

3852381

WHEN RECORDED, MAIL TO:
Douglas W. Aleshire
3675 East 3820 South, No. 1
Salt Lake City, Utah 84109

AFFIDAVIT OF INCORPORATORS
CONCERNING AMENDMENT OF DECLARATION
AND ELECTION OF DIRECTORS

28⁵⁰
REC'D
DEP
Wayne Harper
Margaret Aleshire

OCT 3 4 24 PM '93
Douglas W. Aleshire

MAIL ROOM
RECORDED
SALT LAKE COUNTY
UTAH

Douglas W. Aleshire, Margaret A. Rorke and Terry M. Wonder,
being first duly sworn on oath, state as follows:

1. That each of them is the owner of a condominium unit located in the condominium project (the "Project") known as the "Millcreek Cove Condominium," such Project having been formed and created pursuant to that certain Declaration of Covenants, Restrictions and Conditions filed in the real estate records of the Recorder of Salt Lake County, Utah on August 14, 1981, as Entry No. 3595315, in Book 5281, beginning at page 1453, and that certain Record of Survey Map filed in said records on August 14, 1981 as Entry No. 3595314, in Book 81-8 of Plats at page 121 (said two documents being collectively referred to herein as the "Declaration").

2. That the declarant under the Declaration, Artistic Homes, failed at all times prior to July 21, 1983 to cause a homeowners' association to be incorporated as a Utah non-profit corporation, in violation of the Declaration, and has failed to turn over to an association of the unit owners (whether incorporated or not) the management of the affairs of the Project in violation of Utah Code Annotated, § 57-8-16.5.

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3. That they are the incorporators of Millcreek Cove Phase I Homeowners' Association, a non-profit corporation established under the Utah Non-Profit Corporation and Cooperative Association Act, pursuant to Articles of Incorporation caused by them to be filed with the Utah Secretary of State on July 21, 1983.

MR DA
4. That commencing at 8:00 ~~(A.M.)~~, p.m.) on ~~August~~ ^{September} 13, 1983, the initial meeting of the newly-incorporated Association was held at 3675 E. 3820 So. # 1, Utah, pursuant to written notice given by the undersigned to each unit owner, addressed in care of each unit.

5. That at such initial meeting, the Association adopted Bylaws in the form attached hereto as Exhibit A, pursuant to the following resolution:

WHEREAS, Artistic Homes, as declarant, filed that certain Declaration of Covenants, Restrictions and Conditions in the real estate records of the Recorder of Salt Lake County, Utah on August 14, 1981, as Entry No. 3595315, in Book 5281, beginning at page 1453, and that certain Record of Survey Map in said records on August 14, 1981 as Entry No. 3595314, in Book 81-8 of Plats at page 121 (said two documents being collectively referred to herein as the "Declaration"), creating Millcreek Cove Condominium; and

WHEREAS, said declarant failed to attach bylaws to said Declaration, in violation of Utah Code Annotated, § 57-8-15, and notwithstanding the statement in the Declaration that bylaws were attached thereto as Exhibit D; and

WHEREAS, at all times prior to this meeting said declarant has failed to amend the Declaration for the purpose of adding said bylaws; and

WHEREAS, the newly-formed Millcreek Cove Phase I Homeowners' Association deems it necessary and desirable that bylaws be immediately adopted, and said Association at this initial meeting desires to adopt bylaws in the form attached to the minutes of this initial meeting as Appendix 1, to govern the affairs of the Association from and after the date of this initial meeting,

NOW, THEREFORE, BE IT RESOLVED, that the Bylaws attached to the minutes of this meeting as Appendix 1 be and the same hereby are approved and adopted as and for the Bylaws of the Association, and that the incorporators of the Association be and they hereby are authorized, empowered and directed to prepare an affidavit and file the same in the real estate records of the office of the Recorder of Salt Lake County, Utah, in order that said Bylaws shall become a matter of public record and shall be deemed to be and become a part of the Declaration.

6. That at said initial meeting, the following individuals were elected to serve as members of the Board of Directors of the Association, for the terms indicated:

| <u>Individual</u> | <u>Address</u> | <u>Term</u> |
|---------------------|---|-------------|
| Terry M. Wonder | 3685 East 3820 South, No. 4 Salt Lake City, Utah 84109 | 3 years |
| Douglas W. Aleshire | 3820 South 3675 East, No. 1 Salt Lake City, Utah 84109 | 2 years |
| Margaret A. Rorke | 3820 South 3685 East, No. 5 Salt Lake City, Utah 84109 | 1 year |

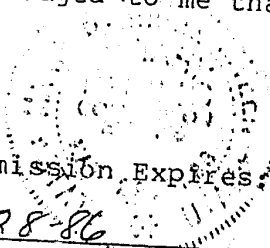
Douglas W. Aleshire
Douglas W. Aleshire

Margaret A. Rorke
Margaret A. Rorke

Terry M. Wonder
Terry M. Wonder

STATE OF UTAH)
COUNTY OF SALT LAKE) ss.

On the 14th day of September, 1983, personally appeared before me Douglas W. Aleshire, Margaret A. Rorke and Terry M. Wonder, the signers of the foregoing instrument, who duly acknowledged to me that they executed the same.


My Commission Expires
5-28-86

Maria B. Van Kesteren
Notary Public
Residing at: Salt Lake City, Utah

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EXHIBIT A
to Affidavit

[Attach copy of Bylaws, as approved at initial
meeting, prior to execution and recording
of this Affidavit]

BYLAWS
OF
MILLCREEK COVE CONDOMINIUM

An Association of Unit Owners
Under the Utah Condominium
Ownership Act

The administration of the MILLCREEK COVE CONDOMINIUM (the "property") and the MILLCREEK COVE PHASE I HOMEOWNERS' ASSOCIATION Condominium Ownership Act, Utah Code Ann. 57-8-1 through 57-8-35 (Repl. vol. 1973) (the "act") and by the declaration.

1. Application of Bylaws

All present and future unit owners, mortgagees, lessees and occupants of units and their employees, and any other persons who may use the facilities of the property in any manner are subject to the declaration, these bylaws and all rules made pursuant hereto and any amendment thereof. The acceptance of a deed or conveyance or the entering into of a lease or the act of occupancy of a unit shall constitute an agreement that the provisions of the declaration and these bylaws (and any rules and regulations made pursuant thereto), as they may be amended from time to time, are accepted, ratified and will be complied with.

2. Board of Directors

2.1 The administration of the property on behalf of the Association shall be conducted by a Board of Directors of three (3) natural individuals.

2.2 Beginning with the first meeting and at every annual meeting thereafter, the Association shall elect the members of the Board of Directors for the forthcoming year. Members of the Board of Directors shall be unit owners or spouses of unit owners and officers, directors, agents and employees of owners other than individuals.

2.3 Members of the Board of Directors shall serve for a term of three (3) years; provided, however, that one member of the Board of Directors elected at the first meeting shall serve for an initial term of three (3) years, one member for a two (2) year term, and one member for a one (1) year term. Thereafter, all Board of Directors members elected shall serve for a three year term. The members of the Board of Directors shall serve until their respective successors are elected, or until their death, resignation or removal. Any member of the Board of Directors who fails to attend three consecutive Board of Directors meetings or fails to attend at least 25% of the Board of Directors meetings held during any calendar year shall forfeit his membership on the Board of Directors.

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2.4 Any member of the Board of Directors may resign at any time by giving written notice to the president of the Association, or the remaining Board of Directors members. Any member of the Board of Directors may be removed from membership on the Board of Directors by a two-thirds majority vote of the Association. Whenever there shall occur a vacancy on the Board of Directors due to death, resignation, removal or other cause, the remaining members shall elect a successor member to serve until the next annual meeting of the Association at which time said vacancy shall be filled by the Association for the unexpired term, if any.

2.5 The members of the Board of Directors shall receive no compensation for their services unless expressly approved by a majority of the Association,; provided, however, that any member of the Board of Directors may be employed by the Association in another capacity and receive compensation for such employment.

2.6 The Board of Directors, for the benefit of the property and the Association, shall manage the business, property and affairs of the property and the Association and enforce the provisions of the declaration, these bylaws, the house rules and the administrative rules and regulations governing the property. The Board of Directors shall have the powers, duties and responsibilities with respect to the property as contained in the act, the declaration and these bylaws.

2.7 The meetings of the Board of Directors shall be held at such places within or without the State of Utah as the Board of Directors shall determine. Two (2) members of the Board of Directors constitute a quorum, and if a quorum is present, the decision of at least two of the members shall be the act of the Board of Directors. The Board of Directors shall annually elect all of the officers of the Association. The meeting for the initial election of officers shall be held at the first meeting of the Board of Directors immediately following the first meeting of the Association.

2.8 Special meetings of the Board of Directors may be called by the president or by any two Board of Directors members.

2.9 Regular meetings of the Board of Directors may be held without call or notice. The person or persons calling a special meeting of the Board of Directors shall, at least ten (10) days before the meeting, give notice thereof by any usual means of communication. Such notice need not specify the purpose for which the meeting is called; if an agenda is prepared for such a meeting, the meeting need not be restricted to discussions of those items listed on the agenda.

2.10 Any member of the Board of Directors may, at any time, waive notice of any meeting of the Board of Directors in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the Board of Directors at a

meeting shall constitute a waiver of notice of such meeting except if a Board of Directors member attends the meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called. If all the members of the Board of Directors are present at any meeting of the Board of Directors, no notice shall be required and any business may be transacted at such meeting.

2.11 The powers and responsibilities to act in all instances where the act or the declaration would otherwise require action by the Association, the Board of Directors, or any of the officers of them, have heretofore been vested in declarant. The formation of the Association shall not waive any such claims, actions, causes of action or other liabilities of or against declarant, owed to or existing or which may at any time after formation of the Association be owed to or existing for the benefit of the unit owners, the Association, the Board of Directors, or any of them or the officers of any of them, which may have arisen prior to such formation or may arise at any time thereafter, out of any act, omission to act, matter, transaction, cause or thing whatsoever at any time prior to the formation of the Association. The first meeting of the Association shall be held at a time set by the unit owners, but within one year after formation of the Association, at which time the Association shall elect the members of the Board of Directors. The following annual meetings shall be held on the same date each year thereafter.

2.12 After the election of the members of the Board of Directors at the first meeting of the Association, the incorporators of the Association shall execute, acknowledge and record an affidavit stating the names of the members of the newly elected Board of Directors. Thereafter, any two (2) persons who are designated of record as being members of the most recent Board of Directors (regardless of whether or not they shall still be members) may execute, acknowledge and record an affidavit stating the names of all of the members of the then current Board of Directors. The most recently recorded of such affidavits shall be prima facie evidence that the persons named therein are all of the incumbent members of the Board of Directors and shall be conclusive evidence thereof in favor of all persons who rely thereon in good faith.

3. Meetings of the Association

3.1 The presence in person or by proxy at any meeting of the Association of fifty percent (50%) of the unit owners in response to notice of all unit owners of record properly given shall constitute a quorum. Each unit shall be entitled to one vote. In the event that fifty percent (50%) of the unit owners are not present in person or by proxy, the meeting shall be adjourned for twenty-four (24) hours, at which time it shall reconvene and a minimum of two (2) Board members and any number of unit owners present at such subsequent meeting shall constitute a quorum. Unless otherwise expressly provided in the declaration or the act, any action may be taken at any meeting of the unit owners upon a majority vote of the unit owners of the Association.

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3.2 There shall be an annual meeting of the Association on the anniversary date following the first meeting at 8:00 p.m. at the property or at such other reasonable place or time (not more than sixty (60) days before or after such date) as may be designated by written notice by the Board of Directors delivered to the unit owners not less than fifteen (15) days prior to the date fixed for said meeting. At or prior to an annual meeting, the Board of Directors shall furnish to the unit owners: (i) a budget for the coming fiscal year that shall itemize the estimated common expenses for the coming fiscal year with the estimated allocation thereof to each unit owner; and (ii) an audited statement of the common expenses itemizing receipts and disbursements for the previous and current fiscal year, together with the allocation thereof to each unit owner. Within ten (10) days after the annual meeting, that budget statement shall be delivered to the unit owners who were not present at the annual meeting.

3.3 Special meetings of the Association may be held at any time at the property or at such other reasonable place to consider matters which, by the terms of the declaration, require the approval of all or some of the unit owners, or for any other reasonable purpose. Special meetings shall be called by written notice delivered by hand or certified mail, signed by a majority of the Board of Directors, or by unit owners representing at least one third (1/3) in interest of the undivided ownership of the common areas and facilities and delivered to all unit owners not less than fifteen (15) days prior to the date fixed for said meeting. The notices shall specify the date, time and place of the meeting, and the matters to be considered.

3.4 Robert's Rules of Order (latest edition) shall govern the conduct of the Association's meeting when not in conflict with the declaration of these bylaws.

4. Officers

4.1 All officers and employees of the Association shall serve at the will of the Board of Directors. The officers shall be a president, secretary and treasurer. One person may serve as both treasurer and secretary. The Board of Directors may appoint such other assistant officers as the Board of Directors may deem necessary. No officer shall be required to be a unit owner, but the president must be a member of the Board of Directors. No officer shall receive compensation for serving as such, except that the treasurer may receive such compensation as shall be approved by the Association. Officers shall be annually elected by the Board of Directors. The Board of Directors may, in its discretion, require that officers (and other employees of the Association) be subject to fidelity bond coverage.

4.2 The president shall be the chief executive of the Board of Directors and shall preside at all meetings of the unit owners and of the Board of Directors and may exercise the powers ordinarily allocable to the presiding officer of an association, including the appointment of committees. The president shall exercise general supervision over the property and its affairs. He shall sign on behalf of the Association all conveyances, mortgages and contracts of material importance to its business. He shall do and perform all acts which the Board of Directors may require.

4.3 The secretary shall keep minutes of all proceedings of the Board of Directors and of the meetings of the Association and shall keep such books and records as may be necessary and appropriate for the records of the unit owners and the Board of Directors. In the absence or inability of the president, the secretary shall perform the functions of the president.

4.4 The treasurer shall be responsible for the fiscal affairs of the Association but may delegate the daily handling of funds and the keeping of records to a manager or managing company upon approval of the Board.

5. Common Expenses: Assessments

5.1 All assessments shall be made in accordance with the provisions of the act and the declaration, including without limitation the provisions of Article VII of the declaration.

5.2 Within thirty (30) days prior to each annual meeting of the Association, the Board of Directors shall estimate the common expenses for the following year. The estimated common expenses shall include such amounts as the Board of Directors may deem proper for general working capital, for the general operating reserve, for a reserve fund for replacements and major maintenance and shall take into account any expected income, surplus or deficit in the common expenses for any prior year. These estimated common expenses shall be presented at the annual meeting and thereafter shall be assessed on a monthly basis to the unit owners. If the estimated common expenses prove inadequate for any reason, including nonpayment of any unit owner's assessments, the Board of Directors may, by resolution duly adopted pursuant to the affirmative vote of a majority of the total votes of the Association, make additional assessments, which shall be assessed to the unit owners in the same manner as the estimated common expenses. Each unit owner shall be obligated to pay to the Board of Directors assessments made pursuant to this paragraph on or before the first day of each month, or in such other reasonable manner as the Board of Directors shall designate. The funds received by the Board of Directors from assessments shall be kept in a separate account known as the "common expense fund" and shall be expended by the Board of Directors only in accordance with the provisions of the act, the declaration and these bylaws.

5.3 The failure by the Board of Directors before the expiration of any year to estimate the common expenses as required herein shall not be deemed a waiver or modification in any respect of the provisions of the declaration or these bylaws or a release of any unit owner from the obligation to pay any past or future assessments, and the estimated common expenses fixed for the previous and current year shall continue until a new estimate is fixed.

5.4 Amendments to this paragraph 5 shall be effective only upon unanimous written consent of the unit owners and their mortgagees.

5.5 No unit owner may exempt himself from liability for common expenses by waiver of the use or enjoyment of any of the common areas and facilities or by abandonment of his unit.

5.6 The treasurer shall keep detailed records of all receipts and expenditures, including expenditures affecting the common areas and facilities; specifying and itemizing the maintenance, repair and replacement expenses of the common areas and facilities and any other expenses incurred. Such record shall be available for examination by the unit owners during regular business hours. In accordance with the actions of the Board of Directors assessing common expenses against the units and unit owners, the treasurer shall keep an accurate record of such assessments and of the payments thereof by each unit owner.

5.7 All common expense assessments shall be a separate, distinct and personal liability of the owner of the unit at the time each assessment is made. The Board of Directors shall have the rights and remedies contained in the act and in the declaration to enforce the Association's lien for nonpayment of common expenses. Without limiting the generality of the foregoing sentence, in the case of foreclosure, the owner shall be required to pay a reasonable rental for the unit, and the Association as plaintiff in the foreclosure action shall be entitled to the appointment of a receiver to collect the rental without regard to the value of the unit.

5.8 Any person who shall have entered into a written agreement to purchase a unit shall be entitled to obtain a written statement from the treasurer setting forth the amount of unpaid assessments charges against the unit and its owners, and if such statement does not reveal the full amount of the unpaid assessments as of the date it is rendered, neither the purchaser nor the unit shall be liable for the payment of an amount in excess of the unpaid assessments shown thereon, provided that the former unit owner grantor shall remain so liable. Any such excess which cannot be promptly collected from the former unit owner grantor shall be reassessed by the Board of Directors as a common expense to be collected from all unit owners, including without limitation the purchaser of the unit, his successors and assigns. The new unit owner shall be liable and the former unit owner shall not be liable for any assessments made after the date of transfer of title to a unit, even though the common expenses for the expenses incurred or the advances made by the Board of Directors for which the assessment is made relate in whole or in part to any period prior to that date.

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5.9 In the event that title to a unit is transferred at sheriff's sale pursuant to execution upon any lien against the unit, the Board of Directors shall give notice in writing to the sheriff of any unpaid assessments for common expenses which are a lien against the unit, and for any expenses of or advances by the Board of Directors which became due prior to the sheriff's sale of the unit. Any such unpaid assessments which cannot be promptly collected from the former unit owner shall be reassessed by the Board of Directors as a common expense to be collected from all of the unit owners, including the purchaser who acquired title at the sheriff's sale, his successors and assigns. To protect its right to collect unpaid assessments for common expenses which are a lien against a unit, and for any expenses of and advances by the Board of Directors, the Board of Directors may on behalf of all the unit owners, purchase the unit at sheriff's sale, provided such action is authorized by the affirmative vote of a majority of the members of the Association.

5.10 In addition to the statements issuable to purchasers of units, the Board of Directors shall provide a current statement of unpaid assessments for common expenses and for any expenses of and advances by the Board of Directors in respect of the unit, to the unit owner, to any person who shall have entered into a binding agreement to purchase the unit and to any mortgagee on request at reasonable intervals.

5.11 In all cases where all or part of any assessments for common expenses and for any expenses of and advances by the Board of Directors cannot be promptly collected from the persons or entities liable therefor under the act, declaration or bylaws, the Board of Directors shall reassess the same as a common expense, without prejudice to its rights of collection against such persons or entities.

5.12 Each assessment or installment of an assessment shall bear interest at the rate of one and one-half percent (1.5%) per month from the date it becomes due and payable until paid, without notice or demand, in the case of any such amount as shall not be paid within fifteen (15) days after the date on which payment of the same is due.

6. Litigation

6.1 If any action is brought by one or more but less than all unit owners on behalf of the Association and recovery is had, the plaintiff's expenses, including reasonable counsel's fees, shall be a common expense; provided, however, that if such action is brought against the unit owners or against the Board of Directors, the officers, employees, or agents thereof, in their capacities as such, with the result that the ultimate liability asserted would, if proved, be borne by all the unit owners, the plaintiff's expenses, including counsel fees, shall not be charged to or borne by the other unit owners, as a common expense or otherwise.

6.2 Complaints brought against the Association, the Board of Directors or the officers, employees or agents thereof, in their respective capacities as such, or the property as a whole, shall be directed to the Board of Directors which shall promptly give written notice thereof to the unit owners and any mortgagees and shall be defended by the Board of Directors, and the unit owners and mortgagees shall have no right to participate other than through the Board of Directors in such defense. Complaints against one or more, but less than all unit owners shall be directed to such unit owners, who shall promptly give written notice thereof to the Board of Directors and to the mortgagees affecting such units, and shall be defended by such unit owners.

7. Abatement and Enjoinment of Violations by Unit Owners

The violation of any house rules or administrative rules or regulations adopted by the Board of Directors or the breach of any provision contained herein, or the breach of any provision of the declaration, shall give the Board of Directors the right, in addition to any other rights set forth in these bylaws:

7.1 To enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance or existence of such breach.

8. Accounting

8.1 The books and accounts of the Association shall be kept in accordance with generally accepted accounting procedures under the direction of the treasurer.

8.2 The books and accounts and unaudited statements of the Association shall be available for inspection at the office of the Association by any unit owner or his authorized representative during regular business hours.

9. Special Committees

The Board of Directors by resolution may designate one or more special committees, each committee to consist of two (2) or more unit owners, which to the extent provided in said resolution, shall have and may exercise the powers set forth in said resolution. Such special committee or committees shall have such name or names as may be determined from time to time by the Board of Directors. Such special committees shall keep regular minutes of their proceedings and report the same to the Board of Directors when required. The members of such special committee or committees designated shall be appointed by the Board of Directors or the president. The Board of Directors or the president may appoint unit owners to fill vacancies on each of said special committees occasioned by death, resignation, removal or inability to act for any extended period of time.

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10. Amendment of Bylaws

These bylaws may be amended by a two thirds (2/3) affirmative vote of the Association at a meeting duly called for such purpose. Upon such an affirmative vote, the Board of Directors shall acknowledge the amended bylaws, setting forth the fact of the required affirmative vote of the unit owners and the amendment shall be effective upon recording.

11. Severability

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

12. Captions

The captions herein are inserted only as a matter of convenience and for reference and in no way to define, limit or describe the scope of these bylaws nor the intent of any provision hereof.

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Minutes of Millcreek Cove HOA Meeting 9/13/83

- 1) Mtg ~~adjourned~~ came to order at 8:17 PM.
- 2) Affidavit was read to everyone
- 3) Bylaws were amended as follows:
 - i) included minimum of two board members must attend in 3.1.
 - ii) owners will be notified by written notice hand delivered to ~~residence~~ owners or ~~sent~~ delivered by certified mail in 3.3.
 - iii) change time to 8PM in 3.2.
 - iv) delete section 7.1.
 - v) include the continuance or existence of such breach in 7.2.
- 4) Amendment of Bylaws was discussed maintaining 2/3 of HOA. Can ~~remedy~~ remedy by mailed proxies or lack of return of proxy or attendance.
- 5) vi) include Board of Directors approval on Treasurer delegation of managing in 4.4.
- 5) Voted on Bylaws
Proposed Mary Frodsham
2nd Carla Warden
Past by majority
- 6) Voted on Affidavit
Proposed Norin Felton
2nd Mary Frodsham
Past by majority - unanimously
- 7) Books were reviewed by all
Proposed to accept books Lyn Felton
2nd Terry Warden
Approved unanimously by all
- 8) Election of Board of Directors
opened floors to nominations. Nominees were: Norin Felton, Kevin Gullett, Norm Burnham, Margaret Rorke, Terry Warden and Doug Aleshire.
Members elected as follows:
Terry Warden 3 year term
Doug Aleshire 2 year term
Margaret Rorke 1 year term

- 9) Treasurer Compensation was decided by members present.
Proposed by Doug Christiansen
2nd Kevin Gaultey
Unanimously voted on by all that Treasurer would
pay his association fee but be compensated \$50/month.
- 10) Insurance report by Doug Christiansen.
Coverage was written for a brick unit.
Requested replacement value @ 1.5M\$ and included
Fidelity coverage.
Has asked four companies for bids, will have results
before 9/29/83 (end of present coverage).
Suggested we make claims on carport and stolen
sprinkler control box before policy expired.
- 11) Meeting adjourned at 10:08 PM.