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I, Christine Walker, County Clerk for Jackson County, Oregon, certify  
that the instrument identified herein was recorded in the Clerk  
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Christine Walker - County Clerk

**AFTER RECORDING RETURN TO:**

Stoel Rives LLP  
760 SW Ninth Avenue, Suite 3000  
Portland, OR 97205  
Attn: Christian H. Scott

First American Title 3743046 EV

**DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR  
EAGLE POINT ESTATES  
AT EAGLE POINT GOLF COMMUNITY**

**DECLARANT**

**EP HOF, LLC**



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**DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR  
EAGLE POINT ESTATES  
AT EAGLE POINT GOLF COMMUNITY**

THIS DECLARATION is made this 27 day of October, 2021, by EP HOF, LLC, an Oregon limited liability company (the "Declarant").

RECITALS

A. Declarant has recorded the plat of "**Eagle Point Phase 16A**" in the plat records of Jackson County, Oregon.

B. Declarant desires to subject Lots 489-544, inclusive, in such Plat to the conditions, restrictions and charges set forth in this instrument for the benefit of such property and its present and subsequent Owners, and to establish such property under the Oregon Planned Community Act, ORS 94.550 to 94.783, as a Class I planned community project to be known as "**Eagle Point Estates at Eagle Point Golf Community.**"

C. Declarant intends to annex the lots included in Phases 16B, 11, 15, 17 and 18 of the Eagle Point Golf Community Master Plan (attached as Exhibit B) to the terms of and provisions of this Declaration.

D. The property subject to this Declaration shall be a sub-association of the Eagle Point Golf Community and subject to enforcement by the Eagle Point Golf Community Homeowners Association as further described herein.

NOW, THEREFORE, Declarant hereby declares that the property described in Section 2.1 shall be held, sold and conveyed subject to the following easements, covenants, restrictions and charges, which shall run with such 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 all such persons.

**ARTICLE 1**

**DEFINITIONS**

As used in this Declaration, the terms set forth below shall have the following meanings:

**1.1 "Additional Property"** means any land, whether or not owned by Declarant, that is made subject to this Declaration as provided in Section 2.2.

**1.2 "Assessment Unit"** means a factor assigned to each Lot in accordance with Section 8.3 for purposes of determining each Lot's pro rata share of General Assessments, Special Assessments, and Emergency Assessments.

**1.3** “**Assessment(s)**” means all assessments and other charges, fines and fees imposed by the Association on an Owner in accordance with this Declaration, the Bylaws of the Association or the provisions of the Oregon Planned Community Act, including, without limitation, General Assessments, Special Assessments, Emergency Assessments and Individual Assessments as described in Article 9.

**1.4** “**Association**” means the nonprofit corporation to be formed to serve as the Owners association as provided in Article 7, and its successors and assigns.

**1.5** “**Board of Directors**” or “**the Board**” means the duly appointed or elected board of directors of the Association, which is invested with the authority to operate the Association and to appoint the officers of the Association. Prior to the Turnover Meeting, Declarant will appoint the Board of Directors. After the Turnover Meeting, the Board will be elected by the Owners.

**1.6** “**Bylaws**” means the duly adopted bylaws of the Association as the same may hereafter be amended or replaced.

**1.7** “**Common Areas**” means those lots or tracts designated as such on any plat of the Initial Property or in this Declaration or any declaration annexing Additional Property to the Property, including any improvements thereon and shall also include Common Easement Areas. Common Areas are to be maintained by the Master Association.

**1.8** “**Common Easement Areas**” means those easements established for the benefit of all property within Eagle Point Estates pursuant to this Declaration or any plat or declaration annexing Additional Property to Eagle Point Estates.

**1.9** “**Declarant**” means EP HOF, LLC, an Oregon limited liability company, and its successors and assigns, if such successor or assignee should acquire Declarant’s interest in the remainder of the Property, or less than all of such property if a recorded instrument executed by Declarant assigns to the transferee all of Declarant’s rights under this Declaration. Any such successor declarant shall succeed to all of the rights and obligations of the Declarant under this Declaration, including, without limitation, the obligation to complete any improvements required by City of Eagle Point as part of its subdivision approval.

**1.10** “**Eagle Point Estates**” means the Initial Property and any Additional Property annexed to this Declaration

**1.11** “**Emergency Assessments**” means the Assessments described in Section 9.4(c).

**1.12** “**General Assessments**” means the Assessments described in Section 9.4(a).

**1.13** “**General Plan of Development**” means Declarant’s general plan of development of the Property as approved by City of Eagle Point, as the same may be amended from time to time.



**1.14 “Golf Course”** means the real property and improvements located at 100 Eagle Point Drive, Eagle Point, Oregon 97524 (Tax Parcel Numbers 1-087184-3, 1-021228-1, 1-098384-6, 1-087186-8, 1-097967-3, 1-074380-2, 1-087192-4, 1-087191-6 and 1-087185-0), so long as said property is operated as a golf club, and its owner. As of the recording of this Declaration, the owner of said property is Hyer Golf LLC.

**1.15 “Individual Assessments”** means the Assessments described in Section 9.4(d).

**1.16 “Lot”** means a platted or partitioned lot within the Property (including the Unit located on such Lot), with the exception of the Common Areas and any tract marked on the Plat as being dedicated to a public body.

**1.17 “Master Association”** means the Eagle Point Golf Community Homeowner’s Association.

**1.18 “Mortgage”** means a mortgage or a trust deed; **“Mortgagee”** means a mortgagee or a beneficiary of a trust deed; **“Mortgagor”** means a mortgagor or a grantor of a trust deed.

**1.19 “Occupant”** means the occupant of a Unit who is the Owner, lessee or any other Person authorized by the Owner to occupy the premises.

**1.20 “Operations Fund”** means the fund described in Section 9.6.

**1.21 “Owner”** means the Person or Persons, including Declarant, owning any Lot in the Property, but does not include a tenant or holder of a leasehold interest or a contract vendor or other Person holding only a security interest in a Lot. If a Lot is Sold under a recorded real estate installment sale contract, the purchaser (rather than the seller) will be considered the Owner unless the contract specifically provided to the contrary. If a Lot is subject to a written lease with a term in excess of one year and the lease specifically so provides, then upon filing a copy of the lease with the Board of Directors, the lessee (rather than the fee owner) will be considered the Owner during the term of the lease for the purpose of exercising any rights related to such Lot under this Declaration. The rights, obligations and other status of being an Owner commence upon acquisition of the ownership of a Lot and terminate upon disposition of such ownership, but termination of ownership shall not discharge an Owner from obligations incurred prior to termination.

**1.22 “Person”** means a human being, corporation, partnership, limited liability company, trustee or other legal entity.

**1.23 “Property”** means the Initial Property and any Additional Property annexed pursuant to Section 2.2.

**1.24 “Reserve Fund”** means the fund described in Section 9.7.

**1.25 “Rules and Regulations”** means those policies, procedures, rules and regulations adopted by the Association pursuant to the authority granted in this Declaration, as the same may be amended from time to time.

**1.26 “Sold”** means that legal title has been conveyed or that a contract of sale has been executed and recorded under which the purchaser has obtained the right to possession.

**1.27 “Special Assessments”** means the Assessments described in Section 9.4(b).

**1.28 “This Declaration”** means all of the easements, covenants, restrictions and charges set forth in this instrument, together with any rules or regulations promulgated hereunder, as the same may be amended or supplemented from time to time in accordance with the provisions hereof, including the provisions of any supplemental declaration annexing property to Eagle Point Estates.

**1.29 “Turnover Meeting”** means the meeting called by Declarant pursuant to Section 7.7, at which Declarant will turn over administrative responsibility for the Property to the Association.

**1.30 “Unit”** means a building or a portion of a building located upon a Lot within the Property and designated for separate occupancy as a dwelling, together with any attached garage, courtyard, deck or patio.

**1.31 “Working Fund Assessments”** means the Assessments described in Section 9.4(e).

## ARTICLE 2

### PROPERTY SUBJECT TO THIS DECLARATION

**2.1 Initial Property.** Declarant hereby declares that all of the real property described below is owned and shall be owned, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration:

Lots 489-544, inclusive, located in the City of Eagle Point, Jackson County, Oregon and contained in that certain plat (the “Plat”) entitled “Eagle Point Phase 16A” filed in the plat records of Jackson County, Oregon, on February 18<sup>th</sup>, 2021 in Volume 47 at Page 02 of the Plat Records.

**2.2 Annexation of Additional Property.** Declarant intends from time to time to annex to Eagle Point Estates as Additional Property the real property shown on Exhibit B as Phases 16B, 11, 15, 17, and 18, and may also from time to time and in its sole discretion permit other holders of real property to annex the real property owned by them to Eagle Point Estates. The annexation of such Additional Property shall be accomplished as follows:

(a) The Owner or Owners of such real property shall record a declaration that shall be executed by or bear the approval of Declarant and shall, among other things, describe the

real property to be annexed; establish land classifications for the Additional Property; establish any additional limitations, uses, restrictions, covenants and conditions that are intended to be applicable to such Additional Property; and declare that such property is held and shall be held, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration.

(b) The Additional Property described in any such annexation shall thereby become a part of Eagle Point Estates and subject to this Declaration, and the Declarant and the Association and Master Association shall have and shall accept and exercise administration of this Declaration with respect to such Additional Property.

(c) There is no limitation on the number of Lots or Units that Declarant may create or annex to Eagle Point Estates, except as may be established by applicable ordinances of City of Eagle Point. Similarly, there is no limitation on the right of Declarant to annex common property, except as may be established by City of Eagle Point.

(d) Upon annexation to Eagle Point Estates, additional Lots so annexed shall be entitled to voting rights as set forth in Section 7.3.

(e) The formula to be used for reallocating the common expenses if additional Lots are annexed and the manner of reapportioning the common expenses if additional Lots are annexed during a fiscal year are set forth in Section 9.5.

(f) Additional Lots shall be subject to Assessment by the Master Association for the common expenses of the Master Association and subject to the enforcement rights of the Master Association contained in Section 2.3 of this Declaration.

**2.3 Authority of Master Association.** The covenants, conditions and restrictions contained within this Declaration may be enforced by the Master Association, as authorized by ORS 94.695. Subject to the rights of the Association and terms set forth in the Bylaws, the Master Association shall have the right to enforce the provisions of this Declaration against any Owner, including the Declarant or the Association. In enforcing the provisions of this Declaration, the Master Association shall have all the same rights and authorities available to it when enforcing the provisions of the Master Association's governing documents against its own members, including, without limitation, the right to levy fines, which shall become Assessments and liens against the offending Lot, and the right to seek injunctive relief to remedy violations.

**2.4 Improvements.** Declarant does not agree to build any improvements on the Property other than as specified in the final plan as approved by City of Eagle Point, but may elect, at Declarant's option, to build additional improvements.

**2.5 Dedications.** Declarant reserves the right to dedicate any portions of the Property then owned by Declarant to any governmental authority, quasi-governmental entity or entity qualifying under Section 501(c)(3) of the Internal Revenue Code or similar provisions, from time to time, for such purposes as Declarant may deem to be appropriate, including, without limitation, for utility stations, equipment, fixtures and lines; streets and roads; sidewalks; trails; open space;

recreational facilities; schools; fire, police, security, medical and similar services; and such other purposes as Declarant and such governmental authority or quasi-governmental entity shall determine to be appropriate from time to time. Any consideration received by Declarant as a result of such dedication or by reason of any condemnation or any conveyance in lieu of condemnation shall belong solely to Declarant.

### ARTICLE 3

#### PROPERTY RIGHTS IN COMMON AREAS

**3.1 Designation of Common Areas.** Tracts A, B and C are for the purposes shown on the Plat and have been conveyed to the Eagle Point Estate Homeowners Association and will be maintained by the Master Association.

**3.2 Owners' Easements of Enjoyment.** Subject to the provisions of this Article 3, every Owner and his or her invitees shall have a right and easement of enjoyment in and to the Common Areas, which easement shall be appurtenant to and shall pass with the title to every Lot.

**3.3 Title to the Common Areas.** Except for portions dedicated to the public or any governmental authority, title to the Common Areas, except Common Easement Areas, shall be conveyed to the Association by Declaration AS IS, but free and clear of monetary liens, on or before the Turnover Meeting. In the event Declarant erroneously conveys to the Association any property that is not Common Area, upon request the Association shall promptly reconvey such property to Declarant or its designee.

**3.4 Extent of Owners' Rights.** The rights and easements of enjoyment in the Common Areas created hereby shall be subject to the following and to all other provisions of this Declaration:

(a) **Easements.** Declarant grants to the Association for the benefit of the Association and all Owners of Lots within the Property the following easements over, under and upon the Common Areas:

(1) An easement for underground installation and maintenance of power, gas, electric, water and other utility and communication lines and services installed by Declarant or with the approval of the Board of Directors and any such easement shown on any Plat of the Property.

(2) An easement for construction, maintenance, repair and use of such areas, including any common facilities thereon.

(3) An easement for the purpose of making exterior repairs to the Units and performing any other maintenance required or permitted by this Declaration.

(b) **Public and Utility Easements.** The Common Areas shall be subject to such public and utility easements as may be established in any plat of the Property. In addition, Declarant or the Association may (and, to the extent required by law, shall) grant or assign such easements to municipalities or other utilities performing utility services and to communication companies, and the Association may grant free access thereon to police, fire and other public officials and to employees of utility companies and communications companies serving the Property.

(c) **Use of the Common Areas.** The Common Areas shall be used for the purposes set forth in any plat of the Property and not be partitioned or otherwise divided into parcels for residential use, and no private structure of any type shall be constructed on the Common Areas. Except as otherwise provided in this Declaration, the Common Areas shall be reserved for the use and enjoyment of all Owners. No private use may be made of the Common Areas except as otherwise provided in this Declaration. No Owner shall place or cause to be placed on the Common Areas any trash, structure, equipment, furniture, package or object of any kind. Nothing in this Declaration shall prevent the placing of a sign or signs upon the Common Areas by Declarant or the Association identifying the Property or identifying pathways or items of interest, signs restricting certain uses, or warning, traffic or directional signs, provided that such signs are approved by the Board of Directors and comply with any applicable sign ordinances. The Board shall have authority to abate any trespass or encroachment upon the Common Areas at any time, by any reasonable means and with or without having to bring legal proceedings. A declaration annexing Additional Property may provide that the Owners of such Additional Property do not have the right to use a particular Common Area or facility located on such Common Area, in which event such Common Area shall automatically become a Limited Common Area assigned to the Lots that have access thereto. The Common Areas shall be subject to public and private utility easements for the installation and maintenance of sanitary sewers, waterlines, surface water management, storm drainage and access over their entirety. In addition, Declarant or the Association may (and to the extent required by law, shall) grant or assign easements on all Common Areas to governmental bodies or other utilities performing utility services and to communications companies, and may grant free access over the Common Areas to police, fire and other public officials and to employees of utility companies and communication companies serving the Property.

(d) **Alienation of the Common Areas.** The Association may not by act or omission seek to abandon, partition, subdivide, encumber as security for a debt, sell, transfer or convey the Common Areas owned directly or indirectly by the Association for the benefit of the Lots unless the holders of at least 80 percent of the Class A voting rights and the Class B Member, if any, have given their prior written approval and the Master Association and the City of Eagle Point have given their approval. The Association, upon approval in writing of at least two-thirds of the Class A voting rights and the Class B Member, if any, and if approved by order or resolution of City of Eagle Point, may dedicate or convey any portion of the Common Areas to a park district or other public body. Any sale, transfer, conveyance or encumbrance permitted by this Declaration may provide that the Common Area may be released from any restrictions imposed by this Declaration if the request for approval of the action also includes approval of the release.

(e) **Leases, Easements, Rights-of-Way, Licenses and Similar Interests and Vacations of Roadways.** Notwithstanding the provisions of paragraph (d) above, the Association may execute, acknowledge and deliver leases, easements, rights-of-way, licenses and other similar interests affecting the Common Areas and consent to vacation of roadways within and adjacent to the Common Areas, subject to such approvals as are required by ORS 94.665(4) and (5).

(f) **Limitation on Use.** Use of the Common Areas by the Owners shall be subject to the provisions of this Declaration and to the following:

(1) The provisions of this Declaration and any applicable supplemental declaration;

(2) Any restrictions or limitations contained in any deed or other instrument conveying such property to the Association;

(3) Easements reserved or granted in this Declaration or any supplemental declaration;

(4) The Board's right to:

(A) adopt Rules and Regulations regulating use and enjoyment of the Common Areas, including rules limiting the number of guests who may use the Common Areas;

(B) suspend the right of an Owner to use the Common Areas as provided in this Declaration; and

(C) dedicate or transfer all or any part of the Common Areas, subject to such approval requirements as may be set forth in this Declaration.

**3.5 Delegation of Use.** Any Owner may extend the Owner's right of use and enjoyment of the Common Areas to the members of the Owner's family, lessees and social invitees, as applicable, subject to reasonable regulation by the Board of Directors. An Owner who leases the Owner's Unit shall be deemed to have assigned all such rights to the lessee of such Unit for the period of the lease.

**3.6 Easements Reserved by Declarant.** So long as Declarant owns any Lot, Declarant reserves an easement over, under and across the Common Areas to carry out sales and rental activities necessary or convenient for the sale or rental of Lots, including, without limitation, advertising and "For Sale" signs. In addition, Declarant hereby reserves to itself and for the Owners of Lots in the Property a perpetual easement and right-of-way for access over, upon and across the Common Areas for construction, utilities, communication lines, drainage, and ingress and egress for the benefit of other property owned by Declarant. Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under and across the Common Areas and the right to store materials thereon and to make such other use thereof as

may be reasonably necessary or incident to the construction of the improvements on the Property or other real property owned by Declarant; provided, however, that no such rights shall be exercised by Declarant in such a way as to unreasonably interfere with the occupancy of, use of, enjoyment of or access to an Owner's Lot by the Owner or the Owner's family, tenants, employees, guests or invitees. Declarant may assign such easements to builders purchasing Lots from Declarant for development.

**3.7 Easement to Serve Other Property.** Declarant reserves for itself and its duly authorized agents, successors, assigns and Mortgagees, and the developers of improvements in all future phases of Eagle Point Estates, a perpetual easement over the Common Areas for the purposes of enjoyment, use, access and development of the property subject to the General Plan of Development, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Areas for construction, utilities, water and sanitary sewer lines, communication lines, drainage facilities, irrigation systems and signs, and ingress and egress for the benefit of other portions of Eagle Point Estates and any Additional Property that becomes subject to this Declaration or any property in the vicinity of the Property or Additional Property that is then owned by Declarant or an affiliate thereof. Declarant agrees that such users shall be responsible for any damage caused to the Common Areas as a result of their actions in connection with development of such property. If the easement is exercised for permanent use by such property and such property or any portion thereof benefiting from such easement is not made subject to this Declaration, Declarant or its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of any maintenance of such facilities. The allocation of costs in any such agreement shall be based on the relative extent of use of such facilities.

**3.8 Common Easement Areas.** The trails, paths and open space and private roads and alleys, as shown on the Plat, shall be the initial Common Easement Areas. Such areas are to be maintained by the Master Association and no changes in landscaping will be permitted within such areas without written authorization by the Board of Directors. No building, wall, fence, paving, landscaping or construction of any type shall be erected or maintained by any Owner so as to trespass or encroach upon the Common Easement Areas, nor may any such areas be used by the Owner for stormwater treatment purposes except as provided for on the Plat.

## ARTICLE 4

### PROPERTY RIGHTS IN LOTS

**4.1 Use and Occupancy.** The Owner of a Lot in the Property shall be entitled to the exclusive use and benefit of such Lot, except as otherwise expressly provided in this Declaration, but the Lot shall be bound by and each Owner and Declarant shall comply with the restrictions contained in Article 5, all other provisions of this Declaration and the provisions of any supplement or amendment to this Declaration.

**4.2 Easements Reserved.** In addition to any utility and drainage easements shown on any recorded plat, Declarant hereby reserves the following easements for the benefit of Declarant, the Association and Owners, as applicable:

(a) **Right of Entry.** Upon request given to the Owner and any Occupant, any Person authorized by the Association may enter a Lot to perform necessary maintenance, repair or replacement of any property for which the Association has maintenance, repair or replacement responsibility under this Declaration; to make emergency repairs to a Lot that are necessary for the public safety or to prevent damage to Common Areas or to another Lot; or to enforce this Declaration or the Rules and Regulations. Requests for entry must be made in advance and for a reasonable time, except in the case of any emergency, when the right of entry is immediate. An emergency entry does not constitute a trespass or otherwise create a right of action in the Owner of the Lot.

(b) **Encroachments.** Each Lot and all Common Areas shall have an easement over all adjoining Lots and Common Areas for the purpose of accommodating any present or future encroachment as a result of engineering errors, construction, reconstruction, repairs, settlement, shifting or movement of any portion of the Property, or any other similar cause, and any encroachment due to building overhang or projection. There shall be valid easements for the maintenance of the encroaching Units and Common Areas so long as the encroachments shall exist, and the rights and obligations of Owners shall not be altered in any way by the encroachment. The encroachments described in this paragraph (b) shall not be construed to be encumbrances affecting the marketability of title to any Lot. Nothing in this Section 4.2 shall relieve an Owner of liability in the case of the Owner's willful misconduct.

(c) **Utilities.** Each Lot shall be subject to an easement under and across that portion of the Lot not occupied by the Unit for installation, maintenance and use of power, gas, electric, water and other utility and communication lines, facilities and services and for meters measuring such services installed by or at the direction of Declarant or with approval of the Board of Directors; provided, however, that shared or common use utilities shall not run beneath Unit structures. Separate utility services shall be supplied to each individual Unit.

(d) **Utility Inspection and Repairs.** Each utility and communication service provider and its agents or employees shall have authority to access all Lots, but not improvements constructed thereon, and the Common Areas on which communication, power, gas, drainage, sewage or water facilities may be located for the purpose of installing, operating, maintaining, improving or constructing such facilities; reading meters; inspecting the condition of pipes, lines and facilities; and completing repairs. The Owner of any such Lot will be given advance notice if possible. In the case of an emergency, as determined solely by the utility or communication service provider, no prior notice will be required.

(e) **Rain Drains and Storm Sewers.** Each Lot shall be subject to an easement for installation and maintenance of such rain drains and connected storm sewers installed or to be installed (as required by governmental regulatory authorities or as otherwise authorized by the Board of Directors) in or around any Unit or under the surface of any Lot.



(f) **Easements Reserved by Declarant.** Declarant and Declarant's agents, successors and assigns shall have an easement over and upon the Lots as may be reasonably necessary for the purpose of completing or making repairs to existing structures and for the purpose of discharging any other obligation of Declarant or exercising any other special Declarant right, whether arising under the Oregon Planned Community Act or reserved in this Declaration or the Bylaws. For a period of 10 years following completion of construction, Declarant shall have a right to inspect the Common Areas and portions of the Units maintained by the Association and the Association's records regarding inspections and maintenance of each Unit and the Common Areas.

(g) **Land Outside Units.** The Association shall have a right of entry over all portions of each Lot, other than the portion occupied by a Unit, for installation, operation, maintenance and use of utilities and other facilities for the use and benefit of the Owners within Eagle Point Estates.

#### **4.3 Easements and Indemnities Relating to Golf Course.**

(a) Each Lot and the Common Areas are burdened with an easement permitting (i) golf balls to come upon them, and (ii) for golfers at reasonable times and in a reasonable manner to come upon them to retrieve golf balls. In some cases, the golf balls which come upon the Common Area or Lots may have sufficient force and velocity to do serious harm to a Person, to pets, to improvements or to personal property. EACH OWNER, FOR SUCH OWNER'S FAMILY MEMBERS, VISITORS, INVITEES AND GUESTS AND SUCH OWNER'S SUCCESSORS AND ASSIGNS, ASSUMES SUCH RISK AND WAIVES EACH RIGHT SUCH PERSON OTHERWISE WOULD HAVE AGAINST DECLARANT, BUILDERS, THE ASSOCIATION AND ITS MEMBERS (IN THEIR CAPACITY AS SUCH), THE GOLF COURSE, THE GOLF COURSE OWNER AND OPERATOR, THE GOLF COURSE DESIGNER, THE GOLF COURSE CONTRACTOR AND THE OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, INDEPENDENT CONTRACTORS, DESIGNERS, ARCHITECTS, AGENTS, SUCCESSORS AND ASSIGNS OF THE FOREGOING, TO THE FULLEST EXTENT PERMISSIBLE BYLAW, FOR EACH INJURY RESULTING FROM THE DESIGN OF SUCH GOLF COURSE, OR THE LOCATION OF A LOT OR STRUCTURE IN RELATION TO THE GOLF COURSE, AND AGREES TO INDEMNIFY AND HOLD DECLARANT, BUILDERS, THE ASSOCIATION AND ITS MEMBERS (IN THEIR CAPACITY AS SUCH), THE GOLF COURSE, THE GOLF COURSE OWNER AND OPERATOR, THE DESIGNER OF THE GOLF COURSE, THE BUILDER OF THE GOLF COURSE AND THE OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, INDEPENDENT CONTRACTORS, DESIGNERS, ARCHITECTS, AGENTS, SUCCESSORS AND ASSIGNS OF THE FOREGOING HARMLESS FROM AND AGAINST ALL CLAIMS AND LIABILITY INCLUDING, WITHOUT LIMITATION, LEGAL FEES AND COSTS IN THE EVENT ANY PERSON WHILE ON A UNIT, RECEIVES ANY INJURY, OR SUFFERS PROPERTY DAMAGE AND THEREAFTER SEEKS TO RECOVER AGAINST SUCH PERSONS OR ENTITIES FOR COMPENSATION FOR SUCH INJURY OR DAMAGE, WHETHER DIRECTLY OR INDIRECTLY, OR AS THE RESULT OF A THIRD-PARTY CLAIM OR CROSS-CLAIM. EACH OWNER AND SUCH OWNER'S FAMILY MEMBERS, INVITEES, GUESTS, VISITORS, SUCCESSORS AND ASSIGNS WAIVE EACH

AND EVERY CLAIM OR RIGHT THEY MAY HAVE TO CLAIM THAT THE NORMAL AND CUSTOMARY OPERATION OF THE GOLF COURSE CONSTITUTES A NUISANCE, OR THAT ANY ASPECT OF THE GOLF COURSE OPERATION SHOULD BE LIMITED TO ANY SPECIFIC HOURS OF THE DAY OR TO ANY SPECIFIC DAYS OF THE WEEK. EACH OWNER, BY ACCEPTANCE OF THE DEED OR CONTRACT FOR A UNIT, AND SUCH FAMILY MEMBERS, INVITEES, GUESTS, VISITORS, SUCCESSORS AND ASSIGNS OF SUCH OWNER ASSUME THE RISKS WHICH ARE ASSOCIATED WITH THE GAME OF GOLF AND THE FLIGHT OF GOLF BALLS OVER AND UPON THEIR LOT, INCLUDING, WITHOUT LIMITATION, THE POSSIBILITY OF DAMAGE TO THEIR PROPERTY, REAL OR PERSONAL, AND INJURY TO THEMSELVES AND THEIR FAMILY, PETS, FRIENDS, INVITED GUESTS, VISITORS OR ANY OTHER PERSON ON THEIR UNIT, AND AGREES TO INDEMNIFY AND HOLD DECLARANT, BUILDERS, THE ASSOCIATION AND ITS MEMBERS (IN THEIR CAPACITY AS SUCH), THE GOLF COURSE, THE GOLF COURSE OWNER AND OPERATOR, THE GOLF COURSE DESIGNER, GOLF COURSE BUILDER, AND THE OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, INDEPENDENT CONTRACTORS, DESIGNERS, ARCHITECTS, AGENTS, SUCCESSORS AND ASSIGNS OF THE FOREGOING HARMLESS AND FREE FROM AND AGAINST ALL CLAIMS AND LIABILITY, INCLUDING, WITHOUT LIMITATION, LEGAL FEES AND COSTS ARISING FROM ANY SUCH ASSUMED RISK.

(b) The owner of the Golf Course and its respective agents, successors and assigns shall at all times have a right and nonexclusive easement of access and use over those portions of the Common Area reasonably necessary, with or without the use of maintenance vehicles and equipment, for the operation, maintenance, repair and replacement of the Golf Course.

(c) The Lots immediately adjacent to the Golf Course are hereby burdened with a nonexclusive easement in favor of the Golf Course for overspray of water from any irrigation system serving the Golf Course. Under no circumstances shall the Association or the owners of the Golf Course be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

(d) The Golf Course and its respective agents, successors and assigns shall have a perpetual, exclusive easement of access over the Common Area and unimproved Lots for the purpose of retrieving golf balls from bodies of water within the Common Area lying reasonably within range of golf balls hit from the Golf Course.

(e) The Golf Course and its respective agents, successors and assigns shall have a perpetual, nonexclusive easement to the extent reasonably necessary, over the Common Area for the installation, maintenance, repair, replacement and monitoring of utility lines, wires, drainage pipelines and pipelines serving all or portions of the Golf Course.

(f) The Lots and Common Areas are hereby burdened with easements in favor of the Golf Course for natural drainage of storm water runoff from the Golf Course.

(g) The Common Area is hereby burdened with easements in favor of the Golf Course for golf cart paths serving the Golf Course. Under no circumstances shall the Association or the owners of the Golf Course be held liable for any damage or injury resulting from the exercise of this easement.

## ARTICLE 5

### ARCHITECTURAL REVIEW

**5.1 General.** No structure shall be placed, erected or installed upon any Lot and no improvements shall be made except in compliance with this Declaration and upon approval of the appropriate committee under this Section 5.1. This Article 5 may not be amended without the written consent of (a) the Master Association, and (b) the Declarant so long as the Declarant owns any land subject to this Declaration. No provisions within this Article 5 that affect a right of the Golf Course may be amended without written consent from the Golf Course.

**5.2 Architectural Review.** The architectural review process shall be administered and enforced by the Design Review Committee and the Modifications Committee of the Association, with the Master Association having the right to appoint one voting representative to each committee, and in accordance with the procedures that have been promulgated by each. The Design Review Committee shall have jurisdiction over all new construction and the Modifications Committee shall have jurisdiction over all modifications or alterations to existing construction, and the particulars of each committee's jurisdiction shall be in accordance with the jurisdictional provisions of the Master Association's governing documents.

**5.3 Limitation of Liability.** Review and approval of any application pursuant to this Article 5 is made on the basis of aesthetic considerations only, and neither the Association, the Master Association, Design Review Committee nor the Modifications Committee shall bear any responsibility for insuring the structural integrity or soundness of approved construction or modifications, nor for insuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Master Association, the Directors, any committee, or member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner or quality of approved construction on or modifications to any Lot.

**5.4 Architectural Standards.** The Design Guidelines of the Master Association shall not apply to any Lot in this Association. The architectural standards attached hereto as Exhibit C shall apply to the Lots in this Association, and no structure shall be placed, erected or installed and no improvements shall made upon any Lot except in compliance with these architectural standards.

**5.5 No Waiver of Approval Authority.** Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings or other matters subsequently or additionally submitted for approval.

**5.6 No Variance Without Master Association Approval.** The Design Review Committee may not approve variances from the architectural standards contained herein without prior written approval from the Board of Directors of the Master Association.

**5.7 Enforcement.** Any structure or improvement placed or made in violation of this Article 5 shall be deemed to be non-conforming. Upon written request from the Board of Directors, the Declarant, or the Master Association, Owners shall at their own cost and expense remove such structure or improvement, restore the land to substantially the same condition as existed prior to the non-conforming work, and/or make such modifications as necessary to remove the nonconformity. Should an Owner fail to remove, modify and/or restore as required, the Board of Directors, the Master Association, or either's designee shall have the right to enter the property, remove the violation, restore the property to substantially the same condition as previously existed, and/or make such modifications as necessary to remove the nonconformity. All costs, together with interest at the rate of 12 percent per annum or the maximum rate then allowed by law, whichever is less, may be assessed against the offending Lot and collected as an Individual Assessment unless otherwise prohibited in this Declaration.

**5.8 Design and Construction Standards Relating to Golf Course.**

(a) In addition to the requirements included in Section 6.14 "Golf Course Adjacent Areas," all landscaping on any Lot adjacent to the Golf Course must be completed within nine months from the date that a certificate of occupancy is issued by the City of Eagle Point for a residential structure on such Lot.

(b) All grass lawns planted on Units or Areas of Common Responsibility adjacent to the Golf Course shall be of equal or better grade than the Golf Course grass. All burrowing animals, including, but not limited to, gophers, moles and squirrels, which appear on any Unit adjacent to the Golf Course shall be exterminated as expeditiously as possible.

(c) Backyard fences on Lots adjacent to the Golf Course, other than fences separating two such Lots or separating one such Lot from Common Areas, are discouraged, and any such fences, prior to installation, must have the written approval of the Golf Course.

(d) No fences, hedges, mass plantings, shrubs or other structures, except for residential homes, exceeding four feet in height may be erected or maintained on Lots adjacent to the Golf Course without the prior written approval of the Golf Course.

(e) The Golf Course shall have the authority to appoint a member to the Design Review Committee and Modification Committee of the Master Association whenever those committees are reviewing applications for construction or alteration of improvements on Lots adjacent to the Golf Course, in accordance with the terms of the Master Association's governing documents.

## ARTICLE 6

### RESTRICTIONS ON USE

**6.1 Residential Use.** Not more than one Unit may be located on any Lot. Except with the consent of the Board of Directors, no trade, craft, business, profession, commercial or similar activity of any kind shall be conducted on any Lot, nor shall any goods, equipment, vehicles, materials or supplies used in connection with any trade, service or business be kept or stored on any Lot. The mere parking on a Lot of a vehicle bearing the name of a business shall not, in itself, constitute a violation of this provision. Nothing in this Section 6.1 shall be deemed to prohibit (a) activities relating to the rental or sale of Lots; (b) the right of Declarant to construct Units on any Lot, to store construction materials and equipment on any Lot in the normal course of construction, and to use one or more Units as sales or rental offices or model homes or apartments for purposes of sales or rental within the Property; and (c) the right of the Owner of a Lot to maintain his or her professional personal library, keep his or her personal business or professional records or accounts, handle his or her personal business or professional telephone calls or confer with business or professional associates, clients or customers, in his or her Unit by appointment only. The Board shall not approve commercial activities otherwise prohibited by this Section 6.1 unless the Board determines that only normal residential activities would be observable outside of the Unit and that the activities would not be in violation of applicable law. The Board may specify acceptable activities in the Rules and Regulations.

**6.2 Offensive or Unlawful Activities.** No noxious or offensive activities shall be carried out upon the Property nor shall anything be done or placed upon the Property that interferes with or jeopardizes the enjoyment of the Property, or that is a source of annoyance to Owners or Occupants. As with any common wall building, some amount of sound transmission between Units, including, without limitation, fluid through pipes, music, TVs and other appliances, will occur. Occupants shall use extreme care about creating disturbances, making noises or using musical instruments, radios, televisions, amplifiers and audio equipment that may disturb other Occupants. No unlawful use shall be made of the Lot or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction over the Property shall be observed. Owners and other Occupants shall not engage in any abusive or harassing behavior, either verbal or physical, or any form of intimidation or aggression directed at other Owners, Occupants, guests or invitees, or directed at the managing agent, its agents or employees, or vendors. No Owner may make active use of lakes, ponds, streams or other bodies of water within the Initial Property, Additional Properties or the Golf Course, except that the owner of the Golf Course and its agents, successors and assigns shall have the exclusive right and all necessary easements to retrieve golf balls within the Initial Property, Additional Properties or the Golf Course. The Association shall not be responsible for any loss, damage or injury to any Person or property arising out of the authorized or unauthorized use of lakes, ponds, streams or other bodies of water within or adjacent to the Initial Property or Additional Properties.

**6.3 Trailers, Campers, Boats, Etc.** Except as may otherwise be provided in the Rules and Regulations, no motorcycle, trailer, truck camper, boat or boat trailer, or other recreational

vehicles or equipment, or motor vehicles not operated in daily use shall be parked in driveways or on any other portion of the Property or on adjoining streets, except in a garage or for the purpose of temporary loading or unloading. Parking of passenger vehicles and trucks that may also be used for commercial purposes or which contain a commercial name or logo on their exterior are permitted in driveways. No such vehicle shall be used as a residence temporarily or permanently on any portion of the Property.

**6.4 Vehicles in Disrepair.** No Owner shall permit any vehicle that is in an extreme state of disrepair or not currently licensed to be abandoned or to remain parked upon any Lot, or on the Common Area or any adjoining street for a period in excess of 48 hours. A vehicle shall be deemed to be in an "extreme state of disrepair" when, in the opinion of the Board of Directors, due to its appearance or continued inoperability its presence reasonably offends the Occupants of the neighborhood. Should any Owner fail to remove such vehicle within five days following the date on which notice is mailed to him or her by the Association, the Association may have the vehicle removed from the Property and charge the expense of such removal to the Owner.

**6.5 Parking.** No vehicle of any kind shall be parked on the private roads or drives within the Property except temporarily in the course of day-to-day activities. The Association by Rule may regulate the length of time guests may park in driveways. Blocking a Common Area, roadway or alley is prohibited. Vehicles parked in violation of this Declaration or the Rules and Regulations may be towed and stored at the direction of the Board of Directors, with the expense charged to the Owner.

**6.6 Garages.** All garage doors shall remain closed except to permit entrance and exit and in connection with outside activities. Garages shall be used primarily for parking of vehicles, and only secondarily for storage, and shall not be used as office or living space, except that Declarant may use garages as sales offices prior to permanent occupancy of the Units.

**6.7 Signs.** No signs shall be erected or maintained on any Lot except that not more than one "For Sale," "For Rent" or "For Lease" sign placed by the Owner, Declarant or by a licensed real estate agent or rental agent, not exceeding 24 inches high and 36 inches long, may be temporarily displayed on any Lot, and two such signs may be placed on a Lot during the course of initial construction of a Unit on such Lot. The restrictions contained in this Section 6.7 shall not prohibit the temporary placement of "political" signs on any Lot by the Owner, subject to reasonable regulations adopted by the Association relating to size and length of display.

**6.8 Animals.** No animals, livestock or poultry of any kind shall be raised, kept or permitted within the Property or any part thereof, except a reasonable number of domestic dogs, cats or other ordinary household pets kept within a Unit and that are reasonably controlled so as not to be a nuisance. The Board of Directors shall have the authority to determine what is an "ordinary household pet." Any hostile, overly aggressive, unrestrained or barking dog shall constitute a nuisance. No such dogs, cats or pets shall be permitted to run at large nor shall be kept, bred or raised for commercial purposes. Any inconvenience, damage or unpleasantness caused by such pets shall be the responsibility of the respective Owners. No animal shall be permitted to roam the Property unattended, and each dog shall be kept on a leash while outside a Unit. Owners shall be

responsible for cleaning up after their pet's waste at the Property. An Owner or Occupant may be required to remove a pet upon receipt of the third written notice from the Board of violations of any rule, regulation or restriction governing pets within the Property. No Owner may permit a pet to go upon the Golf Course.

**6.9 Appearance.** Except to the extent of the Master Association's responsibility under Section 8.1, each Owner shall maintain such Owner's Unit and Lot in a clean and attractive condition, in good repair and in such a fashion as not to create a fire hazard. Damage caused by fire, flood, storm, earthquake, riot, vandalism, or other causes shall be the responsibility of each Owner and shall be restored within a reasonable period of time. No part of any Lot or any part of the Common Areas shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste. Trash, garbage or other wastes shall be kept only in sanitary containers in the garages, except when outside awaiting pick up the night before and during garbage pickup days. No playground, athletic or recreational equipment or structures, including, without limitation, basketball backboards, hoops and related supporting structures, shall be placed, installed or utilized on any Lot in view from any street, sidewalk or Common Area within the Property.

**6.10 Antennas and Service Facilities.** Exterior antennas and satellite receivers and transmission dishes are prohibited, except to the extent expressly mandated by rules adopted by the Federal Communication Commission. Specifically, ham radio antennas, satellite dishes one meter or larger, television antennas on masts 12 feet or higher and multi-point distribution antennas more than one meter or on masts 12 feet or higher are prohibited. To the extent permitted by Federal Communication Commission rules, the Board of Directors may require all other antennas and dishes to be hidden from view from streets and adjacent dwellings. No outside clotheslines or similar service facilities may be installed without the approval of the Board of Directors.

**6.11 Exterior Lighting or Noise-Making Devices.** Except with the consent of the Board of Directors, and except for exterior lighting originally installed by the Declarant or builder, no exterior lighting or noise-making devices shall be installed or maintained on any Lot. Owners shall not tamper with exterior lighting installed by the Declarant or builder except to replace expended bulbs with similar new bulbs. Seasonal holiday lighting and decorations are permissible if consistent with any applicable Rules and Regulations and if removed within 30 days after the celebrated holiday.

**6.12 Windows, Decks, Porches and Outside Walls.** To preserve the attractive appearance of the Property, the Association may regulate the nature of items that may be placed in or on windows, decks, porches, and the outside walls so as to be visible from the street or Common Areas. Window coverings, curtains, shutters, drapes or blinds, other than those of commercially produced quality, shall not be permitted to be visible from any public or private street, pathway, Common Area or adjacent property. Garments, rugs, laundry and other similar items may not be hung from windows, facades, porches, or decks.

**6.13 Recreational Equipment.** Unless approved by the Association, no playground, athletic or recreational equipment or structures, including, without limitation, permanently installed basketball backboards, hoops and related supporting structures, shall be placed, installed or utilized

on any Lot in view from any street, sidewalk or Common Area within the Property. Portable basketball backboards, hoops, soccer goal nets, and related supporting structures may be used during daylight hours, so long as such equipment is stored out of view from any street, sidewalk or Common Area within the Property.

**6.14 Unauthorized Use of Golf Course.** No Owner, or Owner's tenant or guest, shall go onto or use the Golf Course or any of its improvements without the consent of the Golf Course.

**6.15 Golf Course Adjacent Areas.** The portion of each Lot that is adjacent to the Golf Course and twenty feet in depth measured from the Golf Course boundary shall be referred to herein as "Golf Course Adjacent Area." Golf Course Adjacent Areas shall be used only as turfed, natural or garden areas, including walkways and retaining walls. With approval by the Master Association's Design Review Committee or Modification Committee, as the case may be, each Owner shall have the right to plant grass varieties and other types of vegetation and establish an irrigation system on the Golf Course Adjacent Area. Each Owner's maintenance obligations shall include performing all necessary landscaping and gardening to properly maintain and periodically replace trees, plants, grass and other vegetation located in the Golf Course Adjacent Area. The installation of turf or other landscaping in the Golf Course Adjacent Areas shall be completed within 90 days from the completion of the residence on the Lot in question. All grass planted in the Golf Course Adjacent Areas shall be of a variety that is compatible with and not detrimental to the grass on the Golf Course.

**6.16 Alterations.** Owners are expressly prohibited from painting or changing the exterior of a building or other structure after original construction without the written permission of the Board of Directors. To guard against moisture intrusion, no penetration of or attachments to the exterior surfaces is allowed without the prior written approval of the Board of Directors. No structure may be installed outside of Units except structures, including, without limitation, fences, installed by Declarant or the Association or installed by an Owner with written approval of the Board of Directors.

**6.17 Insurance.** No Owner shall permit anything to be done or kept in his or her Unit or in the Common Areas that will result in cancellation of insurance on any Unit or any part of the Common Areas.

**6.18 Leasing and Rental of Units.** A Unit may not be leased or rented for a period of less than 30 days. All leases of a Unit shall be by written agreement specifying that: (i) the tenant shall be subject to all provisions of the Declaration, Bylaws and Rules and Regulations; and (ii) failure to comply with any provision of the Declaration, Bylaws or Rules and Regulations shall constitute a default under the rental agreement. The lessor shall provide each tenant a copy of the Declaration, Bylaws and Rules and Regulations. The Owner shall be responsible for any violations by tenants and shall be directly responsible for either correcting or eliminating such violations or causing tenant to do the same.

**6.19 Rain Drains and Sewers.** All rain drains and storm sewers shall be kept free of debris, and Owners shall not cause any such drains or sewers to become blocked, clogged or



otherwise to back up into any Lot. Drainage systems have been designed to meet the drainage requirements of local jurisdictions and may not be changed so as to fail to comply with such requirements or to adversely affect drainage.

**6.20 Rules and Regulations.** In addition, the Association from time to time may adopt, modify or revoke such nondiscriminatory Rules and Regulations governing the conduct of Persons and the operation and use of the Property as it may deem necessary or appropriate to ensure the peaceful and orderly use and enjoyment of the Property. A copy of the Rules and Regulations, upon adoption, and a copy of each amendment, modification or revocation thereof, shall be delivered by the Board of Directors promptly to each Owner. The Rules and Regulations may be adopted by the Board, except as may be otherwise provided in the Bylaws of the Association.

## ARTICLE 7

### ASSOCIATION

Declarant has organized, or before conveyance of the first Lot shall organize, an association of all of the Owners within Eagle Point Estates. Such Association, and its successors and assigns, shall be organized as an Oregon nonprofit corporation under the name "Eagle Point Estates Homeowners Association," and shall have such property, powers and obligations as are set forth in this Declaration for the benefit of the Property and all Owners of Lots located therein.

**7.1 Organization.** Declarant shall, before the first Lot is conveyed to an Owner, organize the Association as a nonprofit corporation under the general nonprofit corporation laws of the State of Oregon. The Articles of Incorporation of the Association shall 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. In that event, the unincorporated association shall have all the property, powers and obligations of the incorporated association existing immediately prior to dissolution. To the greatest extent possible, any successor unincorporated association shall be governed by the Articles of Incorporation and Bylaws of the Association as if they had been made to constitute the governing documents of the unincorporated association and shall be served by the members of the Board of Directors and the officers who served immediately prior to dissolution.

**7.2 Membership.** Every Owner of one or more Lots within the Property shall, immediately upon creation of the Association and thereafter during the entire period of such Owner's ownership of one or more Lots within the Property, be a member of the Association. Such membership shall commence, exist and continue simply by virtue of such ownership; shall expire automatically upon termination of such ownership; and need not be confirmed or evidenced by any certificate or acceptance of membership.

**7.3 Voting Rights.** The Association shall have two classes of voting membership:

(a) **Class A.** Class A Members shall be all Owners with the exception of the Class B Member and shall be entitled to one vote for each Lot owned. When more than one Person

holds an interest in any Lot, all such Persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

(b) **Class B.** The Class B member shall be Declarant and shall be entitled to three votes for each Lot owned by Declarant. The Class B Membership shall cease and be converted to Class A Membership on the happening of any of the following events, whichever occurs earlier:

(1) When all of the Lots in all phases of Eagle Point Estates have been Sold and conveyed to Owners other than a successor Declarant or a builder for development and Declarant has relinquished the right to annex Additional Property;

(2) The expiration of 20 years after the closing of the sale of the first Lot to an Owner other than a successor Declarant or a builder for development; or

(3) At such earlier time as Declarant may elect in writing to terminate Class B Membership.

**7.4 General Powers and Obligations.** The Association shall have, exercise and perform all of the following powers, duties and obligations:

(a) The powers, duties and obligations granted to the Association by this Declaration.

(b) The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Oregon.

(c) The powers, duties and obligations of a homeowners association pursuant to the Oregon Planned Community Act.

(d) Any additional or different powers, duties and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to this Declaration or otherwise promoting the general benefit of the Owners within the Property.

The powers and obligations of the Association may from time to time be amended, repealed, enlarged or restricted by changes in this Declaration made in accordance with the provisions of this Declaration, accompanied by any required changes in the Articles of Incorporation or Bylaws of the Association made in accordance with such instruments and with the nonprofit corporation laws of the State of Oregon.

**7.5 Specific Powers and Duties.** The powers and duties of the Association shall include, without limitation, all of the following:

(a) **Maintenance and Services.** The Association shall provide maintenance and services for the Property as provided in Article 7 and other provisions of this Declaration.

(b) **Insurance.** The Association shall obtain and maintain in force policies of insurance as determined by the Board of Directors and in accordance with any requirements in this Declaration or the Bylaws of the Association.

(c) **Rulemaking.** The Association may make, establish, promulgate, amend and repeal Rules and Regulations as provided in Section 6.20.

(d) **Assessments.** The Association shall adopt budgets and impose and collect Assessments as provided in Article 7.

(e) **Enforcement.** The Association shall perform such acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce the provisions of this Declaration and the Rules and Regulations adopted by the Association.

(f) **Employment of Agents, Advisers and Contractors.** The Association, through its Board of Directors, may employ the services of any Person as manager; hire employees to manage, conduct and perform the business, obligations and duties of the Association; employ professional counsel and obtain advice from such Persons such as, but not limited to, landscape architects, architects, planners, attorneys and accountants; and contract for or otherwise provide for all services necessary or convenient for the management, maintenance and operation of the Property; provided, however, the Board may not incur or commit the Association to incur legal fees in excess of \$10,000 for any specific litigation or claim matter or enter into any contingent fee contract or any claim in excess of \$100,000 unless the Owners have enacted a resolution authorizing the incurring of such fees by a vote of 75 percent of the total voting rights of the Association. These limitations shall not be applicable to legal fees incurred in defending the Association or the Board from claims or litigation brought against them. The limitations set forth in this paragraph (f) shall increase by 10 percent on each fifth anniversary of the recording of this Declaration.

(g) **Borrow Money.** The Association may borrow and repay money for the purpose of performing its duties under this Declaration; provided, however, that such borrowing in any calendar year shall not exceed 15 percent of the estimated budgeted expenses of the Association for that calendar year unless the Owners have enacted a resolution authorizing the project by a majority vote of the members. The Association may pledge Association income to secure such borrowing; and, subject to Section 7.5(g), encumber the Common Areas as security for the repayment of such borrowed money.

(h) **Hold Title to Property.** The Association may acquire and hold title to real and personal property and interests therein, and shall accept any real or personal property, leasehold or other property interests within Eagle Point Estates conveyed to the Association by Declarant.

(i) **Transfer, Dedications and Encumbrances and Easements.** Except as otherwise provided in Sections 3.4(d) and 3.4(e), the Association may sell, transfer or encumber and grant easements upon all or any portion of the Common Area or other property to which it then

holds title to a Person, whether public or private, and dedicate or transfer all or any portion of such Common Area or property to any public agency, authority, or utility for public purposes.

(j) **Create Classes of Service and Make Appropriate Charges.** The Association may, in its sole discretion, create various classes of service and make appropriate Individual Assessments or charges therefor to the users of such services without being required to render such services to those of its members who do not assent to such charges and to such related Rules and Regulations as the Board deems proper. In addition, the Board shall have the right to discontinue any service upon nonpayment of Assessments or to eliminate any service for which there is no demand or for which there are inadequate funds to maintain the same.

(k) **Implied Rights and Obligations.** The Association may exercise any other right or privilege reasonably to be inferred from the existence of any right or privilege expressly given to the Association under this Declaration or reasonably necessary to effectuate any such right or privilege.

**7.6 Liability.** Neither a member of the Board of Directors nor an officer of the Association or member of any committee established by the Board shall be liable to the Association, any Owner or any third party for any damage, loss or prejudice suffered or claimed on account of any action or failure to act in the performance of his or her duties, so long as the individual acted in good faith; believed that the conduct was in the best interests of the Association, or at least was not opposed to its best interests; and, in the case of criminal proceedings, had no reason to believe the conduct was unlawful. In the event any member of the Board or any officer or committee member of the Association is threatened with or made a party to any proceeding because the individual was or is a director, officer or committee member of the Association, the Association shall defend such individual against such claims and indemnify such individual against liability and expenses incurred to the maximum extent permitted by law.

**7.7 Interim Board; Turnover Meeting.** Declarant shall have the right to appoint an interim board of one to three directors, who shall serve as the Board of Directors of the Association until replaced by Declarant or until their successors take office at the Turnover Meeting following termination of Class B Membership. Declarant shall call a meeting of the Association for the purpose of turning over administrative responsibility for the Property to the Association not later than 90 days after termination of the Class B Membership in accordance with Section 7.3. At the Turnover Meeting the interim directors shall resign and their successors shall be elected by the Owners, as provided in this Declaration and in the Bylaws of the Association. If Declarant fails to call the Turnover Meeting required by this Section 7.7, any Owner or Mortgagee of a Lot may call the meeting by giving notice as provided in the Bylaws.

**7.8 Contracts Entered into by Declarant or Before Turnover Meeting.** Notwithstanding any other provision of this Declaration, any management contracts, service contracts or employment contracts entered into by Declarant or the Board of Directors on behalf of the Association before the Turnover Meeting shall have a term of not more than three years. In addition, any such contract shall provide that it may be terminated without cause or penalty by the Association or Board upon not less than 30 days' notice to the other party given not later than

60 days after the Turnover Meeting. The limitations contained in this Section 7.8 shall not apply to those contracts referred to in ORS 94.700(2).

**7.9 Managing Agent or Manager.** On behalf of the Association, the Board of Directors shall employ or contract for a professional managing agent or a manager at a compensation to be established by the Board of Directors. The Board of Directors may delegate to the managing agent or manager such duties and powers as the Board of Directors may authorize. The Board of Directors may not terminate professional management and assume self-management unless the decision to do so is approved by at least 75 percent of the total voting power of the Association.

**7.10 Bylaws.** The Bylaws of the Association and any amendment or modification of the Bylaws shall be recorded in the Deed Records of Jackson County, Oregon. On behalf of the Association, the Declarant shall adopt and record the initial Bylaws as provided in ORS 94.625.

## ARTICLE 8

### MAINTENANCE, SERVICES, CONDEMNATION AND DAMAGE

**8.1 Maintenance and Lighting of Common Areas and Streetscape.** The Master Association shall be responsible for exterior lighting for and shall perform all maintenance upon the Common Areas and the improvements located thereon, including, without limitation, perimeter fences and walls and the sidewalks and landscaping within the right-of-way of streets adjoining the Property.

**8.2 Maintenance of Utilities.** The Association shall perform or contract to perform maintenance of any utilities, such as sanitary sewer service lines, domestic water service lines and storm drainage lines, located in the Common Areas, Common Easement Areas and Lots, except to the extent such maintenance is performed by the utilities furnishing such services. The Association shall not be liable for any interruption or failure of such services. Each Owner shall maintain at such Owner's expense utility lines that serve only that Unit.

**8.3 Maintenance Plan and Inspections.** The Association shall maintain those portions of the Property to be maintained by the Association in as good or better condition as at the time of the Turnover Meeting. Declarant will initially prepare and thereafter the Board of Directors shall implement, review and update a maintenance plan (the "**Maintenance Plan**") for the maintenance, repair and replacement of all property for which the Association has maintenance, repair or replacement responsibility under this Declaration or the Bylaws or the Oregon Planned Community Act. The Maintenance Plan shall describe the maintenance, repair or replacement to be conducted; include a schedule for maintenance, repair or replacement; be appropriate for the size and complexity of the maintenance, repair and replacement responsibility of the Association; and address issues that include, but are not limited to, warranties and the useful life of the items of which the Association has maintenance, repair or replacement responsibility. The operating and reserve budgets of the Association shall take into account such costs. The Board shall review and update the Maintenance Plan as necessary. Changes or updates to the Maintenance Plan shall be based on written advice of competent experts or consultants. In addition, the Board shall cause an

annual professional inspection of those portions of the Property to be maintained by the Association pursuant to this Declaration for the purposes of identifying any items needing repair or preventive maintenance and shall cause such repair or preventive maintenance to be implemented. If the Association fails to follow such maintenance and inspection requirements, then neither the Association nor any Owner shall have any claim against Declarant or its design professionals, contractors, subcontractors and suppliers and their consultants, including, without limitation, all of their officers, members, managers, directors, employees, agents and brokers, for loss or damage to the extent that they result from such failure to follow the Maintenance Plan or to conduct annual professional inspections, and shall indemnify such Persons and entities from and against claims by Owners or other Persons or entities for loss or damage resulting from such failure. For a period of 10 years following recording of the Declaration, any changes to the Maintenance Plan without the written approval of the Declarant and the original general contractor shall void any applicable warranty and will release them from liability for any damage resulting from such change.

**8.4 Utilities and Services.** The Association may provide or contract for such utilities and services as the Board of Directors may reasonably deem to be of benefit to the Property, including, without limitation, cable, telecommunications, garbage and trash removal and security services.

**8.5 Security.** The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to make the Property safer than it otherwise might be. **Neither the Association, any managing agent retained by the Association, Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Property, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or of ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system or other security system cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants that the Association, its Board of Directors and committees, any managing agent retained by the Association, Declarant, and any successor Declarant are not insurers and that each Person using the Property assumes all risks for loss or damage to Persons, to property and to the contents of Lots resulting from acts of third parties.**

**8.6 Access at Reasonable Hours.** For the purpose solely of performing the maintenance and services provided for in this Article 8, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot or exterior of the dwelling thereof at reasonable hours. The Association shall also have a right of entry to Units for purposes of effecting emergency repairs or action to prevent imminent damage or injury to other Units, to other Owners and their guests or invitees, or to the Common Areas. In such instances, the Association shall give notice by telephone if reasonably possible prior to entry.

**8.7 Condemnation.** If any portion of the Common Areas is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, notice of the proceeding or proposed acquisition shall promptly be given to each Owner and to each Mortgagee. The Association shall represent the Owners in any condemnation proceeding or in negotiations, settlements and agreements with the condemning authority for acquisition of any portion of the Common Areas, and each Owner appoints the Association to act as his or her other attorney-in-fact for such purposes. All compensation, damages or other proceeds of the taking of Common Areas shall be payable to the Association. Proceeds shall first be applied to restore or repair any remaining Common Area, including a structure on the Common Area, which may be required to permit the continued enjoyment of such Common Area. Thereafter, the Association shall deposit such sums in the Operations Fund or apply these sums to such capital improvements as shall be authorized pursuant to Section 9.4(b) of this Declaration.

**8.8 Damage or Destruction by Casualty.** In the event of damage or destruction that affects a material portion of the Property, timely written notice shall be given to the Owners and their Mortgagees, and the following provisions shall apply:

(a) In the event of damage or destruction by casualty of any structures erected on the Common Areas, the damage or destruction shall be repaired, reconstructed, or rebuilt unless, within 14 days of such damage or destruction, the Board of Directors or more than 10 percent of the Owners shall have requested a special meeting of the Association. Such special meeting must be held within 30 days of the date of damage or destruction. At the time of such meeting, unless all Owners, whether in person, by writing or by proxy, with the approval of 75 percent or more of the Mortgagees if and as required by this Declaration, vote not to repair, reconstruct or rebuild the damaged property, the damage or destruction shall be repaired, reconstructed or rebuilt, with the work commencing as soon as reasonably possible. In the event any portion of the insurance proceeds paid to the Association are not used to repair, reconstruct or rebuild the damaged or destroyed Common Areas or Units, the Association shall distribute the proceeds attributable to Units to the Owners and Mortgagees thereof, as their interests may appear. The proceeds attributable to Common Areas shall be deposited in the Operations Fund or applied to such capital improvements as shall be authorized pursuant to Section 9.4(b) of this Declaration. If the insurance proceeds are not sufficient to pay the entire cost, the Board of Directors, if necessary, may assess the Owner of each Unit such additional amounts as required to pay the cost of restoration. The responsibility for payment of the amount of the deductible in the Association's insurance policy may be prescribed by resolution adopted by the Board of Directors.

(b) If, due to act or neglect of an Owner or a member of his or her family or his or her household pet or of a guest or other unauthorized Occupant or visitor of such Owner, damage shall be caused to the Common Areas or maintenance, repairs or replacements shall be required that would otherwise be a common expense, then such Owner shall pay for such damage and such maintenance, repairs or replacements as may be determined by the Association, to the extent not covered by the Association's insurance (including any deductible), as an Individual Assessment.

**8.9 Owner's Maintenance Responsibilities.** Maintenance of the Lots and Units shall be the sole responsibility of the Owner thereof, who shall maintain such Lot and the portion of the street right-of-way between the Lot and the street in a neat and attractive condition in accordance with the community-wide standard of Eagle Point Estates. The Association shall have the authority to require each Owner to keep his or her respective Lot and Unit at a high standard of maintenance. In the event an Owner fails to maintain his or her Unit or Lot to the standards established by the Board of Directors pursuant to the authority of this Section 8.9, the Association will have the right and the authority at its option, after giving reasonable notice and opportunity to be heard to the respective Owner, to cause such repairs and maintenance to be performed as are necessary to meet the foregoing standards and to charge the respective Owner for such repairs and maintenance.

**8.10 Option to Provide Maintenance Services Through Association.** Upon request of an Owner, the Association may provide maintenance and repair services which would otherwise be the responsibility of such Owner under this Article, provided that the respective Owner shall reimburse the Association, as an Individual Assessment, for such services immediately upon completion. Alternatively, upon proposal by the Board of Directors and approval by 51 percent of the total voting power of the Association, the charge for such maintenance and repair services may be designated a common expense of the Association to be paid with funds collected from the Owners pursuant to the assessment procedures set forth in Article 9. In the event the Owners elect to designate any such maintenance and repair services as a common expense of the Association, (i) such designation shall identify specifically which services are to become included as common expenses (with any maintenance and repair responsibilities not so included to remain the obligation of the Owners under Section 8.9); and (ii) the Association may add a charge to such common expenses sufficient to cover the costs of administering, coordinating and invoicing for such additional maintenance and repair services.

## ARTICLE 9

### ASSESSMENTS

**9.1 Purpose of Assessments.** The Association may levy Assessments. The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and Occupants of the Property and for the improvement, operation and maintenance of the Common Areas and those portions of the Lots to be maintained by the Association.

**9.2 When Lots Become Subject to Assessment.** Lots shall become subject to General Assessments (including Assessments for reserves), Special Assessments, Emergency Assessments and Master Association Assessments upon the first sale of the Lot to a purchaser other than Declarant, a successor declarant, an affiliate of Declarant or a homebuilder, provided that in the event that a Lot or Lots are sold to a homebuilder who is not also a successor declarant or affiliate of Declarant, the Lots shall become subject to such assessment two (2) years following the date that such Lots are conveyed to the homebuilder if such Lot(s) do not otherwise become subject to assessment sooner. Declarant shall be obligated to pay shortfalls relating to the Master



Association's cost of maintaining the Common Elements within plats that are subject to this Declaration until such time as there are sufficient Lots paying Master Association Assessments to meet such costs. The books and records of the Association shall reflect the amount owing from Declarant for all reserve Assessments. Declarant may elect to delay collection of General Assessments against all Lots, but in such case shall pay all common expenses of the Association until such Assessments commence.

**9.3 Allocation of Assessments.** All Lots subject to assessment shall pay an equal share of the General Assessments, Special Assessments and Emergency Assessments.

**9.4 Type of Assessments.** The Association is authorized to levy the following types of Assessments:

(a) **General Assessments.** The Association may levy General Assessments for the common expenses incurred by or on behalf of the Association in accordance with this Declaration. The Board of Directors shall from time to time and at least annually prepare an operating budget for the Association, taking into account the current costs of maintenance and services and future needs of the Association, any previous over-assessment and any common profits of the Association. The budget shall take into account the number of Lots subject to assessment as of the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to assessment during the fiscal year. The budget may be based upon a greater number of Lots than those reasonably anticipated to be subject to assessment during the fiscal year if the Declarant agrees to subsidize the Association for any shortfall in the Operations Fund. The budget shall provide for such reserve or contingency funds as the Board deems necessary or as may be required by law, but not less than the reserves required by Section 9.7. General Assessments for such operating expenses and reserves shall then be apportioned among the Lots as provided in Section 9.2. The Board may revise the budget and adjust the General Assessment from time to time during the year. Within 30 days after the adoption of a final budget by the Board, the Board shall send a copy of the final budget to each Owner. If the Board fails to adopt a budget, the last adopted budget shall continue in effect. The manner of billing and collection of Assessments shall be as provided in the Bylaws.

(b) **Special Assessments.** The Board of Directors may levy during any fiscal year a Special Assessment, applicable to that year only, for the purpose of deferring all or any part of the cost of any construction or reconstruction, unexpected repair, or acquisition or replacement of a described capital improvement, or for any other one-time expenditure not to be paid for out of General Assessments. Special Assessments for acquisition or construction of new capital improvements or additions that in the aggregate in any fiscal year exceed an amount equal to 15 percent of the budgeted gross expenses of the Association for the fiscal year may be levied only if approved by a majority of the voting rights voting on such matter, together with the written consent of the Class B Member, if any. Prior to the Turnover Meeting, any Special Assessment for acquisition or construction of new capital improvements or additions must be approved by not less than 50 percent of the Class A voting rights, together with the written consent of the Class B

Member. Special Assessments shall be apportioned as provided in Section 9.3 and may be payable in a lump sum or in installments, with or without interest or discount, as determined by the Board.

(c) **Emergency Assessments.** If the General 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 immediately determine the approximate amount of such inadequacy and issue a supplemental budget, noting the reason therefor, and levy an Emergency Assessment for the amount required to meet all such expenses on a current basis. Emergency Assessments shall be apportioned as set forth in Section 9.3 and payable as determined by the Board.

(d) **Individual Assessments.** Any common expense or any part of a common expense benefiting fewer than all of the Lots may be assessed as Individual Assessments exclusively against the Lots benefited. Individual Assessments include, without limitation, charges for the maintenance of the private roads as those costs are allocated to the Lots which use those roads, charges for services provided under Section 7.5(j) and any loss or cost incurred by the Association that the Board of Directors determines is the fault of one or more Owners and not paid by insurance. Individual Assessments shall also include default Assessments levied against any Lot to reimburse the Association for costs incurred in bringing such Lot or its Owner into compliance with the provisions of this Declaration or the Rules and Regulations of the Association and for fines or other charges imposed pursuant to this Declaration for violation thereof. Unless otherwise provided by the Board, Individual Assessments shall be due 30 days after the Board has given written notice thereof to the Owners subject to the Individual Assessments.

(e) **Working Fund Assessments.** Upon the first sale of a Lot to a purchaser other than a successor Declarant and upon any subsequent sale of such Lot, the purchaser shall pay to the Association a Working Fund Assessment equal to two times the monthly General Assessment then applicable to the Lot. The Board of Directors may deposit Working Fund Assessments either in the Operations Fund or in the Reserve Fund, at the discretion of the Board.

(f) **Master Association Assessments.** In addition to the Assessments described above, each Lot shall be subject to assessment in accordance with the terms of the governing documents of the Master Association.

**9.5 Assessment of Additional Property.** When Additional Properties are annexed to Eagle Point Estates, the Lots included therein shall become subject to Assessments as provided in Section 9.2. The Board of Directors, however, at its option may elect to recompute the budget based upon the additional Lots subject to Assessment and additional Common Areas and recompute General Assessments for all Lots, including the new Lots, for the balance of the fiscal year.

**9.6 Operations Fund.** The Association shall keep all funds received by it as Assessments, other than reserves described in Section 9.7 or Working Fund Assessments deposited in the Reserve Fund, separate and apart from its other funds, in an Operations Fund in a bank account in the name of the Association. The Association shall use such fund for the purpose of promoting the recreation, health, safety and welfare of the residents within the Property and in

particular for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas and the Lots, including, but not limited to:

(a) Payment of the cost of operation, maintenance, utilities, services, repairs and replacements as provided in Article 8.

(b) Payment of the cost of insurance maintained by the Association.

(c) Payment of taxes assessed against the Common Areas and any improvements thereon.

(d) Payment of the cost of other services that the Association deems to be of general benefit to the Owners, including, but not limited to, accounting, legal and secretarial services.

#### **9.7 Reserve Fund.**

(a) **Establishment of Account.** Declarant, on behalf of the Association, shall conduct an initial reserve study as described in paragraph (c) of this Section 9.7 and establish a Reserve Fund in a bank account in the name of the Association to fund major maintenance, repair or replacement of those items that if the Association has responsibility to maintain, including items required by the Maintenance Plan established pursuant to Section 8.3, that will normally require major maintenance, repair or replacement in whole or in part in more than one and less than 30 years, including, without limitations, exterior painting. The Reserve Fund need not include those items that can reasonably be funded from the general budget or other funds of the Association or for those items for which one or more, but less than all, Owners are responsible for maintenance and replacement under the provisions of this Declaration or the Bylaws.

(b) **Funding of Reserve Fund.** The Reserve Fund shall be funded by Assessments against the individual Lot assessed for maintenance of the items for which the Reserve Fund is being established, which sums shall be included in the regular General Assessment for the Lot. The Reserve Fund shall also include Working Fund Assessments to the extent so allocated by the Board of Directors pursuant to Section 9.4(e). The Reserve Fund shall be established in the name of the Association. The Association is responsible for administering the Reserve Fund and making periodic payments into the account. The Board of Directors or the Owners may not vote to eliminate funding the Reserve Fund unless the Board determines that the Reserve Account will be adequately funded for the following year, except that after the Turnover Meeting the Board, with the approval of all Owners, may, on an annual basis, elect not to fund the Reserve Fund for the following year.

(c) **Reserve Studies.** The reserve portion of the initial Assessment determined by Declarant shall be based on a reserve study described in this paragraph (c) or other sources of information. The Board of Directors annually shall conduct a reserve study, or review and update an existing study, to determine the Reserve Fund requirements, and may adjust the amount of

payments as indicated by the study or update and provide other reserve items that the Board, in its discretion, may deem appropriate. The annual reserve study shall:

- (1) Identify all items for which reserves are to be established;
- (2) Include the starting balance of the reserve account for the current fiscal year;
- (3) Include the estimated remaining useful life of each item for which reserves are or will be established, as of the date of the reserve study;
- (4) Include for each item, as applicable, an estimated cost of maintenance, repair and replacement at the end of its useful life of each item for which reserves are or will be established;
- (5) Include the rate of inflation during the current fiscal year; and
- (6) Include returns on any invested reserves or investments.

**9.8 Use of Reserve Fund.** The Reserve Fund shall be used only for the purposes for which the reserves have been established and shall be kept separate from other funds. After the Turnover Meeting, however, the Board of Directors may borrow funds from the Reserve Fund to meet high seasonal demands on the regular operating funds or to meet unexpected increases in expenses if the Board has adopted a resolution, which may be an annual continuing resolution, authorizing the borrowing of funds. Not later than the adoption of the budget for the following year, the Board shall adopt by resolution a written payment plan providing for repayment of the borrowed funds within a reasonable period. Assessments paid into the Reserve Fund are the property of the Association and are not refundable to sellers or Owners of Lots. Sellers of the Lots, however, may treat their outstanding share of the Reserve Fund as a separate item in any sales agreement.

**9.9 Declarant's Subsidy.** Declarant may, but shall not be obligated to, reduce the General Assessments for any fiscal year by payment of a subsidy (in addition to any other amounts then owed by Declarant), which may be either a contribution, an advance against future Assessments due from Declarant or a loan, in Declarant's discretion. Any such subsidy shall be disclosed as a line item in the income portion of the Association's budget. Payment of such subsidy in any year shall not obligate Declarant to continue payment of such subsidy in future years unless otherwise provided in a written agreement between the Association and Declarant.

**9.10 Commencement of Assessment Obligation; Time of Payment.** The obligation to pay Assessments under this Declaration shall commence as to each Lot on the first day of the month after such Lot becomes subject to Assessment. The first annual General Assessment levied on each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time Assessments commence for such Lot.

**9.11 Payment of Assessments.** Assessments shall be paid in such manner and on such dates as the Board of Directors may establish. Unless the Board otherwise provides, the General Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any Assessments or other charges levied on his or her Lot, the Board may require the outstanding balance on all Assessments to be paid in full immediately. Until the Turnover Meeting, any obligation of Declarant to pay Assessments may be satisfied in the form of cash or by “in kind” contributions of services or materials, or by a combination of these.

**9.12 Creation of Lien and Personal Obligation of Assessments.** Declarant, for each Lot owned by it within the Property, hereby covenants, and each Owner of any Lot by acceptance of a conveyance thereof, whether or not so expressed in any such conveyance, shall be deemed to covenant to pay to the Association all Assessments or other charges as may be fixed, established and collected from time to time in the manner provided in this Declaration or the Association Bylaws. Such Assessments and charges, together with any interest, late charges, expenses or attorneys’ fees imposed pursuant to Article 10, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment or charge is made. Such Assessments, charges and other costs shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the Assessment or charge fell due. Such liens and personal obligations shall be enforced in the manner set forth in Article 10.

**9.13 Voluntary Conveyance.** In a voluntary conveyance of a Lot the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments against the grantor of the Lot up to the time of the grant or conveyance, without prejudice to the grantee’s right to recover from the grantor the amounts paid by the grantee therefor. However, upon request of an Owner or Owner’s agent for the benefit of a prospective purchaser, the Board of Directors shall make and deliver a written statement of the unpaid Assessments against the prospective grantor of the Lot effective through a date specified in the statement, and the grantee in that case shall not be liable for any unpaid Assessments against the grantor not included in the written statement.

**9.14 No Waiver.** Failure of the Board of Directors to fix Assessment amounts or rates or to deliver or mail each Owner an Assessment notice shall not be deemed a waiver, modification or release of any Owner from the obligation to pay Assessments. In such event, each Owner shall continue to pay Assessments on the same basis as during the last year for which an Assessment was made, if any, until a new Assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

**9.15 No Option to Exempt.** No Owner may exempt himself or herself from liability for Assessments by nonuse of Common Areas, abandonment of his or her Lot, or any other means. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board of Directors to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

**9.16 Certificate.** Upon written request, the Association shall furnish to any Owner liable for any type of Assessment a certificate in writing signed by an Association officer setting forth whether such Assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

## ARTICLE 10

### ENFORCEMENT

**10.1 Violation of Protective Covenants.** In the event that any Owner violates any provision of this Declaration, the Bylaws or the Rules and Regulations, then the Association acting through the Board of Directors shall notify the Owner in writing of any such specific violations. If the Owner is unable, is unwilling, or refuses to comply with the Association's specific directives for remedy or abatement, or the Owner and the Association cannot agree to a mutually acceptable solution within the framework and intent of this Declaration, after notice and opportunity to be heard and within 14 days after issuing written notice to the Owner, then the Association acting through the Board shall have the right to do any or all of the following:

(a) Assess reasonable fines against such Owner, based upon a resolution adopted by the Board of Directors that is delivered to each Lot, mailed to the mailing address of each Lot or mailed to the mailing address designated by the Owner of each Lot in writing, which fines shall constitute Individual Assessments for purposes of this Declaration;

(b) Enter the offending Lot and remove the cause of such violation, or alter, repair or change the item that is in violation of this Declaration in such a manner as to make it conform thereto, in which case the Association may assess such Owner for the entire cost of the work done, which amount shall be payable to the Operations Fund as an Individual Assessment, provided that no items of construction shall be altered or demolished in the absence of judicial proceedings;

(c) Cause any vehicle parked in violation of this Declaration or of the Rules and Regulations to be towed and impounded at the Owner's expense;

(d) Suspend the voting rights, any utility or communication services paid for out of Assessments and the right to use the Common Areas for the period that the violations remain unabated, provided that the Association shall not deprive any Owner of access to and from the Owner's Lot in the absence of a lien foreclosure or court order to such effect; and

(e) Bring suit or action against the Owner on behalf of the Association and other Owners to enforce this Declaration.

**10.2 Default in Payment of Assessments; Enforcement of Lien.** If an Assessment or other charge levied under this Declaration is not paid within 30 days after its due date, such

Assessment or charge shall become delinquent and shall bear interest from the due date at the rate set forth below. In such event the Association may exercise any or all of the following remedies:

(a) The Association may suspend such Owner's voting rights, any utility or communication service paid for out of Assessments and right to use the Common Areas until such amounts, plus other charges under this Declaration, are paid in full and may declare all remaining periodic installments of any General Assessment immediately due and payable. In no event, however, shall the Association deprive any Owner of access to and from the Owner's Lot in the absence of a lien foreclosure or court order to such effect.

(b) The Association shall have a lien in accordance with ORS 94.709 against each Lot for any Assessment levied against the Lot, including any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Lot, and may foreclose such lien in the manner provided in ORS 94.709.

(c) The Association may bring an action to recover a money judgment for unpaid Assessments under this Declaration without foreclosing or waiving the lien described in Section 10.2(b). Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.

(d) The Association shall have any other remedy available to it by law or in equity.

**10.3 Interest, Late Charges and Expenses.** Any amount not paid to the Association when due in accordance with this Declaration shall bear interest from the due date until paid at a rate that is the greater of 18 percent per annum or three percentage points per annum above the prevailing Portland, Oregon prime rate as of the due date, or such other rate as may be established by the Board of Directors, but not to exceed the lawful rate of interest under the laws of the State of Oregon. A late charge may be charged for each delinquent Assessment in an amount established from time to time by resolution of the Board, which resolution is delivered to each Lot, mailed to the mailing address of each Lot or mailed to the mailing address designated by the Owner in writing, together with all expenses incurred by the Association in collecting such unpaid Assessments, including attorneys' fees (whether or not suit is instituted). In the event the Association shall file a notice of lien, the lien amount shall also include the recording fees associated with filing the notice and a fee for preparing the notice of lien established from time to time by resolution of the Board.

**10.4 Costs and Attorneys' Fees.** In the event of any suit or action to enforce this Declaration, the Bylaws, the Rules and Regulations or the Oregon Planned Community Act, or to collect any money due hereunder or to foreclose a lien, the prevailing party in such suit or action shall be entitled to recover all costs and expenses incurred by it in connection with such suit or action, including a foreclosure title report, and shall recover such amount as the court may determine to be reasonable as attorneys' fees at trial and upon any appeal or petition for review thereof or in connection with any bankruptcy proceedings or special bankruptcy remedies.

**10.5 Assignment of Rents.** As security for the payment of all obligations owing to the Association pursuant to this Article 10, each Owner hereby grants to the Association the right to collect the rents, issues and profits of the Owner's Lot; provided, however, that the Owner shall retain the right, prior to any default by such Owner in performance of the Owner's obligations under this Declaration, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, the Association may, at any time after 10 days' written notice to the Owner, either in person, by agent or by a receiver to be appointed by a court of competent jurisdiction, and without regard to the adequacy of any security for such indebtedness, in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply them, less costs and expenses of operation and collection, including reasonable attorneys' fees, in payment of such indebtedness to the Association, and in such order as the Association may determine. Such action shall not cure nor waive any default under this Declaration or invalidate any act done pursuant to this Declaration. The assignment of rents and powers described in this Section 10.5 shall not affect, and shall in all respects be subordinate to, the rights and powers of the holder of any first or second Mortgage on any Lot to do the same or similar acts.

**10.6 Nonexclusiveness and Accumulation of Remedies.** An election by the Association to pursue any remedy provided for violation of this Declaration shall not prevent concurrent or subsequent exercise of another remedy permitted under this Declaration. The remedies provided in this Declaration are not exclusive but shall be in addition to all other remedies, including actions for damages and suits for injunctions and specific performance, available under applicable law to the Association. In addition, any aggrieved Owner may bring an action against another Owner or the Association to recover damages or to enjoin, abate or remedy any violation of this Declaration by appropriate legal proceedings.

**10.7 Enforcement by City of Eagle Point.** The provisions of this Declaration relating to preservation and maintenance of Common Areas shall be deemed to be for the benefit of City of Eagle Point as well as the Association and Owners of Lots, and the City of Eagle Point may enforce such provisions by appropriate proceedings at law or in equity or may cause such maintenance to be performed, the costs of which shall become a lien upon the Property. In addition, Section 7.1 may be enforced by the City of Eagle Point building official to facilitate the maintenance, repair or replacement of common property line fire walls, and may be facilitated by application of City of Eagle Point housing or nuisance abatement ordinances, or an existing building or property maintenance codes.

## ARTICLE 11

### DISPUTE RESOLUTION

**11.1 Claims Other Than for Defective or Negligent Construction or Condition.** The following provisions of this Section 11.1 shall apply to any claim, controversy or dispute by or among Declarant (including members, officers, directors, shareholders and affiliates of Declarant), the Association, the manager or one or more Owners, or any of them, arising out of or related to



this Declaration, the Bylaws or the Property, other than claims relating to defective or negligent construction or condition as provided in Section 11.2:

(a) **Mediation.**

(1) Except as otherwise provided in Section 11.1, before initiating litigation, arbitration or an administrative proceeding in which the Association and an Owner have an adversarial relationship, the party that intends to initiate litigation, arbitration or an administrative proceeding shall offer to use any dispute resolution program available within Jackson County, Oregon that is in substantial compliance with the standards and guidelines adopted under ORS 36.175. The written offer must be hand-delivered or mailed by certified mail, return receipt requested, to the address, contained in the records of the Association, for the other party.

(2) If the party receiving the offer does not accept the offer within 10 days after receipt of the offer, such acceptance to be made by written notice, hand-delivered or mailed by certified mail, return receipt requested, to the address, contained in the records of the Association, for the other party, the initiating party may commence the litigation, arbitration or administrative proceeding. The notice of acceptance of the offer to participate in the program must contain the name, address and telephone number of the body administering the dispute resolution program.

(3) If a qualified dispute resolution program exists within Jackson County, Oregon and an offer to use the program is not made as required under Section 11.1(a)(1), then litigation, arbitration or an administrative proceeding may be stayed for 30 days upon a motion of the noninitiating party. If the litigation, arbitration or administrative action is stayed under this Section 11.1(a)(3), both parties shall participate in the dispute resolution process.

(4) Unless a stay has been granted under Section 11.1(a)(3), if the dispute resolution process is not completed within 30 days after receipt of the initial offer, the initiating party may commence litigation, arbitration or an administrative proceeding without regard to whether the dispute resolution is completed.

(5) Once made, the decision of the court, arbitrator or administrative body arising from litigation, arbitration or an administrative proceeding may not be set aside on the grounds that an offer to use a dispute resolution program was not made.

(6) The requirements of this Section 11.1(a) do not apply to circumstances in which irreparable harm to a party will occur due to delay or to litigation, arbitration or an administrative proceeding initiated to collect Assessments, other than Assessments attributable to fines.

(b) **Arbitration.** Any claim, controversy, or dispute by or among Declarant (including members, officers, directors, shareholders and affiliates of Declarant), Association or one or more Owners, or any of them, arising out of or related to this Declaration, the Bylaws, the Rules and Regulations, or the Property shall be first subject to mediation as described in

Section 11.1(a) or otherwise, and if not timely settled by mediation, shall be resolved by arbitration in accordance with this Article 11, and shall be conducted by and pursuant to the then effective arbitration rules, except as modified herein, of the Arbitration Service of Portland, Inc. The decisions and award of the arbitrator shall be final, binding and nonappealable. The arbitration shall be conducted in the Portland, Oregon, metropolitan area or at such other location as may be agreed upon by the parties, pursuant to the arbitration statutes of the State of Oregon and any arbitration award may be enforced by any court with jurisdiction. Filing for arbitration shall be treated the same as filing in court for purposes of meeting any applicable statute of limitations or for purposes of filing a notice of pending action (“lis pendens”).

(c) **Selection of Arbitrator.** The arbitration shall be conducted by a single arbitrator selected by mutual agreement of the parties. The arbitrator selected shall be neutral and unbiased, except to the extent the arbitrator’s prior relationship with any party is fully disclosed and consented to by the other party or parties. If the parties are unable to agree upon the arbitrator within 10 days after a party’s demand for arbitration, upon application of any party, the Presiding Judge of the Circuit Court of Jackson County, Oregon shall designate the arbitrator.

(d) **Consolidated Arbitration.** Upon demand by any party, claims between or among the parties and third parties shall be submitted in a single, consolidated arbitration. Notwithstanding the provisions of this Article 11, in the event any claim, controversy or dispute related to the Property or this Declaration involves a claim by any party against a third party who is not required to and does not voluntarily agree to submit such claim to arbitration, then the party asserting the claim against a third party hereby waives trial by jury and agrees that such claim(s) shall be determined by a judge sitting without a jury.

(e) **Discovery.** The parties to the arbitration shall be entitled to such discovery as would be available to them in an action in Jackson County Circuit Court. The arbitrator shall have all of the authority of the court incidental to such discovery, including, without limitation, authority to issue orders to produce documents or other materials, to issue orders to appear and submit to deposition, and to impose appropriate sanctions, including, without limitation, award against a party for failure to comply with any order.

(f) **Evidence.** The parties to the arbitration may offer such evidence as they desire and shall produce such additional evidence as the arbitrator may deem necessary for an understanding and determination of the dispute. The arbitrator shall determine the admissibility of the evidence offered. All evidence shall be taken in the presence of the arbitrator and all of the parties, except when any of the parties is absent in default or has waived its right to be present.

(g) **Excluded Matters.** Notwithstanding the foregoing, the following matters shall not be subject to mediation or arbitration under this Article 11 (but shall be subject to the applicable provisions of Section 11.1(h)): (i) actions relating to the collection of fees, Assessments, fines and other charges imposed or levied by the Association (other than disputes as to the validity or amount of such fees, Assessments, fines or charges, which disputes shall be subject to mediation/arbitration as provided above); and (ii) actions to enforce any order, decision or award rendered by arbitration pursuant to this Article 11. The filing of a lis pendens or the application to

any court for the issuance of any provisional process or similar remedy described in the Oregon or Federal Rules of Civil Procedure shall not constitute a waiver of the right or duty to utilize the procedures specified in this Article 11.

(h) **Costs and Attorneys' Fees.** The fees of any mediator and the costs of mediation shall be divided and paid equally by the parties. Each party shall pay its own attorneys' fees and costs in connection with any mediation. The fees of any arbitrator and the costs of arbitration shall be paid by the nonprevailing party or parties; if none, such fees and costs shall be divided and paid equally by the parties. Should any suit, action or arbitration be commenced in connection with any dispute related to or arising out of this Declaration, the Bylaws, the Rules and Regulations or the Oregon Planned Community Act to obtain a judicial construction of any provision of this Declaration, the Bylaws or the Rules and Regulations; to rescind this Declaration; or to enforce or collect any judgment or decree of any court or any award obtained during arbitration, the prevailing party shall be entitled to recover its costs and disbursements, together with such investigation, expert witness and attorneys' fees incurred in connection with such dispute as the court or arbitrator may adjudge reasonable, at trial, in the arbitration, upon any motion for reconsideration, upon petition for review, and on any appeal of such suit, action or arbitration proceeding. The determination of who is the prevailing party and the amount of reasonable attorneys' fees to be paid to the prevailing party shall be decided by the arbitrator (with respect to attorneys' fees incurred before and during the arbitration proceeding) and by the court or courts, including any appellate or review court, in which such matter is tried, heard or decided, including a court that hears a request to compel or enjoin arbitration or that hears exceptions made to an arbitration award submitted to it for confirmation as a judgment (with respect to attorneys' fees incurred in such proceedings).

**11.2 Claims for Negligent or Defective Construction or Condition.** The following alternative dispute resolution procedures shall apply to any claim by the Association or any Owner against Declarant or its affiliates, members or managers, or any contractor, subcontractor, supplier, consultant or design professional of every tier performing any work or services in connection with the Property, and their agents, brokers, successors, employees, affiliates, representatives, officers, directors, managers and members, and any of their insurers and reinsurers, related to the design, construction or condition of the Property, including, but not limited to, claims for defective or negligent construction or design or failure to disclose a defective condition.

(a) **Initial Dispute Resolution Procedures.**

(1) In the event of a claim for a construction defect governed by ORS 701.560 to 701.595, the parties shall first comply with the provisions contained therein. In the event the claim is not for a construction defect governed by such provisions, but relates to a claimed defect in the condition of the Property, the parties shall follow the same procedures as set forth in such provisions, except that the notice of defect shall include a statement of the basis upon which the recipient is claimed to be liable for the defect.

(2) In the event the claim is for a matter not governed by Section 11.2(a)(1), the parties shall first attempt in good faith to resolve the claim through direct

discussions following receipt of written notice of the claim. If the parties are unable to resolve the matter within 180 days of the assertion of the claim, then following expiration of such period the parties shall proceed with mediation as provided in Section 11.2(b).

(3) Compliance with the procedures contained in this Section 11.2(a) shall be a condition precedent to mediation, arbitration or litigation of any such claims.

(b) **Mediation.** If the initial dispute resolution proceedings under Section 11.2(a) do not resolve the claims, the parties shall then engage in mediation to resolve the claims. The fees of any mediator and the costs of mediation shall be divided and paid equally by the parties. Each party shall pay its own attorneys' fees and costs in connection with any mediation. Completion of the mediation process under this Section 11.2(b) shall be a condition precedent to the filing of any arbitration or litigation proceedings under this Section 11.2(b) or any claims relating to the matter with the Oregon Construction Contractors Board, and the claimant waives any right to file any such claims if the claimant has not fully complied with this Section 11.2(b). The mediation shall be conducted in accordance with the following procedures:

(1) Within 60 days after completion of the proceedings under Section 11.2(a) and delivery of a demand for mediation by one of the parties to the other parties, the parties shall agree upon a neutral mediator. If the parties are unable to agree on a mediator within that period, upon application of any party, the Presiding Judge of the Circuit Court of Jackson County, Oregon shall designate the mediator.

(2) Within 60 days after appointment of the mediator, the parties shall exchange with each other all inspection and consultant's reports in their possession pertaining to the claims, which reports and materials shall be considered and remain confidential mediation communications under ORS 36.220(1).

(3) The parties shall have 90 days after exchanging reports in which to perform additional inspections. Any additional reports resulting from such inspections shall be furnished to the other parties prior to mediation, which reports and materials shall be considered and remain confidential mediation communications under ORS 36.220(1).

(4) The mediation shall be conducted after completing parts (2) and (3) above, but within 180 days following appointment of the mediator. The mediator may elect to adjourn the mediation to additional sessions if the mediator determines that further sessions would be beneficial in resolving the disputes.

(5) Each party shall send to the mediation a representative with authority to settle the dispute.

(6) Any settlement agreed upon in mediation shall be documented and executed within 60 days following completion of the mediation.

(c) **Arbitration.** All claims that have not been resolved by the initial dispute resolution procedures set forth in Section 11.2(a), or mediation pursuant to Section 11.2(b), shall be submitted to final and binding private arbitration in accordance with Sections 11.1(b) through 11.1(h). Each party shall be responsible for its own costs and attorneys' fees in any suit, action or arbitration brought under this Section 11.2, and the prevailing party shall not be entitled to an award of costs, disbursements, expert witness fees or attorneys' fees, in the arbitration, upon any motion for reconsideration, upon petition for review, on appeal or otherwise.

(d) **Confidentiality.** The parties shall keep all discussions of disputes, settlements and arbitration awards and decisions confidential and shall not disclose any such information, whether directly or indirectly, to any third parties other than their attorneys and consultants, unless compelled to do so by an order of a court of competent jurisdiction. In the event of a breach of this confidentiality obligation, the other party shall be entitled to seek and obtain any and all equitable remedies, including injunctive relief and specific performance, and the breaching party waives any claim or defense that the other party has an adequate remedy at law for any such breach, and such party shall not be required to post any bond or other security in connection with any such equitable relief.

**11.3 Time Periods Within Which Claims Must Be Asserted.** Any claims under Section 11.2, including, without limitation, allegations of property damage or personal injury claims arising out of fungus, spores, or mold; any water intrusion or dampness; or otherwise, regardless of the legal theory or basis of alleged causation, including, but not limited to, negligence, misrepresentation, construction defect, professional errors or omissions, strict liability or breach of contract, must be commenced under Section 11.2(a) by providing written notice on the earlier of (i) expiration of the applicable statute of limitations, (ii) within 90 days after the date the Association or the Owner(s) knew or reasonably should have known of facts sufficient to put the Association or the Owner(s) on notice of the claim, (iii) within 90 days after the date the Association or the Owner(s) first discovered or in the exercise of reasonable care should have discovered the injury or damage, (iv) with respect to the Unit and related Limited Common Areas, by no later than the first anniversary of the closing date of the sale of the Unit to the first purchaser, or (v) with respect to the Common Areas, by no later than the first anniversary of the date of the first conveyance of a Unit to an Owner other than Declarant. Any arbitration or litigation based upon such claim(s) must be instituted on the earlier of (i) 60 days after completion of the mediation proceedings under Section 11.2(b), or (ii) one year after expiration of any express warranty or the applicable statute of limitations. Any and all such claims not brought within these time periods will be deemed time barred, regardless of when the Association or Owners actually discovered the alleged basis for the claim. For purposes of this Section 11.2(e), a claim is "instituted" when arbitration is formally initiated or a complaint is filed in the appropriate court and served promptly on the parties.

**11.4 Survival.** The mediation and arbitration agreement set forth in this Article 11 shall survive the transfer by any party of its interest or involvement in the Property and any Lot therein and shall survive the termination of this Declaration.

## ARTICLE 12

### MORTGAGEES

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots. The provisions of this Article 12 apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

**12.1 Subordination of Lien to Mortgages.** The lien of the Assessments or charges provided for in this Declaration shall be subordinate to the lien of any Mortgage on such Lot which was made in good faith and for value and which was recorded prior to the recordation of the notice of lien. Sale or transfer of any Lot shall not affect the Assessment lien, but the sale or transfer of any Lot which is subject to any Mortgage or deed of trust pursuant to a decree of foreclosure or nonjudicial sale thereunder shall extinguish any lien of an Assessment, notice of which was recorded after the recording of the Mortgage. Such sale or transfer, however, shall not release the Lot from liability for any Assessments or charges thereafter becoming due or from the lien of such Assessments or charges.

**12.2 Reimbursement of First Mortgagees.** First Mortgagees of Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Areas and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy, for such Common Area. First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

**12.3 Notification of First Mortgagee.** If a first Mortgagee has requested such notice in writing from the Association, the Board shall notify such Mortgagee of any individual Lot of any default in performance of this Declaration by the Owner which is not cured within 60 days after notice of default to the Owner.

**12.4 Notice to Association.** Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

**12.5 FHA/VA Approval.** As long as there is a Class B Membership, the following actions will require the prior approval of the Federal Housing Administration ("FHA") or the Veterans Administration ("VA"), if this Declaration was previously approved by such agencies: annexation of Additional Properties other than as provided in the General Plan of Development, mergers and consolidations, mortgaging or dedication of Common Areas, dissolution of the Association and amendment of this Declaration or the Articles of Incorporation or the Bylaws of the Association.

## ARTICLE 13

### GOLF COURSE

**13.1 Ownership and Operation of Golf Course.** All Persons, including all Owners, are hereby advised that no representations or warranties have been or are made by the Declarant or any other Person with regard to the continuing existence, ownership, operation or maintenance of the Golf Course. As of the date this Declaration is recorded, the Golf Course is owned by Hyer Golf LLC, an Oregon limited liability company, which is entirely separate and distinct from the Declarant. The ownership and/or operation of the Golf Course may be changed at any time, solely at the discretion of Hyer Golf LLC and/or its successors and assigns. All Persons, including all Owners, are hereby advised that operation and maintenance of the Golf Course will result in noise, traffic, social and recreational gatherings of large numbers of people, the use of sound amplification systems and photography equipment and require the application of fertilizers and pesticides. Each Owner, for such Owner and such Owner's successors and assigns, assumes the risk and waives each right such Person otherwise would have against any parties having any right, title or interest in the Golf Course, resulting from the foregoing conditions and other similar circumstances associated with the operation and maintenance of the Golf Course.

**13.2 Right to Use.** Neither membership in the Association nor ownership or occupancy of a Lot shall confer any ownership interest in or right to use the Golf Course in any manner. Rights to use the Golf Course will be granted only to such Persons and on such terms and conditions as may be determined from time to time by the owner of the Golf Course. The owner of the Golf Course shall have the right, from time to time, in its sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of the Golf Course, including, without limitation, eligibility for and duration of use rights, categories of use and extent of use privileges and number of users and shall also have the right to reserve use rights and to terminate use rights altogether, subject to the provisions of any outstanding membership documents.

**13.3 View Impairment.** Neither the Declarant, the Association nor the owner or operator of the Golf Course guarantees or represents that any view over and across the Golf Course from adjacent Units will be preserved without impairment. The owner of the Golf Course, if any, shall have no obligation to prune or thin trees or other landscaping, and shall have the right, in its sole and absolute discretion, to add trees and other landscaping to the Golf Course from time to time. In addition, the owner of the Golf Course may, in its sole and absolute discretion, change the location, configuration, size and elevation of the tees, bunkers, fairways and greens on the Golf Course from time to time. Any such additions or changes to the Golf Course may diminish or obstruct any view from the Lots, and any express or implied easements for view purposes or for the passage of light and air are hereby disclaimed.

**13.4 Limitations on Amendments.** In recognition of the fact that the provisions of this Article 13 are for the benefit of the owner of the Golf Course, no amendment to this Article 13 and no amendment in derogation of any rights reserved or granted to the Golf Course by other provisions of this Declaration may be made without the written approval of the Golf Course.

**13.5 Jurisdiction and Cooperation.** It is Declarant's intention that the Association and the owner of the Golf Course shall cooperate to the maximum extent possible in the operation of the Properties and the Golf Course. Each shall reasonably assist the other in upholding the aesthetics of the Properties and the Golf Course. The Association shall have no power to promulgate rules and regulations affecting activities on or use of the Golf Course.

**13.6 Enforcement by Golf Course.** Since important interests which benefit the Golf Course are created by this Declaration, all parties having any right, title, or interest in the Golf Course, or any part thereof, are authorized and have standing to defend and enforce such interests through judicial and administrative proceedings and shall not be bound by or subject to the Dispute Resolution and Limitation on Litigation provisions of this Declaration.

## ARTICLE 14

### AMENDMENT AND REPEAL

**14.1 How Proposed.** Amendments to or repeal of this Declaration shall be proposed by either a majority of the Board of Directors or by Owners holding 30 percent or more of the Association's voting rights. The proposed amendment or repeal 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 consent to the amendment or repeal.

**14.2 Approval Required.** This Declaration, or any provision thereof, as from time to time in effect with respect to all or any part of the Property, may be amended or repealed by the vote or written consent of Owners representing not less than 75 percent of the Lots, based upon one vote for each such Lot, together with the written consent of the Class B Member, if such Class B Membership has not been terminated as provided in this Declaration, and the written consent of the Board Directors of the Master Association. To the extent required by Section 2.5, such amendment shall also require the prior written approval of the FHA and VA. In no event shall an amendment under this Section 14.2 create, limit or diminish special Declarant rights without Declarant's written consent, or change the boundaries of any Lot or any uses to which any Lot is restricted under this Declaration or change the method of determining liability for common expenses, the method of determining the right to common profits or the method of determining voting rights of any Lot, unless the Owners of the affected Lots unanimously consent to the amendment. Declarant may not amend this Declaration to increase the scope of special Declarant rights reserved in this Declaration after the sale of the first Lot unless Owners representing 75 percent of the total vote, other than Declarant, agree to the amendment, and the Board Directors of the Master Association consents to such amendment. To the extent any amendment relates to the preservation or maintenance of the Common Areas or private utility lines, repair, upkeep and replacement and access to shared or common use building elements or utilities or the existence of an entity responsible for accomplishing the same, such amendment shall be approved by the zoning administrator or building official of City of Eagle Point and the Board Directors of the Master Association.

**14.3 Recordation.** Any such amendment or repeal shall become effective only upon recordation in the Deed Records of Jackson County, Oregon of a certificate of the President and



Secretary of the Association setting forth in full the amendment, amendments or repeal so approved and certifying that such amendment, amendments or repeal have been approved in the manner required by this Declaration and ORS 94.590, and acknowledged in the manner provided for acknowledgment of deeds.

**14.4 Regulatory Amendments.** Notwithstanding the provisions of Section 14.1, until the Turnover Meeting has occurred, Declarant shall have the right to amend this Declaration or the Bylaws of the Association in order to comply with the requirements of the FHA; the VA; the Farmers Home Administration of the United States; the Federal National Mortgage Association; the Government National Mortgage Association; the Federal Home Mortgage Loan Corporation; any department, bureau, board, commission or agency of the United States or the State of Oregon; or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon that insures, guarantees or provides financing for a planned community or lots in a planned community. After the Turnover Meeting, any such amendment must be approved by the Association in accordance with the approval provisions of this Declaration or the Bylaws, as applicable.

## ARTICLE 15

### MISCELLANEOUS PROVISIONS

**15.1 No Implied Obligations.** Nothing in this Declaration shall be construed to require Declarant or any successor Declarant to subject Additional Property to this Declaration or to improve or develop any of the Property or to do so for any particular uses.

**15.2 Notice of Sale or Transfer of Title.** Any Owner selling or otherwise transferring title to his or her Lot shall give the Association written notice within seven days after such transfer of the name and address of the purchaser or transferee, the date of such transfer of title and such other information as the Association may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot, including Assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

**15.3 Exclusive Rights to Use Name of Development.** No Person shall use the name "Eagle Point Estates" or any derivative of such name in any printed, digital (i.e., internet) or other promotional or commercial material without Declarant's prior written consent. However, an Owner may use the name "Eagle Point Estates" where such term is used solely to specify that the Owner's property is located within the Property. In no event shall any Owner enter into an agreement with any third party for the sale, rental or management of the Owner's Lot if such agreement purports to grant any right to such third party to use the name "Eagle Point Estates" or any derivative of such name in violation of this provision.

**15.4 Lessees and Other Invitees.** Lessees, employees, invitees, licensees, contractors, family members, guests and other Persons entering the Property under rights derived from an Owner shall comply with all of the provisions of this Declaration restricting or regulating the

Owner's use, improvement or enjoyment of his or her 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.

**15.5 Nonwaiver.** Failure by the Association or by 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.

**15.6 Construction and Severability.** This Declaration shall be liberally construed as an entire document to accomplish the purposes hereof as stated in the introductory paragraphs hereof. Nevertheless, each provision of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision shall not affect the validity or enforceability of the remaining part of that or any other provision.

**15.7 Terminology and Captions.** As used in this Declaration, the singular shall include the plural and the plural the singular, and the masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions used in this Declaration are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration.

**15.8 Notices.** All notices to the Association or to the Board of Directors shall be sent care of the manager or, if there is no manager, to the principal office of the Association or to such other address as the Board may designate from time to time. All notices to any Owner shall be sent to such address as may have been designated by such Owner from time to time, in writing, to the Board or, if no address has been designated, to the Owner's Lot. In the discretion of the Board, any notice, information or other written material required to be given to an Owner or director under this Declaration or the Bylaws or pursuant to the Oregon Planned Community Act may be given by electronic mail, facsimile or other form of electronic communication acceptable to the Board, except for the following notices: failure to pay an Assessment, foreclosure of an Association lien under ORS 94.709, or an action the Association may take against an Owner. An Owner or director may decline to receive notice by electronic mail, facsimile or other form of electronic communication and may direct the Board to provide notice in any other manner permitted under this Declaration or the Bylaws or the Oregon Planned Community Act.

**15.9 Private Agreement.** This Declaration and the covenants and agreements contained herein constitute a private agreement among the Owners of Lots in Eagle Point Estates. This Declaration does not restrict City of Eagle Point's authority to adopt or amend its development regulations. It is the duty of every Person engaged in development or remodeling of a Lot and/or improvement in Eagle Point Estates to know the requirements of this Declaration and the covenants and agreements contained herein. There may be conflicting requirements between this Declaration and regulations of City of Eagle Point. In the event there is a conflict between a regulation of City of Eagle Point and this Declaration, any question regarding which provision controls shall be directed to the Architectural Review Committee. In each case, City of Eagle Point will limit its review of a development application to the requirements of its regulations and will not be liable

for any approvals or permits that are granted in compliance with the regulations of City of Eagle Point, the State of Oregon or any other jurisdiction, but that are not in compliance with this Declaration. Declarant, the Committee and/or the Association will not be liable for any approvals that are granted in compliance with this Declaration, but that are not in compliance with the regulations of City of Eagle Point, the State of Oregon or any other jurisdiction.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date set forth above.

**EP HOF, LLC**, an Oregon limited liability company

By: [Signature]  
Its: AUTHORIZED AGENT

Washington )  
STATE OF ~~OREGON~~ ) 10/28/2021  
County of Clark ) ss.

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of October, 2021  
by Mike Loomis of EP HOF,  
LLC, an Oregon limited liability company, on its behalf.

[Signature]  
Notary Public for ~~Oregon~~ Washington 10/28/2021  
My commission expires: 04/18/2023

NOTARY PUBLIC  
STATE OF WASHINGTON  
LYNNE E GRAY  
COMMISSION NO. 206878  
MY COMMISSION EXPIRES  
APRIL 18, 2023

IN WITNESS WHEREOF, I, as homeowner of Lot 527, 76 Woodlands Dr., Eagle Point, OR 97542 have read and consent to this Declaration of CC&Rs.

Newell Samuel Howard, II

By: [Signature]  
Its: Member

STATE OF OREGON )  
County of Jackson ) ss.

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of October, 2021 by Newell Samuel Howard, II of EP HOF, LLC, an Oregon limited liability company, on its behalf.



[Signature]  
Notary Public for Oregon  
My commission expires: 08/19/2023

**EXHIBIT A**

**BYLAWS OF  
EAGLE POINT ESTATES HOMEOWNERS ASSOCIATION**

8/13/07

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**BYLAWS OF  
EAGLE POINT ESTATES HOMEOWNERS ASSOCIATION**

**ARTICLE 1**

**DEFINITIONS**

**1.1 Association.** "Association" means **EAGLE POINT ESTATES HOMEOWNERS ASSOCIATION**, a nonprofit corporation organized and existing under the laws of the State of Oregon.

**1.2 Articles of Incorporation.** "Articles of Incorporation" means the Articles of Incorporation of the Association.

**1.3 Declaration.** The "Declaration" means the Declaration of Protective Covenants, Conditions, Restrictions and Easements for Eagle Point Estates to which these Bylaws are attached, as the same may be subsequently amended or supplemented pursuant to the terms thereof.

**1.4 Incorporation by Reference.** Except as otherwise provided herein, the terms that are defined in Article 1 of the Declaration are used in these Bylaws as therein defined.

**ARTICLE 2**

**MEMBERSHIP**

**2.1 Membership.** Every Owner of one or more Lots within the Property shall, immediately upon creation of the Association and thereafter during the entire period of such ownership, be a member of the Association. Such membership shall commence, exist and continue simply by virtue of such ownership, shall expire automatically upon termination of such ownership, and need not be confirmed or evidenced by any certificate or acceptance of membership. The Association shall have two classes of membership, Class A and Class B, as set forth in the Declaration.

**2.2 Membership List.** The Secretary shall maintain at the principal office of the Association a membership list showing the name and address of the Owner of each Lot. The Secretary may accept as satisfactory proof of such ownership a duly executed and acknowledged conveyance, a title insurance policy, or other evidence reasonably acceptable to the Board of Directors.

**ARTICLE 3**

**MEETINGS AND VOTING**

**3.1 Place of Meetings.** Meetings of the members of the Association shall be held at such reasonable place convenient to the members as may be designated in the notice of the meeting.

**3.2 Turnover Meeting.** Declarant shall call the first meeting of the Owners to organize the Association within 90 days after termination of the Class B Membership as provided in Section 3.7 below. Notice of such meeting shall be given to all Owners as provided in Section 3.5. If a quorum of the Owners is present, the Owners shall elect not fewer than the number of directors sufficient to constitute a quorum of the Board of Directors. If the Declarant fails to call the meeting, the meeting may be called and notice given by any Owner or Mortgagee of a Lot. The expense of giving notice shall be paid or reimbursed by the Association. In the event of a lack of quorum at such Turnover Meeting, it may be adjourned as provided in Section 3.6. Nothing in this Section 3.2 shall be construed as preventing Declarant from calling the Turnover Meeting before such date or from calling informal, informational meetings of the Owners.

**3.3 Annual Meeting.** The annual meeting of the members for the election of directors and for the transaction of such other business as may properly come before the meeting shall be held at such reasonable hour and on such reasonable day as may be established by the Board of Directors or, if the Board should fail to designate a date by the first day of September, then at 7:30 p.m. on the second Thursday in October. The first annual meeting shall be held within one year after the date of the Turnover Meeting.

**3.4 Special Meetings.** A special meeting of the Association may be called at any time by the President or by a majority of the Board of Directors. A special meeting shall be called by the President or Secretary upon receipt of a written request stating the purpose of the meeting from members having at least 30 percent of the voting rights entitled to be cast at such meeting. Business transacted at a special meeting shall be confined to the purposes stated in the notice of meeting.

**3.5 Notice of Meeting.**

(1) Written or printed notice stating the place, day and hour of the meeting; the items on the agenda, including the general nature of any proposed amendment to the Declaration or these Bylaws; any budget changes; any proposal to remove a director or officer; and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than 10 or more than 50 days before the date of the meeting. Such notice shall be given either personally, by mail or, to the extent permitted by law, by electronic mail, facsimile or other form of electronic communication acceptable to the Board of Directors, by or at the direction of the President, the Secretary, or the Persons calling the meeting, to each member entitled to vote at such meeting and to all Mortgagees who have requested such notice. For a period of 10 years following recording of the Declaration, notices of meetings (including agendas) shall also be given to Declarant (or any designee of Declarant specified in any written notice to the Association) in the same manner as given to Owners, and Declarant or a representative of Declarant shall be entitled to attend such meetings. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, with postage fully prepaid thereon, addressed to the member at his or her most recent address as it appears on the records of the Association or to the mailing address of his or her Lot.

(2) When a meeting is adjourned for 30 days or more, or when a redetermination of the Persons entitled to receive notice of the adjourned meeting is required by law, notice of the adjourned meeting shall be given as for an original meeting. In all other cases, no notice of the adjournment or of the business to be transacted at the adjourned meeting need be given other than by announcement at the meeting at which such adjournment is taken.

**3.6 Quorum.** At any meeting of the Association, members having at least 20 percent of the voting rights entitled to be cast at such meeting, present in person, by proxy or by absentee ballot, if permitted by the Board of Directors, shall constitute a quorum, except when a larger quorum is required by the Declaration. When a quorum is once present to organize a meeting, it cannot be broken by the subsequent withdrawal of a member or members. 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 not less than 48 hours or more than 30 days from the time the original meeting was called until a quorum is present.

**3.7 Voting Rights.** The Association shall have two classes of voting membership:

(a) **Class A.** Class A members shall be all Owners with the exception of the Class B member and shall be entitled to one vote for each Lot owned. When more than one Person holds an interest in any Lot, all such Persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

(b) **Class B.** The Class B member shall be the Declarant and shall be entitled to three votes for each Lot owned by Declarant. The Class B Membership shall cease and be converted to Class A Membership on the happening of either of the following events, whichever occurs earlier:

(1) When all of the Lots in the final phase of development of Eagle Point Estates have been sold and conveyed to Owners other than a successor Declarant or a builder for development; or

(2) At such earlier time as Declarant may elect in writing to terminate Class B Membership.

**3.8 Fiduciaries and Joint Owners.** An executor, administrator, guardian or trustee may vote or grant consent with respect to any Lot owned or held in such capacity, whether or not the specific right shall have been transferred to his or her name, provided that such Person shall satisfy the Secretary that he or she is the executor, administrator, guardian or trustee, holding such Lot in such capacity. Whenever any Lot is owned by two or more Persons jointly, according to the records of the Association, the vote of such Lot may be exercised by any one of the Owners, in the absence of protest by a co-Owner. In the event of disagreement among the co-Owners, the vote of such Lot shall be disregarded completely in determining the proportion of votes given with respect to such matter, unless a valid court order establishes the authority of a co-Owner to vote.

**3.9 Tenants and Contract Vendors.** Unless otherwise expressly stated in the rental agreement or lease, all voting rights allocated to a Lot shall be exercised by the Owner. Unless otherwise stated in the contract, all voting rights allocated to a Lot shall be exercised by the vendee of any recorded land sale contract on the Lot.

**3.10 Casting of Votes and Consents.** The voting rights or consent of an Owner may be cast in person at a meeting of the Association or, at the discretion of the Board of Directors, by proxy in accordance with paragraph (a) of this Section 3.10, by absentee ballot in accordance with paragraph (b) of this Section 3.10, by written ballot in accordance with paragraph (c) of this

Section 3.10, or by any other method specified in the Declaration, these Bylaws or the Oregon Planned Community Act.

(a) **Proxies.** A proxy must be dated and signed by the Owner, is not valid if it is undated or purports to be revocable without notice, and terminates one year after its date unless the proxy specifies a shorter term. The Board of Directors may not require that a proxy be on a form prescribed by the Board. An Owner may not revoke a proxy given pursuant to this paragraph (a) 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. A copy of a proxy in compliance with this paragraph (a) provided to the Association by facsimile, electronic mail or other means of electronic communication utilized by the Board of Directors is valid.

(b) **Absentee Ballots.** An absentee ballot, if authorized by the Board of Directors, shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. All solicitations for votes by absentee ballot shall include instructions for delivery of the completed absentee ballot, including the delivery location and instructions about whether the ballot may be canceled if the ballot has been delivered according to the instructions. An absentee ballot shall be counted as an Owner present for the purpose of establishing a quorum. Even if an absentee ballot has been delivered to an Owner, the Owner may vote in person at a meeting if the Owner has returned the absentee ballot and canceled the absentee ballot, if cancellation is permitted in the instructions given under this paragraph (b).

(c) **Ballot Meetings.** At the discretion of the Board of Directors, any action that may be taken at any annual, regular or special meeting of the Association may be taken without a meeting by written ballot to the extent and in the manner provided in ORS 94.647.

(d) **Electronic Ballots.** To the extent authorized by the Board of Directors and permitted by the Oregon Planned Community Act, any vote, approval or consent of an Owner may be given by electronic ballot.

(e) **Mortgagees.** An Owner may pledge or assign such 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 under these Bylaws and to exercise the Owner's voting rights from and after the time that the Mortgagee shall give written notice of such pledge or assignment to the Board of Directors. Any first Mortgagee may designate a representative to attend all or any meetings of the Association.

**3.11 Majority Vote.** The vote of a majority of the voting rights entitled to be cast by the members present or represented by absentee ballot or proxy, at a meeting at which a quorum is present, shall be necessary for the adoption of any matter voted upon by the members, unless a greater proportion is required by law, by the Declaration, by the Articles of Incorporation, or by these Bylaws.

**3.12 Rules of Order.** Unless other rules of order are adopted by resolution of the Association or the Board of Directors, all meetings of the Association shall be conducted according to the latest edition of *Robert's Rules of Order*, published by Robert's Rules Association.

## ARTICLE 4

### DIRECTORS: MANAGEMENT

**4.1 Number and Qualification.** The affairs of the Association shall be governed by a Board of Directors of three to five Persons. All directors, other than interim directors appointed by Declarant, shall be Owners or co-Owners of Lots. For purposes of this Section 4.1, the officers of any corporate Owner, the members of any limited liability company and the partners of any partnership shall be considered co-Owners of any Lots owned by such corporation or partnership.

**4.2 Interim Directors.** Upon the recording of the Declaration, Declarant shall appoint an interim board of one to three directors, who shall serve until replaced by Declarant or until their successors have been replaced by the Owners as provided below.

**4.3 Transitional Advisory Committee.** Unless the Turnover Meeting has already been held, Declarant shall call a meeting of the Owners for the purpose of forming a Transitional Advisory Committee. The meeting shall be called within 60 days after the date Declarant conveys 50 percent or more of the Lots then existing in Eagle Point Estates to Owners other than a successor Declarant. The committee shall consist of two or more Owners elected by the Owners other than Declarant and not more than one representative of Declarant. The members shall serve until the Turnover Meeting. The Transitional Advisory Committee shall be advisory only, and its purpose shall be to enable ease of transition from administrative control of the Association by Declarant to control by the Owners. The committee shall have access to any information, documents and records that Declarant must turn over to the Owners at the time of the Turnover Meeting. If Declarant fails to call the meeting to elect a Transitional Advisory Committee within the time specified, the meeting may be called and notice given by any Owner. If the Owners fail to elect a Transitional Advisory Committee at the meeting called for such purpose, Declarant shall have no further obligation to form the committee.

#### **4.4 Election and Tenure of Office.**

(a) At the Turnover Meeting, the interim directors shall resign and the members shall elect three directors, two to serve for two years and one to serve for one year. The two nominees receiving the greatest number of votes shall serve for two years. In the event of a tie, term selection shall be by random means. Thereafter, the successors to each director shall serve for terms of two years each.

(b) Upon a majority vote of the voting rights entitled to be cast by the members present or represented by absentee ballot or proxy at a meeting or ballot meeting at which a quorum is present, the Board of Directors may be increased from three directors to five directors. At the next annual meeting or a special meeting called for such purpose, two additional directors shall be elected, one to serve for a two-year term and one to serve for a one-year term. Term selection shall be in the same manner as provided in paragraph (a) above.

(c) All directors shall hold office until their respective successors shall have been elected by the members. Election shall be by plurality.

#### **4.5 Vacancies.**

(a) A vacancy in the Board of Directors shall exist upon the death, resignation or removal of any director, or if the authorized number of directors is increased, or if the members fail at any annual or special meeting of members at which any director or directors are to be elected to elect the full authorized number of directors to be voted for at that meeting.

(b) Vacancies in the Board of Directors, other than interim directors, may be filled by a majority of the remaining directors even though less than a quorum, or by a sole remaining director. Each director so elected shall hold office for the balance of the unexpired term and until his or her successor is elected. Vacancies in interim directors shall be filled by Declarant.

(c) In the event that a vacancy in the Board of Directors, other than interim directors, remains unfilled for a period of three months or more, then the Board of Directors of the Master Association may fill the vacancy by appointing any director of the Master Association to serve as a temporary director. Such a temporary director appointed by the Master Association shall serve until the vacancy is filled in accordance with Section 4.5(b) or a director is elected to fill the vacancy in accordance with Section 4.4. This Section 4.5(c) may not be amended without prior written approval from the Master Association.

**4.6 Removal of Directors.** All or any number of the directors, other than interim directors, may be removed, with or without cause, at any meeting of members at which a quorum is present, by a vote of a majority of the number of votes entitled to be cast at an election of directors. No removal of a director shall be effective unless the matter of removal was an item on the agenda and stated in the notice of the meeting as provided in these Bylaws.

**4.7 Powers.** The Board of Directors shall have all the powers and duties necessary for the administration of the affairs of the Association, except such powers and duties as by law or by the Declaration or by these Bylaws may not be delegated to the Board of Directors by the Owners. The Board of Directors may delegate responsibilities to committees or a managing agent, but shall retain ultimate control and supervision. The powers and duties to be exercised by the Board of Directors shall include, but not be limited to, those set forth in Section 7.5 of the Declaration and the following:

(a) Carry out the program for maintenance, upkeep, repair and replacement of any property required to be maintained by the Association as described in the Declaration and these Bylaws.

(b) Determine the amounts required for operation, maintenance and other affairs of the Association, and the making of such expenditures.

(c) Prepare a budget for the Association, and assessment and collection of the Assessments.

(d) Employ and dismiss such personnel as may be necessary for such maintenance, upkeep and repair.

(e) Employ legal, accounting or other personnel for reasonable compensation to perform such services as may be required for the proper administration of the Association;

provided, however, the Board may not incur or commit the Association to incur legal fees in excess of \$5,000 for any specific litigation or claim matter or enter into any contingent fee contract on any claim in excess of \$100,000 unless the Owners have enacted a resolution authorizing the incurring of such fees by a vote of 75 percent of the voting rights. These limitations shall not be applicable to legal fees incurred in defending the Association or the Board of Directors from claims or litigation brought against them. The limitations set forth in this paragraph (e) shall increase by 10 percent on each fifth anniversary of the recording of the Declaration. To the extent required by the Oregon Planned Community Act, the Board shall notify the Owners before instituting litigation or administrative proceedings. With regard to any pending litigation involving the Association, the Board shall periodically report to the Lot Owners as to the status (including settlement offers), progress, and method of funding such litigation. Nothing in this paragraph (e) shall be construed as requiring the Board to disclose any privileged communication between the Association and its counsel.

(f) Open bank accounts on behalf of the Association and designating the signatories required therefor.

(g) Prepare and file, or cause to be prepared and filed, any required income tax returns or forms for the Association.

(h) Purchase Lots at foreclosure or other judicial sales in the name of the Association or its designee.

(i) Sell, lease, mortgage, vote the votes appurtenant to (other than for the election of directors), or otherwise deal with Lots acquired by the Association or its designee.

(j) Obtain insurance or bonds pursuant to the provisions of these Bylaws and review such insurance coverage at least annually.

(k) Make additions and improvements to, or alterations of, the Common Areas, or modify, close, remove, eliminate or discontinue use of any common facility, including any improvement or landscaping, except that any such modification, closure, removal, elimination or discontinuance (other than on a temporary basis) of any swimming pool, spa or recreational or community building must be approved by a majority vote of the members at a meeting or by written ballot held or conducted in accordance with these Bylaws.

(l) From time to time adopt, modify, or revoke such Rules and Regulations governing the details for the operation of the Association, the conduct of Persons and the operation and use of the Property as the Board of Directors may deem necessary or appropriate to ensure the peaceful and orderly use and enjoyment of the Property. Such action may be overruled or modified by vote of not less than 75 percent of the voting rights of each class of members present, in person or by proxy, at any meeting, the notice of which shall have stated that such modification or revocation of Rules and Regulations will be under consideration.

(m) Enforce by legal means the provisions of the Declaration, these Bylaws and any Rules and Regulations adopted hereunder.

(n) In the name of the Association, maintain a current mailing address of the Association, file annual reports with the Oregon Secretary of State, and maintain and keep current the information required to enable the Association to comply with ORS 94.670(7).

(o) Subject to Section 7.8 of the Declaration, enter into management agreements with professional management firms.

#### **4.8 Meetings.**

(a) Meetings of the Board of Directors shall be held at such place as may be designated from time to time by the Board of Directors or other Persons calling the meeting.

(b) Annual meetings of the Board of Directors shall be held within 30 days following the adjournment of the annual meetings of the members.

(c) Special meetings of the Board of Directors for any purpose or purposes may be called at any time by the President or by any two directors.

Unless other rules of order are adopted by resolution of the Association or the Board of Directors, all meetings of the Board of Directors shall be conducted according to the latest edition of *Robert's Rules of Order*, published by Robert's Rules Association.

#### **4.9 Open Meetings.**

(a) All meetings of the Board of Directors shall be open to Owners except that, in the discretion of the Board, the following matters may be considered in executive session: (i) consultation with legal counsel concerning the rights and duties of the Association regarding existing or potential litigation, or criminal matters; (ii) personnel matters, including salary negotiations and employee discipline; (iii) negotiation of contracts with third parties and (iv) collection of unpaid Assessments. Except in the case of an emergency, the Board of Directors shall vote in an open meeting on whether to meet in executive session. If the Board of Directors votes to meet in executive session, the 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 the executive session shall be included in the minutes of the meeting, and any contract or action considered in executive session shall not become effective unless the Board, following the executive session, reconvenes in open meeting and votes on the contract or action, which shall be reasonably identified in the open meeting and included in the minutes.

(b) Meetings of the Board of Directors may be conducted by telephonic communication or by other means of communication that allows all members of the Board participating to hear each other simultaneously or otherwise to be able to communicate during the meeting, except that if a majority of the Lots are principal residences of the Occupants, then: (i) for other than emergency meetings, notice of each Board of Directors' meeting shall be posted at a place or places on the property at least three days before the meeting, or notice shall be provided by a method otherwise reasonably calculated to inform the Owners of such meeting; and (ii) only emergency meetings of the Board of Directors may be conducted by telephonic communication. The meeting and notice requirements of this Section 4.9 may not be circumvented by chance, social meetings, or any other means.



#### **4.10 Notice of Meetings.**

(a) Notice of the time and place of meetings shall be given to each director orally, or delivered in writing personally, by mail or to the extent permitted by the Oregon Planned Community Act, by electronic mail, facsimile or other form of electronic communication acceptable to the Board of Directors, at least 24 hours before the meeting. Notice shall be sufficient if actually received at the required time or if mailed or sent electronically not less than 72 hours before the meeting. If mailed, the notice shall be directed to the address shown on the Association's records or to the director's actual address ascertained by the Person giving the notice. Such notice need not be given for an adjourned meeting if such time and place is fixed at the meeting adjourned. For a period of 10 years following recording of the Declaration, notices of meetings (including agendas) shall also be given to Declarant in the same manner as given to the directors.

(b) Attendance of a director at a meeting shall constitute a waiver of notice of such meeting except when a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

#### **4.11 Quorum and Vote.**

(a) A majority of the directors shall constitute a quorum for the transaction of business. A minority of the directors, in the absence of a quorum, may adjourn from time to time but may not transact any business.

(b) The action of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors unless a greater number is required by law, the Declaration, the Articles of Incorporation or these Bylaws.

(c) A director who is present at a meeting of the Board of Directors at which action is taken on any Association matter is presumed to have assented to the action unless the director votes against the action or abstains from voting on the action because the director claims a conflict of interest. When action is taken on any matter at a meeting of the Board of Directors, the vote or abstention of each director present must be recorded in the minutes of the meeting. Directors may not vote by proxy or by secret ballot at meetings of the Board of Directors, except that officers may be elected by secret ballot.

**4.12 Right of Declarant to Disapprove Actions.** So long as Declarant or any affiliate of Declarant owns any property within Eagle Point Estates, directly or indirectly, in whole or in part, Declarant shall have a right to disapprove any action, policy or program of the Association, the Board of Directors and any committee which, in the sole judgment of the Declarant, would tend to impair the rights of Declarant or builders under the Declaration or these Bylaws, or interfere with development, construction or marketing of any portion of the Property, or diminish the level of services being provided by the Association. This right to disapprove is in addition to, and not in lieu of, any right to approve or disapprove specific actions of the Association, the Board of Directors or any committee as may be granted to the Class B Member or Declarant in the Declaration or these Bylaws.

(a) The Declarant shall be given written notice of all meetings of the Association, the Board of Directors or any committee thereof and of all proposed actions of the

Association, the Board of Directors or any committee thereof to be approved at such meetings or by written request in lieu of a meeting. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, which notice complies with the requirements for Board meetings set forth in these Bylaws and which notice shall, except in the case of the regular meetings held pursuant to the Bylaws, set forth with reasonable particularity the agenda to be followed at such meeting.

(b) The Declarant shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein. The Declarant and its representatives or agents may make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee.

(c) No action, policy or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of paragraphs (a) and (b) above have been met and the time period set forth in paragraph (d) below has expired.

(d) The Declarant, acting through any officer or director, agent or authorized representative, may exercise its right to disapprove at any time within 10 days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within 10 days following receipt of written notice of the proposed action. This right to disapprove may be used to block proposed actions, but shall not include a right to require any action or counteraction on behalf of any committee, the Board or the Association unless such action or counteraction countermands an action, policy or program that was not properly noticed and implemented. The Declarant shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

**4.13 Liability.** Neither a member of the Board of Directors nor an officer of the Association or a member of the Architectural Review Committee or any other committee established by the Board of Directors shall be liable to the Association, any Owner or any third party for any damages, loss or prejudice suffered or claimed on account of any action or failure to act in the performance of his or her duties so long as the individual acted in good faith, believed that the conduct was in the best interests of the Association, or at least was not opposed to its best interests, and in the case of criminal proceedings, had no reason to believe the conduct was unlawful. In the event any member of the Board of Directors or any officer or committee member of the Association is made a party to any proceeding because the individual is or was a director, officer or committee member of the Association, the Association shall defend such individual against such claims and indemnify such individual against liability and expenses incurred to the maximum extent permitted by law. The managing agent of the Association, and its officers and employees, shall not be liable to the Association, the Owners or any third parties on account of any action or failure to act in the performance of its duties as managing agent, except for acts of gross negligence or intentional acts, and the Association shall indemnify the managing agent and its officers and employees from any such claims, other than for gross negligence or intentional misconduct.

**4.14 Compensation.** No director shall receive any compensation from the Association for acting as such.

**4.15 Executive, Covenants and Other Committees.** Subject to law, the provisions of the Declaration and these Bylaws, the Board of Directors may appoint an Executive Committee, a Covenants Committee to be responsible for covenant enforcement as provided in Section 4.16 and such other standing or temporary committees as may be necessary from time to time consisting of Owners and at least one member of the Board of Directors and having such powers as the Board of Directors may designate. Such committees shall hold office at the pleasure of the Board.

**4.16 Enforcement Procedures.** The Association shall have the power, as provided in the Declaration, to impose sanctions for any violation of the Declaration, these Bylaws or the Rules and Regulations. To the extent specifically required by the Declaration, the Board of Directors shall comply with the following procedures prior to the imposition of sanctions:

(a) **Notice.** The Board of Directors or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a statement that the alleged violator shall have 14 days to present a written request for a hearing before the Board of Directors or a Covenants Committee appointed by the Board of Directors, if any; and (iv) a statement that the proposed sanction may be imposed as contained in the notice unless a hearing is requested within 14 days of the notice.

(b) **Response.** The alleged violator shall respond to the notice of the alleged violation in writing within such 14-day period, regardless of whether the alleged violator is challenging the imposition of the proposed sanction. If the alleged violator cures the alleged violation and notifies the Board of Directors in writing within such 14-day period the Board of Directors may, but shall not be obligated to, waive the sanction. Such waiver shall not constitute a waiver of the right to sanction future violations of the same or other provisions by any Person. If a timely request for a hearing is not made, the sanction stated in the notice shall be imposed; provided, however, that the Board of Directors or Covenants Committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the 14-day period. Any response or request for a hearing shall be delivered to the Association's manager, President or Secretary, or as otherwise specified in the notice of violation.

(c) **Proof of Notice.** Prior to the effectiveness of sanctions imposed pursuant to this Section 4.16, proof of proper notice shall be placed in the minutes of the Board of Directors or Covenants Committee, as applicable. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative requests and appears at the hearing.

(d) **Hearing.** If a hearing is requested within the allotted 14-day period, the hearing shall be held before the Board of Directors or the Covenants Committee, as applicable. The alleged violator shall be afforded a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing (i.e., the decision) and the sanction, if any, to be imposed.

(e) **Appeal.** Following a hearing before the Covenants Committee, if applicable, the violator shall have the right to appeal the decision to the Board of Directors. To exercise this right, the violator must deliver a written notice of appeal to the Association's manager, President or Secretary within 10 days after the hearing date.

(f) **Enforcement Policies.** The Board of Directors, by Resolution, may adopt additional policies and procedures governing enforcement of the Declaration, these Bylaws or the Rules and Regulations.

(g) **Enforcement by Master Association.** As provided in the Declaration, the Master Association has the right to enforce the rules and obligations of the Association and its governing documents. Prior to any direct enforcement action by the Master Association, the Master Association's Board of Directors shall first provide written notice to the Association's Board of Directors detailing a violation for which enforcement is sought. Following receipt of the notice, the Association's Board of Directors or manager shall have 14 days in which to investigate the matter and either provide a first notice of violation to the Lot or Owner in question (with a copy to the Master Association) or provide a written statement to the Master Association's Board of Directors explaining why enforcement is not required. If the matter is resolved by the actions of the Association's Board of Directors, the Master Association shall not pursue direct enforcement. If the alleged violation is not resolved or otherwise addressed by the Association's Board of Directors or manager following the 14-day notice period, the Master Association shall then have the right to pursue direct enforcement action against the Owner in question following the same process set forth in this Section 4.16.

## ARTICLE 5

### OFFICERS

**5.1 Designation and Qualification.** The officers of the Association shall be the President, the Secretary, the Treasurer, and such Vice Presidents and subordinate officers as the Board of Directors shall from time to time appoint. The President shall be a member of the Board of Directors, but the other officers need not be directors. Any two offices, except the offices of President and Secretary, may be held by the same Person.

**5.2 Election and Vacancies.** The officers of the Association shall be elected annually by the Board of Directors at the organization meeting of each new Board to serve for one year and until their respective successors are elected. If any office shall become 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.

**5.3 Removal and Resignation.**

(a) Any officer may be removed upon the affirmative vote of a majority of the directors whenever, in their judgment, the best interests of the Association will be served thereby. The removal of an officer shall be without prejudice to the contract rights, if any, of the officer so removed.

(b) Any officer may resign at any time by giving written notice to the Board of Directors, the President or the Secretary of the Association. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective; provided, however, that the Board of Directors may reject any postdated resignation by notice in writing to the

resigning officer. The effectiveness of such resignation shall not prejudice the contract rights, if any, of the Association against the officer so resigning.

**5.4 President.** The President shall be the chief executive officer of the Association and shall, subject to the control of the Board of Directors, have powers of general supervision, direction and control of the business and affairs of the Association. He or she shall preside at all meetings of the members and of the Board of Directors. He or she shall be an ex officio member of all the standing committees, including the Executive Committee, if any, shall have the general powers and duties of management usually vested in the office of president of a nonprofit corporation, and shall have such other powers and duties as may be prescribed by the Board of Directors or these Bylaws.

**5.5 Vice Presidents.** The Vice Presidents, if any, shall perform such duties as the Board of Directors shall prescribe. In the absence or disability of the President, the President's duties and powers shall be performed and exercised by the Senior Vice President as designated by the Board of Directors.

**5.6 Secretary.**

(a) The Secretary shall keep or cause to be kept a book of minutes of all meetings of directors and members showing the time and place of the meeting; whether it was regular or special, and if special, how authorized; the notice given; the names of those present at directors' meetings; the number of memberships present or represented at members' meetings; and the proceedings thereof.

(b) The Secretary shall give or cause to be given such notice of the meetings of the members and of the Board of Directors as is required by these Bylaws or by law. The Secretary shall keep the seal of the Association, if any, and affix it to all documents requiring a seal, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or these Bylaws.

(c) If there are no Vice Presidents, then in the absence or disability of the President, the President's duties and powers shall be performed and exercised by the Secretary.

**5.7 Treasurer.** The Treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Association, including accounts of its assets, liabilities, receipts and disbursements. The books of accounts shall at all reasonable times be open to inspection by any director. The Treasurer shall deposit or cause to be deposited all moneys and other valuables in the name and to the credit of the Association with such depositories as may be designated by the Board. The Treasurer shall disburse or cause to be disbursed the funds of the Association as may be ordered by the Board, shall render to the President and directors, whenever they request it, an account of all of the Treasurer's transactions as Treasurer and of the financial condition of the Association, and shall have such other powers and perform such other duties as may be prescribed by the Board or these Bylaws.

**5.8 Compensation of Officers.** No officer who is a member of the Board of Directors shall receive any compensation from the Association for acting as an officer, unless such compensation is authorized by a resolution duly adopted by the members. The Board of Directors may fix any compensation to be paid to other officers.

## ARTICLE 6

### ASSESSMENTS, RECORDS AND REPORTS

**6.1 Assessments.** As provided in the Declaration, the Association, through its Board of Directors, shall do the following:

(a) Assess and collect from every Owner Assessments in the manner described in the Declaration.

(b) Keep all funds received by the Association as Assessments, other than reserves described in the Declaration, in the Operations Fund and keep all reserves collected pursuant to the Declaration in the Reserve Fund and use such funds only for the purposes described in the Declaration. All Assessments shall be deposited in the name of the Association in a separate federally insured account at a financial institution as defined in ORS 706.008, other than an extranational institution. All expenses of the Association shall be paid from the Association's bank account.

(c) From time to time, and at least annually, prepare a budget for the Association, estimating the common expenses expected to be incurred with adequate allowance for reserves based upon the reserve study required by the Declaration, and determine whether the Annual Assessment should be increased or decreased. Within 30 days after adopting a proposed annual budget, the Board of Directors shall provide a summary of the budget to all Owners. If the Board of Directors fails to adopt a budget, the last adopted annual budget shall continue in effect.

(d) Fix the amount of the Annual Assessment against each Lot at least 30 days in advance of each Annual Assessment period. Written notice of any Assessment shall be sent to every Owner subject thereto and to any first Mortgagee requesting such notice. The due dates shall be established by the Board of Directors, which may fix a regular flat Assessment payable on a monthly, quarterly, semiannual or annual basis. The Board of Directors shall cause to be prepared a roster of the Lots showing Assessments applicable to each Lot. The roster shall be kept in the Association office and shall be subject to inspection by any Owner or Mortgagee during regular business hours. Within 10 business days after receiving a written request, and for a reasonable charge, the Association shall furnish to any Owner or Mortgagee a recordable certificate setting forth the unpaid Assessments against such Owner's Lot. Such certificate shall be binding upon the Association, the Board of Directors, and every Owner as to the amounts of unpaid Assessments.

(e) When Additional Properties are annexed, the Board of Directors shall assess any Lots included therein in accordance with Section 9.10 of the Declaration.

(f) Enforce the Assessments in the manner provided in the Declaration.

(g) Keep records of the receipts and expenditures affecting the Operations Fund and Reserve Fund and make the same available for examination by members and their Mortgagees at convenient hours, maintain an Assessment roll showing the amount of each Assessment against each Owner and the amounts paid upon the account and the balance due on the Assessments, give each member written notice of each Assessment at least 30 days before the time when such Assessments shall become due and payable, and for a reasonable charge, promptly provide any

Owner or Mortgagee who makes a request in writing with a written certificate of such Owner's unpaid Assessments.

**6.2 Records.** The Association shall keep within the State of Oregon correct and complete financial records sufficiently detailed for proper accounting purposes; keep minutes of the proceedings of its members, Board of Directors and committees having any of the authority of the Board of Directors; and retain all documents, information and records turned over to the Association by Declarant. All documents, information and records delivered to the Association by Declarant pursuant to ORS 94.616 shall be kept within the State of Oregon.

**6.3 Statement of Assessments Due.** The Association shall provide, within 10 business days after receipt of a written request from an Owner, a written statement that provides: (a) the amount of Assessments due from the Owner and unpaid at the time the request was received, including regular and Special Assessments, fines and other charges, accrued interest, and late-payment charges; (b) the percentage rate at which interest accrues on Assessments that are not paid when due; and (c) the percentage rate used to calculate the charges for late payment or the amount of a fixed-rate charge for late payment. The Association is not required to comply with this Section 6.3 if the Association has commenced litigation by filing a complaint against the Owner and the litigation is pending when the statement would otherwise be due.

**6.4 Inspection of Books and Records.** Except as otherwise provided in ORS 94.670(5), during normal business hours or under other reasonable circumstances, the Association shall make reasonably available for examination and, upon written request, available for duplication, by Owners, lenders, and holders of any Mortgage of a Lot that make the request in good faith for a proper purpose, current copies of the Declaration, Articles, Bylaws, Rules and Regulations, amendments or supplements to such documents and the books, records, financial statements and current operating budget of the Association. The Association shall maintain a copy, suitable for purposes of duplication, of each of the following: (a) the Declaration, these Bylaws, the Rules and Regulations and any amendments or supplements thereto, (b) the most recent financial statement of the Association, and (c) the current operating budget of the Association. The Association, within 10 business days after receipt of a written request by an Owner, shall furnish copies of such documents to the requesting Owner. Upon written request, the Association shall make such documents, information and records available to such Persons for duplication during reasonable hours. 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 such documents, information or records. The fee may include reasonable personnel costs for furnishing the documents, information or records.

**6.5 Payment of Vouchers.** The Treasurer or managing agent shall pay all vouchers for all budgeted items and for any nonbudgeted items, up to \$1,000 signed by the President, managing agent, manager or other Person authorized by the Board of Directors. Any voucher for nonbudgeted items in excess of \$1,000 shall require the authorization of the President or a resolution of the Board of Directors.

**6.6 Execution of Documents.** The Board of Directors may, except as otherwise provided in the Declaration, Articles of Incorporation, or these Bylaws, authorize any officer or agent to enter into any contract or execute any instrument in the name of and on behalf of the Association. Such authority may be general or confined to specific instances. Unless so authorized

by the Board of Directors, no officer, agent, or employee shall have any power or authority to bind the Association by any contract or engagement, to pledge its credit, or to render it liable for any purpose or for any amount.

**6.7 Reports and Audits.** An annual financial statement consisting of a balance sheet and an income and expense statement for the preceding year shall be rendered by the Board of Directors to all Owners and to all Mortgagees who have requested the same within 90 days after the end of each fiscal year. Commencing with the fiscal year following the Turnover Meeting, if the Annual Assessments exceed \$75,000 for the year, then the Board of Directors shall cause such financial statements to be reviewed within 180 days after the end of the fiscal year by an independent certified public accountant licensed in Oregon in accordance with the Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants, or if the Annual Assessments are \$75,000 or less, shall cause such review within 180 days after receipt of a petition requesting such review signed by at least a majority of Owners. The Board of Directors need not cause such a review to be performed if so directed by an affirmative vote of at least 60 percent of the Owners, not including votes of Declarant with respect to Lots owned by Declarant. From time to time, the Board of Directors, at the expense of the Association, may obtain an audit of the books and records pertaining to the Association and furnish copies thereof to the members. At any time any Owner or holder of a Mortgage may, at their own expense, cause an audit or inspection to be made of the books and records of the Association.

## ARTICLE 7

### INSURANCE

**7.1 Types of Insurance.** For the benefit of the Association and the Owners, the Board of Directors shall obtain and maintain at all times, and shall pay for out of the Operations Fund, the following insurance:

(a) **Property Damage Insurance.**

(1) The Association shall maintain a policy or policies of insurance covering loss or damage from fire, with standard extended coverage and "all risk" endorsements, and such other coverages as the Association may deem desirable.

(2) The amount of the coverage shall be for not less than 100 percent of the current replacement cost of the elements that the Association has responsibility for maintaining and any improvements on the Common Areas (exclusive of land, foundation, excavation and other items normally excluded from coverage), subject to a reasonable deductible as determined by the Board of Directors not to exceed \$10,000.

(3) The policy or policies shall include all fixtures and building service equipment to the extent that they are part of the Common Areas and all personal property and supplies belonging to the Association, together with all fixtures, improvements and alterations comprising a part of each Unit for which the Association has maintenance and repair responsibility.

(4) Such policy or policies shall name the Association, for the use and benefit of the individual Lot Owners, as insured, and shall provide for loss payable in favor of the



Association, as a trustee for each Owner and each such Owner's Mortgagee, as their interests may appear. The policies shall contain the standard mortgage clause, or equivalent endorsement (without contribution) which is commonly accepted by institutional mortgage investors in Oregon.

(b) **Liability Insurance.**

(1) The Association shall maintain comprehensive general liability insurance coverage insuring the Declarant, the Association, the Board of Directors, and the managing agent against liability to the public or to Owners and their invitees or tenants incident to the operation, maintenance, ownership or use of the Common Areas, including legal liability arising out of lawsuits related to employment contracts of the Association. There may be excluded from such policy or policies coverage of an Owner (other than as a member of the Association or Board of Directors) for liability arising out of acts or omissions of such Owner and liability incident to the ownership and/or use of the part of the Property as to which such Owner has the exclusive use or occupancy.

(2) Limits of liability under such insurance shall not be less than \$1 million on a combined single-limit basis.

(3) Such policy or policies shall be issued on a comprehensive liability basis and shall provide a cross-liability endorsement wherein the rights of named insureds under the policy or policies shall not be prejudiced as respects his, her or their action against another named insured.

(c) **Workers' Compensation Insurance.** The Association shall maintain workers' compensation insurance to the extent necessary to comply with any applicable laws.

(d) **Fidelity Insurance.**

(1) The Board of Directors may cause the Association to maintain blanket fidelity insurance for all officers, directors, trustees and employees of the Association and all other Persons handling or responsible for funds of, or administered by, the Association. In the event that the Association has retained a management agent, the Board of Directors may require such agent to maintain fidelity insurance for its officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association. The cost of such insurance, if any, may be borne by the Association.

(2) The total amount of fidelity insurance coverage required shall be based upon the best business judgment of the Board of Directors.

(3) Such fidelity insurance shall name the Association as obligee and shall contain waivers by the insurers of all defenses based upon the exclusion of Persons serving without compensation from the definition of "employees" or similar terms or expressions. The insurance shall provide that it may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least 10 days' prior written notice to the Association.

(e) **Director's and Officers' Liability Insurance.** The Association shall maintain a policy of directors' and officers' liability insurance with coverage in the amount of not less than \$1 million subject to a reasonable deductible, which deductible shall be the responsibility

of the Association. Such insurance shall cover both interim and regular directors and shall include coverage for claims brought by the Association, Owners and/or third parties, including, without limitation, claims arising out of construction defects or failure to maintain adequate reserves. Directors and officers will be accepting such positions in reliance upon such insurance protection being maintained by the Association. Therefore, in the event the Association fails to carry such insurance or amends these Bylaws to delete or reduce these insurance requirements, the Association and Owners shall be deemed to have released such claims and deemed to have covenanted not to sue or prosecute any claims against its current or former directors or officers that would have been insured under such a policy.

(f) **Insurance by Lot Owners.** The Association has no responsibility to procure or assist in procuring property loss insurance for any Owner or tenant for (i) damage to a Unit not covered by the Association's policy (because of the deductible amount or because the claim for loss or damage is one not covered by fire and property loss insurance policies required by these Bylaws or held by the Association); or (ii) for any damage or loss to the Owner's or tenant's personal property. Owners must be responsible for purchasing insurance policies insuring their Units (including for the deductible amount applicable to Association maintained elements of the exterior) and for insuring their own personal property for any loss or damage. Owners and tenants of all Units must procure and maintain comprehensive liability policies having combined limits in amounts reasonably set by the Board of Directors no more often than every three years. Such insurance must provide coverage for, without limitation, the negligent acts of the Owner and tenant and their guests or other Occupants of the Unit for damage to the Common Area and other Units and the personal property of others located therein. Each Owner shall obtain, at his or her own expense, homeowner's insurance covering the Unit on the Owner's Lot and liability resulting from use or ownership of the Lot.

**7.2 Planned Community Act Requirements.** The insurance maintained by the Association shall comply with the requirements of the Oregon Planned Community Act, ORS 94.550 to 94.780.

## ARTICLE 8

### GENERAL PROVISIONS

**8.1 Seal.** The Board of Directors may, by resolution, adopt a corporate seal.

**8.2 Waiver of Notice.** Whenever any notice to any member or director is required by law, the Declaration, the Articles of Incorporation, or these Bylaws, a waiver of notice in writing signed at any time by the Person entitled to notice shall be equivalent to the giving of the notice.

**8.3 Action Without Meeting.** Any action that the law, the Declaration, the Articles of Incorporation or the Bylaws require or permit the members or directors to take at any meeting may be taken without a meeting or ballot meeting if a consent in writing setting forth the action so taken is signed by all of the members or directors entitled to vote on the matter. The consent, which shall have the same effect as a unanimous vote of the members or directors, shall be filed in the records of minutes of the Association.

**8.4 Conflicts.** These Bylaws are intended to comply with the Oregon Planned Community Act, the Oregon Nonprofit Corporation Law, the Declaration and the Articles of Incorporation. In case of any irreconcilable conflict, such statutes and documents shall control over these Bylaws.

## ARTICLE 9

### AMENDMENTS TO BYLAWS

**9.1 How Proposed.** Amendments to these Bylaws shall be proposed by either a majority of the Board of Directors or by members holding at least 30 percent of the voting rights entitled to be cast for such amendment. 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 be attached to any request for consent to the amendment.

#### **9.2 Adoption.**

(a) A resolution adopting a proposed amendment may be proposed by either the Board of Directors or by the members and may be approved by the membership at a meeting called for such purpose, or by written consent of the members. Members not present at the meeting considering such amendment may express their approval in writing or by proxy. Any resolution must be approved by members holding a majority of the voting rights, together with the written consent of the Class B member, if any, and, as long as there is a Class B member, by the Federal Housing Administration or the Veterans Administration, if these Bylaws were previously approved by such agencies. Amendment or repeal of any provision of these Bylaws that is also contained in the Declaration must be approved by the same voting requirement for amendment of such provision of the Declaration.

(b) Notwithstanding the provisions of the preceding paragraph (a), until the Turnover Meeting has occurred, Declarant shall have the right to amend these Bylaws in order to comply with the requirements of the Federal Housing Administration, the United States Department of Veterans Affairs; the Farmers Home Administration of the United States; the Federal National Mortgage Association; the Government National Mortgage Association; the Federal Home Mortgage Loan Corporation; any department, bureau, board, commission or agency of the United States or the State of Oregon; or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon that insures, guarantees or provides financing for a planned community or lots in a planned community. After the Turnover Meeting, any such amendment shall require the approval of a majority of the voting rights of the Association, voting in person, by proxy, or by ballot, at a meeting or ballot meeting of the Association at which a quorum is represented.

**9.3 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 and ORS 94.625 and recorded in the Deed Records of Jackson County, Oregon.

EXHIBIT B to DECLARATION

MAP OF ADDITIONAL PLANNED PHASES OF DEVELOPMENT

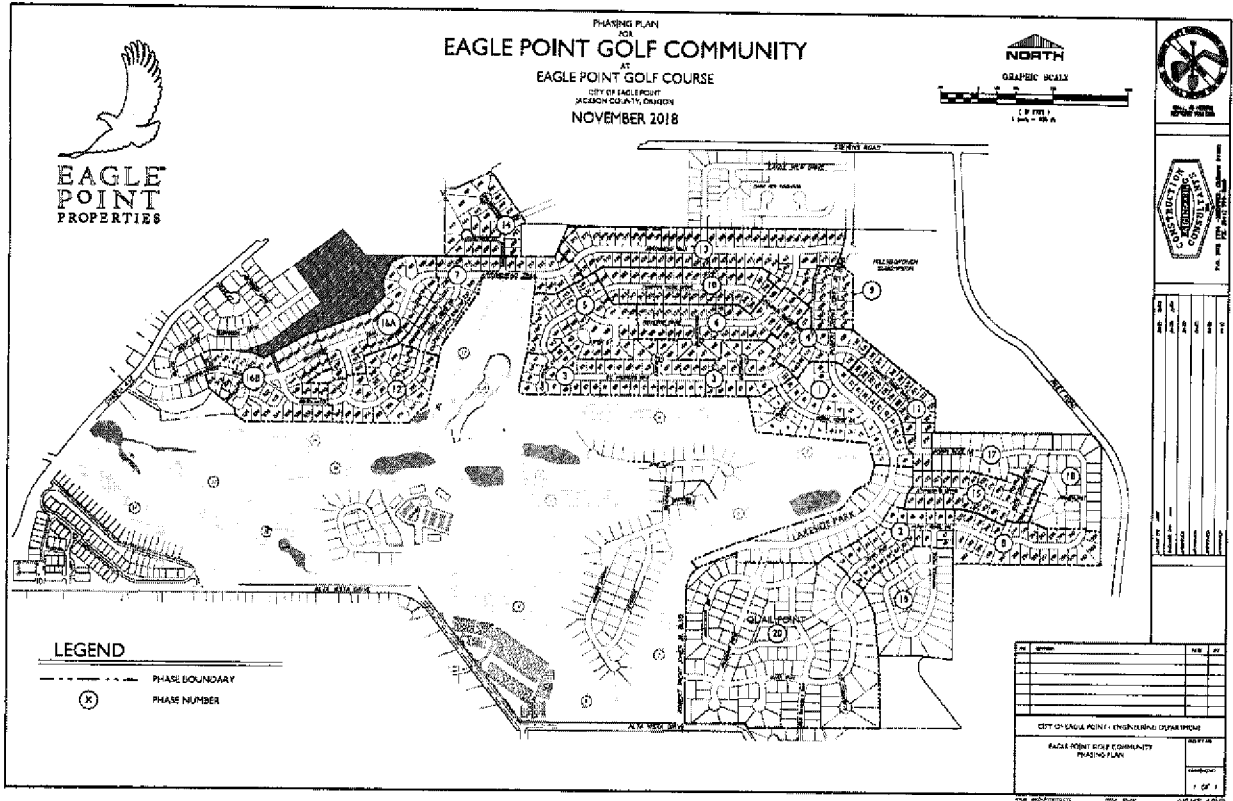


EXHIBIT C TO DECLARATION  
ARCHITECTURAL AND DESIGN STANDARDS

**Eagle Point Design Guidelines**  
*Applies to Phases 11, 15, 16A & B, 17, 18 and Buffer Zone Lots*

**Design Guideline Language**

1. No like elevation shall be used on lots that are within three lots abutting the subject lot, or directly across the street.
2. The ground floor of a one-story dwelling, exclusive of open porches and garage in all Phases except the golf course fronting lots in 16B shall not be less 1800 square feet. The golf course fronting lots in 16B shall be no less than 1950 square feet. A multiple level dwelling, two-story dwelling, split-entry home, or daylight basement home, the principal living level shall have a minimum square footage of not less than 1200 square feet, exclusive of open porches and garages, except where lot slope limits the ability to meet the minimum SF. All homes must have at least a two (2) car garage.
3. The street facing elevation shall include no less than three (3) varying planes for plans with three (3) car garages, and two (2) varying planes on plans with two (2) car garages. These variations may include but are not limited to the following examples: Second floor protrusion forward from main floor, entrance awning protrusion or inset from main elevation.
4. All homes shall include either accent stone, composite, or brick veneer contained on the front elevation, unless substantial use of other design detail is utilized as part of a specific style (e.g. farmhouse or Spanish style.)
5. The square footage of the windows included in the front elevation shall be no less than 10% of the total square footage of the front elevation. When windows make up more than 20% of the garage door surface, they may be counted towards the square footage of the required windows.
6. Exterior window trim:
  - a. The exterior window trim shall be required on all street facing, tract facing and open space facing elevations of the home.
  - b. The exterior window trim shall be painted consistently with the other trim board areas on the exterior elevations, except that trim may be of a contrasting tone of similar hue.
  - c. The exterior window trim type shall be either;

- i. standard four way wrap with a minimum of 3-inch wrap material.
  - ii. four way wrap with ledger sill
  - iii. four way wrap with ledger and header sill
  - iv. or other four side window trim approved by the architectural committee
- d. All exterior window trim material shall be no less than 3 inches wide

7. Exterior Siding

- a. The exterior siding may be a mix of composite (Hardi plank or like), stucco, and wood materials.
  - b. The exterior siding on the front street facing, elevations shall include two (2) or more accent material (i.e. shake, batten board, lap, brick, stone or belly band).
    - i. The accent material shall cover no less than 10% of each subject elevation, unless the limitation of accent materials is driven by a specific style (e.g. farmhouse or Spanish style).
8. The paint package shall include no less than three (3) colors, specifically Body, Trim and Accent colors, unless the limitation of accent colors is driven by a specific style (e.g. farmhouse or Spanish style), then a 2-color limit is allowed.
- a. A fourth color may be proposed for door(s) or other accents.
  - b. No substantially similar color packages shall be used on homes that are within three (3) lots abutting the subject lot, or directly across the street.
  - c. Trim must mark all building rooflines, porches, and doors on all elevations. The trim must be at least 3-1/2 inches wide.

9. Elevation Features

- a. The front facing elevation shall include no less than (3) elevation accents features in at least two (2) different feature types. The feature types may include but are not limited to façade slat vents, window shutters, corbels dormer windows, belly bands, Hardi-shake, nook windows, brick accents and others approved by the Design Review Committee.

10. The garage doors are to include window covers, be frosted or be otherwise opaque if garage doors include glazing over 25%.

11. Roofing type to be asphalt composite or tile.

12. Fences & Hedges

- a) Hedges or site-obscuring plantings shall not exceed three (3') feet in height in the front yard or on the side lot lines forward of the building line with the greatest setback on lot or the adjoining residential lot.
- b) No fences shall be constructed in the front yard or on the side lot lines within ten (10') feet of the front building line unless due to topographic conditions or other conditions a variance is agreed to in writing by the Architectural Control Committee.

- c) The maximum height of a site-obscuring fence located on a lot shall not exceed six (6') feet in height.
- d) Fences shall be well constructed of suitable fencing materials, approved by the Architectural Control Committee, and shall not detract from the appearance of the dwelling located upon the lot. All fences are to be well kept and wood structures are to be painted or stained or maintained in a manner approved by the Architectural Control Committee. Chain link fencing is not permitted unless required by the City of Eagle Point, and in case such fencing is required it shall comply with the construction standards and requirements of the City of Eagle Point.
- e) Internal fencing on all golf course fronting lots must be approved by the Design Review Committee and the Golf Course, and considerations may vary from lot to lot. Tops of fences must be constructed relatively level and lateral fence elevation changes must occur at the fence posts or in a manner approved by the Architectural Control Committee.

### 13. Landscaping

- a. All landscape plans shall be designed, installed and completed by a landscape architect or professional landscape company
- b. All landscape installations require an irrigation system. Landscape plans should note the type of irrigation system to be installed
- c. No plantings may be listed on the Invasive & Noxious Plants list at <https://plants.usda.gov/java/noxiousDriver>. Select 'Oregon' from the State Noxious Weed Lists to view plantings that are not allowed
- d. All front yard landscape plans must propose at least one (1) shade tree, standing at 6-7ft. in height with a 2" inch caliper trunk
- e. All front yard plantings must include a balanced mix of 1, 2 and 5-gallon plants. Front yards must contain a minimum of twelve (12) plantings, not including the required shade tree
- f. Rear yard plantings may be any size. At a minimum, rear yards will be fully graded and the rear yard shall be covered with either grass and/or other approved stabilization material
- g. All landscape plans for golf course fronting lots should consist of an even mix of one (1), three (3) and five (5) gallon plantings
- h. Front yard hedges, fountains, boulders, or other site obscuring plantings or installations forward of the building line may not exceed 3ft. in height
- i. Soil amendment is required for all lawn and planter bed installations
- j. Some lots, depending on location, slope and size, may require contour grading to avoid abrupt grade lines and to ensure smooth visual transitions across the lot(s)
- k. Xeriscape plans with little irrigation and no lawn plantings shall be allowed, please see the Modification Committee's guidelines for xeriscape installation guidelines. The Design Review Committee may grant variations to these requirements on a case by case basis.
- l. All pools must be in-ground pools. No above-ground swimming pools are permitted.

## EXHIBIT D

### Architectural and Design Standards

#### **Eagle Point Design Guidelines**

*Applies to Phases 11, 15, 16A & B, 17, 18 and Buffer Zone Lots*

#### **Design Guideline Language**

1. No like elevation shall be used on lots that are within three lots abutting the subject lot, or directly across the street.
2. The ground floor of a one-story dwelling, exclusive of open porches and garage in all Phases except the golf course fronting lots in 16B shall not be less 1800 square feet. The golf course fronting lots in 16B shall be no less than 1950 square feet. A multiple level dwelling, two-story dwelling, split-entry home, or daylight basement home, the principal living level shall have a minimum square footage of not less than 1200 square feet, exclusive of open porches and garages, except where lot slope limits the ability to meet the minimum SF. All homes must have at least a two (2) car garage.
3. The street facing elevation shall include no less than three (3) varying planes for plans with three (3) car garages, and two (2) varying planes on plans with two (2) car garages. These variations may include but are not limited to the following examples: Second floor protrusion forward from main floor, entrance awning protrusion or inset from main elevation.
4. All homes shall include either accent stone, composite, or brick veneer contained on the front elevation, unless substantial use of other design detail is utilized as part of a specific style (e.g. farmhouse or Spanish style.)
5. The square footage of the windows included in the front elevation shall be no less than 10% of the total square footage of the front elevation. When windows make up more than 20% of the garage door surface, they may be counted towards the square footage of the required windows.
6. Exterior window trim:
  - a. The exterior window trim shall be required on all street facing, tract facing and open space facing elevations of the home.
  - b. The exterior window trim shall be painted consistently with the other trim board areas on the exterior elevations, except that trim may be of a contrasting tone of similar hue.
  - c. The exterior window trim type shall be either;



- i. standard four way wrap with a minimum of 3-inch wrap material.
  - ii. four way wrap with ledger sill
  - iii. four way wrap with ledger and header sill
  - iv. or other four side window trim approved by the architectural committee
- d. All exterior window trim material shall be no less than 3 inches wide

7. Exterior Siding

- a. The exterior siding may be a mix of composite (Hardi plank or like), stucco, and wood materials.
  - b. The exterior siding on the front street facing, elevations shall include two (2) or more accent material (i.e. shake, batten board, lap, brick, stone or belly band).
    - i. The accent material shall cover no less than 10% of each subject elevation, unless the limitation of accent materials is driven by a specific style (e.g. farmhouse or Spanish style).
8. The paint package shall include no less than three (3) colors, specifically Body, Trim and Accent colors, unless the limitation of accent colors is driven by a specific style (e.g. farmhouse or Spanish style), then a 2-color limit is allowed.
- a. A fourth color may be proposed for door(s) or other accents.
  - b. No substantially similar color packages shall be used on homes that are within three (3) lots abutting the subject lot, or directly across the street.
  - c. Trim must mark all building rooflines, porches, and doors on all elevations. The trim must be at least 3-1/2 inches wide.

9. Elevation Features

- a. The front facing elevation shall include no less than (3) elevation accents features in at least two (2) different feature types. The feature types may include but are not limited to façade slat vents, window shutters, corbels dormer windows, belly bands, Hardi-shake, nook windows, brick accents and others approved by the Design Review Committee.

10. The garage doors are to include window covers, be frosted or be otherwise opaque if garage doors include glazing over 25%.

11. Roofing type to be asphalt composite or tile.

12. Fences & Hedges

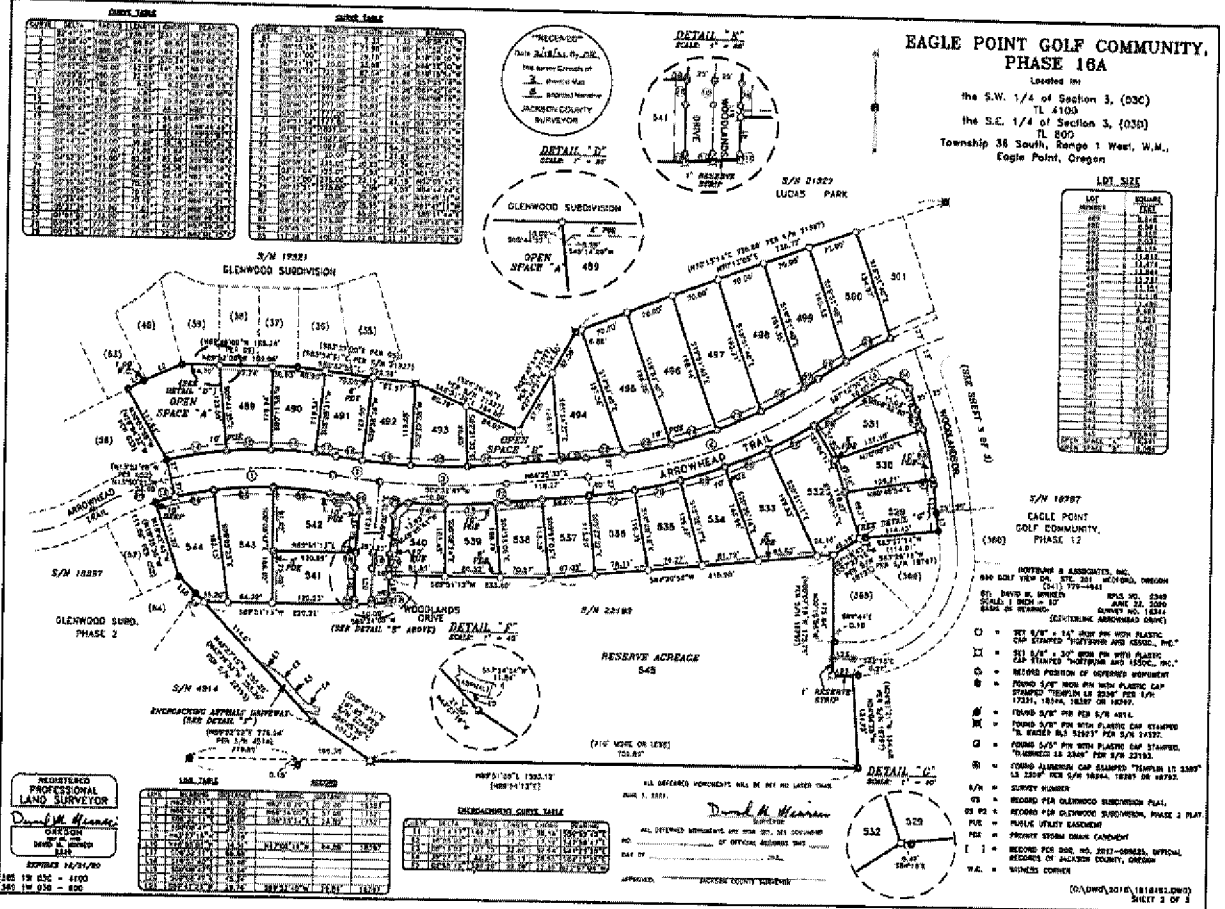
- f) Hedges or site-obscuring plantings shall not exceed three (3') feet in height in the front yard or on the side lot lines forward of the building line with the greatest setback on lot or the adjoining residential lot.
- g) No fences shall be constructed in the front yard or on the side lot lines within ten (10') feet of the front building line unless due to topographic conditions or other conditions a variance is agreed to in writing by the Architectural Control Committee.

- h) The maximum height of a site-obscuring fence located on a lot shall not exceed six (6') feet in height.
- i) Fences shall be well constructed of suitable fencing materials, approved by the Architectural Control Committee, and shall not detract from the appearance of the dwelling located upon the lot. All fences are to be well kept and wood structures are to be painted or stained or maintained in a manner approved by the Architectural Control Committee. Chain link fencing is not permitted unless required by the City of Eagle Point, and in case such fencing is required it shall comply with the construction standards and requirements of the City of Eagle Point.
- j) Internal fencing on all golf course fronting lots must be approved by the Design Review Committee and the Golf Course, and considerations may vary from lot to lot. Tops of fences must be constructed relatively level and lateral fence elevation changes must occur at the fence posts or in a manner approved by the Architectural Control Committee.

### 13. Landscaping

- a. All landscape plans shall be designed, installed and completed by a landscape architect or professional landscape company
- b. All landscape installations require an irrigation system. Landscape plans should note the type of irrigation system to be installed
- c. No plantings may be listed on the Invasive & Noxious Plants list at <https://plants.usda.gov/java/noxiousDriver>. Select 'Oregon' from the State Noxious Weed Lists to view plantings that are not allowed
- d. All front yard landscape plans must propose at least one (1) shade tree, standing at 6–7ft. in height with a 2" inch caliper trunk
- e. All front yard plantings must shall include a balanced mix of 1, 2 and 5-gallon plants. Front yards must contain a minimum of twelve (12) plantings, not including the required shade tree
- f. Rear yard plantings may be any size. At a minimum, rear yards will be fully graded and the rear yard shall be covered with either grass and/or other approved stabilization material
- g. All landscape plans for golf course fronting lots should consist of an even mix of one (1), three (3) and five (5) gallon plantings
- h. Front yard hedges, fountains, boulders, or other site obscuring plantings or installations forward of the building line may not exceed 3ft. in height
- i. Soil amendment is required for all lawn and planter bed installations
- j. Some lots, depending on location, slope and size, may require contour grading to avoid abrupt grade lines and to ensure smooth visual transitions across the lot(s)
- k. Xeriscape plans with little irrigation and no lawn plantings shall be allowed, please see the Modification Committee's guidelines for xeriscape installation guidelines. The Design Review Committee may grant variations to these requirements on a case by case basis.
- l. All pools must be in-ground pools. No above-ground swimming pools are permitted.





REGISTERED  
PROFESSIONAL  
LAND SURVEYOR  
*David M. Wilson*  
OREGON  
DAVID M. WILSON  
350  
EXPIRES 12/31/99  
188 18 03C - 4190  
189 18 03B - 420

LOT	AREA (SQ. FT.)	AREA (SQ. YD.)
480	10,200	233
481	10,200	233
482	10,200	233
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- NOTES:
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