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AMENDED AND RESTATED  
DECLARATION OF HOMEOWNERS ASSOCIATION  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
OF THE COTTAGES AT ELK RUN PHASE 2, a P.U.D.  
MAGNA, UTAH

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This Declaration is made on the date executed below by the Association after being approved by at least 2/3 of all Class A membership votes.

**RECITALS**

A. The Cottages at Elk Run is a planned unit development located in Magna City, Salt Lake County, Utah;

B. The Cottages at Elk Run phases 1 and 2 are subject to a declaration of covenants, conditions and restrictions recorded as Entry No. 8175627 in the Salt Lake County Recorder's Office ("Original Declaration");

C. The Original Declaration was amended by amendments recorded as Entry Nos. 9516269 and 10325976;

D. This Declaration replaces the Original Declaration and all its amendments in their entirety;

E. The Association is comprised of two phases. The phases are not adjoining and are separated by several blocks. Phase 1 has common areas which exclusively benefit the owners in Phase 1. Phase 1 and Phase 2 desire to separate and operate independently of one another;

F. This Declaration shall be binding against The Cottages at Elk Run, Phase 2, as shown on the Map recorded as Entry No. 8009745 and described in Exhibit "A;"

G. All Owners, guests, invitees, agents, and residents shall abide by the provisions of this Declaration;

H. Under the Original Declaration, declarant rights and Class B membership have expired;

I. These covenants, conditions, restrictions, easements, and limitations shall run with the land described in Exhibit "A" and shall be binding on and burden all parties having or acquiring any right, title, or interest to the land or any part thereof and shall create servient tenements on the land. The covenants, conditions, restrictions, easements, and limitations shall also benefit all parties having or acquiring any right, title, or interest to the land and shall create dominant tenements on the land;

J. The Association may be incorporated as a Utah nonprofit corporation. If incorporated, it shall be entitled to the rights, obligations, and benefits of the Revised Nonprofit Corporation Act (Utah Code Ann. 16-6a-101, *et. seq.*) as amended from time to time.

K. Under the Original Declaration Article X, Section 10.3, more than 2/3 of the Class A membership votes which members present in person or represented by proxy are entitled to cast at a meeting duly called for such purpose have approved this Declaration;

NOW THEREFORE, for the benefit of the Project and the Owners thereof, the following covenants, conditions, restrictions, and easements shall apply to and be binding on the Project:

## **1 DEFINITIONS**

Capitalized terms used in the Project Documents (including recitals) have the following meanings:

### **1.1 Articles**

Articles mean the Articles of Incorporation for Cottages at Elk Run Homeowners Association, Inc.

### **1.2 Association**

Association means Cottages at Elk Run Homeowners Association, Inc. It is intended that the Association be a Utah non-profit corporation. Failure of the Association to maintain its corporate status will not result in dissolution of the Association. The Association may renew its corporate status, reinstate its corporate status, or incorporate without Owner approval.

### **1.3 Board**

Board means the Board of Directors. The Board governs the property, business, and affairs of the Association.

### **1.4 Bylaws**

Bylaws mean the bylaws of the Association, as amended or restated from time to time. The Bylaws are attached to this document as Exhibit "B."

### **1.5 Common Areas**

Common Areas mean private roadways, hammerhead turn arounds, and open space indicated by cross hatching on the Map.

### **1.6 Common Expenses**

Common Expenses mean all sums spent to administer, maintain, or replace the Common Areas; expenses agreed upon as common expenses by a majority of the Owners; expenses authorized by the Governing Documents or the Community Association Act as common expenses; any other expenses necessary for the common benefit of the Owners.

**1.7 Community Association Act**

Community Association Act shall mean Utah Code §§ 57-8a-1 *et seq.*, as amended or replaced from time to time.

**1.8 Declaration**

Declaration means this document, as amended, supplemented, or restated from time to time.

**1.9 Director**

Director means a member of the Board.

**1.10 Governing Documents**

Governing Documents mean the Declaration, Bylaws, Articles of Incorporation, Map, and rules and regulations.

**1.11 Lot**

Lot means a separately numbered parcel of property as shown on the Map. Lots shall include all utility lines and other installations exclusively serving the Lot whether under or over the Common Areas or not.

**1.12 Map**

Map means the record of survey map on file with the Salt Lake County Recorder.

**1.13 Member**

Member means an Owner.

**1.14 Nonprofit Act**

Nonprofit Act means Utah Code §§ 16-6a-101 *et seq.*, as amended or replaced from time to time.

**1.15 Owner**

Owner means the owner of the fee in a Lot together with an undivided interest in the Common Areas. If a Lot is subject to an executory purchase contract, the contract purchaser shall be considered the Owner. However, the seller and buyer may otherwise agree but must inform the Board in writing of the alternative arrangement.

**1.16 Person**

Person means an individual, corporation, partnership, association, trustee, or other legal entity.

**1.17 Project**

Project means The Cottages at Elk Run, A P.U.D., as shown on the Map. The project includes the land, buildings, improvements and structures, easements, rights, appurtenances, and articles of personal property intended for use in connection therewith. Exhibit "A" contains the legal description for the Project.

**1.18 Resident**

Resident means any Person living or staying at the Project. Residents include without limitation: Owners, tenants, family members of Owners and tenants, and guests staying more than a week.

## **2 SUBMISSION**

The Project and the Governing Documents are submitted to provisions of the Community Association Act.

## **3 EASEMENTS**

### **3.1 Easement for Encroachment**

If any part of the Common Areas encroaches on a Lot, an easement for the encroachment and for maintenance shall exist. If any part of a Lot encroaches upon the Common Areas, an easement for the encroachment and for maintenance shall exist. Such encroachments will not be considered to be encumbrances to the Common Areas or Lots. Encroachment causes include, without limitation, errors in the original construction; errors in the Map; settling, rising, or shifting of the earth; or changes in position caused by repair or reconstruction of the Project.

### **3.2 Right of Ingress, Egress, and Enjoyment**

Each Resident, guest, or invitee has the right to ingress and egress across the Common Areas necessary for access to his Lot. Subject to the rules and regulations, each Resident has a right to enjoyment of the Common Areas. The rights described in this Section are appurtenant to and pass with title to the Lot.

### **3.3 Association Easement**

The Association, its Board, employees, agents, and contractors shall have non-exclusive easements to use the Common Areas to perform their duties as assigned by the Governing Documents.

### **3.4 Easement for Utility Services**

The Project is subject to a blanket easement over, across, above, and under it for ingress, egress, installation, maintenance, repair, and replacement of utilities. Utilities include, without limitation, water, sewer, gas, telephone, electricity, data, video, and cable.

## **4 MAINTENANCE**

### **4.1 Common Areas**

The Common Areas shall be maintained by the Association.

### **4.2 Lots**

Owners shall maintain, repair, and replace their Lot at their cost. An Owner's maintenance responsibility extends to all components of their Lot as defined in the Declaration, on the Map, and in the Community Association Act. Lots shall be maintained so as not to detract from the appearance of the project and to maintain the value of any other Lot. Lots shall be maintained to protect and preserve the health, safety, and welfare of the other Lots and Common Areas. Prior to maintaining, repairing, or replacing any exterior feature, an Owner must submit their plans showing color, style, and shapes for approval by the Association.

## **5 MEMBERSHIP AND ASSOCIATION**

### **5.1 Membership**

Every Owner is a Member of the Association. Membership in the Association is mandatory, is



appurtenant to the Lot, and shall not be separated from the Lot.

### **5.2 Voting Rights**

Each Lot shall have one vote. Voting is governed by the Bylaws.

### **5.3 Status and Authority of Board**

The Board is the governing body of the Association. It is obligated to manage, operate, and maintain the Project and to enforce the Governing Documents. The Board has exclusive authority to act in the Association's name. any action taken by the Board on behalf of the Association will be deemed to be done in the Association's name. The rights and powers of the Board are governed by the Bylaws.

### **5.4 Composition and Selection of Board**

The Bylaws govern how the Board is established and selected.

## **6 USE RESTRICTIONS**

### **6.1 Use of Lots**

Lots may be used for residential use only. Home businesses are allowed as long as they do not increase traffic flow or have exterior indication of a business. Home businesses must be licensed and comply with zoning code.

### **6.2 No Obstruction of Common Areas**

Owners and Residents shall not obstruct Common Area. Owners and Residents shall not use Common Areas for their private use, unless approved by the Board. Owners and Residents shall not store anything in the Common Areas, except for parking in designate parking areas. Owners and Residents shall not alter Common Areas. Owners and Residents may not damage or commit waste to the Common Areas.

### **6.3 Cancellation of Insurance/Nuisance**

Owners and Residents shall not do or keep anything in a Lot, which would result in the cancellation of insurance or increase the premium. Owners and Residents shall not do or keep anything in a Lot which would violate a law. No noxious, destructive, or offensive activity shall be done in a Lot. No activity shall be done which creates a nuisance.

### **6.4 Rules and Regulations**

Owners and Residents shall obey the rules created by the Board.

### **6.5 Leases**

Leases shall be subject to the following restrictions:

6.5.1 Lots may be rented only to a single family. Dormitory, hostel, hotel, or nightly rentals are strictly prohibited.

6.5.2 All leases and lessees shall be subject to the provisions of the Declaration, Bylaws, and rules and regulations. Any owner who leases their Lot shall be responsible for assuring the occupants' compliance with the Governing Documents.

6.5.3 The leasing of Lots shall comply with this Section. "Leasing" means granting the

right to use or occupy a Lot to a non-owner while no Owner occupies the Lot as their primary residence. Lots owned by business entities or trusts shall be considered leased regardless of who occupies the Lot.

6.5.4 Lease Limit. No more than 10% of the Lots may be leased at any given time. Hardship Exemptions shall not count against the Lease Limit.

6.5.5 Minimum Occupancy Period. Prior to being eligible to lease a Lot, an Owner must occupy the Lot as his primary residence for 24 months. The Minimum Occupancy Period will not apply to a mortgagee who takes possession of a Lot through foreclosure.

6.5.6 Initial Lease Term. The initial lease term shall be a six month minimum.

6.5.7 Hardship Exemption. Notwithstanding the above, in order to avoid undue hardships or practical difficulties the following classes of Owners shall be exempt from the Lease Limit:

6.5.7.1 An Owner in the military for the period of the Owner's deployment;

6.5.7.2 A Lot occupied by the Owner's parent, child, or sibling;

6.5.7.3 An Owner who has relocated to perform charitable service;

6.5.7.4 An Owner experiencing extreme financial hardship or disability, as such is defined by Board resolution;

6.5.7.5 An Owner whose employer has relocated the Owner for no less than two years;

6.5.7.6 A Lot owned by a trust or other entity created for estate planning purposes if the trust or other estate planning entity was created for the estate of:

6.5.7.6.1 A current Occupant of the Lot; or

6.5.7.6.2 The parent, child, or sibling of the current Occupant of the Lot.

6.5.8 Application and Approval. Each Owner desiring to lease a Lot shall apply to the Board for approval. The application shall contain all supporting documentation necessary to prove the Owner either complies with the Minimum Occupancy Period or qualifies for a Hardship Exemption. The Board shall review the application and determine whether the Owner is current in payment of assessments, and complies with the Minimum Occupancy Period or qualifies for a Hardship Exemption. The Board shall:

6.5.8.1 Approve the application if it determines that the Owner is current in payment of assessments, complies with the Minimum Occupancy Period, the Initial Lease Term, and Lots are available for lease under the Lease Limit; or

6.5.8.2 Approve the application if it determines that the Owner is current in payment of assessments, qualifies for a Hardship Exemption, and the lease complies with the Initial Lease Term; or

6.5.8.3 Deny the application if it determines that the Owner is not current in

payment of assessments, does not qualify for a hardship, or there are no available Lots under the Lease Limit.

6.5.9 Review of Rental Applications. The Board shall review applications within 10 business days of receipt. The Board shall approve or deny an application and shall notify the Owner of the result, and, if permission is not given, the reason for the denial within 15 business days of receipt of the application.

6.5.10 Application Form; Approval Process. An application form, the application and approval process, and any other rules deemed necessary by the Board to implement this section shall be established by resolution of the Board.

6.5.11 Lease Agreements – Required Terms. All Owners shall use and provide the Board with a copy of a written lease agreement. All lease agreements shall contain terms subjecting the Occupant to the terms, conditions, and restrictions of the Governing Documents, as amended from time to time. The Owner shall provide the tenant with a copy of the Governing Documents. In the event the Governing Documents are amended, revised, changed, or supplemented by the Association, the Owner shall provide the tenant with a copy of the amendments, revisions, changes, or supplements within 10 calendar days of adoption by the Association, its Board, or its membership.

6.5.12 Violations of Rental Restrictions. If an Owner fails to submit the required application, fails to use and submit a copy of a written lease agreement with the required terms, and leases their Lot, or leases their Lot after the Board has denied the Owner's application, the Board may assess fines against the Owner and the Lot in an amount to be determined by the Board pursuant to a schedule of fines adopted by the Board. Regardless of whether any fines have been imposed, the Board may seek any available legal or equitable remedies, including but not limited to, an action to terminate the lease agreement and eviction of any tenant.

6.5.13 Failure to Take Legal Action. Failure by an Owner to take legal action against their Occupant who is in violation of the Governing Documents within 10 days after delivery of written demand to so do from the Board, shall entitle the Association to take any and all such action for and in behalf of said Owner and as his or her agent, including but not limited to the institution of legal proceedings on behalf of such Owner against his or her Occupant for eviction, injunctive relief or damages. Neither the Association nor its agents shall be liable to the Owner or Occupant for any legal action commenced under this Section that is made in good faith.

6.5.14 Recovery of Costs and Attorney Fees; Owner Liable. The Association shall be entitled to recover from the offending Owner its costs and attorney's fees incurred for enforcement of this Section, regardless of whether any lawsuit or other action is commenced. The Association may assess such costs and attorney's fees against the Owner and the Lot as an assessment pursuant to this Declaration. Additionally, the Owner shall be liable for all fines, assessments, or other penalties levied due to violations of their tenant. The Owner shall be personally liable for any violations caused by their tenant. Any assessments, fines or penalties levied under this Section shall be collectable as an assessment.

6.5.15 Grandfathered Lots: Lots being leased on the date this Amendment was recorded shall be exempt from the Lease Limit until:

6.5.15.1 The Owner transfers the Lot by deed;

6.5.15.2 The Owner grants a life estate in the Lot;

6.5.15.3 If owned by a business entity, the Owner sells or transfers more than 75% of its shares, stock, membership interests, or partnership interests within a 12 month period.

Grandfathered Lots shall comply with all other provisions of this section including the Initial Lease Term. Grandfathered Lots shall be subject to the remedies authorized in this section for failure to comply with the restrictions herein.

#### **6.6 Timeshares**

Timeshares and time-sharing of Lots is prohibited. Under no circumstances shall any Lot be owned or used as a "time period unit" as defined by Utah Code § 57-8-3(26), as amended from time to time.

#### **6.7 Firearms and Projectile Weapons**

The use of firearms, airsoft guns, BB guns, pellet guns, archery equipment, or any other projectile weapon, however powered, is prohibited

### **7 ARCHITECTURAL CONTROL**

#### **7.1 Architectural Control Committee**

The Board shall serve as the Architectural Control Committee. The Architectural Control Committee shall insure that all improvements and landscaping within the Project comply with the requirement of this Declaration and harmonize with the surrounding homes.

#### **7.2 Submission to Committee**

No home, accessory, addition, repair to the exterior of a home, or other improvement shall be constructed, maintained, or altered unless complete plans and specifications have first been submitted and approved by the Architectural Control Committee.

#### **7.3 Standard**

In deciding whether to approve plans and specifications, the Architectural Control Committee shall use its best judgment to ensure that all improvements, construction, color schemes, and building materials harmonize with existing surroundings and structures.

#### **7.4 Approval Procedure**

Any plans submitted to the Architectural Control Committee shall be approved or disapproved in writing within 30 days after submission. Architectural Control Committee failure to act and communicate the decision in 30 days results in approval of the proposed plans.

#### **7.5 No Liability for Damages**

The Architectural Control Committee shall not be liable for damages by reason of any action, inaction, approval, or disapproval by it with respect to a request for approval.

#### **7.6 Building Materials**

All homes shall have masonry front elevations. Masonry shall consist of brick, stone, or stucco in any combination covering the entire front elevation. Side and rear elevations shall have masonry or siding. All materials and colors must be approved by the Architectural Control Committee.

### **7.7 Garages Required**

Each home within the Project shall have a two-car garage.

### **7.8 Dwelling Size**

The minimum dwelling size shall be 900 square feet for single story ramblers and 1,000 square feet for multi-level and two-story homes.

### **7.9 Landscaping**

All Lots shall have a fully landscaped yard. Each Lot shall have one tree in the front yard. Deciduous trees shall be a minimum 1 1/2 inch caliper and conifers shall be a minimum height of five feet.

### **7.10 Temporary Structures and Equipment**

No temporary structure, trailer, tent, shack, detached garage, barn, or other out building shall be used on a Lot as a residential unit unless approved in writing by the Association. No trailer, camper, boat, truck larger than 1-ton, or similar equipment shall be permitted to remain upon any Lot unless approved in writing by the Association.

### **7.11 Fences**

Rear yards shall be fenced and shall come forward on the side yard no further than the front corner of the house. Fences shall extend across the entire rear yard area. If a Lot borders a hammerhead, the fencing shall extend across the hammerhead to the adjoining property. Fencing shall be white vinyl and shall be six feet in height.

## **8 ENFORCEMENT**

### **8.1 Compliance**

Each Owner and Resident shall comply with the Governing Documents. Failure to comply will be grounds for the remedies provided in this Declaration.

### **8.2 Remedies**

The remedies for violations shall be levied against the Owner in all cases and the Residents in cases involving injunctive relief. Remedies shall not be mutually exclusive and can be exercised concurrently. The Association shall have rights to take the following actions to correct violations of the Governing Documents:

8.2.1 After 15 days notice, to enter a Lot and abate and remove any violation of the Governing Documents. Any expense incurred in abating the violation will be an individual assessment against the Owner. If the Association exercises this right of entry, they will not be guilty of any manner of trespass or nuisance;

8.2.2 To levy fines pursuant to procedures adopted by the Board. The procedures shall comply with the Community Association Act;

8.2.3 To bring suit for damages, to enjoin, abate, or remedy the violation on behalf of the Association and the Owners.

### **8.3 Action by Owner**

An Owner may bring an action against another Owner or the Association for damages, to enjoin, abate, or remedy a violation being committed by another Owner or the Association.

### **8.4 Hearings**

The board shall adopt procedures for hearings. When a hearing is requested or required, the hearing shall be conducted in accordance with the Board's procedures.

## **9 ASSESSMENTS**

### **9.1 Covenant for Assessment**

By accepting a deed or other conveyance, each Owner covenants and agrees to pay the Association all regular assessments, special assessments, individual assessments, late penalties, and collection costs (including attorney's fees) whether or not a lawsuit is commenced. No Owner may exempt themselves from liability for assessments by abandonment of their Lot, failure of the Association to maintain the Common Areas, or non-use of the Common Areas. If an Owner loses their Lot to foreclosure or voluntarily conveys it, they shall remain personally liable for unpaid assessments, late fees, interest, and collection costs (including attorney's fees).

### **9.2 Annual Budget**

The Board shall prepare an annual budget for the Association. The annual budget shall provide for: the maintenance, repair, and replacement of the Common Areas; and the administration, management, operation, and reserves of the Association. The Board shall present the budget at the annual meeting or special meeting. The budget shall not become effective unless a majority of a quorum of Owners approve it at the meeting where the budget is presented. If the Board fails to adopt an annual budget or majority of a quorum of Owners fail to ratify the budget, the last adopted budget shall continue in effect.

### **9.3 Reserve Account**

The Association shall establish a reserve account to fund long-term maintenance and replacement items. The Board shall use reasonable efforts to fund the reserve account. The Board shall not be personally liable for failure to fund the reserve unless gross negligence or intentional misconduct is proven in a court of law.

### **9.4 Regular Assessment**

The Association may collect the regular assessment on an annual basis, semi-annual basis, quarterly basis, or monthly basis. Written notice of the regular assessment amount and payment schedule shall be sent to Owners at least 30 days in advance of the beginning of the fiscal year for which the regular assessment will be due. Apart from the initial notice of regular

assessment, the Association is not obligated to send periodic invoices for regular assessments. If the Board fails to fix a regular assessment, the amount of the last regular assessment and payment schedule will continue in effect.

#### **9.5 Special Assessment**

The Association may levy a special assessment for the purpose of defraying in whole or in part the cost of any budget shortfall, construction, reconstruction, maintenance, repair, or replacement of the Common Areas. The Association may levy a special assessment up to 50% of the annual budget without approval from the Owners. If a special assessment exceeds 50% of the annual budget, it must be approved by a majority of a quorum of Owners.

#### **9.6 Individual Assessment**

Any expenses attributable to less than all the Lots may be assessed exclusively against the affected Lots. Individual assessments include, without limitation:

9.6.1 Assessments levied against a Lot to reimburse the Association for costs incurred in correcting a violation of the Governing Documents;

9.6.2 Fines, late fees, interest, collection costs (including attorney's fees);

9.6.3 Services provided to a Lot due to an Owner's failure to maintain, for emergency repairs, or to protect the health, safety; and welfare of adjoining Lots and Common Areas;

9.6.4 Reinvestment or transfer fees; and

9.6.5 Any charge described as an individual assessment by the Governing Documents;

#### **9.7 Apportionment of Assessments**

Regular, special, and emergency assessments will be apportioned equally among the Lots. Individual assessments shall be apportioned exclusively to the Lots benefitted or affected.

#### **9.8 Nonpayment of Assessment**

Assessments not paid within 30 days after the due date established by the Board will be late and subject to interest at 18% per annum on any delinquent balance and a late fee in an amount to be determined by the Board. Late fees may only be charged once for a missed payment.

#### **9.9 Application of Partial Payments**

Partial payments shall be credited first to collection costs (including attorney's fees), then to interest and late fees, then to the oldest assessments, then the most recent assessments.

#### **9.10 Suspension of Voting Rights**

If an Owner has a delinquent assessment balance, the Association may suspend their right to vote.

#### **9.11 Lien for Assessment**

All assessments, late fees, interest, and collection costs (including attorney's fees) not timely paid shall be a charge and continuing lien upon each Lot against which the assessment is made. The Association shall file a notice of lien with the county recorder as evidence of nonpayment.

### **9.12 Enforcement of Lien**

Without waiving its right to personally pursue an Owner for unpaid assessments, the Association may foreclose its lien in the same manner as deeds of trust, mortgages, or any other manner permitted by Utah law.

### **9.13 Appointment of Trustee**

The Owners hereby convey and warrant pursuant to U.C.A. Sections 57-1-20 and 57-8a-402 to Samuel E. Bell, with power of sale, the Lot and all improvements to the Lot for the purpose of securing payment of assessments under the terms of the Declaration.

### **9.14 Subordination of Lien**

A lien for assessments shall be subordinate to a first Mortgage now or hereafter placed upon a Lot. The sale of a Lot pursuant to foreclosure of a first Mortgage shall extinguish the lien for assessments which became due prior to the foreclosure sale. A foreclosure will not relieve the purchaser's obligation to pay 6 months of assessments, late fees, and penalties.

## **10 INSURANCE**

### **10.1 Types of Insurance Maintained by the Association**

To the extent reasonably available, the Association shall obtain the following insurance coverage:

10.1.1 Public liability for the Common Areas for at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate for property damage, bodily injury, or death;

10.1.2 Property, fire, and extended hazard for all Common Areas, if available and advisable;

10.1.3 Directors and officers for at least \$1,000,000.00;

10.1.4 Fidelity bond or dishonest acts insurance for at least the value of the reserves and operating capital of the Association.

The Board may adopt insurance rules and policies to maintain the insurability of the Project, keep the premiums reasonable, and enforce responsibilities of the Owners.

### **10.2 Insurance Company**

The Association shall use an insurance company knowledgeable with community association insurance, which is licensed in Utah.

### **10.3 Premium as Common Expense**

The premiums for the Association's insurance policies shall be a Common Expense.

### **10.4 Insurance by Owner**

Each Owner shall insure their Lot, home, and personal property.

### **10.5 Payment of Deductible**

The deductible on a claim made against an Association policy shall be paid for by the party:



10.5.1 Who would be liable for the loss, damage, claim or repair in the absence of insurance; or

10.5.2 From whose Lot the cause originates.

If there are multiple responsible parties, the loss shall be allocated equally amongst the parties. If a loss is caused by an Act of God, nature, or risk or peril beyond the control of the parties, then the Owner shall be responsible for the deductible. Deductibles shall be determined by the Board. If the Board changes the deductible amount, 60 days notice will be given to the Owners. Owners found to be responsible for the deductible, shall be so despite inadequate personal insurance. If the Board finds an Owner to be responsible for the deductible, it shall be an Individual Assessment.

## **11 MISCELLANEOUS**

### **11.1 Amendment of Declaration**

Owners representing 67% or more of the undivided ownership interests in the common areas must approve any amendment to the Declaration. However, the Board may amend without Owner approval, to correct misspellings; grammar, or to comply with changes in the loan underwriting guidelines, if failure to comply would disqualify the Project from financing eligibility.

### **11.2 Termination of Declaration**

Owners representing 75% or more of the undivided ownership interests in the Common Area must approve a termination of the Declaration.

### **11.3 Votes without a Meeting**

The Association may collect votes without a meeting as outlined in the Bylaws.

### **11.4 Service of Process**

The registered agent of the Association will be the Person named in the corporate records on file with the Utah State Department of Commerce.

If the corporate status of the Association expires, the president shall be the successor agent. The name and address of the president shall be kept with the Association's records at its principal place of business.

### **11.5 Taxes on Lots**

Each Lot is subject to separate taxation of each taxing authority. Consequently, no taxes will be assessed against the Project except for Association personal property. Each Owner will pay all taxes which may be assessed against him or his Lot.

### **11.6 Covenants Run with the Land**

The Declaration contains covenants which run with the land and create equitable servitudes. The Declaration shall be binding upon and inure to the benefit of the Association, all parties who hereafter acquire any interest in or occupy a Lot or any part of the Project, their heirs, successors, assigns, grantees, devisees, personal representatives, guests, and invitees. Each Owner or Resident shall comply with the Governing Documents. All interests in the Lots shall be subject to the Governing Documents. Failure to comply shall be grounds for an action for

damages or injunctive relief by the Association or an Owner. By acquiring any interest in a Lot, each Owner or Resident agrees to be bound by the Governing Documents.

**11.7 Severability**

If any provision of the Declaration is determined to be invalid or unenforceable, it shall not affect the remaining provisions of the Declaration.

**11.8 Waiver**

No provision of the Declaration shall be waived or abrogated by reason of a failure to enforce it.

**11.9 Gender**

The use of one gender shall be deemed to refer to all genders. The use of the singular shall be deemed to refer to the plural and vice versa.

**11.10 Headings**

The headings are for reference only and not to describe, interpret, limit, extend or affect the content of the Declaration.

**11.11 Conflicts**

If the Declaration conflicts with the Community Association Act, the Community Association Act shall control. If the Declaration conflicts with the Map, the Map shall control. If the Declaration conflicts with the Bylaws, Articles, or rules, the Declaration shall control.

**11.12 Effective Date**

The Declaration and any amendments take effect upon recording in the Salt Lake County Recorder's Office.

IN WITNESS WHEREOF, the Association, has caused this Declaration to be executed by its duly authorized officers.

DATED: 12/21/2011.

**Elk Run Cottages P.U.D. Property Owners Association**

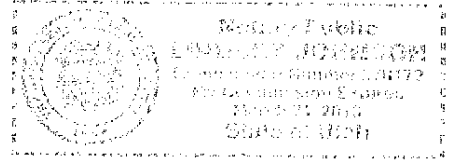
\_\_\_\_\_  
By: Michael George  
Its: President

STATE OF UTAH )  
 )  
County of Salt Lake ) :ss.

On this 21 day of December, 2011, personally appeared before me  
Michael George who being by me duly sworn, did say that they are the agent of the  
Association authorized to execute this Declaration and did certify that more than 2/3 of the

Class A membership approved this Declaration.

  
NOTARY PUBLIC



**Exhibit A**  
**Legal Description**

All Lots contained in Cottages at Elk Run, Phase 2 PUD, as shown on the official plat map thereof on record in the Salt Lake County Recorder's Office.

Parcel ID Nos.:

14-32-154-001-0000
14-32-154-002-0000
14-32-154-003-0000
14-32-154-004-0000
14-32-154-005-0000
14-32-154-006-0000
14-32-154-012-0000
14-32-154-011-0000
14-32-154-010-0000
14-32-154-009-0000
14-32-154-008-0000
14-32-154-007-0000
14-32-154-026-0000
14-32-154-022-0000
14-32-154-018-0000
14-32-154-017-0000
14-32-154-016-0000
14-32-154-021-0000
14-32-154-025-0000
14-32-154-024-0000
14-32-154-020-0000
14-32-154-015-0000
14-32-154-014-0000
14-32-154-013-0000
14-32-154-019-0000
14-32-154-023-0000
14-32-177-001-0000
14-32-177-002-0000
14-32-177-013-0000
14-32-177-012-0000
14-32-177-022-0000
14-32-177-023-0000
14-32-177-024-0000

14-32-177-025-0000
14-32-177-026-0000
14-32-177-014-0000
14-32-177-003-0000
14-32-177-004-0000
14-32-177-015-0000
14-32-177-027-0000
14-32-177-028-0000
14-32-177-029-0000
14-32-177-016-0000
14-32-177-005-0000
14-32-177-006-0000
14-32-177-017-0000
14-32-177-030-0000
14-32-177-031-0000
14-32-177-032-0000
14-32-177-018-0000
14-32-177-007-0000
14-32-177-008-0000
14-32-177-019-0000
14-32-177-033-0000
14-32-177-034-0000
14-32-177-035-0000
14-32-177-020-0000
14-32-177-011-0000
14-32-177-010-0000
14-32-177-009-0000

## **Exhibit B**

### **Bylaws of Cottages at Elk Run Homeowners Association**

#### **1 BYLAW APPLICABILITY/DEFINITIONS**

##### **1.1 Definitions**

The capitalized terms used in the Bylaws shall have the same meaning given to them in the Declaration, unless otherwise specifically stated.

##### **1.2 Bylaw Applicability**

The provisions of these Bylaws are binding upon the Association and the Owners. All present and future Owners shall be subject to these Bylaws, as amended from time to time. Acquisition of any Lot constitutes an acknowledgment that the Owner has agreed to and ratified these Bylaws and will comply with them.

#### **2 ASSOCIATION**

##### **2.1 Composition**

All of the Owners acting as a group in accordance with the Governing Documents shall constitute the Association. Except for matters specifically reserved for a vote of the Owners, the Board, on behalf of the Owners, shall administer the Association's affairs.

##### **2.2 Annual Meeting**

Annual meetings shall be held one a year. The Board shall determine the date, time, and place of the annual meeting. The Association shall send notice of annual meetings at least 20 days in advance of the meeting. At the annual meeting the Association shall conduct the following business:

- 2.2.1 Roll call and verification of quorum;
- 2.2.2 Approval of minutes from preceding annual meeting;
- 2.2.3 Reports of officers;
- 2.2.4 Special committee reports;
- 2.2.5 Election of directors;
- 2.2.6 Review of reserve analysis, vote on funding reserves;
- 2.2.7 Unfinished business from preceding annual meeting; and
- 2.2.8 New business.

##### **2.3 Special Meeting**

Special meetings may be held at any time for any purpose. A special meeting may be called by a majority of the Directors or upon petition of at least 20% of the Owners in good standing. The Association shall schedule and send notice of a special meeting within 30 days of request. The

notice of a special meeting shall state the date, time, place, and purpose of the meeting. The Association shall send notice of a special meeting at least 10 days in advance of the meeting. No business may be transacted at a special meeting except as stated in the notice.

#### **2.4 Place of Meeting**

Meetings shall be held at a place designated by the Board and stated in the notice of meeting. Meetings shall be held in Salt Lake County.

#### **2.5 Conduct of Meeting**

The President shall preside over all meeting of the Association. The Secretary shall keep the minutes of the meeting and take record of all resolutions adopted at the meeting.

#### **2.6 Quorum**

A quorum shall be the Owners present in person or by proxy at a meeting.

#### **2.7 Voting**

Each Lot shall have one vote. If a Lot is owned by more than one Person and multiple Owners are present at a meeting, the vote appertaining to that Lot shall be cast by agreement of a majority of the Owners. If a Lot is owned by more than one Person and a single Owner is present at a meeting, the vote appertaining to that Lot shall be cast by the Owner present. The Association may conclusively presume the consent of all a Lot's Owners when a vote is cast by a Lot with multiple Owners.

Except where a greater number is required by the Governing Documents or the Nonprofit Act and elections of directors, any decision requiring Owner consent shall be passed by majority vote of a quorum.

#### **2.8 Good Standing**

An Owner shall be in good standing if he has paid assessments levied against his Lot, including late fees, interest, fines, collection costs, and attorney fees. An Owner must have paid in full at least three days prior to the meeting or action.

#### **2.9 Proxies**

An Owner in good standing may vote or otherwise act by proxy. An Owner may appoint a proxy by signing a proxy appointment form. The proxy appointment form may be submitted to the Association in person, by mail, or electronically. The proxy appointment form must name a proxy, be dated, and signed by the Owner. Any proxy appointment form that does not contain a proxies name, date, or signature shall be void. A proxy appointment form is valid until revoked by the Owner's attendance at a meeting, a signed and dated revocation delivered to the Association, a subsequent proxy appointment, notice of death or incapacity of the Owner, or the passage of 11 months.

#### **2.10 Mail-in Ballots**

Any action requiring a vote of the Owners, except election of directors, may be taken by mail-in ballots. Action by mail-in ballot shall comply with the procedures set forth in Nonprofit Act Section 16-6a-709, as amended from time to time. A combination of mail-in ballots, ballots collected electronically, and ballots cast in person may be used.

#### **2.11 Written Consent in Lieu of Vote**

Any action requiring a vote of the Owners, except election of directors, may be taken by written

consent. Action by written consent shall comply with the procedures set forth in Nonprofit Act Section 16-6a-707, as amended from time to time. Written consents may be collected electronically.

### **2.12 Record Date**

The record date for determining which people are entitled to vote shall be the date notice of the meeting or action is sent. The Board may change the record date prior to sending notice of the action. The Owners shown on the records of the Association on the record date shall be the people entitled to vote on an action.

## **3 BOARD OF DIRECTORS**

### **3.1 Number and Qualification of Directors**

There shall be three Directors. Directors must be Owners in good standing.

### **3.2 Selection and Term of Directors**

Unless appointed by the Board under this Article, Directors shall be elected by the Owners. Cumulative voting shall not be permitted. The candidates with the most votes shall be elected.

Directors shall serve staggered terms of two years. Directors shall hold office until their successor is elected. If the Directors' terms become non-staggered (*i.e.*, after removal of the entire Board), the initial term of each member (1 or 2 years) shall be decided by vote of the newly elected Directors at their organization meeting. There is no limit on the number of terms a Director may serve.

### **3.3 Vacancies**

Director vacancies, for any reason other than removal by vote of the Association, shall be filled by vote of a majority of the remaining Directors. The Board shall conduct a special meeting for the purpose of filling the vacancy. The meeting shall be valid even if a quorum is not present. Each replacement Director shall serve until the next annual Owners' meeting, then the vacancy shall be filled by vote of the Owners. The replacement Director elected by the Owners shall serve the remaining term of the replaced Director.

### **3.4 Removal of Directors**

A Director may be removed with or without cause by vote of a majority of a quorum of Owners. If the Owners propose to remove a Director, the Association shall give the Director and Owners at least 15 day written notice of the meeting and the purpose of the meeting. The Director shall be given an opportunity to be heard at the meeting prior to the vote to remove him. At any meeting where a Director is removed by the Owners, the Owners must vote to replace the Director. The replacement will serve the remaining term of the removed Director.

Any Director who allows his assessments to become more than 90 days past due may be removed and replaced by vote of a majority of the Board. The Board shall give the Director 10 day written notice to cure the default prior to voting to remove the Director.

### **3.5 Organization Meeting**

The Directors shall hold a meeting following the annual owners meeting for the purpose of electing officers. Notice of the organization meeting shall be given verbally at the annual meeting. The organization meeting shall be conducted within seven days of the annual meeting.



### **3.6 Regular Meetings**

The Board shall hold regular meetings. The Board shall determine frequency, times, and locations of regular meetings. However, the Board shall conduct at least two regular meetings per year. Notice of regular meetings shall be given to each Director at least five days prior to the meeting.

### **3.7 Special Meetings**

A Director may call a special meeting of the Board. Notice shall be given at least three days prior to the meeting. Notice shall state the time, place, and purpose of the meeting.

### **3.8 Conduct of Meetings**

The President shall preside over all meetings of the Board. The Secretary shall take minutes of the Board meetings and shall make record of all resolutions.

### **3.9 Quorum**

A majority of the Board shall constitute a quorum. A quorum shall be required to conduct business at a meeting. If less than a quorum is present at a meeting, the majority of those present may adjourn the meeting until such time as a quorum is present. Once established, a quorum will be present even if directors leave. Directors may attend a meeting telephonically.

### **3.10 Waiver of Meeting Notice**

Directors may waive notice of meetings in writing. A waiver shall be deemed equivalent to notice. Attendance of a Director at a meeting will be considered a waiver of notice, unless the Director attends to dispute notice. If all Directors are present at a meeting, notice of the meeting is waived and any business may be conducted.

### **3.11 Action without Meeting**

Any action by the Board may be taken without a meeting if all the Directors give written consent to the action. Written consent may be given in person, by mail, or electronically. The Association shall file the written consents with its record of minutes.

### **3.12 Powers and Duties**

The Board shall manage the affairs and business of the Association. The Board is vested with all power and authority necessary to administer the affairs of the Association in accordance with the Governing Documents. The Board may do any act required or allowed by the Governing Documents, the Community Association Act, the Nonprofit Act, or any other rule of law.

Subject to the limitations contained in the Declaration, Bylaws, or Community Association Act, the Board shall have the following authority:

- 3.12.1 Prepare an annual budget and establish what constitutes a Common Expense;
- 3.12.2 Adopt and amend rules, regulations, policies, and procedures governing the Common Areas, administration of the Association, and to enforce and interpret the Governing Documents;
- 3.12.3 Delegate authority to a managing agent to act on behalf of the Association;
- 3.12.4 Provide for the maintenance, repair, and replacement of the Common Areas;
- 3.12.5 Hire, contract for, and terminate personnel or contractors necessary for the maintenance repair and replacement of the Common Areas and administration of Association business. Provide for the compensation of personnel. Purchase supplies, equipment, and materials for use in the Association.
- 3.12.6 Open and maintain bank accounts on behalf of the Association. Designate authorized signers for the bank accounts;
- 3.12.7 File lawsuits or initiate other legal proceedings on behalf of the Association.
- 3.12.8 Defend lawsuits, administrative actions, and other legal proceedings against the Association;
- 3.12.9 Pay costs of any services rendered to the Project or multiple Owners, but not billed to the Owners individually;
- 3.12.10 Keep books with detailed accounts of the receipts and expenditures of the Association. Make the books available to the Owners as required by the Community Association Act and Nonprofit Act. The books shall be kept in accordance with generally accepted accounting practices. Upon resolution by the Board, retain an independent auditor to audit the books;
- 3.12.11 Grant easements, licenses, or permission over, under, and through the Common Areas;
- 3.12.12 Upon approval by 67% of the ownership interest in the Common Areas, to convey Common Areas;
- 3.12.13 Create committees;
- 3.12.14 Any other act allowed or required by the Governing Documents, the Community Association Act, or the Nonprofit Act;
- 3.12.15 Any act allowed or required to be done in the name of the Association.

### **3.13 Manager**

The Board may employ a manager to perform such duties and services as the Board shall authorize. The Board may delegate to the manager all powers granted to the Board and officers by the Governing Documents. However, the manager must obtain the Board's written consent to exercise the powers listed in Bylaw Sections 3.12.2, 3.12.6, 3.12.7, 3.12.8, 3.12.11, 3.12.12.

### **3.14 Compensation**

Directors shall not be compensated for their work. However, the Board may elect to waive regular assessments for Directors. Additionally, directors may seek reimbursement for actual

costs and mileage incurred during their service.

### **3.15 Limitation of Liability**

The Directors shall not be liable to the Owners for any mistake of judgment, negligence, or other errors, unless it was by willful misconduct or criminal conduct. The Association shall indemnify and hold the Directors harmless against liability to third parties for actions taken on behalf of the Association, while acting in their capacity as Director, unless the action constitutes willful misconduct or criminal conduct.

## **4 OFFICERS**

### **4.1 Election and Term of Officers**

The officers of the Association shall be elected by the Board. Officers shall serve one-year terms and shall serve until their successor is elected.

### **4.2 Removal of Officers**

The Board may remove any officer with or without cause by affirmative vote of a majority of a quorum of the Board. If an officer is removed, the Board shall replace them.

### **4.3 Offices**

The Association officers shall be president, vice president, secretary, and treasurer. The Board may appoint assistant officers as it may deem necessary. Except for the president, the same person may hold two offices.

#### **4.3.1 President**

The president shall be the chief executive officer. He shall preside at meetings of the Association and the Board. He shall be an unofficial member of all committees. He shall have general and active management of Association business. He shall see that all resolutions and policies of the Association are executed.

#### **4.3.2 Vice President**

The vice president shall perform the duties and exercise the powers of the president in the absence or disability of the president. If the president and vice president are unable to act, the Board shall appoint a Director to fulfill the duties on an interim basis.

#### **4.3.3 Secretary**

The secretary shall attend all meetings and take minutes thereof. He shall also make record of all resolutions, rule, policies, and procedures. He shall give or cause to be given notice of all meetings. He shall compile or cause to be compiled a complete list of the owners and their contact information.

#### **4.3.4 Treasurer**

The treasurer shall oversee the finances of the Association. He shall be responsible to ensure that the Association has full and accurate records of income and expenses. He shall give financial reports at regular Board meetings and the annual Owners' meeting.

### **4.4 Delegation of Duties**

The Association officers may delegate any of their duties to a manager or to committee. However, the officers shall be responsible to oversee and ensure that the duties so delegated are

being properly discharged.

#### **4.5 Compensation**

Officers shall not be compensated for their work. However, the Board may elect to waive regular assessments for its officers. Additionally, officers may seek reimbursement for actual costs and mileage incurred during their service.

### **5 NOTICE**

#### **5.1 Manner of Notice**

All notices and other communications required under the Governing Documents shall be in writing.

5.1.1 Notices to Owners may be delivered using the following methods:

5.1.1.1 By professional courier service or First-class U.S. mail, postage prepaid, to the address of the Lot or to any other address designated by the Owner in writing to the Association;

5.1.1.2 By hand to the address of the Lot or to any other address designated by the Owner in writing to the Association; or

5.1.1.3 By facsimile, electronic mail, or any other electronic means to an Owner's number or address as designated by the Owner in writing to the Association.

5.1.2 Notice to the Association may be delivered using the following methods:

5.1.2.1 By professional courier service or First-class U.S. mail, postage prepaid, to the principal office of the Association as designated in writing to the Owners; or

5.1.2.2 By facsimile, electronic mail, or any other electronic means to the Association's official electronic contact as designated in writing to the Owners.

5.1.2.3 Notices sent via courier or mail shall be deemed received 3 days after being sent. Notices hand delivered or sent via electronic means shall be deemed received upon delivery or being sent.

#### **5.2 Waiver of Notice**

Whenever any notice is required under the Governing Documents, the Community Association Act, or the Nonprofit Act, an owner may waive notice in writing. The waiver may be signed before or after the time for notice. A waiver of notice shall be equivalent to notice.

### **6 FINANCES**

#### **6.1 Fiscal Year**

The fiscal year of the Association shall be the calendar year.

#### **6.2 Checks, Agreements, Contracts**

All checks, contracts deeds, leases, and other instruments used for expenditures or obligations over \$500.00 shall be executed by two officers. All instruments for expenditures of obligations

less than \$500.00 may be executed by one officer and any other person authorized by the Board.

### **6.3 Availability of Records**

Association financial records shall be available as provided by the Community Association Act and Nonprofit Act.

## **7 AMENDMENT TO BYLAWS**

### **7.1 Amendments**

These Bylaws may be amended either by the Board, unless it would result in changing the rights, privileges, preferences, restrictions, or conditions of a membership class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class. These Bylaws may also be amended by a majority vote of the Owners.

### **7.2 Recording**

Any amendment to these Bylaws shall become effective on the date it is recorded in the Salt Lake County Recorder's Office.

## **8 MISCELLANEOUS**

### **8.1 Office**

The principal office of the Association shall be located at any place within the State of Utah which may be designated from time to time by the Board.

### **8.2 Conflicts**

The Bylaws are subordinate to any conflicting provisions in the Community Association Act, the Nonprofit Act, the Articles, the Map, or the Declaration. The Bylaws are superior to the rules, regulations, and policies of the Association.

### **8.3 Severability**

If any provision of these Bylaws is held by a court of law to be invalid, the validity of the remainder of these Bylaws shall not be affected.

### **8.4 Waiver**

No provision of these Bylaws shall be deemed to be waived because of a failure to enforce the provision.

### **8.5 Captions**

The captions contained in these Bylaws are for convenience only. The captions shall not be used to interpret, limit, or enlarge the provisions of these Bylaws.

### **8.6 Gender, etc.**

Whenever the context so requires, the singular shall include the plural and vice versa. The use of any gender shall include all genders.

IN WITNESS WHEREOF, the Association has caused these Bylaws to be executed by its duly authorized officers.

