

**BYLAWS OF
THE EAGLE CREST ESTATE HOMESITE ASSOCIATION**

**ARTICLE I
GENERAL PROVISIONS**

Section 1. Name. The name of the association is the Eagle Crest Estate Homesite Association (the "Association"). The principal office of the Association shall be at such place in the County of Deschutes, State of Oregon, as the Board of Directors may designate from time to time.

Section 2. Definitions. Unless expressly indicated to the contrary, the terms used herein shall have the following meanings:

(a) **Declaration.** That certain Declaration of Covenants, Conditions and Restrictions (Eagle Crest Estate Homesites) recorded June 24, 1985 in the office of the recording officer of Deschutes County, and all amendments thereto.

(b) **Project.** All of the "Property" (as defined in the Declaration) and the improvements thereon.

(c) **Additional Terms.** The balance of the terms defined in the Declaration shall have the same meaning when used in these Bylaws as when used in the Declaration.

Section 3. Purpose. The Association has been formed for the purpose of exercising the powers and performing the duties of the Association set forth in these Bylaws, the Articles of Incorporation of the Association and the Declaration.

**ARTICLE II
MEMBERSHIP AND VOTING RIGHTS**

Section 1. Qualifications. Each Owner of an Assessable Estate Homesite, including Declarant but excluding persons or entities who hold interest merely as security for the performance of an obligation shall be a Member of the Association. If an Assessable Estate Homesite is owned by more than one Owner all such Owners shall be Members of the Association; provided, however, that for the purposes of the representation of such Assessable Estate Homesite with regard to the affairs of the Association and the voting of the Members of the Association, each Assessable Estate Homesite shall each be represented by and entitled to only one vote which shall be exercised and cast in accordance with the Provision of these Bylaws. Ownership of an Assessable Estate Homesite within the Project shall be the sole qualification for membership in the Association.

Section 2. Transfer of Membership. The Association membership of each Owner shall be appurtenant to the Assessable Estate Homesite giving rise to such membership, and shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon the transfer of title to said Assessable Estate Homesite and then only to the transferee of title to said Estate Homesite. Any attempt to make a prohibited transfer shall be void. Any transfer of title to an Assessable Estate Homesite shall operate automatically to transfer the membership in the Association appurtenant thereto to the new Owner thereof.

Section 3. Voting Rights. The Association shall have two classes of voting membership:

(a) **Class A.** The Class A Membership of the Association shall consist of the following, and each Class A Members shall be entitled to vote as follows:

Prior to conversion of the Class B Membership, each Non-Declarant Owner, and subsequent to such conversion each Owner of an Assessable Estate Homesite shall be entitled to one vote for each Assessable Estate Homesite.

(b) **Class B.** The Class B Membership of the Estate Homesite Association shall be Declarant who shall be entitled to three (3) votes for each Assessable Estate Homesite owned. Class B Membership shall cease and be converted to Class A Membership on the happening of the earlier of the following events:

(i) When the total votes outstanding in the Class A Membership equals the total votes outstanding in the Class B Membership; or

(ii) Three years from the date of issuance of the most recent Public Report with respect to any part of the Property; or

(iii) Ten (10) years from the date of the original issuance of the first Public Report with respect to any portion of the Property.

Whenever these Bylaws, the Declaration or the Articles require the vote, assent or presence of a stated number of Owners or Members entitled to vote on a matter or at a meeting with regard to the taking of any action or any other matter whatsoever, and unless provided specifically to the contrary in the Declaration, the provisions of this Article II and Section 3 of Article IV shall govern as to the total number of available votes, the number of votes Member is entitled to cast at the meeting, and the manner in which the vote attributable to an Assessable Estate Homesite having more than one Owner shall be cast.

Section 4. Joint Owner Disputes. The vote, or votes, for each Assessable Estate Homesite may be cast only as a unit, and fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner or Owners cast a vote representing a certain Assessable Estate Homesite, it will thereafter be conclusively presumed for all purposes that he or they were acting with the authority and consent of all other Owners of the same Assessable Estate Homesite.

Section 5. Members' Rights and Duties. Each Member shall have the rights, duties and obligations set forth in these Bylaws, the Articles and the Declaration, as the same may be amended from time to time.

ARTICLE III

MEMBERSHIP ASSESSMENTS AND LIEN RIGHTS

Section 1. Membership Assessments. All Annual Assessments together with all other assessments of the Members provided for in the Declaration shall be paid by the Members at the time, in the manner and subject to the conditions and limitations set forth in the Declaration, and the Board shall fix, levy, collect and enforce such assessments at the time, in the manner and subject to the limitations set forth in the Declaration.

Section 2. Enforcement, Lien Rights. For the purpose of enforcing and collecting assessments, this Association shall have the lien rights set forth in the Declaration, which lien rights shall be enforceable by the Board in the manner set forth in the Declaration. The Board shall also have and be entitled to exercise all other rights and remedies set forth in the Declaration or otherwise provided for at law or in equity.

ARTICLE IV

MEMBERSHIP RIGHTS AND PRIVILEGES

Section 1. Rights and Privileges of Members. No Member shall have the right, without the prior approval of the Board, to exercise any of the powers or to perform any of the acts delegated to the Board by these Bylaws, or the Declaration. Each Member shall have all of the rights and privileges including, but not limited to, property rights and rights to access over, and use and enjoyment of the Estate Homesite Association Property granted to the Members by these Bylaws and the Declaration subject to such limitation as may be imposed in accordance therewith.

Section 2. Estate Homesite Association Policies and Procedures. Upon notice and hearing the Board may establish such rules, regulations, policies, procedures and prerequisite conditions (collectively "policies and procedures") to the use of the Estate Homesite Association Property and the facilities thereon as it, in its sole discretion, deems appropriate, so long only as such policies and procedures do not materially abridge the rights of Members set forth in the Declaration. Upon notice and hearing, the Board may establish and/or amend any such policies and procedures with respect to the use of the Estate Homesite Association Property and facilities thereon. Upon notice and hearing, the Board may determine whether admission and/or other fees shall be charged for the use of any recreational facilities situated upon the Estate Homesite Association Property; provided, however, that subsequent to the meeting for turnover of administrative control as defined in Article V, Section 3(c), if such fees are to be charged to Members, no such fees shall be imposed without the vote or written assent of a majority of the voting power of the Association residing in Members other than Declarant. Any such admission or other fees (as distinguished from assessments) shall apply equally to all Members of the Association and to their spouses or children living with such Member, (but need not be the same as such fees for persons who are neither Members or Members' spouses or children living with such Member) and shall be used first by the Association for expenses of maintenance, repair and operation of any recreation facility the use of which is subject to an admission or other fee set by the Board, until all monies derived from such admissions and fees have been expended therefor. All policies and procedures adopted pursuant to this Section 2 and pursuant to the

Declaration shall hereinafter be referred to as the "Estate Homesite Association Policies and Procedures."

Section 3. Suspension of Voting Rights and other Membership Rights; Imposition of Monetary Penalties. After the meeting of the Board, as provided below, the Board shall have the right to suspend the voting rights of any Member or Members for the period during which any Assessment owed by such Member remains unpaid and delinquent. The Board shall also have the right to suspend such voting rights for a period not to exceed 30 days and to impose monetary penalties for any other failure to comply with the Declaration or the Estate Homesite Association Policies and Procedures by any Member, his servants, guests, tenants, invitees or the members of his family; provided that any suspension of voting rights shall be made or monetary penalties imposed by the Board only after a meeting of the Board, at which a quorum of the Board is present, duly called and held for such purpose in the same manner as provided in these Bylaws for the noticing, calling and holding of a special meeting of the Board.

Written notice of such meeting, including notice of the proposed actions of the Board and the reasons therefor, shall be given as in the manner described for special meetings of the Board to the Member whose voting rights are being sought to be suspended or against whom monetary penalties are sought to be imposed. Such notice shall indicate the effective date of such suspension or imposition of monetary penalties which date shall not be less than 15 days from the date such notice is given. Such notice shall be given as provided in Article V, Section 5, below.

The Member whose voting rights are being sought to be suspended or against whom monetary penalties are sought to be imposed shall be entitled to appear at such meeting, which shall be held not less than 5 days before the effective date of the suspension or imposition of monetary penalties, and present his case as to why voting rights should not be suspended or such monetary penalties should not be imposed. The decision as to whether such rights should be suspended or such monetary penalties should be imposed shall be made by a majority of the members of the Board present at such meeting and shall be binding upon all Members. No action taken at such meeting shall be effective unless a quorum of the Board is present. No suspension of voting rights or imposition of monetary penalties shall be effective unless and until written notice has been given to the Member of the suspension or imposition of monetary penalties and the reason(s) therefor and the effective date of such suspension or imposition of monetary penalties is indicated in said notice.

The remedies described above shall not limit the right of the Board to establish a schedule of late payment charges to be imposed on any Member for nonpayment of assessments. Said late payment charges shall be separate and in addition to the remedies described above.

ARTICLE V MEETINGS OF MEMBERS

Section 1. Place of Meeting. All meetings of the Members shall be held within the Eagle Crest Planned Community or as close thereto as may be practical.

Section 2. Annual Meeting of Members. The annual meeting of Members shall be held each year in the same month in which the organization meeting as hereinafter provided for was held commencing with the year immediately following the year during which the organization meeting is held. An organization meeting shall be held within one year after the date of recordation of the deed for the sale of the first interest in an Assessable Estate Homesite. At the organization meeting, and at all subsequent annual meetings as required, the Members shall elect a Board of Directors by secret written ballot in accordance with the requirements of these Bylaws. The Members may also transact such other business of the Association as may properly come before them at such organization or annual meeting.

Written notice of both the organization meeting and each annual meeting shall be given to each Member by the Secretary or, in the case of the organization meeting only, by the Declarant, in the manner hereinafter provided. All such notices of any organization or annual meeting shall be sent to each Member not less than 10 days and not more than 50 days before such meeting, and shall specify the place, the day and the hour of such meeting and shall generally state those matters which the Board, at the time of mailing of the notice intends to present for action by the Members (but any proper matter may be presented for action at such meeting). The notice of any meeting at which Directors are to be elected shall include the names of those who are nominees at the time the notice is sent to Members.

Section 3. Special Meetings.

(a) **General.** Special meetings of Members, for any purpose or purposes whatsoever, may be called at any time by the President of the Association or by the Board or by any two or more Directors or by Members representing 10 percent or more of the total voting power of all Members; provided

that no special meeting may be held or called prior to the organization meeting. Except in special cases where other express provision is made by statute, these Bylaws or the Declaration, notice of such special meetings shall be given in the same manner as for annual meetings and may be given by any person or persons entitled to call such meeting. Notices of any special meetings shall specify in addition to the place, day and hour of such meeting, the general nature of the business to be transacted (and no other business may be transacted).

If a special meeting is called by Members, the request shall be submitted by such Members in writing, specifying the general nature of the business proposed to be transacted, and shall be delivered personally or sent by registered mail or by telegraphic or other facsimile transmission to the President, any Vice-President or the Secretary of the Association. The Officer receiving the request shall cause notice to be given to the Members entitled to vote, that a meeting will be held, and the date for such meeting. The date of such meeting shall be not less than 30 nor more than 50 days from the date such notice is given. If the notice is not given within 20 days after receipt of the request, the persons requesting the meeting may give the notice. Nothing contained in this paragraph shall be construed as limiting, fixing or affecting the time when a meeting of Members may be held when the meeting is called by action of the Board.

(b) **Transition and Turnover of Administrative Responsibility.** Within 60 days after the Declarant has conveyed Assessable Estate Homesites representing 50% of the votes in the Association, but not later than 30 days before the organization meeting is held, the Declarant shall call a meeting of the Members for the purpose of selecting a transitional advisory committee; provided, however, that if Declarant has not so acted the Board shall call such a meeting in the manner of calling a special meeting as provided in this section. The Members other than Declarant shall select two members of this transitional advisory committee and Declarant may select no more than one member. The transitional advisory committee shall have reasonable access to all information and documents which Declarant shall turn over to the Association at the turnover meeting specified in this Article and shall make itself familiar with such information and documents and take all steps reasonably necessary to assume administrative responsibility from Declarant at the time of the turnover meeting.

(c) **Turnover Meeting; Transfer of Administration.** At a time which is the earlier of the date of the organization meeting or 120 days after Assessable Estate Homesites representing 75% of the votes of the Association have been conveyed by Declarant, Declarant shall convene a meeting for the purpose of turning over administrative responsibility for the Eagle Crest Estate Homesite Project to the Association; provided, however, that if Declarant does not call such meeting it shall be called by the Board, the transitional advisory committee, or any Member in the manner set forth in subsection (a) of this Section. At the turnover meeting the Declarant shall relinquish administrative control of the Association to the Board and the Board shall accept such responsibility from Declarant. At said meeting Declarant shall deliver to the Board the following:

- (i) The original or a photocopy of the recorded Declaration and copies of the Bylaws and the Articles of Incorporation, if any, of the Association and any supplements and amendments to the Articles or Bylaws;
- (ii) A deed (or copy of a previously recorded deed) to the Estate Homesite Association Property, unless otherwise provided in the Declaration;
- (iii) The minute books, including all minutes, and other books and records of the Association and the Board of Directors;
- (iv) All Policies and Procedures adopted by the Declarant;
- (v) Resignations of officers and members of the Board of Directors who are required to resign because of the expiration of any period of Declarant control reserved pursuant to ORS 94.600;
- (vi) A report on the present financial position of the Association, consisting of a balance sheet and an income and expense statement for the prior 12-month period or a period following the recording of the Declaration, whichever period is less;
- (vii) All funds of the Association and control of the funds;
- (viii) All tangible personal property that is property of the Association, and an inventory of the property;
- (ix) Records of all property tax payments for the Estate Homesite Association Property to be administered by the Association;
- (x) Copies of any income tax returns filed by the declarant in the name of the Association, and supporting records for the returns;
- (xi) All bank signature cards;
- (xii) The reserve account established in the name of the Association under ORS 94.595;

(xiii) An operating budget for the portion of the Estate Homesite Project turned over to Association administration and a budget for replacement and maintenance of the Estate Homesite Association Property;

(xiv) A copy of each of the following as it pertains to the Estate Homesite Association Property, if available:

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

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

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

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

(E) A list of any general contractor and the electrical, heating and plumbing subcontractors responsible for construction or installation of Estate Homesite Association Property;

(xv) Insurance policies;

(xvi) Copies of any occupancy permits issued for the Estate Homesite Project;

(xvii) Any other permits issued by governmental bodies applicable to the Estate Homesite Project in force or issued within one year before the date on which the owners assume administrative responsibility;

(xviii) A list of any written warranties on the Estate Homesite Association Property that are in effect and the names of the contractor, subcontractor or supplier who made the installation for which the warranty is in effect;

(xix) A roster of owners and their addresses and telephone numbers, if known, as shown on the records of the Declarant;

(xx) Leases of the Estate Homesite Association Property and any other leases to which the Association is a party;

(xxi) Employment or service contracts in which the Association is one of the contracting parties or service contracts in which the Association or the owners have an obligation or responsibility, directly or indirectly, to pay some or all of the fee or charge of the person performing the service; and

(xxii) Any other contracts to which the Association is a party.

In order to facilitate an orderly transition during the 90 day period next following said turnover meeting, the Board shall inquire of Declarant with respect to any information which may be needed in order to allow the Board to assume full administrative control as contemplated pursuant to this Section.

Section 4. Notice of Certain Agenda Items. If action is proposed to be taken at any meeting for approval of any of the following proposals, the notice shall also state the general nature of the proposal. Member action on such items is invalid unless the notice or written waiver of notice states the general nature of the proposal(s):

(1) Removing a director without cause;

(ii) Filling vacancies on the Board by the Members;

(iii) Amending the Articles;

(iv) Adopting a contract or transaction in which a director has a material financial interest;

(v) Approving a plan of distribution of assets, other than cash, in liquidation when the Association has more than one class of memberships outstanding.

Section 5. Manner of Giving Notice. Notice of any meeting of the Members shall be given either personally or by first-class mail, telegraphic or other written communication, charges prepaid, addressed to each Member either at the address of any Assessable Estate Homesite in the Project owned by the Member or the address given by the Member to the Association for the purpose of notice. If no address appears on the Association's books and no other has been given and the Member does not reside at the address of the Assessable Estate Homesite owned by him, notice shall be deemed to have been given if either (i) notice is sent to that Member by first-class mail or telegraphic or other written communication to the Association's principal executive office, or (ii) notice is published at least once in a newspaper of general circulation in the county where that office is located. Notice shall be deemed to have been given at the time when delivered personally or deposited in the mail or sent by telegram or other means of written communication. An affidavit of the mailing or other means of giving any notice of any Members' meeting may be executed by the Secretary, Assistant Secretary, or any other agent of the Association giving the notice, and if so executed, shall be filed and maintained in the minute book of the Association.

Section 6. Quorum. The presence either in person or by proxy at a Members' meeting of Members representing and entitled to cast at least 30 percent of that number of votes (the "Net Total Votes") which is equal to the difference between the total number of votes in the Association (the "Total Votes") and the number of votes as to which voting rights are suspended at the time of the subject meeting in accordance with these Bylaws, shall constitute a quorum for any action by the Members, unless a different requirement is imposed by these Bylaws, the Articles or the Declaration, and a majority of the Net Total Votes present at a meeting at which a quorum is present shall prevail at such meetings unless a different percentage is required by these Bylaws, the Articles or the Declaration. Subject to the provisions of Section 4 of this Article V and unless otherwise expressly authorized by these Bylaws or the Declaration, all action required or permitted to be taken by the Members may be taken only at a duly called and properly noticed organization, annual or special meeting at which a quorum is present.

The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members so that less than a quorum is present if any action taken (other than adjournment) is approved by at least a majority of the Members required to constitute a quorum.

Section 7. Adjourned Meetings and Notices Thereof. Any membership meeting, organization, annual or special, whether or not a quorum is present, may be adjourned from time to time by the affirmative vote of a majority of the votes entitled to be cast and represented at such meeting in person or by proxy, but in the absence of a quorum, no other business may be transacted at any such meeting unless these Bylaws or the Declaration otherwise provide.

If a time and place for the adjourned meeting is not fixed by those in attendance at the original meeting, or if for any reason a change to the date fixed for the adjourned meeting is made after adjournment, notice of the time and place of the adjourned meeting shall be given to Members in the manner prescribed for regular meetings. No meeting may be adjourned for more than 45 days. Except as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting, other than by an announcement at the meeting at which such adjournment is taken, provided, however, if any meeting cannot be held because a quorum is not present, a majority of the Members present either in person or by proxy and entitled to vote, may adjourn the meeting to a time not less than 5 days nor more than 30 days from the time the original meeting was called at which meeting the quorum requirement shall be 25 percent of the Net Total Votes.

Section 8. Consent of Absentees. The transactions of any meeting of Members, either organization, annual or special, however called and noticed, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present either in person or by proxy, and if, either before or after the meeting, each of the Members entitled to vote and not present in person or by proxy, signs a written waiver of notice or a consent of the holding of such meeting, or an approval of the minutes thereof. The waiver of notice or consent need not specify either the business to be transacted or the purpose of any annual or special meeting of members, except that if action is taken or proposed to be taken for approval of any of the matters specified in Section 4 of Article V, the waiver of notice or consent shall state the general nature of the proposal. All such waivers, consents, or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 9. Waiver by Attendance. Attendance by a person at a meeting shall also constitute a waiver of notice of that meeting, except when the person objects at the beginning of the meeting to the transaction of any business due to the inadequacy or illegality of the notice. Also, attendance at a meeting is not a waiver of any right to object to the consideration of matters required to be so included, in the notice of the meeting, if that objection is expressly made at the meeting.

Section 10. Action Without Meeting. Any action, other than the election of Directors, which under the provisions of law may be taken at a meeting of the Members, may be taken without a meeting and without prior notice if (a) the written ballot of every Member is solicited specifying the proposed action and providing an opportunity to specify approval or disapproval of any proposal, (b) the required number or signed approvals in writing, setting forth the action so taken, is received, (c) the number of ballots cast within the time period specified equals or exceeds the quorum required to be present at a meeting authorizing the action, and (d) the number of approvals equals or exceeds the number of votes that would be required to approve at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

Ballots shall be solicited in a manner consistent with the requirements of law. All such solicitations shall indicate the number of responses needed to meet the quorum requirement and shall state the percentage of approvals necessary to pass the measure submitted. The solicitation must specify the time by which the ballot must be received in order to be counted.

Subject to any applicable provisions of law, any Member casting a ballot, or the proxyholders of a Member or a transferee of a membership or a personal representative of the Member or their respective proxyholders, may revoke the ballot, or substitute another, by a writing received by the Association prior to the time specified in the solicitation pursuant to the preceding paragraph, but may not do so thereafter. Such revocation is effective upon its receipt by the Secretary of the Association.

Section 11. Record Date. The Board of Directors may fix a date in the future as a record date for the determination of the Members entitled to notice of and to vote at any meeting of Members.

To determine the Members entitled to notice of and to vote at any meeting of Members, the record date shall not be more than 60 nor less than 10 days prior to the date of the meeting. When a record date is so fixed, only Members of record on that date shall be entitled to notice of and to vote at the meeting, notwithstanding any transfer of or issuance of membership certificates on the books of the Association after the record date. If no record date is fixed, Members at the close of business on the business day preceding the day on which notice is given or, if notice is waived, at the close of business on the business day preceding the day on which the meeting is held are entitled to notice of and to vote at the meeting of Members.

The record date for determining those Members entitled to vote by written ballot on corporate action without a meeting shall not be more than 60 days before the day on which the first written ballot is mailed or solicited. If no record date is fixed, Members on the day the first written ballot is mailed or solicited who are otherwise eligible to vote are entitled to the cast written ballots.

For purposes of this section, a person holding membership as of the close of business on the record date shall be deemed the Member of record.

Section 12. Proxies. Every person entitled to vote or execute consents shall have the right to do so either in person or by an agent or agents authorized by a written proxy executed by such person or his duly authorized agent and filed with the Secretary of the Association prior to the commencement of the meeting at which that proxy is to be exercised. A validly executed proxy that does not state that it is irrevocable shall continue in full force and effect unless (i) revoked by the Member executing it, before the vote cast pursuant to that proxy, by a writing delivered to the Association stating that the proxy is revoked by a subsequent proxy executed by such Member, or by personal attendance and voting at a meeting by such Member, or (ii) if written notice of the death or incapacity of the maker of the proxy is received by the Association before the vote pursuant to the proxy is counted; provided, however, that no proxy shall be valid after the expiration of 11 months from the date of the proxy, unless otherwise provided in the proxy, except that the maximum term of any proxy shall be 3 years from the date of execution. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of law. In any election of Directors, any form of proxy that is marked by a Member "withhold", or otherwise marked in a manner indicating that the authority to vote for the election of Directors is withheld, shall not be voted either for or against the election of a Director. Failure to comply with this paragraph shall not invalidate any corporation election taken, but may be the basis for challenging the proxy at a meeting.

ARTICLE VI DIRECTORS

Section 1. Number, Qualifications, Term of Office. The affairs of the Association shall be managed by a Board of 5 Directors who shall be Members of the Association or representatives of Declarant designated by Declarant. At the organization meeting, the Members shall elect 5 Directors, 3 of whom shall hold office for 3 years and 2 of whom shall hold office for 2 years. At each annual meeting of the Members thereafter, a new Director shall be elected to fill each vacancy created by the expiration of a prior Director's term of office. Such new Directors shall serve for a term of 2 years or until the later election of their successors. Prior to the organization meeting, and thereafter until their successors are elected, the Incorporator of the Association or the first Directors appointed by the Incorporator shall serve as Directors of the Association. The number of Directors may be increased or decreased from time to time (but in no event shall be less than 5) by an amendment to these Bylaws by the Members as hereinafter provided in these Bylaws. From and after the first election of the Board by the Members, at least one of the Members of the Board shall be elected by the votes of the Members other than Declarant, which election of Directors shall comply with the following special election procedures:

(a) Any Member entitled to vote at the meeting pursuant to the provisions of these Bylaws shall be eligible as a candidate for the position of director. Nominations shall be made as set forth in Section 2 of this Article VI.

(b) The procedure for election of Directors shall be as follows: The Secretary of the meeting shall call for nominations, if any, from the floor. Any person so nominated to stand for election shall have his or her name added to the written ballots to be used in the conduct of the election. Following the closing of nominations, the election of directors shall be conducted by secret ballot.

At the organizational meeting, the vote shall be counted in 2 phases. First, the vote of all Members other than Declarant shall be counted to determine which of the nominees shall be elected solely by the vote of Members other than Declarant. The nominee receiving the highest vote total in this phase of the election shall be elected (for purposes of these Bylaws, such Director shall be referred to as the "Non-Declarant Director"). Second, once the Non-Declarant Director has been elected, the vote of all Members, including Declarant, shall be counted and the remaining positions on the Board shall be filled by those nominees (excluding the Non-Declarant Director) receiving the highest number of votes. The two Directors receiving the highest number of votes among the Directors elected at each annual meeting next preceding the Master Association meeting at which the Association is entitled to fill two board positions of the Master Association shall also be nominated for election to the board of directors of the Master Association. The three Directors receiving the highest number of votes among the Directors elected shall each serve an initial term of three years. The remaining two directors shall each serve a two year term.

At each subsequent annual election at which the Non-Declarant Director shall stand for re-election or such position shall be vacant, the procedure set forth in the preceding paragraph shall be used to elect the Directors to be elected at such meeting. At all other annual or special elections (at which the position of Non-Declarant Director is not up for election), Directors shall be elected, or candidates to fill vacancies on the Master Association board shall be nominated, in accordance with the vote of all Members, including Declarant.

Section 2. Nominating Committee. The President of the Association shall appoint a committee to select qualified candidates for election to the Board at least 95 days before the date of the election, and the Secretary shall forward to each Member, with the notice of meeting required by Article V, Section 2, a list of candidates nominated.

Members representing 5 percent of the membership may nominate candidates for the position of directorships at any time before the 50th day preceding such election. On timely receipt of a petition signed by the required number of Members, the Secretary shall cause the names of the candidates named on it to be placed on the ballot along with those candidates named by the nominating committee. At the meeting to elect directors, any Member present at the meeting, in person or by proxy, may place names in nomination.

Section 3. Removal and Vacancies. The entire Board or any individual Director may be removed from office, with or without cause, at any duly called, noticed and held annual or special meeting of the Members, at which a quorum is present, by a majority of the total votes present at such meeting either in person or by proxy, and entitled to vote, provided, however that unless the entire Board is removed from office by vote of the Members of the Association, no individual director shall be removed prior to the expiration of his term of office if the votes cast against removal or not consenting in writing to such removal would be sufficient to elect the director if voted cumulatively at an election at which the same number of votes were cast and the entire number of directors authorized at the time of the most recent election of the director were then being elected. The Non-Declarant Director may be removed from office prior to the expiration of his term of office only by the vote of at least a simple majority of the voting power residing in Members other than Declarant. A vacancy in the Board created by the removal of a director (other than the Non-Declarant Director) shall be filled by a majority of the remaining Directors at a meeting of the Board, (a vacancy in the Board created by the removal of the Non-Declarant Director shall be filled by Owners other than Declarant entitled to vote or so assent, who exercise such entitlement at a duly-called special meeting and who collectively own more than 50% of all Assessable Estate Homesites owned by such Owners other than Declarant), and each director so appointed (or elected) shall hold office until his successor is elected at an annual meeting of Members or at a special meeting duly called for that purpose. A vacancy or vacancies shall be deemed to exist in case of the death, resignation or removal of any director, or if the Members shall increase the authorized number of directors but shall fail at the meeting at which such increase is authorized or any adjournment thereof to elect the additional director so provided for, or in case the Members fail at any time to elect the full number of authorized directors. In the event of an increase in the authorized number of directors, no more than one director may be appointed, rather than elected, to fill a vacancy created thereby.

Any Director may resign effective upon giving written notice to the President, the Secretary or the Board, unless the notice specifies a later time for the effectiveness of such resignation. If the Board accepts the resignation of a Director tendered to take effect at a future time, the Board shall have the power to elect

a successor to take office when the resignation shall become effective.

In the event that any Member of the Board shall be absent from 4 consecutive regular meetings of the Board of Directors, the Board may, by action taken at the meeting during which said fourth absence occurs, declare the office of said absent Director to be vacant.

Section 4. Place of Meeting. All meetings of the Board shall be held on the Property if reasonably possible, otherwise at a place as close thereto as reasonably possible and within the County of Deschutes, as designated at any time by resolution of the Board or by written consent of a majority of the members of the Board.

Section 5. Organization Meeting of the Board. Immediately following the organization meeting and each annual meeting of the Members, the Board shall hold a regular meeting at the same place for the purpose of organization, election of officers and the transaction of other business. Notice of such meeting is hereby dispensed with.

Section 6. Other Regular Meetings. Other regular meetings of the Board shall be held at a time and at such place within the Planned Community or as close thereto as reasonably possible, which place may be designated by the Board from time to time. Notice of the time and place of such meeting shall be posted at a prominent place or places within the Estate Homesite Association Property at least 72 hours prior to such meeting and shall be communicated to each Director not less than 4 days prior to the meeting. Regular meetings of the Board shall be held at least once every 3 months.

Section 7. Special Meetings. Special meetings of the Board for any purpose or purposes may be called by written notice at any time by the President, or if he is absent or unable or refuses to act, by any Vice President or by any two directors.

Notice of the time and place of special meetings and of the nature of any special business to be considered shall be given to each Director by written notice at least 72 hours prior to the scheduled time of such meeting; provided notice need not be given to any Director who signs a waiver of notice or a written consent to the holding of the meeting. Notice of the time and place of all special meetings shall be posted at a prominent place or places within the Estate Homesite Association Property no later than 72 hours prior to the meeting.

Whenever any director has been absent from any special meeting of the Board and notice of such meeting has been duly given to such director, an entry in the minutes to the effect that notice has been duly given shall be made.

Section 8. Meetings by Telephone. Only emergency meetings of the Board may be held by conference telephone or similar communication equipment, and any member of the Board may participate by conference telephone or similar communications equipment in a meeting at which other members of the board are physically present, so long as all directors participating in the meeting can hear one another, and all such directors shall be deemed to be present in person at such meeting.

Section 9. Quorum Requirement, Waiver of Notice. The transaction of any business at any meeting of the Board, however called and noticed, or wherever held, shall be as valid as though made at a meeting duly held after regular call and notice, if a quorum is present, unless a quorum is expressly not required pursuant to these Bylaws, and if, either before or after the meeting, each of the directors not present signs a written waiver of notice, or a consent to the holding of such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records and made a part of the minutes of the meeting.

Section 10. Action Without Meeting. Any action required or permitted to be taken by the Board by law, according to the Articles or according to these Bylaws or the Declaration may be taken without a meeting, if all members of the Board shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the Board, and shall have the same force and effect as a unanimous vote of such directors.

If the Board resolves by unanimous written consent to take action, an explanation of the action taken shall be posted at a prominent place or places within the Estate Homesite Association Property within 3 days after the written consents of all Directors have been obtained.

Section 11. Quorum. A majority of the Board shall constitute a quorum thereof. Every act or done or decision made by a majority of the directors present at a meeting duly held at which a quorum is present, in person or by telephone, shall be regarded as the act of the Board, unless the provisions of these Bylaws, the Articles or the Declaration (especially those provisions relating to (i) approval of contracts or transactions in which a director has a direct or indirect material financial interest, (ii) appointment of committees, and (iii) indemnification of directors) shall require or permit the particular action involved to be taken by the Board under other circumstances.

Section 12. Adjournment. A quorum of the Directors may adjourn any Directors' meeting to meet

again at a stated day and hour; provided, however, that in the absence of a quorum, a majority of the Directors present at the Directors' meeting, either regular or special, may adjourn from time to time until the time fixed for the next regular meeting of the Board. Notice of the time and place of holding an adjourned meeting need not be given, unless the meeting is adjourned for more than 24 hours, in which case personal notice of the time and place shall be given before the time of the adjourned meeting to the Directors who were not present at the time of the adjournment.

Section 13. Open Meetings.

(a) Regular and special meetings of the Board shall be open to all Members of the Association provided, however, that Members who are not on the Board may not participate in any deliberation or discussion unless expressly so authorized by the vote of a majority of a quorum of the Board. Any Member may request to be and shall be connected by telephone conference call to a Meeting by telephone held pursuant to Section 8 of this Article. If the number of Members requesting such connection makes the telephone conference call impractical or impossible, a telephone conference meeting by telephone may not be held.

The Board may, with the approval of a majority of a quorum of its members, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

Section 14. Compensation. No Director of the Association shall receive any salary or other compensation for services rendered as a director or officer of the Association. However, directors and officers shall be reimbursed for expenses incurred in connection with the business of the Association and authorized by the Board. Nothing herein shall preclude any director from serving the Association in any capacity other than as an Officer or a Director and receiving compensation therefor as authorized and approved by the Board. Any Director receiving any special compensation for services in such other capacity shall be excluded from deliberations and voting by the Board relative to the authorization thereof and fixing compensation with regard thereto.

Section 15. Committees. The Board shall have the power to appoint an Executive Committee and other committees of its members and to delegate to such committees any of the powers and authority of the Board in the management of the business and affairs of the Association except the power to:

- (a) adopt, amend or repeal the Bylaws or the Articles of Incorporation;
- (b) fill vacancies on the Board or in any committee which has the authority of the Board;
- (c) amend or repeal any resolution of the Board which by its express terms is not so amendable or repealable;
- (d) appoint any other committees of the Board or the members of these committees;
- (e) approve any transaction (1) to which the Association is a party and one or more Directors have a material financial interest or (2) between the Association and one or more of its Directors or (3) between the Association and any entity in which one or more of its Directors have a material financial interest.

Each Committee shall be composed of two or more Directors (one member of the Executive Committee shall be the President) and shall keep regular written minutes of the proceedings and report the same to the Board.

Section 16. Powers and Duties. Subject to the limitations of the Articles, these Bylaws, the Declaration and law as to action required to be taken, authorized or approved by the Members of the Association, or a portion or percentage thereof, all Association powers and duties including those set forth in the Declaration shall be exercised by, or under the authority of the Board and the business and affairs of the Association shall be controlled by the Board.

Section 17. Financial Statements. The responsibilities of the Association with respect to preparation and distribution of the annual financial statement required pursuant to ORS 94.670 and other reporting responsibilities of the Association are hereby delegated to the Board to be performed in the manner specified in Section 2.4(h) of the Declaration.

ARTICLE VII OFFICERS

Section 1. Enumeration of Officers. The officers of the Association shall be a President, Vice President, a Secretary, a Chief Financial Officer and such other Officers as the Board may deem necessary. Any person may hold more than one office, provided that neither the Secretary nor the Chief Financial

Officer may serve concurrently as the President. The President, Vice President and Secretary shall be members of the Board. The Chief Financial Officer may be, but need not be a member of the Board.

Section 2. Subordinate Officers. The Board may appoint, and may authorize the President or another Officer to appoint, any other Officers that the business of the Association may require, each of whom shall have the title, hold office for the period, have the authority, and perform the duties specified in these Bylaws or determined from time to time by the Board.

Section 3. Election. The initial Officers shall be chosen by a majority vote of the directors at the first meeting of the Board, and thereafter, officers shall be removed or chosen at any subsequent meeting of the Board by a majority vote of the total number of directors on the Board.

Section 4. Term. All officers shall hold office at the pleasure of the Board.

Section 5. Resignation of Officers. Any officer may resign at any time by giving written notice to the Board. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Association under any contract to which the officer is a party.

Section 6. President. The President shall be the Chief Executive Officer of the Association and shall, subject to the control of the Board, have supervision, direction and control of the business and affairs of the Association. He shall preside at all meetings of the Members and at all meetings of the Board. He shall be ex-officio a member of all standing committees, including the Executive Committee, if in existence and shall have the general powers and duties of management usually vested in the office of President of a corporation, and shall have such powers and duties as may be prescribed by the Board or by these Bylaws. The President shall sign all written instruments, and co-sign all checks and promissory notes, of the Association.

Section 7. Vice President. In the absence or disability of the President, the Vice President shall perform all the duties of the President, and when so acting shall have all powers of, and be subject to all the restrictions upon, the President. The Vice President shall have such other powers and perform such other duties as from time to time may be prescribed for him by the Board or by these Bylaws.

Section 8. Secretary. The Secretary shall keep or cause to be kept, a book of minutes at the principal office of the Association or such other place as the Board may order, of all meetings of directors and Members, with the time and place of holding whether regular or special, and if special how authorized, the notice thereof given, the names of those persons present at the Directors' meetings, the number of Members present or represented at Members' meetings and the proceedings thereof.

The Secretary shall give, or cause to be given, notice of all the meetings of the Members and of the Board required by the Bylaws or by law to be given, except that notice of the organization meeting may be given by the Declarant, and he shall keep the seal of the Association in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board or the Bylaws.

The Secretary shall keep, or cause to be kept, at the principal executive office, as determined by resolution of the Board, a record of the Association Members, showing the names of all Members, their addresses, and the class of membership held by each.

Section 9. Chief Financial Officer. The Chief Financial Officer shall keep and maintain, or cause to be kept or maintained, adequate and correct accounts of the properties and business transactions of the Association, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital and surplus. The books of account shall at all times be open to inspection by any director. The Chief Financial Officer shall sign all checks and promissory notes of the Association and shall deposit all monies and other valuables in the name and to the credit of Association with such depositories as may be designated by the Board. He shall disburse 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 his transactions as Chief Financial Officer 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 the Bylaws. The Board may delegate the performance of the foregoing duties, subject to supervision by the Chief Financial Officer, to a professional manager retained by the Association.

Section 10. Administration for Maintenance, Upkeep and Repair. In addition to any authorization pursuant to Section 2 of Article IX of these Bylaws, the President and any Vice President or Secretary may enter into employment contracts with one or more managers who shall be employees of the Association charged with the responsibility of maintenance, upkeep and repair of the Estate Homesite Association Property as specified in the Declaration. Said Manager or Managers shall be and hereby are authorized to hire employees, and to enter into contracts with agents and subcontractors for the proper purposes of the Estate Homesite Association. Effective as of the date of hiring the first employee of the Estate Homesite

Association, the Manager or if such Manger has not yet been designated, the Officers hereinabove empowered to hire such Manager, shall ascertain that the Association has made provision for all insurance and other benefit programs as may be required by the laws of the State of Oregon, including without limiting the generality of the foregoing, any workers' compensation, unemployment or similar employee protections and safeguards. All employees of the Association shall be supervised and managed by the Manager hired pursuant to this Section; provided, however, that prior to any termination for cause, any such employee shall have the right to a hearing before the Board with respect to justification for such termination or discipline. The Chief Financial Officer or any two subordinates designated by him, shall be and hereby are empowered to sign any payroll checks for employees of the Estate Homesite Association. The payment of any invoices tendered by agents or subcontractors of the Estate Homesite Association with respect to maintenance, upkeep and repair of the Estate Homesite Association Property may be made by Manager so long as such invoice applies to, and is an amount not exceeding, the budgeted amount for such maintenance, upkeep and repair; provided, however, that such authority may be restricted or conditioned by resolution of the Board as the Directors in their judgment may deem appropriate.

ARTICLE VIII

INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES, AND OTHER AGENTS

Section 1. Definitions. For the purpose of this Article:

- (a) "agent" means any person who is or was a director, officer, employee, or other agent of this Association, or is or was serving at the request of this Association as a Director, Officer, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise;
- (b) "proceeding" means any threatened, pending, or completed action or proceeding, whether civil, criminal, administrative or investigative; and
- (c) "expenses" includes, without limitation, all attorneys' fees, costs, and any other expenses incurred in the defense of any claims or proceedings against an agent by reason of his position or relationship as agent and all attorneys' fees, costs, and other expenses incurred in establishing a right to indemnification under this Article.

Section 2. Successful Defense By Agent. To the extent that an agent of this Association has been successful on the merits in the defense of any proceeding referred to in this Article, or in the defense of any claim, issue, or matter therein, the agent shall be indemnified against expenses actually and reasonably incurred by the agent in connection with the claim. If an agent either settles any such claim or sustains a judgment rendered against him, then the provisions of Sections 3 through 5 of this Article shall determine whether the agent is entitled to indemnification.

Section 3. Actions Brought By Persons Other Than The Association. Subject to the required findings to be made pursuant to Section 5 below, this Association shall indemnify any person who was or is a party, or is threatened to be made a party, to any proceeding other than an action brought by, or on behalf of, this Association, or by an officer or Director on the ground that the defendant director was or is engaging in self-dealing by reason of the fact that such person is or was an agent of this Association, for all expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with the proceeding.

Section 4. Action Brought By or On Behalf of the Association.

(a) **Claims settled out of court.** If any agent settles or otherwise disposes of a threatened or pending action brought by or on behalf of this Association, with or without approval, the agent shall receive no indemnification for either amounts paid pursuant to the terms of the settlement or other disposition or for any expenses incurred in defending against the proceeding.

(b) **Claims and suits awarded against agent.** This Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action brought by or on behalf of this Association by reason of the fact that the person is or was an agent of this Association, and for all expenses actually and reasonably incurred in connection with the defense of that action, provided that both of the following are met:

- (i) The determination of good faith conduct required by Section 5 of this Article below must be made in the manner provided for in that section; and
- (ii) Upon application, the court in which the action was brought must determine that, in view of all of the circumstances of the case, the agent should be entitled to indemnity for the expenses

incurred. If the agent is found to be so entitled, the court shall determine the appropriate amount of expenses to be reimbursed.

Section 5. Determination of Agent's Good Faith Conduct. The indemnification granted to an agent in Sections 3 and 4 of this Article above is conditioned on the following:

(a) **Required standard of conduct.** The agent seeking reimbursement must be found, in the manner provided below, to have acted in good faith, in a manner he believed to be in the best interest of this Association, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use in similar circumstances. The termination of any proceeding by judgment, order, settlement, conviction, or on a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith or in a manner which he reasonably believed to be in the best interest of this Association or that he had reasonable cause to believe that his conduct was unlawful. In the case of a criminal proceeding, the person must have had no reasonable cause to believe that his conduct was unlawful.

(b) **Manner of determination of good faith conduct.** The determination that the agent did act in a manner complying with Paragraph (a) above shall be made by:

(i) the Board by a majority vote of a quorum consisting of directors who are not parties to the proceeding; or

(ii) the affirmative vote or written ballot of a majority of the votes of the Members represented and voting at a duly held meeting at which a quorum is present (which affirmative votes also constitute a majority of the required quorum), with the persons to be indemnified not being entitled to vote thereon; or

(iii) the court in which the proceeding is or was pending. Such determination may be made on application brought by this Association or the agent or the attorney or other person rendering a defense to the agent, whether or not the application by the agent, attorney or other person is opposed by this Association.

Section 6. Limitations. No indemnification or advance shall be made under this Article, except as provided in Sections 2 or 5 (b) (iii), in any circumstances when it appears:

(a) that the indemnification or advance would be inconsistent with a provision of the Articles, a resolution of the Members, or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or

(b) that the indemnification would be inconsistent with any condition expressly imposed by a court in approving a settlement.

Section 7. Advance of Expenses. Expenses incurred in defending any proceeding may be advanced by this Association before the final disposition of the proceeding upon receipt of an undertaking by or on behalf of the agent to repay the amount of the advance which undertaking shall be subject only to an ultimate determination that the agent is entitled to be indemnified as authorized in this Article.

Section 8. Contractual Rights of Nondirectors and Nonofficers. Nothing contained in this Article shall affect any right to indemnification to which persons other than directors and officers of this Association, or any subsidiary hereof, may be entitled by contract or otherwise.

Section 9. Insurance. The Board may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any agent of the Association against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, whether or not this Association would have the power to indemnify the agent against that liability under the provisions of this Section.

ARTICLE IX

MISCELLANEOUS

Section 1. Checks, Drafts, Vouchers, Etc. Except as otherwise provided herein, all checks, drafts, vouchers or other order for payment of money, notes or other evidences of indebtedness, issued in the name of or payable to the Association, shall be signed by any two of (i) the Chief Financial Officer, (ii) the President, or (iii) a Vice-President of the Association.

Section 2. Contracts, Etc. How Executed. The Board hereby authorizes the President and Secretary acting together, and, except as otherwise provided in these Bylaws, may authorize any Officer or Officers, agent or agents, to enter into any contract or execute any instrument in the name and on behalf of the Association, and such authority may be general or confined to specific instances; and unless so authorized by the Board, no Officer, agent or employee shall have any power or authority to bind the Association by a

contract or engagement or to pledge its credit or to render it liable for any purpose or to any amount.

Section 3. Maintenance and Inspection of Articles and Bylaws. The Association shall keep in its principal office the original or a copy of the Articles of Incorporation and these Bylaws, as amended or otherwise altered to date, certified by the secretary, which shall be open to inspection by the Members at all reasonable times during office hours.

Section 4. Maintenance and Inspection of Other Corporate Records. The Association shall keep the following records at such place or places designated by the Board or, in the absence of such designation, at its principal executive office:

- a. Adequate and correct books and records of account;
- b. Minutes of the proceedings of the Members, Board of Directors and any committee(s) of the Board;
- c. A record of the names and addresses and the class of membership of each Member.

The minutes shall be kept in written or typed form, and the other accounting books and records shall be kept either in written or typed form or in any other form capable of being converted into written, typed or printed form. These records shall be open to the inspection on the written demand of any Member, at any reasonable time during usual business hours, for a purpose reasonably related to the Member's interests as a Member. The inspection may be made in person or by an agent or attorney, and shall include the right to copy and make extracts.

The Board shall establish reasonable rules with respect to:

- (a) Notice to be given to the custodian of records by the Member desiring to make the inspection. A Member who wishes to inspect and copy the record of all Members' names, addresses and voting rights, must give five (5) business days' prior written demand to the Association which demand shall state the purpose for which the inspection rights are requested.
- (b) Hours and days of the week when such an inspection may be made.
- (c) Payment of the cost of reproducing copies of documents requested by a Member.

Each director shall have the absolute right at any time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extracts and copies of documents.

Section 5. Accounting Year. The accounting year of the Association shall terminate on December 31st of each year.

ARTICLE X

SPECIAL OBLIGATIONS OF MEMBERS

Section 1. Payment of Assessments. The Board shall annually levy the assessments provided for in Article III of the Declaration. If the Annexable Property, or any portion thereof, shall be annexed to the regime of the Declaration from time to time, the levy of assessments by the Board next following such annexation shall encompass such annexed property and the apportionment of such assessments shall be as provided in the Declaration. At the time of adopting such resolution, the Board shall direct the Secretary of the Estate Homesite Association to prepare billings to be sent to each sub-Association which has been empowered to collect the Estate Homesite Association assessments directly from its Members or, alternately, to each Member of the Estate Homesite Association which is not subject to such collection by a Sub-Association. The Secretary thereupon shall mail at least 15 days prior to the date required for payment a billing for the installment due from each Member and a statement of the date when such payment must be received; provided, however, that in the case of a Sub-Association the Secretary shall make one mailing including a schedule of assessments levied with respect to the Owners along with directions to the Sub-Association as to when such payment must be tendered to the Association. The total amount of the assessment, the apportionment thereof among the Real Property and the remedies in the event of nonpayment with respect thereto shall be as provided in Article III of the Master Declaration.

Section 2. Special Insurance Requirements.

(a) **Insurance required to be carried by the Estate Homesite Association.** Insurance for all insurable improvements in the Estate Homesite Association Property against loss or damage by fire or other hazards, including extended coverage vandalism and malicious mischief, and insurance for public liability with respect to damage or injury occurring on the Estate Homesite Association Property shall be procured by the Association and kept in full force and effect as required in the Declaration. Premiums for insurance so obtained shall be included in the assessments to the Members.

(b) **Special Insurance Required of the Members.** Unless and until the Association assumes by

action of the Board any responsibility for maintenance, repair or restoration of improvements located on property other than the Estate Homesites Association Property, the Association shall not require any special insurance coverage by the Members with respect to privately owned property. Notwithstanding the foregoing, if any Member acquires insurance the terms of which contradict or in any way affect the insurance coverage pursuant to the Association policies, the relationship between any insurance of the Association and the insurance of the Owners shall be as governed in the Master Declaration, and insurance of the Estate Homesite Association may not be brought into contribution with that of any Owner.

ARTICLE XI EVIDENCE OF MEMBERSHIP, SEAL

Section 1. Evidence of Membership. The Board shall have the power, but not the obligation, to cause the issuance of evidence of membership in the Association to the Members in such form as the Board shall determine.

Section 2. Seal. The Association shall have a seal in circular form having within its circumference the name of the Association, its date of incorporation and such other matters as may be required by the laws of Oregon.

ARTICLE XII AMENDMENTS, CONFLICTS

Section 1. Amendments. Any amendment to these Bylaws shall require the vote or written assent of a Majority of Owners unless such amendment is considered for action at a meeting of the Members, in which event the vote of a majority of those Members who collectively are entitled to exercise more than 50% of all votes which may be exercised by such Members at such meeting at which a quorum is present shall be required; notwithstanding the foregoing, however, the percentage of the voting power of the Association necessary to amend a specific clause or provision shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause or provision and if a provision required to be included in the Declaration pursuant to ORS 94.580 is included in these Bylaws, the voting requirements for amending the Declaration shall govern the amendment of that provision of the Bylaws. Amendments shall be kept by the Secretary with the other records and books of the Association and shall become effective upon the execution of such written instrument as required by this Section without any further action or requirement.

Section 2. Conflicts. In the event of any inconsistency between these Bylaws and the Articles, the Articles shall control, and in the event of any inconsistency between these Bylaws or the Articles and the Declaration, the Declaration shall control.

CERTIFICATE OF SECRETARY

THIS IS TO CERTIFY:

That I am the duly elected, qualified and acting Secretary of The Eagle Crest Estate Homesite Association, an Oregon non-profit corporation, and that the above and foregoing Bylaws were duly adopted as the Bylaws of said corporation by the Board of Directors by unanimous written consent dated June 24, 1985.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of June, 1985.

/s/ _____ Karen L. Smith

MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT (the "Agreement") is made and entered into this 24th day of June, 1985, by and between EAGLE CREST ESTATE HOMESITE ASSOCIATION, an Oregon non-profit corporation (the "Association") and COUNTRY CLUB MANAGEMENT, INC, an Oregon corporation (the "Manager").

RECITALS:

- A. Pursuant to the provisions of that certain Declaration of Covenants, Conditions and Restrictions (Eagle Crest Estate Homesites) (the "Declaration") recorded in the office of the recording officer of Deschutes County, Oregon, the Estate Homesite Association is responsible for maintenance, control, operation, and management of the estate lot portion (the "Project") of the Eagle Crest Planned Community, as such portion is described in the Declaration. The Estate Homesite Association is authorized to engage an agent or manager for the Project and to delegate such of its powers to the agent or manager as may be required for the proper functioning thereof.
- B. The Estate Homesite Association desires to retain Manager to perform and provide various services for the Project and Manager is willing to provide such services, all on the terms and conditions hereinafter set forth.

THEREFORE, in consideration of the mutual promises, covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

1.1 **Certain Definitions.** The defined terms as used in this Agreement shall have the following meanings:

- (a) "**Agreement**" means this Management Agreement.
- (b) "**Board**" means the Board of Directors of the Estate Homesite Association.
- (c) "**Estate Homesite Association**" means the Eagle Crest Estate Homesite Association, an Oregon non-profit corporation.
- (d) "**Estate Homesite Declaration**" means that certain Declaration of Covenants, Conditions and Restrictions (Eagle Crest Estate Homesites) recorded in the office of the recording officer of Deschutes County, Oregon.
- (e) "**Notice**" means any notice, demand, instruction or other communication required or permitted under the terms of this Agreement.
- (f) "**Operating Year**" means a Fiscal Year of the Estate Homesite Association during the term of this Agreement. The first Operating Year shall be the period from the Starting Date through the last day of the then current Fiscal Year of the Estate Homesite Association, and the last Operating Year hereunder shall end upon the date of the expiration, or sooner termination, of this Agreement.
- (g) "**Project**" means the property included within the regime of the Declaration.
- (h) "**Starting Date**" means the date of which the Deed conveying the first Estate Homesite in the Project to a Non-Declarant grantee is recorded in the office of the recording officer of Deschutes County, Oregon.

1.2 **Other Defined Terms.** Unless otherwise expressly indicated herein, the balance of the terms defined in this Agreement shall have the same meaning as ascribed thereto in the Declaration.

ARTICLE II ENGAGEMENT OF MANAGER

2.1 **Basic Agreement.** The Estate Homesite Association hereby engages and hires Manager as the exclusive managing and servicing agent of the Project and Manager hereby accepts and assumes the obligation to manage and operate the Project during the term hereof, upon the terms, conditions and provisions hereinafter set forth and subject to the provisions contained in the Declaration and standards of performance established by the Board. Manager shall manage and operate the Project in accordance with good practices and standards prevailing in residential communities of comparable size and character, consistent with the best interests of the Estate Homesite Association.

2.2 **Term.** The term of this Agreement shall be for a period of three (3) years, commencing on the Starting Date.

2.3 **Early Termination.** This Agreement may be terminated at any time as follows:

(a) **Termination by the Board.** This Agreement may be terminated without penalty by the Board either:

(i) for cause, upon the vote or written assent of a majority of the Board; provided, that if the cause constitutes a breach of or a failure to perform any term, covenant or condition contained in the Agreement which is capable of being cured, such breach or failure to perform shall not have been cured, or commencement and diligent pursuit of all reasonable efforts to effect such cure shall not have been undertaken, within thirty (30) days following Notice of such default or breach from the Estate Homesite Association. In the event Manager shall dispute a termination of this Agreement pursuant to this subsection, the dispute shall be submitted within 5 days of the termination notice to Arbitration in accordance with the provisions of Section 5.1 hereof; or

(ii) without cause, upon thirty (30) days prior Notice to Manager authorized by vote or written consent of a Majority of Owners.

(b) **Termination by Manager.** Except as expressly provided in this subparagraph, Manager may terminate this Agreement, at any time, upon ninety (90) days prior Notice to the Estate Homesite Association. In the event (i) the Estate Homesite Association shall fail to keep, observe or perform any material covenant, agreement, term or provision of this Agreement to be kept, observed, or performed by the Estate Homesite Association and such default shall continue for a period of thirty (30) days after Notice hereof by Manager; or (ii) the Master Association Property or any portion thereof shall be damaged or destroyed by fire or other casualty and the Estate Homesite Association, through no fault or failure to act of Manager, shall fail to undertake to repair, restore, rebuild or replace any such damage or destruction within ninety (90) days after receipt of insurance proceeds therefor, if such loss was insured, or within ninety (90) days after such fire or casualty, if such loss was not insured, then and in either event this Agreement shall terminate at Manager's option, upon five (5) days' Notice to the Estate Homesite Association.

(c) **Condemnation.** If the whole of the Estate Homesite Association Property shall be taken or condemned in any eminent domain, condemnation, compulsory acquisition or like proceeding by any competent authority for any public or quasi-public use or purpose, or if such a portion thereof shall be taken or condemned as to make it imprudent or unreasonable, in the reasonable opinion of the Board, to use the remaining portion for the purposes contemplated by the Estate Homesite Declaration, then either of such events, the term of this Agreement shall cease and terminate as of the date of such condemnation. To the extent (and only to the extent) any award for such taking or compensation to Manager for any loss of its income resulting from such taking or condemnation, such award shall be fairly and equitably apportioned between the Estate Homesite Association and Manager as to compensate Manager for any such loss of income. Subject to the termination provisions of this Section 2.3, Manager shall continue to supervise and direct the management and operation of the Project until such time as Manager shall be required to surrender possession of the Project as a consequence of such taking or condemnation.

2.4 **Extended Term.** Manager may extend the term of this Agreement, upon mutual consent, for additional and successive one-year terms upon the same terms and conditions as those set forth for the initial term of this Agreement. This initial term and any extension thereof shall be automatically extended unless Manager delivers, to the Board, written Notice of its election not to extend not less than sixty (60) days prior to the expiration of the initial or extended term, as applicable. If no such Notice of nonrenewal is delivered, this Agreement shall be automatically extended for an additional one-year period **unless** (i) Manager is in default under any of the terms of this Agreement, or (ii) not less than thirty (30) days prior to the expiration of the then current term, the Estate Homesite Association, with the prior approval by a Majority of Non-Declarant Owners, determines not to extend the term and gives Notice of that determination to Manager.

ARTICLE III SERVICES OF MANAGER

3.1 **In General.** Manager shall provide or cause to be provided all services and personnel required to administer the affairs of the Estate Homesite Association and to manage and operate the Project contemplated by the Declaration, at all times in the manner consistent with the provisions of the Declaration

and the Bylaws of the Estate Homesite Association and subject to the terms and conditions set forth herein. Manager shall have, and is hereby delegated, all powers which the Estate Homesite Association may exercise pursuant to the Declaration, to the extent necessary to perform its duties and obligations hereunder. Subject to the provisions of Paragraph 3.9 below, Manager may delegate its authority and responsibilities to one or more sub-agents for such periods and upon such terms as Manager deems proper. Services of Manager shall include services described in Paragraphs 3.2, 3.3, 3.4, 3.5 and 3.7 (collectively "Management Services") for a Management Fee as set forth in the provisions of Paragraph 4.1, and Financial Services as described in Paragraph 3.6 for a separate "Financial Services Fee" subject to the provisions of the Budget.

3.2 **Operating Services.** During the term of this Agreement, Manager shall operate and manage the Project in accordance with the terms and conditions of this Agreement. Manager shall provide the following operating services to the Estate Homesite Association with respect to the Project:

(a) **Licenses and Permits.** Manager, or its nominee, shall apply for, obtain and maintain, either in its own name or on behalf of the Estate Homesite Association or in the Estate Homesite Association's name, as may be required by the applicable authorities, all licenses and permits required for the Estate Homesite Association, in connection with the management and operation of the Project. The Board agrees to execute and deliver any and all applications and other documents and otherwise to cooperate to the fullest extent with Manager in applying for, obtaining and maintaining such licenses and permits. The cost of any licenses or permits shall be an operating expense of the Estate Homesite Association.

(b) **Utility Services.** To the extent not provided by the Master Association, Manager shall, on behalf of and at the expense of the Estate Homesite Association or the Owner, cause to be provided to the Project all utility services used or consumed in the Project, including, without limiting the generality of the foregoing, water, electricity, telephone, refuse collection, sewage disposal and, if available, cable television.

(c) **Compliance with Laws.** Manager agrees to operate the Project for the Estate Homesite Association in compliance with all applicable governmental laws, regulations, ordinances, orders and requirements. Manager agrees to do everything reasonable within its powers to operate the Project in accordance with the terms and conditions of the Declaration and in accordance with the requirements of any insurance carrier insuring the Project or any part thereof. The Estate Homesite Association or Manager, with the majority consent of the Board, shall have the right to contest any such governmental law, regulation, ordinance, order or requirement unless failure to comply promptly with any such order or requirement would or might expose either party to criminal liability or to substantial civil penalty unless the party affected thereby consents to such action.

(d) **Operating Supplies.** Manager shall, on behalf and at the expense of the Estate Homesite Association, purchase and maintain sufficient inventories of all items of personal property to be utilized in the operation of the Estate Homesite Association Property.

(e) **Investigation of Accidents.** Manager shall, on behalf of the Estate Homesite Association, and in cooperation with the managing agent of the Master Association promptly investigate all accidents within the Project, any damage or destruction to the Association Property (and the estimated cost of repair thereof) which are made known to Manager and make a full written report to the Board as to all material claims for damages relating thereto as such claims shall become known to Manager. Manager shall prepare for approval by the Board any and all reports required to be filed by any insurance company in connection therewith. All such reports shall be filed with the Board within twenty (20) days after the occurrence of, or Manager's knowledge of, any such accident, claim, damage or destruction. Manager is not authorized to settle for the Estate Homesite Association any claim for personal injury or property damage in excess of One Thousand Dollars (\$1,000) for any claim, without the prior written approval of the Board.

3.3 **Supervisory Services.** Manager shall develop, implement and supervise the application of sound administrative practices, operational policies, and personnel and purchasing programs consistent with the terms and provisions of this Agreement. Manager agrees to establish, implement and supervise for the Estate Homesite Association the accounting, inventory and cost control systems necessary for the efficient operation and maintenance of the Project, subject to and consistent with the Budget for the Operating Year.

3.4 **Administrative Services.** Not in limitation of the provisions of Paragraph 3.1, Manager shall provide the following services of an administrative nature:

(a) **Estate Homesite Association Meetings.** Manager shall organize the meetings of the Board and of the Estate Homesite Association, including the preparation and delivery of notices of meetings, in accordance with the provisions of the Bylaws. Manager shall prepare the agenda for all meetings

and assist in the conduct of the meetings and oversee the election of Directors. Manager shall circulate minutes of any such meeting as prepared by the Secretary of the Estate Homesite Association.

(b) **Estate Homesite Association Records.** Manager shall keep all records of the affairs of the Estate Homesite Association, including, but not limited to, minutes of meetings, correspondence, modifications of the Bylaws and the Estate Homesite Association Policies and Procedures.

(c) **Policies and Procedures.** Manager shall, from time to time, as necessary or desirable, recommend to the Estate Homesite Association that it amend, modify or supplement the Policies and Procedures.

(d) **Roster of Owners.** Manager shall annually compile a complete and accurate roster of Owners setting forth the name of each Owner and the mailing address of such Owner.

3.5 **Personnel Services.** Manager shall select, appoint and supervise an Estate Homesite Manager and such other personnel as may be required for the operation, maintenance and security of the Project, and shall supervise, through the Estate Homesite Manager, the selection, hiring and work of such personnel. The Estate Homesite Manager of the Project may also manage other projects. The Estate Homesite Manager and all personnel of the Project, in every instance, shall be employees of Manager and not of the Estate Homesite Association, which shall have no right to supervise or direct such employees. The decision in regard to any discharge of Estate Homesite Manager and any personnel shall be at the sole discretion of Manager. To the extent that such do not exceed wage rates approved by the Estate Homesite Association, the salaries and all additional costs of employment of such personnel shall be reimbursed to Manager and shall be an operating expense of the Estate Homesite Association. If required by a governmental authority, Manager and all employees of Manager who handle or are responsible for handling of the Estate Homesite Association's monies hereunder shall be covered as employees or agents under a blanket fidelity bond or similar insurance in favor of the Estate Homesite Association as more particularly set forth in subparagraph 3.7(b)(iii). The premiums for such bond or insurance shall be paid by the Estate Homesite Association.

3.6 **Financial Services.** Not in limitation of the provisions of Paragraph 3.1 above and subject to the supervision of the Estate Homesite Association, Manager shall provide the following services of a financial nature, at the expense of the Estate Homesite Association:

(a) **Budgets.** Manager shall, not less than ninety (90) days prior to the end of the first Fiscal Year and each succeeding Fiscal Year thereafter, prepare and submit to the Board for approval, a budget meeting the requirements of the Declaration. Each budget approved by the Board is called the "Budget." Manager shall distribute or cause to be distributed a copy of the Budget to all Owners at the time required by the Declaration which Budget must include the following:

- (i) The estimated revenue and expenses on an accrual basis;
- (ii) The identification of the total current cash reserves;
- (iii) The identification of the estimated remaining life and the method of funding each reserve component identified in the Budget as an item for which Reserve Expenses are collected; and
- (iv) A general statement addressing the procedures used for calculating and establishing the Reserve Expenses.

(b) **Special Assessments.** Manager shall determine whether or not a Special Assessment or Emergency Assessment may be required from time to time and, promptly upon making a determination that such Special Assessment or Emergency Assessment is required, shall submit a recommendation to the Board that such an assessment be levied.

(c) **Collection of Assessments.** Manager shall collect the Assessments on behalf of the Estate Homesite Association and enforce payment of Assessments as follows:

- (i) Manager shall cause to be prepared and mailed to all Owners periodic statements setting forth the amount of all Assessments then due from each Owner; and
- (ii) Manager shall cause to be prepared and mailed to any delinquent Owner a notice of delinquency and shall use its best efforts lawfully to collect delinquent Assessments as provided in the Declaration.

(d) **Bank Accounts.** Manager shall establish and maintain the bank accounts provided for in the Declaration and shall deposit or invest funds collected from Owners and all other amounts collected by Manager in connection with the performance of its duties hereunder in the accounts designated for such purpose as set forth in the Declaration. The Manager shall keep accurate books and records reflecting the amount of such accounts attributable to each Owner.

(e) **Disbursements.** Manager shall disburse from the bank accounts of the Estate Homesite Association any and all amounts required for the payment of all Association expenses incurred

consistent with the applicable Budget and as otherwise permitted by the Declaration. All Reserve Account disbursements must have the prior approval of the Board, except for instances of an emergency nature which make it impractical or unfeasible to obtain such authorization prior to remedial action.

(f) **Financial Statements.** Manager shall, within the time required by the Declaration and in accordance with the requirements therein, prepare and distribute Annual Reports.

(g) **Books and Records.** Manager shall keep and maintain or cause to be kept and maintained full and adequate books and records reflecting the results of operation of the Project in accordance with the accounting principles utilized by the Estate Homesite Association. The books of accounts and other records relating to the operation of the Project shall be available to the Estate Homesite Association and the Members at all reasonable times for examination, inspection and transcription, all as provided in the Declaration.

(h) **Statements of Status.** Manager shall prepare the Statements of Status and shall distribute copies of such Project documents as may be required to be delivered to an Owner as provided for in the Declaration.

3.7 **Physical Services.** Not in limitation of the provisions of Paragraph 3.1 above, Manager shall provide the following services of a physical nature:

(a) **Inspections.** Manager shall make regular inspections of the Project and render reports and make recommendations concerning the Project to the Board.

(b) **Association Insurance.** Manager shall at the sole cost and expense of the Estate Homesite Association, procure and keep in force all insurance and/or bonds required by the provisions of the Declaration. Manager shall administer all such insurance and claims under such insurance policies. Such insurance shall include, but shall not be limited to:

(i) A policy of insurance showing the Estate Homesite Association as the named insured, and Manager as an additional insured, evidencing that the Estate Homesite Association is insured under the Worker's Compensation Law and is in compliance with any unemployment security provisions for employees and all other requirements of the laws of the State of Oregon;

(ii) If required by a governmental authority, a policy or policies of insurance showing the Estate Homesite Association as the named insured, and covering Manager and its employees as employees or agents of the Estate Homesite Association, evidencing that the Estate Homesite Association is insured against loss against embezzlement, misappropriation and misapplication of funds by the employees retained by Manager.

(iii) If required by law or available at a reasonable cost, as determined in the discretion of the Board, Directors and Officers Liability Insurance.

All such policies shall provide that the same shall not be canceled except upon thirty (30) days prior written notice to both the Estate Homesite Association and Manager.

(c) **Repair and Maintenance.** Manager shall cause the Estate Homesite Association Property to be repaired, maintained, rehabilitated and/or refurbished in accordance with the provisions of the Declaration and in the manner consistent with the reserves established for such purpose.

3.8 **All Other Acts.** Manager shall, at the Estate Homesite Association's expense, perform all such other and further acts and things to be done in and about the Project as may be appropriate or necessary to the efficient operation thereof, except for the obligations of the Estate Homesite Association set forth in Article IV and subject to the limitations upon the powers of Manager as set forth in Section 3.9. Manager shall coordinate its responsibilities and activities hereunder with the managing agent(s) for the Eagle Crest Master Association so as to provide for the efficient operation and management of the Planned Community as a whole.

3.9 **Limitations on Powers of Manager.** Notwithstanding the powers of Manager as set forth in Paragraph 3.1 through 3.8, the Manager shall not:

(a) Enter into a contract with a third person or entity whereby such person or entity will furnish goods or services to the Project for a term longer than one year unless authorized by a Majority of Non-Declarant Owners, except for:

(i) A contract with a public utility company at the rates charged for the materials or services regulated by the Public Utilities Commission, State of Oregon; provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate;

(ii) prepaid casualty and/or liability insurance policies not to exceed three (3) year's duration; provided, however, that the policy permits short rate cancellation by the insured; and

(iii) A lease of furniture or equipment for the benefit of the Members.

(b) Enter into any contract in the name of the Estate Homesite Association for goods or services not contemplated by the Budget for the current Fiscal Year or for amounts in excess of those specified in such Budget, unless the Board shall consent thereto in writing.

(c) In order to provide systematic and equitable rules and procedures governing the manner in which the Owners may use and occupy the Project, and in order to assure that the Project remains at all times a viable and attractive project, the Board has the right to promulgate and amend reasonable Policies and Procedures governing the use and enjoyment of the Project. Manager agrees to perform its duties and obligations hereunder consistent with and in furtherance of the Policies and Procedures as in force from time to time.

3.10 **Indemnification.** Manager will indemnify and defend the Estate Homesite Association against any claims of third persons including costs and expenses incident thereto, by reason of the negligence, willful misconduct, or breach of this Agreement by Manager or its officers, employees, agents or representatives.

ARTICLE IV

OBLIGATIONS AND CONVENANTS OF THE ESTATE LOT ASSOCIATION

4.1 **Management Fee.** As compensation for the services to be rendered by Manager hereunder, and in addition to (i) the reimbursement to Manager or payment by the Estate Homesite Association for expenses as herein provided, and (ii) payment to Manager for services pursuant to Section 3.6, the Estate Homesite Association shall pay Manager for each Operating Year, at its principal office (or at such other place, if any, as Manager may from time to time designate by written Notice to the Board), a management fee equal to six percent (6%) of the estimated annual operating expenses of the Estate Homesite Association exclusive of Manager's compensation and property taxes. The management fee shall be payable in monthly installments on or before the tenth (10th) day of each month for the preceding month. Manager is hereby authorized to pay itself its management fee out of the general/operating account of the Estate Homesite Association. All unpaid portions of the management fee shall bear interest at the maximum rate permitted by law from the date such management fee becomes due until fully paid.

4.2 **Cooperation with Manager.** The Board shall furnish Manager with copies of all documents and Notices which may assist or be necessary to Manager in carrying out its duties hereunder, and shall furnish Manager with sufficient instructions and funds to enable Manager to perform all of the acts required of Manager under the provisions of this Agreement.

4.3 **Roster of Owners.** The Estate Homesite Association shall provide to Manager, a true, complete and current roster of the Owners for Manager's use. The roster shall identify each Owner. The Estate Homesite Association shall at its discretion, notify the Manager in writing of the name(s) of any Owner(s) not in good standing.

4.4 **Indemnification.** The Estate Homesite Association will indemnify Manager against any claims of third persons, including costs and expenses incident thereto by reason of the negligence, willful misconduct or breach of this Agreement by the Estate Homesite Association or those of its employees, agents or representatives, who are not employees, agents or representatives of Manager.

4.5 **Employees.** The salary and other related expenses (including, without limitation, payroll taxes and the cost of employee benefits) or other compensations for any employee of the Manager hired solely and exclusively for assignment pursuant to Manager's responsibilities under this Agreement shall, subject to the limitations of Section 3.5, be an expense of the Estate Homesite Association though paid by Manager, and Manager shall be entitled to reimburse itself from funds of the Estate Homesite Association on a monthly basis for such expenditure, which reimbursement shall be in addition to and separate from the compensation paid to Manager pursuant to Paragraph 4.1, above.

4.6 **Advances and Reimbursements.** Manager shall not be required to perform any act or duty hereunder involving an expenditure of money unless there shall be sufficient funds therefor in the bank accounts of the Estate Homesite Association; if at any time the funds in the bank accounts of the Estate Homesite Association are not sufficient to pay the charges incident to this Agreement, Manager, although not obligated to do so, may advance such sums as it deems necessary, and in such event, Manager shall be entitled to reimburse itself from Association funds for the amount of such advances, together with interest at the rate of ten percent (10%) per annum commencing from and after twenty (20) days from the date of the advance by Manager.

4.7 **Discounts.** All discounts, rebates or commissions or like items shall inure to the benefit of the Estate Homesite Association.

4.8 **Single Contracts.** Manager may enter into single or consolidated contracts for operation and maintenance services covering the Project and other projects which may be managed by the Manager, provided that (a) the amount payable by the Estate Homesite Association pursuant thereto shall not exceed the amount for such items set forth in the Budget for such Fiscal Year, and (b) such contracts provide that the persons or entities with whom such contracts are made shall have no claim against the Estate Homesite Association for any amount whatsoever in excess of the amount for such service as is set forth in the Budget for such Fiscal Year, or for services performed with respect to property other than Estate Homesite Association Property.

ARTICLE V GENERAL PROVISIONS

5.1 **Arbitration.** In the event any controversy or claim arising out of this Agreement cannot be settled by the parties or their legal representatives, such controversy or claim shall be settled by arbitration in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association at its Portland, Oregon office. Judgment upon the award may be entered in any court having jurisdiction thereof.

5.2 **Assignment.** Manager shall not assign this Agreement without the prior written consent of the Board. It is understood and agreed that any consent granted by the Board to any such assignment shall not be deemed a waiver of the covenant herein contained against assignment in any subsequent case.

5.3 **Attorney's Fees.** If either party commences an action (including, but not limited to, a demand for arbitration) against the other to enforce any of the terms of this Agreement or because of the breach of either party of any of the terms hereof, the losing or defaulting party shall pay to the prevailing party reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such action. In the event that both parties prevail on various issues in such action, the prevailing party for purposes of this Section shall be the one entitled to the net award thereof.

5.4 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which when taken together shall constitute a single document.

5.5 **Entire Agreement.** This Agreement contains all of the covenants and agreements of the parties hereto with respect to the matters contained herein. No prior agreement or understanding pertaining to any such matter shall be effective for any purpose.

5.6 **Governing Law.** This Agreement is made and shall be construed and interpreted in accordance with the laws of the State of Oregon.

5.7 **Headings.** The article and section headings contained herein are for convenience and reference only and are not intended to define, limit or describe the scope or intent of any provision of this Agreement. This Agreement shall be given a fair and reasonable construction in accordance with the intentions of the parties.

5.8 **Notices.** Any Notice shall, unless otherwise specified, be in writing, sent by telegram or telex or by certified first-class mail, postage prepaid, return receipt requested to the following addresses:

To the Estate Homesite Association: Eagle Crest Estate
Homesite Association
P.O. Box 964
Redmond, Oregon 97756
Attn: President

To Manager: Country Club Management, Inc.
P.O. Box 931
Redmond, Oregon 97756

Notice shall be deemed sufficiently given either when delivered personally at the appropriate addresses set forth above (in which event, the Notice shall be deemed effective only upon such delivery) or forty-eight (48) hours after deposit of same in any United States Post Office mail box in the state to which the notice is addressed or seventy-two (72) hours after deposit in any such mail box other than in the state to which the Notice is addressed, postage prepaid, addressed as set forth above. Either party to this Agreement may change its address by giving the other party Notice of its new address as herein provided.

5.9 **Partnership or Joint Venture.** Nothing contained in this Agreement shall constitute or be construed to be or create a partnership or joint venture between the Estate Homesite Association and Manager.

5.10 **Severability.** The provisions of this Agreement shall be deemed independent and severable, and

the invalidity, partial invalidity or unenforceability of any provision shall not invalidate any other provisions.

5.11 **Successors and Assigns.** Subject to Paragraph 5.2, above, this Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective representatives, successors and permitted assigns.

5.12 **Waiver.** No waiver of any breach of any of the provisions of this Agreement shall constitute a waiver of any succeeding or preceding breach of the same, or of any other, provision contained herein.

5.13 **Merger.** All understandings and agreements heretofore had between the parties respecting the employment contemplated by this Agreement are merged by this Agreement which fully and completely expresses the agreement of the parties. There are no agreements except as specifically set forth in this Agreement or to be set forth in the instruments of other documents delivered or to be delivered hereunder.

5.14 **Amendments.** No change in or addition to, or waiver or termination of this Agreement or any part hereof shall be valid unless in writing and signed by or on behalf of each of the parties hereto.

5.15 **Warranties.** The Estate Homesite Association represents and warrants that it is a validly organized corporation with full power and authority to enter into this Agreement and to carry out the transactions herein contemplated, and that the undersigned officers of the Estate Homesite Association have all necessary authority to execute this Agreement. Manager represents and warrants that it is a validly organized corporation with full power and authority to enter into this Agreement and to carry out the transactions contemplated herein. Manager further represents and warrants that it is duly qualified to do business and is in good standing in the State of Oregon. The undersigned officers of Manager have all necessary authority to execute this Agreement on behalf of Manager.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers as of the date first written above.

Association:

EAGLE CREST ESTATE HOMESITE ASSOCIATION,
an Oregon non-profit corporation

By: /s/ William D. Lyche
Its President

By: /s/ Karen L. Smith
Its Secretary

Manager: Country Club Management, Inc.
an Oregon corporation

By: /s/ William D. Lyche
Its President