Unit unless in an area screened from public view.

(k) Yard Areas. No items of any kind may be stored in front yard areas or other areas of Lots so as to be visible from public view. In order to preserve the attractive appearance of the Property, the Board of Directors and/or the ARC, may regulate the nature of items which may be placed in front yard areas and others areas of Lots so as to be visible from public view.

(l) Signs. Unless written approval is first obtained from the Board of Directors, no advertisement or poster of any kind may be posted in or upon the Properties except:

(1) Not more than one (1) "For Sale" or "For Rent" sign, not exceeding twenty-four (24) inches in height and thirty-six (36) inches long, may be temporarily placed on a Lot by the Owner, resident or a licensed real estate agent;

(2) "Political" signs may be temporarily placed on a Lot by the Owner or occupant of the Lot; and

(3) Signs may be placed on the Property by Declarant.

(m) Antennas and Service Facilities. Exterior antennas and satellite dishes shall not be permitted to be placed upon the exterior of the front or sides of any structure, except as permitted by the Board of Directors.

(n) Noise Disturbance. Residents shall exercise extreme care about making noises or the use of musical instruments, radios, televisions, or amplifiers and may not disturb other residents.

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9.2 Association Rules and Regulations/Fines.

In addition to the restrictions and requirements in Section 9.1 above, the Board of Directors from time to time may, by resolution, adopt, modify, or revoke such rules and regulations governing the conduct of persons and the operation and use of the Lots, and Common Property as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Property.

As stated above, any such rules and regulations shall be consistent with the Community Wide Standard.

The Board of Directors may levy reasonable fines attributable to the violation of said rules and all such unpaid fines shall be collected as an unpaid assessment.

ARTICLE X

*DECLARANT RIGHTS AND RESPONSIBILITY***10.1 Administrative Responsibilities of Association.**

The Declarant shall assume full administrative responsibilities of the Association through a Declarant appointed interim Board of Directors, which shall serve until the Turnover Meeting. The Turnover Meeting shall be held within one hundred twenty (120) days of the earlier of the following:

- (a) Ten (10) years from the recording of this Declaration; or
- (b) The Declarant having conveyed seventy-five percent (75%) of the total number of Lots to be developed.

Declarant may elect to relinquish its responsibilities of the Association at an earlier time by written notice to Owners and the Turnover Meeting shall be held within ninety (90) days of such notice.

10.2 Other Rights.

In addition to any other rights under this Declaration or the Bylaws, as long as Declarant owns at least one (1) Lot within the Property or any Additional Property, Declarant:

- (a) Sales Office and Model. Shall have the right to maintain a sales office and model on one or more of the Lots which Declarant owns. Declarant and prospective purchasers

and their agents shall have the right to use and occupy the sales office and models during reasonable hours any day of the week.

- (b) "For Sale Signs." May maintain a reasonable number of "For Sale" signs, the size of which may be determined by Declarant, at reasonable locations on the Property, including without limitation, the Common Property.

- (c) Approval of Amendments. For so long as the Declarant owns at least one Lot within the Property, the Declarant shall have the right to approve all amendments to the Declaration or Bylaws of the Association proposed by the members.

10.3 Easements Reserved to Declarant.

- (a) The reservation to Declarant, its successors and assigns, of non-exclusive easements and rights of way over those strips or parcels of land designated or to be designated on the Plat as "Drainage and Utility Easement," "Sewer Easement," "Drainage and Sewage Easement," and "Open Space," or otherwise designated as an easement area over any road or Common Area on the Property, and over those strips of land running along the front, rear, side and other Lot lines of each Lot shown on the Plat.

- (b) An easement for the installation, construction, maintenance, reconstruction and repair of public and private utilities to serve

the Property and the Lots therein, including but not limited to the mains, conduits, lines, meters and other facilities for water, storm sewer, sanitary sewer, gas, electric, telephone, cable television, and other public or private services or utilities deemed by Declarant necessary or advisable to provide service to any Lot, or in the area or on the area in which the same is located, together with the right and

(c) Easement granting the privilege of entering upon the Common Areas for such purposes and making openings and excavations thereon, which openings and excavations shall be restored in a reasonable period of time, and for such alterations of the contour of the land as may be necessary or desirable to effect such purposes.

(d) The reservation to Declarant and its successors and assigns, of a non-exclusive easement and right-of-way in, through, over and across the Common Area for the purpose of the storage of building supplies and materials, and for all other purposes reasonably related to the completion of construction and development of the project and the provision of utility services, and related services and facilities.

(e) The Declarant further reserves unto itself, and its successors and assigns, the right to grant easements, rights-of-way and licenses to any person, individual, corporate body or municipality, to install and maintain pipelines, underground or above-ground lines, with the appurtenances necessary thereto for public utilities, or quasi-public utilities or to grant such other licenses or permits as the Declarant

may deem necessary for the improvement of the Community in, over, through, upon and across any and all of the roads, streets, avenues, alleys, and open space and in, over, through, upon and across each and every Lot in any easement area set forth in this Declaration or as shown on the Plat.

(f) The Declarant further reserves unto itself and its successors and assigns, the right to dedicate all of said roads, streets, alleys, rights of way or easements, including easements in the areas designated as "open space" and storm water management reservation, to public use all as shown on the Plat. No road, street, avenue, alley, right of way or easement shall be laid out or constructed through or across any Lot or Lots in the Community except as set forth in this Declaration, or as laid down and shown on the Plat, without the prior written approval of the Architectural Review Committee.

(g) Declarant further reserves unto itself and its successors and assigns, the right at or after the time of grading of any street or any part thereof for any purpose, to enter upon any abutting Lot and grade a portion of such Lot adjacent to such street, provided such grading does not materially interfere with the use or occupancy of any Structure built on such Lot, but Declarant shall not be under any obligation or duty to do such grading or to maintain any slope.

(h) Declarant further reserves unto itself, for itself and any Builder and their successors and assigns, the right, notwithstanding any other provision of the Declaration, to use any

and all portions of the Property other than those Lots conveyed to Owners, including any Common Area which may have previously been conveyed to the Association, for all purposes necessary or appropriate to the full and final completion of construction of the Community.

The Declarant will take reasonable steps, and will ensure that any Builder takes reasonable steps, to avoid unduly interfering with the beneficial use of the Lots by Owners.

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ARTICLE XI

ASSOCIATION

11.1 Organization

(a) The Association has, or will be, organized as a nonprofit corporation under the nonprofit corporation laws of the State of Utah (Utah Code Annotated Title 16-6a). The name of the association is "The Cottages at Eagle Pointe Homeowners Association".

(b) The Articles of Incorporation of the Association provide for its perpetual existence, but in the event the Association is at any time dissolved, whether inadvertently or deliberately, it shall automatically be succeeded by an unincorporated association of the same name. All of the property, powers and obligations of the incorporated Association existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated association. Such vesting shall thereafter be confirmed as evidenced by appropriate conveyances and assignments by the incorporated Association.

To the greatest extent possible, any successor unincorporated association shall be governed by the Articles of Incorporation and Bylaws (as the same may be amended from time to time) as if they had been drafted to constitute the governing documents of the unincorporated association. In the event the corporate status is involuntarily dissolved, the Board of Directors may re-incorporate the Association.

(c) The affairs of the Association shall be governed by a Board of Directors as provided in the Bylaws.

11.2 Membership; Board of Directors.

Each Owner during the entire period of Owner's ownership of one or more Lots within the Community shall be a member of the Association. The membership shall commence, exist and continue by simply virtue of the ownership, shall expire automatically upon termination of ownership and need not be confirmed or evidenced by any certificate or acceptance of membership.

11.3 Voting Rights.

Voting rights within the Association shall be allocated as follows:

(a) Lots. Subject to any rights granted to Declarant during the period of Declarant control expressed Article X above, each Owner of a Lot shall have one (1) vote in matters of the Association for each Lot owned as set forth in the Bylaws.

(b) Method of Voting. The method of voting shall be as provided in the Bylaws.

11.4 Powers, Duties and Obligations.

The Association shall have such powers and duties as may be granted to it or imposed by this Declaration, the Articles of Incorporation, the Bylaws and any applicable statute, as such statute may be amended to expand the scope of association powers.

11.5 Adoption of Bylaws, Appointment of Interim Board of Directors.

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The Association has adopted Bylaws for the Association which are being recorded simultaneously with this Declaration as **Exhibit "C"** hereto.

Declarant has appointed an interim Board of Directors of the Association, which Directors shall serve until their successors have been elected at the Turnover Meeting as provided in Article X above.

ARTICLE XII

ASSOCIATION AND OWNER MAINTENANCE OBLIGATIONS

12.1 Common Area.

The Association shall improve, develop, supervise, manage, operate, examine, insure, inspect, care for, repair, replace, restore and maintain the Common Area, including, without limitation, the private roads, entry monuments and snow removal from the private roads.

12.2 Lots.

(a) Maintenance by Association. The Board of Directors shall assume the maintenance responsibility over the Lots, excluding the Living Units thereon. The expenses of such maintenance incurred by the Association shall be a common expense. The Association shall provide for snow removal from the private streets. Owners, however, shall be responsible for snow removal from the sidewalks and driveways. However, the Board may determine to contract for these services and any such costs shall be a common expense.

(b) Maintenance by Owners. Owner shall be required at all times to maintain the exterior of the Living Units, including roofs and building exteriors, in a condition consistent with the Community Wide Standard. In the event that an Owner fails to maintain their Living Unit exterior in an satisfactory conditions (based on the Community Wide Standard), then the Association shall have the right to maintain the same and assess all costs thereof to the Owners as an Individual Expense.

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ARTICLE XIII

*COMPLIANCE AND ENFORCEMENT***13.1 Compliance.**

Each Owner, tenant or occupant of a Living Unit shall comply with the provisions of this Declaration, the Bylaws and the rules and regulations adopted pursuant thereto and any applicable statute.

Failure to comply therewith shall be grounds for fine or an action or suit maintainable by the Association or an aggrieved Owner.

13.2 Remedies.

Violation of any provisions of this Declaration, the Bylaws, or any rules or regulations adopted pursuant thereto, or of any decision of the Association made pursuant to such documents, shall give the Board of Directors acting on behalf of the Association, the right, in addition to any other rights set forth in this Declaration or the Bylaws, or under law, to do, any or all of the following after giving notice and an opportunity to be heard:

- (a) To enter the Lot which or as to which such violation exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing, or condition that may exist contrary to the intent and meaning of such provisions, and the Board of Directors shall not thereby be deemed guilty of any manner of trespass, provided that judicial proceedings shall be instituted before any items of construction may be altered or demolished;
- (b) To enjoin, abate, or remedy such thing or condition by appropriate legal proceeding;

(c) To levy reasonable fines pursuant to a schedule of fines adopted by resolution of the Board of Directors a copy of which has been delivered to each Owner, mailed to the mailing address of Lot or mailed to the mailing address designated by the Owner in writing to the Association; or

(d) The right of the Association to suspend the voting rights and the rights to use of the Common Area after notice and a hearing for any period not to exceed sixty (60) days for any infraction of any of the published rules and regulations of the Association or of this Declaration.

(e) Bring suit or action against the Owner on behalf of the Association and other Owners to enforce this Declaration, the Bylaws and any rules or regulations adopted pursuant thereto.

13.3 Action by Owners.

Subject to any limitation imposed under this Declaration, the Bylaws or Utah law, an aggrieved Owner may bring an action against such other Owner or the Association to recover damages or to enjoin, abate, or remedy such thing or condition by appropriate legal proceedings.

13.4 Injunctive Relief.

Nothing in this section shall prevent an Owner, the Association, or other interested party from resort to a court of competent jurisdiction in those instances where injunctive relief may be appropriate.

13.5 Notification of First Mortgagee.

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The Board of Directors shall notify in writing any first Mortgagee of any individual Lot of any default in performance of the terms of this Declaration by the Lot Owner which is not cured within sixty (60) days provided such Mortgagee has requested in writing to be so notified.

ARTICLE XIV

*INSURANCE***14.1 Types of Insurance Maintained by the Association.**

The Association shall obtain the following types of insurance:

(a) Insurance on all insurable improvements on the Common Area against loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief in an amount sufficient to cover the full replacement cost of such improvements in the event of damage or destruction;

(b) A public liability insurance policy covering the Association, its officers, directors and managing agents, having at least a Five Hundred Thousand Dollar (\$500,000.00) limit per total claims that arise from the same occurrence, including but not limited to liability insurance for the recreational facilities located in the Community, or in an amount not less than the minimum amount required by applicable law, ordinance or regulation;

(c) Workers' compensation insurance, if and to the extent required by law; and

(d) Fidelity bond or bonds covering all Directors, officers, employees and other persons handling or responsible for the funds of the Association, in such amounts as the Board of Directors deems appropriate.

14.2 Premiums for Insurance Maintained by Association.

Premiums for all insurance and bonds required to be carried under Section 16.1

hereof or otherwise obtained by the Association on the Common Area shall be an expense of the Association, and shall be included in the Annual Assessments. Premiums on any fidelity bond maintained by a third party manager shall not be an expense of the Association. Said assessment, however, shall take into consider the insurance needs for Single Family Lots and shall be calculated accordingly.

14.3 Damage and Destruction of Common Area.

(a) Immediately after any damage or destruction by fire or other casualty to all or any part of the insurable improvements on the Common Area, the Board of Directors, or its agent, shall proceed with the filing and adjustment of all claims arising under the fire and extended coverage insurance maintained by the Association and obtain reliable estimates of the cost of repair or reconstruction of the damaged or destroyed improvements. Repair or reconstruction means repairing or restoring the improvements to substantially the same condition in which they existed prior to the fire or other casualty.

(b) Any damage or destruction to insurable improvements on the Common Area shall be repaired or reconstructed unless at least seventy-five percent (75%) of the members present at a meeting of the membership held within ninety (90) days after the casualty shall decide not to repair or reconstruct.

(c) If, however, in accordance with Subsection (b) of this section, the

improvements are not to be repaired or reconstructed and no alternative improvements are authorized by the members, then and in that event the damaged Common Area shall be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Association in a neat and attractive condition. In such event, any excess insurance proceeds shall be paid over to the Association for the benefit of the Property, which proceeds may be used and/or distributed as determined by the Board of Directors, in its discretion, or as otherwise provided in the Articles of Incorporation and/or the Bylaws of the Association.

14.4 Repair and Reconstruction of Common Area.

If any improvements on the Common Area are damaged or destroyed, and the proceeds of insurance received by the Association are not sufficient to pay in full the cost of the repair and reconstruction of the improvements, the Board of Directors shall, without the necessity of a vote of the members, levy a Special Assessment against all Owners in order to cover the deficiency in the manner provided for in this Declaration. If the proceeds of insurance exceed the cost of repair, such excess shall be retained by the Association and used for such purposes as the Board of Directors shall determine.

14.5 Hazard Insurance on Improved Lots.

Each Owner of an improved Lot at all times shall maintain fire and extended coverage insurance or other appropriate damage and physical loss insurance, in an amount equal to not less than one hundred percent (100%) of the current replacement value of the improvements on the Lot.

14.6 Obligation of Lot Owner to Repair and Restore.

(a) In the event of any damage or destruction of the improvements on a Lot, the insurance proceeds from any insurance policy on an improved Lot, unless retained by a Mortgagee of a Lot, shall be applied first to the repair, restoration or replacement of the damaged or destroyed improvements. Any such repair, restoration or replacement shall be done in accordance with the plans and specifications for such improvements originally approved by the Declarant or the ARC; unless the Owner desires to construct improvements differing from those so approved, in which event the Owner shall submit plans and specifications for the improvements to the ARC and obtain its approval prior to commencing the repair, restoration or replacement.

(b) If any Owner of an improved Lot fails to maintain the insurance required by Section 14.5 above of this Article, the Association may, but shall not be obligated to, obtain such insurance and pay any premiums required in connection with obtaining such insurance. Such Owner shall be personally liable to the Association for any costs incurred by the Association in obtaining such insurance, to the same extent as such Owner is liable for assessments levied against its Lot, and, upon the failure of the Owner to pay such costs within ten (10) days after such Owner's receipt of a written demand therefor from the Association, the Association may establish a lien therefor upon the Owner's Lot in accordance with and subject to the provisions of this Declaration applicable to an assessment lien.

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ARTICLE XV

AMENDMENT AND DURATION

15.1 Amendments.

(a) How Proposed. Amendments to the Declaration shall be proposed by either a majority of the Board of Directors or by Owners holding thirty percent (30%) or more of the voting rights. The proposed amendment must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon or attached to any request for approval or consent to the amendment

(b) Approval Required. Except as otherwise provided in Subsections (c) and (e) of this section or by other provisions of this Declaration, this Declaration may be amended if such amendment is approved by Owners holding sixty-seven percent (67%) of the voting rights of the Association. Notwithstanding the foregoing, however, for so long as the Declarant owns a single Lot in the Property or any of the Additional Property, any and all amendments proposed pursuant to this Section must first receive the approval of the Declarant. Failure to receive such approval shall make the amendment null and void.

(c) Additional Approval Requirements.

(1) No amendment may create, limit or diminish any special Declarant rights, change the boundary of any Lot or uses to which any Lot or Dwelling is restricted under

Section 9.1(a)(1) above, change the method of determining liability for common expenses or right to common profit, or voting rights of any Lot unless the Owners of the affected Lots unanimously consent to the amendment.

(d) Execution and Recordation. An amendment shall not be effective until the amendment is certified by the president and secretary of the Association as being adopted in accordance with this Declaration is acknowledged and is recorded in the Recorder's Office of Utah County, Utah.

(e) Corrections and Regulatory Amendments. Notwithstanding the provisions of Subsections (b) and (c) of this section and any other provision of this Declaration, and in addition to all other special rights of the Declarant provided in this Declaration and the Bylaws, Declarant shall have the unilateral right (without the approval of the general membership or joinder by the Association, Owners, Mortgagee or other person) to amend this Declaration in order to:

(1) Correct obvious typographical, mathematical or similar errors.

(2) Comply with the requirements of any applicable statute, ordinance, regulation or guideline of the Federal Housing Administration, the

Veterans Administration, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, any department, bureau, board, commission or agency of the United States, the State of Utah, Utah County, Draper City, or any corporation wholly owned, directly or indirectly, by the United States, the State of Utah, Utah County or Draper City which insures, guarantees or provides financing for a community such as created herein.

15.2 Duration

a) Period. This Declaration perpetually shall run with the land and shall be and remain in full force and effect at all times with respect to all property included within the Property and the Owners thereof for an initial period of thirty (30) years commencing with the date on which this Declaration is recorded. Subject to Subsection (b) of this section, thereafter, this Declaration shall continue to run with the land and be and remain in full force and effect at all time with respect to all property within the Property and the Owners thereof for successive additional period of ten (10) years each. The continuation from the initial or any additional period into the next subsequent period shall be automatic and without the necessity of any notice, consent or other action whatsoever.

(b) Termination. This Declaration may be terminated at the end of the initial or any additional period by resolution approved not less than six (6) months prior to the intended termination date by the vote or written consent of Owners owning not less than seventy-five percent (75%) of the voting rights in the Association.

(c) Execution and Recording of Termination Certificate. Any such termination shall become effective only if a certificate of the president and secretary of the Association, certifying that termination as of a specified termination date has been approved in the manner required herein, is duly acknowledged and recorded in the Recorder's Office of Utah County, Utah not less than six (6) months prior to the intended termination date.

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ARTICLE XVI

RIGHTS OF MORTGAGEES

16.1 Approval Required.

In addition to any other approvals required by the this Declaration, or the Bylaws, subject to any special Declarant rights, the prior written approval of fifty-one percent (51%) of the holders of first Mortgages of Lots in the Community (based upon one vote for each Mortgage owned) must be obtained for the following:

(a) The abandonment, termination, or removal of the Property from the provisions of this Declaration, except when provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain;

(b) The partition or subdivision of the Common Property;

(c) Any material amendment to this Declaration or the Bylaws. Except for an amendment to the Declaration or Bylaw if its purpose is to correct technical errors or to clarify, a change to the following would be considered as material:

(1) Voting rights;

(2) Assessments, assessment liens, or the priority of assessment liens;

(3) Reserves for maintenance, repair, and replacement of Common Property;

(4) Responsibility for maintenance and repairs;

(5) Rights to use of Common Property;

(6) Redefinition of any Lot boundaries;

(7) Convertibility of Lots into Common Property or vice versa;

(8) Expansion or contraction of the project, or the addition, annexation, or withdrawal of property to or from the project;

(9) Insurance or fidelity bond;

(10) Restoration or repair of the project (after a hazard damage or partial condemnation) in a manner other than that specified in this Declaration or the Bylaws;

(11) Any action to terminate the legal status of the project after substantial destruction or condemnation occurs; or

(12) Any provisions that expressly benefit mortgage holders, insurers, or guarantors;

(d) Abandonment, encumbrance, sale, or transfer of the Common Property. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Property by the

Planned Community shall not be deemed a transfer within the meaning of this clause; or

NOTES

(e) Use of hazard insurance proceeds for losses to any Planned Community property, whether to Lots or to Common Property, for other than the repair, replacement, or reconstruction of such improvements, except as provided by statute in cases of substantial loss to the Lots and/or Common Property.

16.2 Additional Rights.

In addition to the approvals required in Section 16.1 above, each mortgagee (or beneficiary of a trust deed or vendor and including guarantors) shall have the following rights:

ARTICLE XVII

MISCELLANEOUS PROVISIONS

17.1 Invalidity; Number; Captions.

The invalidity of any part of this Declaration shall not impair or affect in any manner the validity, enforceability, or effect of the balance of this Declaration. As used herein, the singular shall include the plural and the plural the singular. The masculine and neuter shall each include the masculine, feminine, and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration.

17.2 Joint Owners.

In any case in which two or more persons share the ownership of any Lot, regardless of the form of ownership, the responsibility of such persons to comply with this Declaration shall be a joint and several responsibility and the act or consent of any one or more of such persons shall constitute the act or consent of the entire ownership interest; provided, however, that in the event such persons disagree among themselves as to the manner in which any vote or right of consent held by them shall be exercised with respect to a pending matter, any such person may deliver written notice of such disagreement to the Board of Directors, and the vote or right of consent involved shall then be disregarded completely in determining the proportion of votes or consents given with respect to such matter in accordance with the Bylaws.

17.3 Lessees and Other Invitees.

Lessees, invitees, contractors, family members and other persons entering the Property under rights derived from an Owner shall comply with all of the provisions of this Declaration, the Bylaws and rules and regulations adopted by the Association restricting or regulating the Owner's use, improvement or enjoyment of such Owner's Lot and other areas within the Property. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner.

17.4 Nonwaiver.

Failure by Declarant, the Association, or any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

17.5 Waiver, Precedent and Estoppel.

No restriction, condition, obligation or provision contained in this Declaration or rules and regulations adopted pursuant hereto shall be deemed to have been abrogated or waived by the Declarant, Association or any Owner by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur and any failure to enforce the same shall not be

deemed to constitute precedent or estoppel impairing the right of the Declarant, Association or Owner as to any similar matter.

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17.6 Notice of Sale, Mortgage, Rental, or Lease.

Immediately upon the sale, mortgage, rental, or lease of any Lot, the Owner shall promptly inform the secretary or manager of the name and address of said grantee, vendee, mortgagee, lessee, or tenant.

EXHIBIT "A"
Legal Description

A parcel of land located in the Southwest Quarter of Section 15 and the Northwest Quarter of Section 22 all in Township 4 South, Range 1 East, Salt Lake Base and Meridian, Utah County, Utah described as follows:

BEGINNING at a point on the easterly right-of-way line of SunCrest Drive as described on SunCrest Drive Extension Phase 1 Right-of-Way & Open Space Dedication Plat recorded February 7, 2003 as Entry No. 19497:2003 and Map # 9889 of the Utah County records, said point being South $89^{\circ}50'02''$ West 521.10 feet along the section line and South 4288.29 feet from the Utah County brass cap marking the North Quarter Corner of Section 15, Township 4 South, Range 1 East, Salt Lake Base and Meridian (Basis of Bearings being South $89^{\circ}50'02''$ West 3657.69 feet between said North Quarter Corner of Section 15 and the Salt Lake County brass cap marking the Northwest Corner of said Section 15) and running thence South $48^{\circ}41'57''$ East 151.41 feet; thence South $28^{\circ}34'32''$ East 91.87 feet; thence South $13^{\circ}27'36''$ East 65.37 feet; thence South $11^{\circ}22'11''$ East 65.59 feet; thence South $19^{\circ}42'04''$ East 250.00 feet; thence South $19^{\circ}22'04''$ East 68.87 feet; thence South $12^{\circ}30'05''$ East 81.08 feet; thence South $02^{\circ}47'30''$ East 81.08 feet; thence South $05^{\circ}55'07''$ West 81.08 feet; thence South $16^{\circ}37'15''$ West 80.95 feet; thence South $24^{\circ}15'04''$ West 70.82 feet; thence South $08^{\circ}05'44''$ West 57.92 feet; thence South $08^{\circ}50'59''$ West 67.66 feet; thence South $41^{\circ}54'16''$ West 139.06 feet; thence South $62^{\circ}09'20''$ West 135.54 feet; thence North $76^{\circ}16'17''$ West 64.08 feet; thence North $48^{\circ}17'41''$ West 203.62 feet; thence North $67^{\circ}03'38''$ West 142.51 feet; thence South $65^{\circ}34'23''$ West 159.26 feet; thence North $81^{\circ}24'23''$ West 107.37 feet; thence North $69^{\circ}48'55''$ West 102.15 feet; thence North $45^{\circ}51'15''$ West 101.98 feet; thence North $34^{\circ}10'29''$ West 260.54 feet; thence South $55^{\circ}49'31''$ West 1.44 feet; thence South $56^{\circ}21'32''$ West 60.17 feet to the easterly right-of-way line of SunCrest Drive as described on SunCrest Drive Extension Phase 2 Right-of-Way Dedication Plat recorded February 7, 2003 as Entry No. 19496:2003 and Map No. 9888 of said records; thence along said easterly right-of-way line North $55^{\circ}49'31''$ East 7.27 feet to the easterly right-of-way line of SunCrest Drive as described on said SunCrest Drive Extension Phase 1 Right-of-Way & Open Space Dedication Plat; thence along said easterly right-of-way line the following three courses: North $55^{\circ}49'31''$ East 718.06 feet, Northeasterly 254.04 feet along a 636.00 foot radius curve to the left through a central angle of $22^{\circ}53'10''$ and along chord of North $44^{\circ}22'56''$ East 252.35 feet and North $32^{\circ}56'21''$ East 312.46 feet to the POINT OF BEGINNING. Containing 853,499 square feet or 19.593 acres.

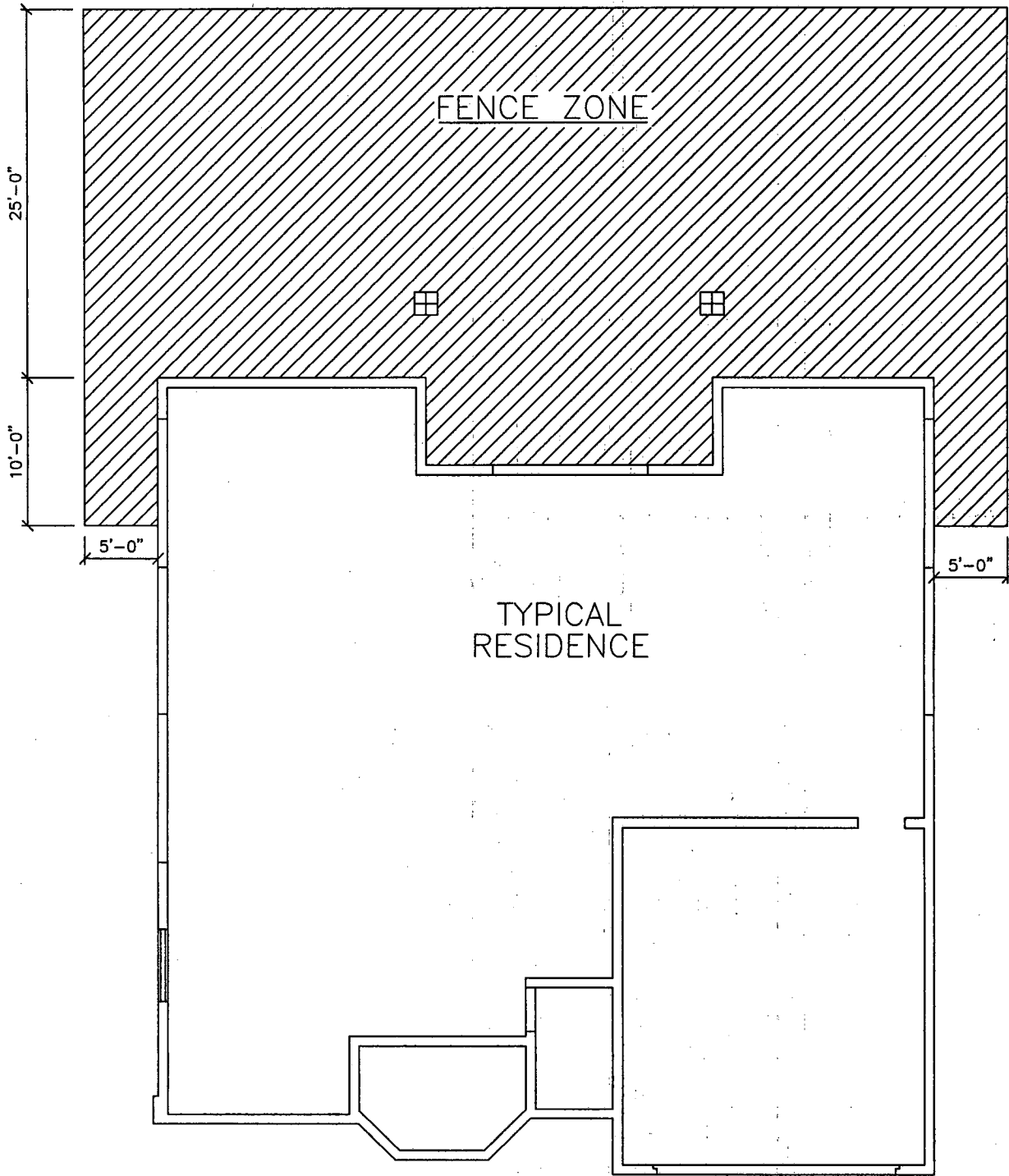


EXHIBIT "B" FENCE ZONE
The Cottages at
EAGLE POINTE-SUNCREST

EXHIBIT "C"

**BYLAWS
OF
THE COTTAGES AT EAGLE POINTE
HOMEOWNERS ASSOCIATION**

ARTICLE I

PLAN OF LOT OWNERSHIP

1.1 Name and Location.

These are the Bylaws of The Cottages at Eagle Pointe Homeowners Association (the "Association"). The Cottages at Eagle Pointe is a community of single family lots that has been subjected to Declaration of Covenants, Conditions and Restrictions for The Cottages at Eagle Pointe recorded as recorded in the Recorder's Office of Utah County, Utah (the "Declaration").

These Bylaws are applicable to the recorded plat of The Cottages at Eagle Pointe, recorded in the Recorder's Office of Utah County, Utah in Plat Book 10716 ("Eagle Crest No. 4 at Suncrest").

1.2 Principal Office.

The principal office of the Association shall be designated by the Board of Directors and may change from time to time.

1.3 Purposes.

This Association is formed to serve as a means through which the Lot Owners may take action with regard to the administration, management and operation of The Cottages at Eagle Pointe, the properties and lots therein.

1.4 Applicability of Bylaws.

The Association, all Lot Owners and all persons using the Property shall be subject to these Bylaws and to all rules and regulations which may be adopted pursuant to the Declaration and these Bylaws.

1.5 Composition of Association.

The Association shall be composed of all Lot Owners, including Eagle Pointe Developers, LLC, a Utah Corporation (the "Declarant"), and the Association, itself, to the extent any of these own any Lot or Lots of the Property.

1.6 Incorporation of Association.

(a) The Association shall be incorporated under the Utah Revised Nonprofit Corporation Act. The Articles of Incorporation of the Association shall be consistent with the Declaration and these Bylaws, and these Bylaws shall constitute the Bylaws of the incorporated association. The name of the association shall be "The Cottages at Eagle Pointe Homeowners Association."

1.7 Definitions.

The definitions contained in or adopted by the Declaration shall be applicable to these Bylaws.

ARTICLE II

MEETING OF ASSOCIATION

2.1 Place of Meeting.

The Association shall hold meetings at such suitable place convenient to the Owners as may be designated by the Board of Directors from time to time.

2.2 Initial Meeting.

The initial meeting of the Association shall be the first annual meeting of the Association pursuant to the provisions of Section 2.4 below, unless the Turnover Meeting is called by the Declarant prior to the date of the first annual meeting, in which case the initial meeting of the Association shall be the Turnover Meeting.

2.3 Turnover Meeting.

(a) The Declarant shall call the Turnover Meeting pursuant to the provisions of Section 2.6 below and as set forth in the Declaration.

The purpose of the meeting shall be to organize the Association and to elect directors. If the Turnover Meeting is not called within the time specified, the meeting may be called and notice given by any Owner or first mortgagee of a unit.

(b) At the Turnover Meeting, the Declarant shall turn over to the Owners the responsibility for the administration of the Association, and the Owners shall accept the administrative responsibility from the Declarant. The Declarant shall deliver to the Association all records, documents and instruments relating to the Property and the Association.

2.4 Annual Meetings.

The first annual meeting of the members shall be held within one (1) year from the date of incorporation of the Association, and each subsequent regular annual meeting of the members shall be held on the same day of the same month of each year thereafter, at a time and place within the State of Utah selected by the Board of Directors of the Association. If the annual meeting of the members is a legal holiday, the meeting will be held on the first day following which is not a legal holiday.

2.5 Special Meetings.

Special meetings of the members may be called at any time by the president or by the Board of Directors, or upon written request of the at least thirty percent (30%) of the members stating the purpose of the meeting. Business transacted at a special meeting shall be confined to the purposes stated in the notice.

2.6 Notice of Meetings.

Written notice of each meeting of the members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least fifteen (15) days but not more than sixty (60) days before such meeting to each member entitled to vote thereat, addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. The notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

2.7 Voting.

Each Lot shall be allocated one vote in the affairs of the Association as provided in the Declaration. The Board of Directors shall be entitled to vote on behalf of any Lot which has been acquired by or on behalf of the Association, except the Board of Directors shall not be entitled to vote such Lots in any election of directors.

2.8 Proxies, Absentee Ballots and Rights of Mortgagees.**(a) Proxies**

(1) A vote may be cast in person or by proxy. A proxy given by an Owner to any person who represents the Owner at meetings of the Association shall be in writing, dated and signed by such Owner and shall be filed with the secretary in accordance with procedures adopted by resolution of the Board of Directors.

(2) No proxy shall be valid after the meeting for which it was solicited, unless otherwise expressly stated in the proxy; however, no proxy may be valid for more than eleven (11) months after the date of execution.

(3) No proxy shall be valid if it purports to be revocable without notice.

(4) An Owner may not revoke a proxy given except by actual notice of revocation to the person presiding over a meeting of the Association or to the Board of Directors if a vote is being conducted by written ballot in lieu of a meeting pursuant to Section 2.14 below.

(5) Every proxy shall automatically cease upon sale of the Lot.

(b) Absentee Ballots. At the discretion of the Board of Directors, a vote may be cast by absentee ballot.

(c) Mortgage Rights.

(1) An Owner may pledge or assign the owner's voting rights to a Mortgagee. In such a case, the Mortgagee or its designated representative shall be entitled to receive all notices to which the owner is entitled hereunder and to exercise the owner's voting rights from and after the time that the Mortgagee shall have given written notice of the pledge or assignment to the Board of Directors.

(2) Any first Mortgagee may designate a representative to attend all or any meetings of the Association.

2.9 Fiduciaries and Joint Owners.

(a) Fiduciaries. An executor, administrator, guardian, or trustee may vote in person or by proxy, at any meeting of the Association with respect to any Lot owned or held in such capacity, whether or not the same shall have been transferred to his or her name; provided, that the person shall satisfy the secretary that he or she is the executor, administrator, guardian, or trustee holding the Lot in such capacity.

(b) Joint Owners. Whenever any Lot is owned by two or more persons jointly, according to the records of the Association, the vote of the Lot may be exercised by any one of the Owners then present, in the absence of protest by a co-owner. In the event of a protest, no one co-owner shall be entitled to vote without the approval of all co-owners. In the event of disagreement among the co-owners, the vote of the Lot shall be disregarded completely in determining the proportion of votes given with respect to the matter.

2.10 Quorum of Owners.

(a) Except as otherwise provided in the Declaration or these Bylaws, at any meeting of the Association, Owners holding twenty percent (20%) of the voting rights, present in person or by proxy, or absentee ballot if permitted under Section 2.8(b) above, shall constitute a quorum.

(b) The subsequent ratification of an Owner, in the action taken at a meeting shall constitute the presence of the person for the purpose of determining a quorum. When a quorum is once present to organize a meeting it cannot be broken by the subsequent withdrawal of an Owner or Owners.

(c) If any meeting of members cannot be organized because of a lack of quorum, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present. For each adjourned meeting, the quorum requirement shall be reduced by one-fourth (1/4) of the quorum requirement of the previous meeting. The adjournment provisions of this subsection (c) do not apply to action by written ballot in lieu of a meeting under Section 2.14 below.

2.11 Binding Vote.

The vote of the holders of more than fifty percent (50%) of the voting rights present, in person or by proxy or absentee ballot if permitted under Section 2.8(b) above, at a meeting at which a quorum is constituted shall be binding upon all s for all purposes except where a higher percentage vote is required by law, the Declaration, or these Bylaws.

2.12 Order of Business.

The order of business at annual meetings of the Association shall be:

- (a) Calling of the roll and certifying of proxies;
- (b) Proof of notice of meeting or waiver of notice;
- (c) Reading of minutes of preceding meeting;
- (d) Reports of officers;
- (e) Reports of committees, if any;
- (f) Election of directors;
- (g) Unfinished business;
- (h) New business; and
- (i) Adjournment.

2.13 Meeting Procedure.

Unless other rules of order are adopted by resolution of the Board of Directors:

- (a) Meeting of the Association shall be conducted according to the latest edition of Robert's Rules of Order published by the Robert's Rules Association.
- (b) A decision of the Association may not be challenged because the appropriate rules of order were not used unless a person entitled to be heard was denied the right to be heard and raised an objection at the meeting in which the right to be heard was denied.

(c) A decision of the Association is deemed valid without regard to procedural errors related to the rules of order one year after the decision is made unless the error appears on the face of a written instrument memorializing the decision.

2.14 Action By Written Ballot In Lieu of a Meeting.

(a) Action By Written Ballot. At the discretion of the Board of Directors, any action, except election or removal of directors, that may be taken at any annual, regular or special meeting of the Association may be taken without a meeting if the Association delivers a written ballot to every Owner that is entitled to vote on the matter not less than twenty (20) days prior to the date on which the ballots must be received by the Association in order to be counted.

(b) Form and Effect of Ballot

(1) The written ballot must set forth each proposed action and provide an opportunity to vote for or against each proposed action.

(2) A written ballot may not be revoked.

(c) Information Required in Ballot Solicitations. All solicitations for votes by written ballot must:

(1) State the number of responses needed to meet any applicable quorum requirements and the total percentage of votes needed for approval.

(2) Specify the period during which the Association will accept written ballots for counting, which period shall end on the earliest of the following unless the vote is pursuant to the secrecy procedure described in Subsection (d) of this section:

(A) The date on which the Association has received a sufficient number of approving ballots to pass the proposal;

(B) The date on which the Association has received a sufficient number of disapproving ballots to render the proposal impossible of passage; or

(C) A date certain on which all ballots must be returned to be counted.

(d) Secrecy Procedure. The Board of Directors may elect to conduct a vote pursuant to this section by a secrecy procedure whereby a written ballot is accompanied by:

(1) A secrecy envelope;

(2) A return identification envelope to be signed by the owner; and

(3) Instructions for marking and returning the ballot.

(e) Determination of Vote. The outcome of a vote by written ballot in lieu of a meeting shall be determined by the Board of Directors within forty-eight (48) hours of the deadline for return of ballots, or in the event the ballot return date is postponed, within forty-eight (48) hours of the postponed date. Matters that may be voted on by written ballot shall be deemed approved or rejected as follows:

(1) If approval of a proposed action would otherwise require a meeting at which a certain quorum must be present and at which a certain percentage of total votes cast is required to authorize the action, the proposal will be deemed to be approved when the date for return of ballots has passed, a quorum of owners has voted and the required percentage of approving votes has been received. Otherwise, the proposal shall be deemed to be rejected.

(2) If approval of a proposed action otherwise would require a meeting at which a specified percentage of owners must authorize the action, the proposal shall be deemed to be approved when the percentage of total votes cast in favor of the proposal equals or exceeds such required percentage. The proposal shall be deemed to be rejected when the number of votes cast in opposition renders approval impossible or when both the date for return or ballots has passed and such required percentage has not been met.

(3) Except as provided in Subsection (e)(4) of this section, votes may be counted from time to time before the final return date to determine whether the proposal has passed or failed by the votes already cast on the date they are entered.

(4) Written ballots that are returned in secrecy envelopes may not be examined or counted before the deadline for returning ballots has passed.

(f) Owner Notification of Ballot Results. Each Owner shall be notified within ten (10) days after the ballots have been counted, by mail or other delivery of written notice, of the

results of the ballot meeting or that a quorum of ballots was not returned.

2.15 Action Without a Meeting.

(a) Any action that may be taken at any annual, regular or special meeting of the Association, may be taken without a meeting and without solicitation of written ballots pursuant to Section 2.14 above, if the action is taken by all of the owners entitled to vote on the action.

(b) The action must be evidenced by one or more written consents describing the action taken, signed by all of the owners entitled to vote on the action, and delivered to the Association for inclusion in the minutes or filing with the Association records.

(c) Action taken under this section is effective when the last owner signs the consent, unless the consent specifies an earlier or later effective date. A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

NOTES

ARTICLE III

BOARD OF DIRECTORS; SELECTION; TERM OF OFFICE

3.1 Number and Qualification

(a) The affairs of the Association shall be governed by a Board of Directors composed of three (3) interim directors as provided in Section 3.2 below. Subsequent to the Turnover Meeting, the Board shall consist of up to five (5) directors elected as provided in Section 3.3 below.

(b) Except for interim directors, all directors must be an Owner or the co-owner of a Lot. However, multiple owners of the same Lot may not serve as directors simultaneously. An officer or employee of a corporation, a partner of a partnership, a trustee of a trust, a personal representative of an estate or an employee of a trust or estate, may serve on the Board if the corporation, partnership, trust or estate owns a Lot.

3.2 Interim Directors.

Upon the recording of the Declaration, the Declarant shall appoint an interim board of three (3) directors, who shall serve until replaced by the Declarant or their successors have been elected by the Owners as provided in Section 3.3 below.

3.3 Election and Term of Office.

(a) At the Turnover Meeting called by the Declarant, the interim directors shall resign and the Owners shall elect one class of two (2) directors to serve for one year and a second class of one (1) director to serve

for two years. Thereafter, the successors to each class of directors shall serve for terms of two years.

(b) Upon a binding vote of the voting rights entitled to be cast by the members present or represented by proxy or absentee ballot if permitted under Section 2.8(b) above at which a quorum is present, the Board of Directors may be increased from three (3) directors to five (5) directors. At the next annual meeting or special meeting called for such purpose, two (2) additional directors shall be elected to serve, one for a one-year term, and one to serve for a two-year term.

(c) Nomination to the Board of Directors and election shall be as specified in Article IV below.

(d) All directors shall hold office until their respective successors shall have been elected by the members.

3.4 Vacancies.

Vacancies on the Board of Directors, caused by any reason other than the removal of a director by a vote of the Association, shall be filled for the balance of the term of each directorship by vote of a majority of the remaining directors even though they may constitute less than a quorum. Each person so elected shall be a director until a successor is elected upon expiration of the term for which the person was elected by the other directors to serve.

3.5 *Removal of Directors.*

(a) At any annual or special meeting, other than a meeting by written ballot conducted pursuant to Section 2.14 above, any one or more of the directors, other than interim directors, may be removed, with or without cause, by a majority of the Owners present in person or by proxy, at a duly constituted meeting. A successor may be elected at that meeting to fill the vacancy thus created. The notice of the meeting must state that the removal is to be considered and any director whose removal has been proposed by the owners may be given an opportunity to be heard at the meeting.

(b) The Board of Directors, pursuant to Section 6.2(c) below, may declare the office of a member of the Board of Directors to be vacant in the event such member is absent from three (3) consecutive regular meetings of the Board of Directors. The vacancy shall be filled as provided in Section 3.4 above.

3.6 *Compensation.*

No director shall receive compensation for any service he or she may render to the Association. However, any director may be reimbursed for actual expenses incurred in the performance of his or her duties.

3.7 *Action Taken Without A Meeting.*

In the case of any emergency, the directors shall have the right to take any action in the absence of a meeting which they could take a regular or special meeting by obtaining the written approval of all the directors in accordance with U.C.A. 16-6a-813. Any

action so approved shall have the same effect as though taken at a meeting of the directors.

NOTES

ARTICLE IV

NOMINATION AND ELECTION OF DIRECTORS

4.1 *Nomination.*NOTES**(a) Method of Nomination.**

Nomination for election to the Board of Directors, including action under Section 3.4 above, shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting or any special meeting held pursuant to Section 3.5 above. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies

(b) Nominating Committee.

The Nominating Committee shall consist of a chairman, who shall be a member of the Board of Directors; and two (2) or more members of the Association. The Nominating Committee shall be appointed by the president of the Association prior to each annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting.

4.2 *Election.*

Election to the Board of Directors shall be by secret written ballot. At the election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

ARTICLE V

MEETINGS OF DIRECTORS

5.1 Organizational Meeting:

(a) Location, Date and Time. The first meeting of a newly-elected Board of Directors shall be held within ten (10) days of election at such place, date and time as shall be fixed by the directors at the meeting at which the directors were elected and no notice shall be necessary to owners or to the newly elected directors in order to legally hold the meeting providing a majority of the elected directors are present.

(b) Procedure and Business. Until the election of new officers, the meeting shall be chaired by the outgoing president, or in the absence of such person, the outgoing secretary, regardless of whether the outgoing president or secretary is as member of the newly constituted board. At the organizational meeting, the Board of Directors shall elect officers in accordance with Section 7.2 below and may conduct any other Association business.

5.2 Regular Meetings.

Regular meetings of the Board of Directors shall be held at least quarterly, at such place and hour as may be fixed from time to time by resolution of the Board. Should the meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

5.3 Special Meetings.

Special meetings of the Board of Directors shall be held when called by the president of

the Association, or by any two (2) directors, after not less than three (3) days notice to each director by mail, including electronic mail if approved by the Board, telephone, or telegraph. The notice must state the time, place, and purpose of the meeting.

5.4 Meeting Procedure.

Unless other rules of order are adopted by resolution of the Board of Directors:

(a) Meeting of the Board of Directors shall be conducted according to the last edition of Robert's Rules of Order published by the Robert's Rules Association.

(b) A decision of the Board of Directors may not be challenged because the appropriate rules of order were not used unless a person entitled to be heard was denied the right to be heard and raised an objection at the meeting in which the right to be heard was denied.

(c) A decision of the Board of Directors is deemed valid without regard to procedural errors related to the rules of order one year after the decision is made unless the error appears on the face of a written instrument memorializing the decision.

5.5 Open Meetings; Executive Sessions.

(a) Open Meetings. Except as provided in Subsection (b) of this section, all meetings of the Board of Directors shall be open to Lot Owners. However, no Owner shall have a right to participate in the Board of Directors

meeting unless the Owner is also a member of the Board. The president shall have the authority to exclude an Owner who disrupts the proceedings at a Board meeting.

(b) Executive Sessions. In the discretion of the Board, the following matters may be considered in executive session:

(1) Consultation with legal counsel concerning the rights and duties of the Association regarding existing or potential litigation or criminal matters;

(2) Personnel matters, including salary negotiations and employee discipline;

(3) The negotiation of contracts with third parties;

(4) Collection of unpaid assessments; and

(c) Executive Session Procedure.

(1) Except in the case of an emergency, the Board of Directors shall vote in an open meeting whether to meet in executive session. If the Board votes to meeting in executive session, the president or other presiding officer shall state the general nature of the action to be considered and, as precisely as possible, when and under what circumstances the deliberations can be disclosed to owners. The statement, motion or decision to meet in executive session must be included in the minutes of the meeting.

(2) A contract or an action considered in executive session does not become effective unless the Board, following the executive session, reconvenes in open

meeting and votes on the contract or action, which must be reasonably identified in the open meeting and included in the minutes.

5.6 Meetings by Telephonic or Electronic Communication.

In the event of an emergency, meetings of the Board of Directors may be conducted by telephonic communication or by the use of a means of communication that allows all members of the Board of Directors participating to hear each other simultaneously or otherwise to be able to communicate during the meeting.

5.7 Notice to Owners of Meetings of Board.

For other than emergency meetings, notice of each Board of Directors meeting must be posted at a place or places on the property at least three (3) days prior to the meeting, or notice must be provided by a method otherwise reasonably calculated to inform the Owners of the meeting.

5.8 Waiver of Notice.

Any director may, at anytime, waive notice of any meeting of the Board of Directors in writing, and the waiver shall be deemed equivalent to the giving of the notice. Attendance by a director at any meeting of the board shall constitute a waiver of notice by the director, except where the director attends the meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. If all directors are present at any meeting of the board, no notice to directors shall be required and any business may be transacted at the meeting.

5.9 *Quorum and Acts.*NOTES

At all meetings of the Board of Directors a majority of the existing directors shall constitute a quorum for the transaction of business and the acts of the majority of the directors present shall be the acts of the Board of Directors. If, at any meeting of the Board of Directors, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting any business which might have been transacted at the meeting as originally called may be transacted without further notice.

ARTICLE VI

POWERS, RIGHTS AND DUTIES OF THE BOARD OF DIRECTORS

6.1 General Powers and Duties.

The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law, the Declaration or by these Bylaws directed to be exercised and done by the Owners.

6.2 Specific Powers.

In addition to powers imposed by the Declaration, these Bylaws or by resolutions of the Association, the Utah Revised Nonprofit Corporation Act or other applicable law, the Board of Directors shall have the power to:

(a) Adopt and publish rules and regulations governing the use of the Common Area, including any improvements and amenities located thereon, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof.

(b) Pursuant to Section 16.2 of the Declaration, suspend the voting rights and right to use of any recreational facilities located on any Common Area of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended, after notice and hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations or any provisions of the Declaration.

(c) Declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3)

consecutive regular meetings of the Board of Directors.

(d) Employ a manager, independent contractor, or such other individuals, entities or employees as they deem necessary and to prescribe their duties.

6.3 Specific Duties.

In addition to duties imposed by the Declaration, these Bylaws or by resolutions of the Association, the Utah Revised Nonprofit Corporation Act or other applicable law, the Board of Directors shall have the duty to:

(a) Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such a statement is requested in writing by twenty-five percent of the members who are entitled to vote;

(b) Supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

(c) As more fully provided in the Declaration, to:

(1) Fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period;

(2) Send written notice of each Assessment to every Owner subject thereto at least thirty (30) days in advance of each Annual Assessment period;

(3) As provided for in the Declaration, foreclose the lien against any Lots for which Assessments are not paid within thirty (30) days after the due date thereof or to bring an action at law against the Owner personally obligated to pay the same;

(d) Issue, or cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid in accordance the Declaration. A reasonable charge may be made by the Board for the issuance of these certificates.

(e) Procure and maintain adequate liability and hazard insurance on property Owned by the Association or maintained by the Association if required by the Declaration.

(f) Cause all officers or employees having fiscal responsibilities to be bonded as it may deem appropriate.

(g) Cause to be maintained the Common Area and any other areas shown on the Plat that may be owned by governmental entities who are not maintaining such areas and any other property required to be maintained by the Declaration.

(h) Establish and maintain the financial accounts of the Association.

(i) Establish a budget for payment of all Common Expenses of the Association, and institute and maintain a voucher system for payment, which shall require a sufficient number of signatories thereon as may be reasonably necessary to prevent any misuse of the Association's funds.

(j) Prepare and distribute annual financial statements for the Community to each Owner.

(j) At least annually, cause the review of the insurance coverage of the Association as provided in the Declaration.

(k) File the Annual Report with the Utah Secretary of State, Department of Corporations and Commercial Code.

(l) Prepare or cause to be prepared and filed any required income tax returns or forms.

(m) In the Boards' discretion, appoint an Architectural Review Committee, as provided in the Declaration; and a Nominating Committee, as provided in these Bylaws. In addition, the Board of Directors shall appoint such other committees as deemed appropriate in carrying out its purpose.

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ARTICLE VII

OFFICERS AND THEIR DUTIES

7.1 Designation and Qualification.

(a) Designation. The principal officers of the Association shall be a president, a vice-president, a secretary and a treasurer. The directors may designate the office of assistant treasurer and assistant secretary.

(b) Qualifications. The president and vice-president shall be a member of the Board of Directors, but the other officers need not be directors or Owners. Any director may be an officer of the Association.

(c) Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one (1) of any of the other offices specified in subsection (a) of this section.

(d) Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

7.2 Election and Vacancies.

The officers of the Association may be elected by the Board of Directors at the organizational meeting of each new board held in accordance with Section 5.1 above or any Board of Directors' meeting thereafter to serve until their respective successors are elected at the next organizational meeting. If any office becomes vacant by reason of death, resignation, removal disqualification or any other cause, the Board of Directors shall elect

a successor to fill the unexpired term at any meeting of the Board of Directors.

7.3 Resignation.

Any officer may resign at any time by giving written notice to the Board, the president or the secretary. The resignation shall take effect on the date of receipt of the notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of the resignation shall not be necessary to make it effective.

7.4 Removal of Officers.

Officers shall hold office at the pleasure of the Board of Directors. Upon an affirmative vote of a majority of the members of the Board of Directors any officer may be removed, either with or without cause.

7.5 Compensation of Officers.

No officer who is a member of the Board of Directors may receive any compensation from the Association for acting as an officer, unless the compensation is authorized by a binding vote of the Owners. The Board of Directors may fix any compensation to be paid to any officers who are not also directors.

7.6 Duties of Officers.

The duties of the officers are as follows:

(a) President. The president shall be the chief executive officer of the Association. He or she shall preside at all meetings of the Association and of the Board of Directors.

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The president shall have all of the general powers and duties which are usually vested in the office of president of an association. The president shall have the authority to sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

(b) Vice-President. The vice-president shall act in the place and stead of the president in the event of the president's absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Board. The Vice-President shall likewise have the authority to sign all leases, mortgages, deeds and other written instruments.

(c) Secretary. The secretary shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the Association, have charge of such books and papers as the Board of Directors may direct, and in general, perform all of the duties incident to the office of secretary.

(d) Treasurer. The treasurer shall have responsibility for the Association's funds and securities not otherwise held by a managing agent, and shall be responsible for causing full and accurate accounts of all receipts and disbursements to be kept in books belonging to the Association. The treasurer shall be responsible for causing the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may, from time to time, be designated by the Board of Directors and disbursing funds as directed by resolution of the Board.

ARTICLE VII

INDEMNIFICATION OF OFFICERS AND DIRECTORS

Each officer and director of the Association, in consideration of his or her services, shall be indemnified by the Association to the extent permitted by law against expenses and liabilities reasonably incurred by him or her in connection with the defense of any action, suit or proceeding, civil or criminal, to which he or she may be a party by reason of being or having been a director or officer of the Association. The foregoing right to indemnification shall be exclusive of any other rights to which the director or officer or person may be entitled by law or agreement or vote of the members or otherwise.

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ARTICLE IX

RECORDS AND AUDITS

The Association shall maintain within the State of Utah all documents, information and other records of the Association in accordance with the Declaration, these Bylaws and the Utah Revised Nonprofit Corporation Act in the manner prescribed by a resolution adopted by the Board of Directors.

9.1 General Records.

(a) The Board of Directors and managing agent or manager, if any, shall keep detailed records of the actions of the Board of Directors and managing agent or manager; minutes of the meetings of the Board of Directors; and minutes of the meeting of the Association.

(b) The Board of Directors shall maintain a Book of Resolutions containing the rules, regulations, and policies adopted by the Association and Board of Directors.

(c) The Board of Directors shall maintain a list of Owners and a list of all Mortgagees of Lots. The list of Owners shall specify whether the Owner is an Owner in Good Standing or a Suspended Owner.

(d) The Association shall retain within this state all records of the Association for not less than the period specified in applicable law, except that:

(1) Documents of a permanent nature such as the following, if available, must be maintained as permanent records of the Association:

(A) The as-built architectural, structural, engineering, mechanical, electrical and plumbing plans;

(B) The original specifications, indicating all subsequent material changes;

(C) The plans for underground site service, site grading, drainage and landscaping together with cable television drawings;

(D) Any other plans and information relevant to future repair or maintenance of the property; and

(E) A list of the general contractor and the electrical, heating and plumbing subcontractors responsible for construction or installation of common areas;

(2) Proxies and ballots must be retained for one year from the date of determination of the vote.

9.2 Records of Receipts and Expenditures

The Board of Directors or its designee shall keep detailed, accurate records in chronological order of the receipts and expenditures affecting the Community, itemizing the maintenance and repair expenses of the Common Area or Association property and any other expenses incurred.

9.3 *Assessment Roll.*

The assessment roll shall be maintained in a set of accounting books in which there shall be an account for each Lot. The account shall designate the lot number, the name and address of the Owner or Owners, the amount of each Assessment against the Owners, the dates and amounts in which the Assessment comes due, the amounts paid upon the account, and the balance due on the Assessments.

9.4 *Payment of Vouchers.*

The treasurer shall pay all vouchers up to One Thousand Dollars (\$1,000) signed by the president, managing agent, manager, or other person authorized by resolution of the Board of Directors. Any voucher in excess of \$1,000 shall require the signature of the president.

9.5 *Financial Reports and Audits.*

(a) An annual report of the receipts and expenditures of the Association and a balance sheet showing assets and liabilities shall be rendered by the Board of Directors to all Owners and to all mortgagees of Lots who have requested the same in writing within ninety (90) days after the end of each fiscal year.

(b) From time to time the Board of Directors, at the expense of the Association, may obtain an audit by a certified public accountant or other financial review of the books and records pertaining to the Association and furnish copies thereof to the Owners and Mortgagees of Lots. At any time any Owner or Mortgagee may, at such Owner's or Mortgagee's own expense, cause

an audit or inspection to be made of the books and records of the Association.

9.6 *Inspection of Records by Owners.*

(a) Except as otherwise provided in Section 9.7 below, all records of the Association shall be reasonably available for examination by an Owner and any Mortgagee of a Lot pursuant to rules adopted by resolution of the Board of Directors.

(b) The Board of Directors shall maintain a copy, suitable for the purposes of duplication, of the following:

(1) The Declaration, Bylaws and any amendments in effect or supplements thereto, and rules and regulations of the Association.

(2) The most recent financial statement prepared pursuant to Section 9.5 above.

(3) The current operating budget of the Association.

(c) The Association, within five (5) business days after receipt of a written request by an owner, shall furnish the requested information required to be maintained under Subsection (b) of this section.

(d) The Board of Directors, by resolution, may adopt reasonable rules governing the frequency, time, location, notice and manner of examination and duplication of Association records and the imposition of a reasonable fee for furnishing copies of any documents, information or records described in this section. The fee may include reasonable

personnel costs incurred to furnish the information.

9.7 Records Not Subject to Inspection.

Records kept by or on behalf of the Association may be withheld from examination and duplication to the extent the records concern:

- (a) Personnel matters relating to a specific identified person or a person's medical records.
- (b) Contracts, leases and other business transactions that are currently under negotiation to purchase or provide goods or services.
- (c) Communications with legal counsel that relate to matters specified in Subsections (a) and (b) of this section.
- (d) Disclosure of information in violation of law.
- (e) Documents, correspondence or management or board reports compiled for or on behalf of the association or the board of directors by its agents or committees for consideration by the board of directors in executive session held in accordance with Section 5.5(b) above.
- (f) Documents, correspondence or other matters considered by the board of directors in executive session held in accordance with Section 5.5(b) above.
- (g) Files of individual Owners, other than those of a requesting Owner or requesting mortgagee of an individual Owner, including any individual Owner's file kept by or on

behalf of the association.

9.8 Notice of Sale or Mortgage.

Immediately upon the sale or Mortgage of any lot, the Owner shall promptly inform the secretary or manager of the name and address of the purchaser, vendee or Mortgagee.

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ARTICLE X

ASSESSMENTS

10.1 Obligation to Pay.

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Each member is obligated to pay to the Association Assessments specified in the Declaration which are secured by a continuing lien upon the lot against which the assessment is made.

No Owner may waive or otherwise escape liability for the Assessment provided for in the Declaration by non-use of the Common Area or abandonment of the Owner's Lot.

ARTICLE XI

*AMENDMENTS***11.1 How Proposed.**

Amendments to the Bylaws shall be proposed by either a majority of the Board of Directors or by Owners holding at least thirty percent (30%) of the voting rights. The proposed amendment must be reduced to writing and must be included in the notice of any meeting at which action is to be taken thereon.

11.2 Adoption.

Amendments may be approved by the Association at a duly constituted meeting or meeting by written ballot in lieu of a meeting conducted pursuant to Section 2.14 above for such purpose. Subject to Section 11.3 and 11.4 below, a vote of at least a two-thirds (2/3) of the Owners participating in a properly convened meeting, held for such purpose, is required for approval of any amendment.

11.3 Corrections and Regulatory Amendments.

Notwithstanding the provisions of Sections 11.2 of this section and any other provision of these Bylaws, and in addition to all other special rights of the Declarant provided in the Declaration and these Bylaws, until the Turnover Meeting, Declarant, unilaterally without the approval or joinder by the Association, Owners, Mortgagee or other person shall have the right to amend these Bylaws in order to:

- (a) Correct obvious typographical, mathematical or similar errors.
- (b) Comply with the requirements of any

applicable statute, ordinance, regulation or guideline of the Federal Housing Administration, the Veterans Administration, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, any department, bureau, board, commission or agency of the United States, the State of Utah, Utah County, Draper City or any corporation wholly owned, directly or indirectly, by the United States, the State of Utah, Utah County or Draper City which insures, guarantees or provides financing for a community such as The Cottages at Eagle Pointe or lots in such a community.

11.4 Declarant Consent.

Any amendment must be approved by the Declarant, in writing, until the Turnover Meeting and as long as Declarant owns at least one Lot in the Community.

11.5 Additional Rights.

Until the Turnover Meeting, the Federal Housing Administration or the Veterans Administration or the Department of Housing and Urban Development, or any successor agencies thereto, shall have the right to veto amendments while there if any such agency or any successor agencies thereto have approved the Properties, any part thereof, or any Lot, for federal mortgage financing.

11.6 Execution and Recording.

An amendment shall not be effective until certified by the president and secretary of the Association as being adopted in accordance with these Bylaws, acknowledged and recorded with the Recorder's Office of Utah County, Utah.

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11.7 Challenge to Validity.

No action to challenge the validity of an adopted amendment may be brought more than one (1) year after the amendment is recorded.

ARTICLE XII

*MISCELLANEOUS***12.1 Notices.**

(a) Association. All notices to the Association or the Board of Directors shall be sent care of the managing agent or, if there is no managing agent, to the principal office of the Association or to such other address as the Board of Directors may hereafter designate from time to time.

(b) Owners.

(1) Except as otherwise provided in the Declaration, these Bylaws or law, all notices to any Owner shall be sent to such address as may have been designated by him or her, from time to time, in writing to the Board of Directors, or if no address has been designated, then to the Owner's Lot.

(2) If a lot is jointly owned or the lot has been sold under a land sale contract, notice shall be sent to a single address, of which the secretary has been notified in writing by such parties. If no address has been given to the secretary in writing, then mailing to the lot shall be sufficient.

12.2 Waiver, Precedent and Estoppel.

No restriction, condition, obligation, or provision contained in these Bylaws or rules and regulations adopted pursuant hereto shall be deemed to have been abrogated or waived by the Association by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur and any failure to enforce the same shall not be deemed to constitute precedent or estoppel impairing the right of the Association

as to any similar matter.

12.3 Invalidity; Number; Captions.

The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of these Bylaws. As used herein, the singular shall include the plural and the plural the singular. The masculine and neuter shall each include the masculine, feminine, and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of these Bylaws.

12.4 Fiscal Year.

The fiscal year of the Association shall be determined by the Board in its discretion.

12.5 Conflicts.

In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

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