

90-17810

## RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS

FOR

## ALBERELLO AT SUNRIVER

THIS RESTATED DECLARATION is adopted by the Lot Owners of ALBERELLO, a planned unit development at Sunriver, Oregon.

## RECITALS:

The Declaration of Conditions and Restrictions Relating to Alberello at Sunriver, Oregon (the "Original Declaration") and the Plat of Alberello were recorded in the Deed Records of Deschutes County, Oregon, on the 3rd day of May, 1983, and the 21st day of December, 1989, respectively.

The Owners of Alberello Homeowners' Association desire to amend and restate the Original Declaration and intend that the terms and provisions of the Restated Declaration shall wholly replace and supersede those of the Original Declaration.

NOW, THEREFORE, this Restated Declaration is adopted by the Owners of Lots in Alberello and shall replace and wholly supersede the Original Declaration.

## ARTICLE I

DEFINITIONS

Section 1. "Alberello" shall mean and refer to all of the property and its developed status as a planned community.

Section 2. "Articles" shall mean and refer to the Articles of Incorporation for the non-profit corporation, Alberello Homeowners' Association, Inc., as filed with the Oregon Corporation Division on or about July 17, 1974, and as may be amended from time to time.

Section 3. "Association" shall mean and refer to Alberello Homeowners' Association, Inc., its successors and assigns.

Section 4. "Board" shall mean and refer to the Board of Directors elected by the members pursuant to the provisions of the Bylaws.

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Section 5. "Bylaws" shall mean and refer to the Restated Bylaws, as may be amended from time to time.

Section 6. "Common Property" shall mean and refer to that area of land shown on the recorded plat of the Property, including any improvements thereon, which are intended to be devoted to the common use and enjoyment of the members and have been conveyed to the Association.

Section 7. "Declaration" shall mean and refer to these Restated Covenants, Restrictions, and all other provisions set forth in this Restated Declaration of Covenants and Restrictions for Alberello.

Section 8. "Living Unit" shall mean and refer to any portion of a structure situated upon the Property designed and intended for use and occupancy as a single-family residence or second home.

Section 9. "Lot" shall mean and refer to each and any of Lots 1 through 26 of Alberello. Provided, however, that "Lot" shall not include any lot depicted on any plat of the Property which is designated for use as Common Property on such plat or in the Declaration.

Section 10. "Occupant" shall mean and refer to the occupant of a living unit who shall be either the owner, lessee or any other person authorized by the owner to occupy the premises.

Section 11. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot or a purchaser in possession under a land sale contract. The foregoing does not include persons or entities who hold an interest in any Lot merely as security for the performance of an obligation.

Section 12. "Property" shall mean and refer to all real property, including Lots 1 through 26, the Common Property and all improvements located on the real property subject to this Declaration, as more particularly set forth on Exhibit "A" hereto attached.

Section 13. "Rules and Regulations" shall mean and refer to the documents containing rules and regulations and policies adopted by the Board of Directors of the Association or the Architectural Review Board as may be from time to time amended.

Section 14. "SROA" shall mean and refer to the Sunriver Owners Association.

## ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located at Sunriver, in Deschutes County, Oregon, and consists of Lots 1 through 26 and the Common Property of Alberello, which is collectively described in Exhibit "A" hereto attached.

## ARTICLE III

GENERAL PLAN OF DEVELOPMENT

Section 1. Lots. The Property has been platted into 26 Lots surrounded by Common Property.

Section 2. Ownership of Common Property. Title to that portion of the Property designated as Common Property on the plat and described in Exhibit "B" hereto attached shall be held by the Association. In the event the Common Property is ever assessed for property tax purposes separately from the Lots, the Association, by and through its Board, shall take such steps as may be necessary to assess all Owners equally for their share of such taxes and to pay such property taxes on a current basis.

## ARTICLE IV

USE RESTRICTIONS AND ARCHITECTURAL CONTROLSSection 1. General.

(a) Governmental Restrictions. All uses, occupancy, construction and other activities conducted on any Lot shall conform with and be subject to applicable zoning, use restrictions, setback requirements, construction and building codes of all local, state and federal public authorities.

(b) Outdoor Storage. No outdoor storage of recreational vehicles, trailers or boats shall be allowed on the Common Property or outdoors on any Lot. Such recreational vehicles, trailer or boats may be stored only in enclosed garages or in such areas as may be designated for such parking by the Board, and further shall be done in a manner which complies with the Consolidated Plan of Sunriver. Provided, however, recreational vehicles and equipment may be temporarily parked in appropriate areas on driveways and parking

portions of the Common Property for purposes of loading, unloading, and cleaning for a period not to exceed 24 hours.

(c) Garages. No garage shall be used for any purpose other than indoor storage of automobiles, recreational vehicles, trailers, boats, a reasonable quantity of safe personal property and material and, subject to approval by the Board of Directors, such hobbies as are not generally unsightly, odorous, noisy or otherwise obtrusive, and which are carried on in a manner that does not interfere with the use and enjoyment by other owners of the Common Property and their homes. The Board of Directors may subsequently revoke permission to conduct a hobby in a garage on any reasonable grounds.

(d) Division. No Owner shall have the right to divide any Lot.

Section 2. Residential and Vacation Home Use. All Lots and Living Units shall be used for residential and vacation home purposes only. No transient rental, commercial, retail or industrial use shall be allowed on any Lot or in any Living unit.

Section 3. Exterior Improvements. No Owner shall construct or place any structure, material, planting, equipment or any object of any kind on any portion of the Common Property.

Section 4. Exterior Maintenance, Repair and Replacement.

(a) Association Responsibilities. From the reserve account established for such purposes, the Association shall maintain, paint, stain, resurface, repair and replace the exterior of Living Units, including without limitation, the siding, trim, rain gutters, roofs, chimneys, deck walls, porch, stair, and balcony railings, but not including the windows, window frames, doors, door frames, and door jambs, (excepting for the painting of these excluded items). The Association shall perform all maintenance, planting, pruning, mowing and cleaning of all lawns and landscaping on the Property, including, without limitation, all landscaping and lawns on Owners' Lots, excluding only so much of the same as is completely enclosed by a fence or courtyard on Owners' Lots. Provided, however, that the removal or relocation of any fence on any Lot shall not require the Association to assume responsibility for the maintenance of any additional area on such Lot until the Owner of such Lot has restored such area to a condition comparable to that of other Lots and until the Board formally accepts the responsibility.

(b) Owner Responsibilities. Each Owner shall perform all maintenance, repair and replacement of the interior of such Owner's Living Unit and all windows, window frames, doors, door frames, door jambs and walking surfaces of all courtyards, patios and balconies, and shall perform all maintenance, planting, pruning, mowing and cleaning of all lawns and landscaping on such Owner's Lot within areas enclosed by a fence or courtyard. Provided, however, the Association shall be responsible for the painting or staining of all window frames, doors, door frames and door jambs. Each Owner shall be responsible for the maintenance, repair and replacement of any improvements or materials located within the area on such Owner's Lot enclosed by a courtyard or fence. Each Owner shall be responsible for the maintenance, repair and replacement of sanitary sewer lines, water lines, electricity supply lines, telephone cables and the like within and under an Owner's Living Unit and within or under an Owner's courtyard.

Section 5. Domestic Animals. No poultry, fowl, livestock, horses or other animals shall be kept on any Lot, except that the Owner of each Lot may keep not more than two pets, only dogs or cats, which shall be confined to enclosed areas on such Owner's Lot or shall be kept on a leash in the Owner's presence. Additionally, owners of pets shall abide by all applicable leash laws and sanitary regulations and the pet rules and regulations established by SROA. Dogs and cats shall not be kept, bred or raised for commercial purposes. The Board shall have the right to require any Owner to remove any pet that is a nuisance or that disturbs the right of occupants of the Property to the quiet enjoyment of the Property. Any dispute arising out of this Section shall be decided by a majority of the Board. Any decision of the Board on this matter shall be binding upon the member or members affected.

Section 6. Underground Utilities. No outdoor overhead wire or service drop for the distribution of electric energy or for telecommunication purposes nor any pole, antennae, satellite receiving dish, tower or other structure for independent reception, transmission or support of any of the above shall be erected, placed or maintained within the Property. All such installations shall be underground.

Section 7. Trash Collection and Storage. No trash or unsightly material shall be dumped or stored upon any Lot or any of the Common Property. All trash and trash cans shall be kept in garages or concealed behind such structures as may properly be built pursuant to this Declaration, and may be left outdoors only for the period reasonably required for collection and removal.

Section 8. Leases. Each Owner shall have the right to lease his Lot and the improvements thereon for a period of not less than sixty (60) days. All such leases shall be in writing and shall be deemed to provide that their terms shall be subject in all respects to the provisions of this Declaration and the Articles of Incorporation and Bylaws of the Association, and that any failure by the lessee to comply with the provisions of this Declaration, the Articles and Bylaws shall constitute a default under said lease. The lessee's use and enjoyment of the Common Property under such lease shall be subject to suspension by the Board for any of the causes set forth elsewhere in this Declaration, including, without limitation, the nonpayment of assessments with respect to the Lot occupied by the lessee. Any such lessee shall be entitled to the use and enjoyment of the Common Property; provided, an owner may not sever the right to the use and enjoyment of the Common property from the right to occupy his Lot and the improvements thereon by means of lease or otherwise. For purposes of this Section, the term "lease" includes, without limitation, a month-to-month rental agreement.

Section 9. Architectural Review Board.

(a) Composition. The Board of Directors shall serve also as an Architectural Review Board. A quorum for the Architectural Review Board action shall be a majority of its members.

(b) Duties. It shall be the duty of the Architectural Review Board to regulate the external design, appearance, location and maintenance of all the Property and of improvements thereon, whether on a Lot or Common Property, and to regulate use of such Property as described in this Declaration. The Architectural Review Board shall adopt general rules to implement the purposes and interpret the covenants of this Article, including, but not limited to, rules not less restrictive than those contained in this Declaration to regulate animals and tenants, storage and use of recreational vehicles, storage and use of machinery, use of outdoor drying lines, trash containers, planting, maintenance and removal of vegetation on the Property.

(c) Approval Required. No outbuilding, fence, wall or other structure of any type shall be commenced, erected or maintained upon the property, nor shall any exterior addition to, change in, painting or staining of, or alteration to any Living Unit, outbuilding, fence, wall, or other structure on the Property of any type be made until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and

approved in writing by the Architectural Review Board as to the harmony of external design, materials, colors and location in relation to surrounding structures and topography.

(d) Procedure. An Owner wishing to take any action requiring approval under this Article shall give notice of such proposed action to the Architectural Review Board, together with complete plans and specifications therefor. The Architectural Review Board shall meet to review the Owner's request within thirty (30) days of receipt and shall render a decision by the vote of a majority of Board Members present within forty-five (45) days of receipt. Interested Owners shall have an opportunity to comment on the request at all such meetings, which shall be open to all Owners. If the Architectural Review Board fails to render a written decision within the time allowed, the request shall be deemed to be approved.

(e) Appeal. The decision of the Architectural Review Board under this Article (including any failure to approve or disapprove within the time allowed) shall be subject to appeal by any Interested Owner as set forth in this Article. Upon the payment of a reasonable fee established by the Architectural Review Board to cover administrative costs not to exceed Two Hundred Fifty Dollars (\$250), any Interested Owner may appeal the decision of the Architectural Review Board to the Association members. The appeal shall be made in writing and shall be filed with the Secretary of the Association within thirty (30) days of the decision of the Architectural Review Board. The Board of Directors shall call a special or ballot meeting to be held after ten (10) days notice and within thirty (30) days after the appeal has been filed with the Secretary of the Association. It shall require a vote of at least a majority of the votes held by the Owners to reverse or modify the decision of the Architectural Review Board.

(f) Exemptions. The planting of any trees, shrubs, flowers or plants by an owner within an enclosed courtyard or fenced area on such owner's lot shall be exempt from the provisions of this Section 9.

(g) Fence Standards. Any fences permitted to be constructed pursuant to this Section 9 shall be no less than five (5) feet and no more than six (6) feet high, and shall be constructed with perma-treated posts set in concrete.

(h) Delegation. The Board of Directors may delegate the duties of the Architectural Review Board to a committee appointed by the Board composed of not less than five (5) Owners.

Section 10. Party Walls.

(a) General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Living Units or as a part of reconstruction pursuant to Article IX of this Declaration upon the Property which divides Living Units, and which is placed on the dividing line between the Lots, shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls shall apply thereto.

(b) Sharing of Repair and Maintenance. The cost of repair and maintenance of a party wall shall be shared equally by the Owners whose Living Units are divided by such wall.

(c) Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, the provisions of Article IX of this Declaration shall apply with regard to repair or reconstruction of such wall.

(d) Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(e) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owners' successors in title.

(f) Arbitration. In the event of any dispute arising concerning a party wall, or concerning the obligations of the Owners or the Association pursuant to the provisions of this Article, each party shall choose one (1) arbitrator, and the arbitrators so chosen shall choose one (1) additional arbitrator, and the dispute shall be resolved by a majority of all the arbitrators.

ARTICLE V  
COMMON PROPERTY



Section 1. Obligations of the Association. Subject to the rights of Owners set forth in this Declaration, the Association shall be responsible for the exclusive management and control of the Common Property and any improvements thereon, and shall keep the same in good, clean, attractive and sanitary condition, order and repair, including, but not limited to, the removal of snow, trash and debris, the maintenance, cleaning and repair of the streets, parking areas, landscaped and unlandscaped land located on the Common Property. This obligation shall include, without limitation, the obligation to maintain, repair and replace the sanitary and storm sewer systems and other private utilities located on or forming a part of the Common Property, as well as those located on Lots up to the boundaries of Owners' Living Units or up to the structures enclosing Owners' courtyards on such Lots. Owners shall be responsible for the maintenance, repair and replacement of sanitary sewer lines, water lines, electricity supply lines, telephone cables and the like within and under such Owners' Living Units and within and under any enclosed courtyard. The Association's obligation shall also include, without limitation, the maintenance and repair of any dry wells located on Common Property and any lakes and ponds, including outflow structures, located thereon.

Section 2. Members' Easement of Enjoyment. Subject to the provisions of this Declaration, the Bylaws, and Rules and Regulations of the Association, every Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Property, which shall be appurtenant to and shall pass with the title to every Lot.

Section 3. Extent of Members' Easements. The members' easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association to establish reasonable rules and to charge reasonable assessments and fees for capital expenditures on the Common Property and the maintenance and upkeep of the Common Property and payment of all Association expenses.

(b) The right of the Association to suspend the right of an Owner or any occupant of a Lot to use the Common Property and facilities for any period during which any assessment against such Owner or occupant's Lot remains unpaid for more than thirty (30) days after notice of such nonpayment; the right of the Association to suspend the right of a member to use any Common Property for a period not to exceed sixty (60) days for any other infraction of the Declaration, Bylaws or the Rules and Regulations of the Association. Provided, however,

that no such suspension pursuant to this subsection 3(b) shall deprive an Owner of access to his Lot.

(c) The right of the Association to dedicate or transfer any portion of the Common Property to any public agency, authority or utility for such purpose or create utility easements under, over and through the Common Property, and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless approved by eighty percent (80%) of the votes of all members and, except as to the grant of easements for utilities and similar or related purposes, unless fifty percent (50%) of first mortgagees on any of the Lots or improvements thereon have approved such dedication or transfer.

Section 4. Delegation of Use. Any Owner may delegate his right of enjoyment to the Common Property and facilities to the members of the Owner's family and to a reasonable number of guests subject to general regulations as may be established from time to time by the Association and included within the Book of Resolutions.

Section 5. Damage or Destruction of Common Area by Owner. In the event any Common Property is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents or members of his family in a manner that would subject such Owner to liability for such damage under Oregon law, such Owner does hereby authorize the Association to repair such damage; the Association shall repair damages in a good and workmanlike manner as originally constituted or as the area may be modified or altered subsequently by the Association in the discretion of the Association. The reasonable cost necessary for such repairs shall become a special assessment upon the Lot of the Owner who caused or is otherwise responsible for such damage.

#### ARTICLE VI

##### COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay the Association (1) regular assessments or charges for common expenses, and (2) special assessments to make up any deficit in common expenses for a prior period or special assessments for purposes of deferred maintenance or replacement of any elements of the Common Property.

All such assessments, together with interest thereon at the rate established from time to time by resolution of the Board of Directors and together with all other costs, fees, charges and fines allowed by law, shall be a lien and charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Such lien shall exist and be executed, recorded and foreclosed in the manner provided by law.

Section 2. General Assessments.

(a) Purpose of Assessments. The assessments levied under this Article shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the Property, and for the improvement and maintenance of such Property, including payment of premiums for insurance required under this Declaration and replacement reserve allocations to create a fund for the maintenance, replacement and repair of improvements to the Common Property, and for payment of any common operating expenses such as landscaping, maintenance, Association water, sewer and garbage collection, management services, legal and accounting services and the like. Neither the Association, nor any assessments of the Owners shall be used to engage in lobbying or to exert political influence.

(b) Method of Assessment. By a vote of two-thirds (2/3) of the Directors voting on the issue, the Board shall determine the annual assessment upon the basis provided above, provided, however, the annual assessment shall be sufficient to meet the obligations imposed by the Declaration. The budget shall be presented to the Association and may be amended by a majority of the votes held by the members. Both annual and special assessments must be fixed at a uniform rate for all Lots. The Board shall set the date(s) such assessment shall become due. The Board may provide for collection of assessments annually or in monthly, quarterly or semi-annual installments; provided, however, upon the default in the payment of any one or more installments, the entire balance of such assessment may be accelerated at the option of the Board and be declared due and payable in full, together with interest and attorneys' fees and costs as herein-after provided.

Section 3. Common Property Reserve Account. The assessment against each Lot, regardless of whether it has been improved with a substantially complete Living Unit, shall include an amount allocated to a reserve account established for the purpose of funding replacements of those elements of the Common Property that will normally require replacement, in whole or in part, in more

than three (3) and less than thirty (30) years. Amounts assessed with respect to reserves shall take into account the estimated remaining life of the items for which the reserve is created and the current replacement cost of such items. The assessments pursuant to this section shall accrue from the date of conveyance of the first Lot in the Property. The Declarant, at the Declarant's option, may defer payment of the accrued assessments for a Lot pursuant to this section until the date the Lot is conveyed to an Owner other than the Declarant, at which time such accrued assessments shall be paid to the Association. The Declarant may require the Owner to whom such Lot is conveyed to reimburse the Declarant for such portion of the assessment.

Section 4. Living Unit Reserve Account. The assessment against each Lot that has been improved with a substantially completed Living Unit shall include an amount allocated to a reserve account established for the purpose of maintaining, repairing and replacing those exterior portions of all Living Units described in Article IV, Section 4.(a) which normally will require painting, staining or replacing in more than three (3) and less than thirty (30) years. Amounts assessed with respect to reserves shall take into account the estimated remaining life of the items for which the reserves are established and the current replacement cost of such items. The assessment under this section shall accrue from the date a Lot is improved with a substantially completed Living Unit. The Declarant, at the Declarant's option, may defer accrued assessments under this section until the Lot is conveyed to an Owner other than the Declarant, at which time such accrued assessments shall be paid to the Association. The Declarant may require the Owner to whom such Lot is conveyed to reimburse the Declarant for this portion of the assessment.

Section 5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Property, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Owners who are voting in person or by proxy at a meeting duly called for this purpose.

Section 6. Effect of Non-Payment of Assessments; Remedies of the Association. In addition to any other remedies provided by law, the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose a lien upon the Property. No such action or a judgment entered therein shall be a waiver of the lien of the Association. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Property or abandonment of his Lot.

Section 7. Subordination of the Lien to Mortgages. The lien with respect to any assessment provided for herein shall be prior to any homestead exemption and all other liens and encumbrances on a Lot, except:

- (a) A first mortgage of record; and
- (b) A lien for real estate taxes and other governmental assessments or charges; and
- (c) Liens and encumbrances recorded before the recordation of this Declaration.

Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments which became due prior to such sale or transfer.

#### ARTICLE VII

##### ASSOCIATION'S EASEMENTS

There is hereby described a blanket easement in favor of the Association with respect to all Lots on the Property for the purpose of maintaining, repairing and replacing sewer and water lines located on the Lots. It shall be the obligation of the Association to maintain, repair and replace sewer and water lines from the main line serving Alberello up to the building courtyard boundary adjoining foundation of the Owner's Living Unit.

The easement herein reserved shall include the right to store materials on the Common Property at such places and for such periods as may be reasonably required to effect the purposes for which this easement is reserved.

#### ARTICLE VIII

##### CONDEMNATION OF COMMON PROPERTY

In the event that all or any portion of the Common Property is appropriated as the result of condemnation or threat or imminence thereof, the following rules and guidelines shall apply:

Section 1. Representation by Association. The Board of the Association shall have the right and duty to represent each of the Owners for the purpose of negotiating and contesting, if it deems so doing to be necessary or appropriate, any condemnation award offered by the condemning authority in question and may authorize

expenditures and assessments to retain adequate counsel or other experts for such purposes.

Section 2. Allocation of Condemnation Award. The Board of the Association shall allocate and distribute any condemnation award received by it with respect to the Common Property to the Owners in proportion to the diminution in fair market value incurred by them with respect to their respective Lots and improvements as a result of said condemnation.

Section 3. Arbitration. In the event of any controversy by, among or between any Owner or Owners and the Board arising under this Section, each of the disputing parties shall choose one (1) arbitrator and such arbitrators shall choose one (1) additional arbitrator. The three (3) arbitrators shall resolve the controversy by majority vote and said decision shall be final, binding and unappealable upon the disputing parties. Any action or decision of the Board pursuant to this Section shall carry a rebuttable presumption or correctness for purposes of arbitration pursuant to this Section. The disputing parties each shall pay all the fees and expenses of the arbitrator designated by each of them and shall pay equally all fees and expenses of the third arbitrator. The disputing parties each shall pay their own expenses in connection with the arbitration.

Section 4. Retention of Rights. No provision of this Section shall be construed as negating the right of the individual Owners to such incidental relief as the law may provide as a result of the condemnation of the Common Property.

#### ARTICLE IX

##### DAMAGE AND DESTRUCTION

Section 1. Insurance Proceeds Sufficient to Cover Loss. In case of fire, casualty or any other damage and destruction, the insurance proceeds of the master policy, if sufficient to reconstruct the damaged or destroyed building, shall be applied to such reconstruction which shall commence within one hundred twenty (120) days of such damage, or as soon thereafter as proceeds are available. Reconstruction of the damaged or destroyed building, as used in this paragraph, means restoring the building to substantially the same condition in which it existed prior to the fire, casualty or disaster, with each Living Unit and the Common Property having the same boundaries as before. Such reconstruction shall be accomplished under the direction of the Board.

Section 2. Insurance Proceeds Insufficient to Cover Loss. If the insurance proceeds are insufficient to reconstruct a damaged or destroyed building, the damage to, or destruction of, such building

shall be promptly repaired and restored under supervision of the Board, using the proceeds of insurance, if any, on the building for that purpose and all the Owners shall be liable for assessment for any deficiency for such reconstruction, such deficiency to take into consideration as the Owner's contribution any individual policy insurance proceeds provided by such Owner. Such reconstruction shall commence within one hundred twenty (120) days of such damage, or as soon thereafter as proceeds are available.

Section 3. Architectural Changes After Damage or Destruction. Notwithstanding all other provisions hereof, the Owners may, by an affirmative vote of the Owners cause an amendment to be made to the Declaration and Bylaws so as to facilitate architectural changes that the Owners affected thereby and the Association deem desirable if, and only if, the partial or total destruction of the Property by fire, casualty or any other disaster is so great as to require the substantial reconstruction of the whole of the building. Any such amendment of the Declaration and Bylaws shall be valid only upon (i) the recording thereof with the appropriate officer of Deschutes County; and (ii) the recording with that recording officer of the approval thereof of each mortgagee and each other lienholder of record having a lien against any part of the project, or building, affected by such amendment.

Section 4. Authority. The Board shall have the authority to delay repair or reconstruction of a Living Unit, or any portion thereof, that has suffered damage until it has reasonable assurance that insurance proceeds and owner assessments will be available in sufficient amounts to complete such repairs or reconstruction.

#### ARTICLE X

##### GENERAL PROVISIONS

Section 1. Records. The Board of Directors shall keep detailed records of the actions of the Board, including minutes of the meetings of the Board and minutes of the meetings of the Association. The Board of Directors shall also keep detailed and accurate financial records in chronological order of the receipts and expenditures of common obligations or of individual obligations for which the Board is serving as the conduit for payment of expenses. The Board of Directors shall also maintain an assessment roll in which there shall be an account for each Lot. Such account shall designate the name and address of the Owner or Owners of the Lot, the amount of each assessment against the Owner, the dates and amounts on which the assessment becomes due, the amounts paid upon the account, and the balance due on the assessments.

Section 2. Indemnification of Directors, Officers, Employees and Agents. The Association shall indemnify any Director, officer,

employee or agent who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by the Association) by reason of the fact that he is or was a Director, officer, employee or agent of the Association or is or was serving at the request of the Association as a Director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by said person in connection with such suit, action or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interest of the Association, and, with respect to any criminal action or proceedings, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or with a plea of nolo contendere or its equivalent, shall not of itself create a presumption that a person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interest of the Association, and, with respect to any criminal action or proceedings, had reasonable cause to believe his conduct was unlawful. Payment under this clause may be made during the pendency of such claim, action, suit or proceeding as and when incurred, subject only to the right of the Association, should it be proven at a later time that said person had no right to such payments. All persons who are ultimately held liable for their actions on behalf of the Association as a Director, officer, employee or agent shall have a right of contribution over and against all other Directors, officers, employees or agents and members of the Association who participated with or benefited from the acts which created said liability.

Section 3. Enforcement. The Association and the Owners within the Property or any mortgagee on any Lot shall have the right to enforce all of the covenants, conditions, restrictions, reservations, easements, liens and charges now or hereinafter imposed by any of the provisions of this Declaration as may appertain specifically to such parties or Owners by any proceeding at law or in equity. Failure by either the Association or by any Owner or mortgagee to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of their right to do so thereafter. In the event suit or action is commenced to enforce the terms and provisions of this Declaration, the prevailing party shall be entitled to its attorneys' fees and costs in such suit or action to be fixed by the trial court, and in the event of an appeal, the cost of the appeal, together with reasonable attorneys' fees, to be set by the appellate court. In addition thereto, the Association shall be entitled to its reasonable attorneys' fees incurred in any enforcement activity taken on delinquent assessments, whether or not suit or action is filed.



Section 4. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect the other provisions hereof and the same shall remain in full force and effect.

Section 5. Duration. The covenants and restrictions of this Declaration shall run with and bind the land for a term of thirty-five (35) years from the date of this Declaration being recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless rescinded by a vote of at least ninety percent (90%) of the Owners and fifty percent (50%) of the first mortgagees. Additionally, any such rescission which affects the Common Property shall require the prior written consent of Deschutes County. Provided, however, that if any of the provisions of this Declaration would violate the rule against perpetuities or any other limitation on the duration of the provisions herein contained imposed by law, then such provision shall be deemed to remain in effect only for the maximum period permitted by law or, in the event the rule against perpetuities applies, until twenty-one (21) years after the death of the last survivor of the now living descendants of President George Bush.

Section 6. Amendment. Except as otherwise provided in the restrictions set forth elsewhere herein, this Declaration may be amended at any time by an instrument approved by not less than seventy-five percent (75%) of the total votes of the Owners. Any amendment must be executed, recorded and certified as provided by law. Provided, however, that no amendment of this Declaration shall effect an amendment of the Bylaws, or the Articles of Incorporation without compliance with the provisions of such documents and the Oregon Non-Profit Corporation Act.

Section 7. Rights of Mortgagees. Any holder of a first mortgage or equivalent lien on any Lot and/or the improvements located thereon, upon written request to the Board of Directors of the Association, shall have the right to:

- (a) Receive timely written notice of meetings of the Association;
- (b) Receive timely written notice of any proposed abandonment, termination or contraction of this planned unit development;
- (c) Receive timely written notice of any material amendment of the Declaration or the Articles of Incorporation or Bylaws of the Association;
- (d) Receive timely written notice of any decision by the Association to terminate professional management and to assume self-management of the Property, if the

Association previously has retained professional management services;

(e) Inspect the financial records and similar documents of the Association at reasonable intervals during normal business hours;

(f) Receive written notice of substantial damage to or destruction of any Lot and/or the improvements thereon or the Common Property and/or any improvements thereon; and

(g) Receive timely written notice of any condemnation or eminent domain proceeding affecting the Common Property or any portion thereof.

Section 8. Notice of Default by Mortgagor. Upon the written request of a mortgagee, the Association shall give such mortgagee written notification of any default by the mortgagor of such Lot in the performance of such mortgagor's obligations under the Declaration and Bylaws which is not cured within thirty (30) days.

Section 9. Prior Consent of Mortgagees. Notwithstanding any other provisions contained in the Declaration or the Bylaws, or any decision of the owners, the termination of the status of the Property as a planned community, or any material amendment to this Declaration or the Bylaws of the Association shall require the prior written consent of all first mortgagees or equivalent liens on Lots and/or the improvements located thereon.

THE UNDERSIGNED President and Secretary of the Alberello at Sunriver Homeowners' Association, Inc. hereby certify that the foregoing Restated Declaration of Covenants and Restrictions were adopted by the members of the association at a meeting held on the 27<sup>th</sup> day of May, 1990.

ALBERELLO AT SUNRIVER HOMEOWNERS'  
ASSOCIATION, INC.

Dated: June 4, 1990

By Thomas R. Bower  
President

Dated: June 1, 1990

By Betty Rae Brigham  
Secretary

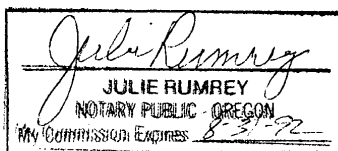
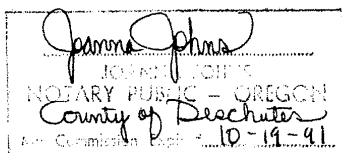
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STATE OF OREGON       )  
                              ) ss.  
County of Deschutes )

Personally appeared the above-named Theodore Bars  
and Betty Brigham, who being first duly sworn, did say  
that they are the President and Secretary, respectively, of  
Alberello at Sunriver Homeowners' Association, Inc., and they  
executed the foregoing instrument by authority of its Board of  
Directors.

Before me:

NOTARY PUBLIC FOR OREGON  
My Commission Expires: \_\_\_\_\_



STATE OF OREGON       )  
COUNTY OF DESCHUTES ) ss.

I, MARY SUE PENHOLLOW, COUNTY CLERK AND  
RECORDER OF CONVEYANCES, IN AND FOR SAID  
COUNTY, DO HEREBY CERTIFY THAT THE WITHIN  
INSTRUMENT WAS RECORDED THIS DAY:

90 JUN 21 PM 12:45

MARY SUE PENHOLLOW  
COUNTY CLERK

BY: [Signature] DEPUTY  
NO. 90-17810 FEE 95  
DESCHUTES COUNTY OFFICIAL RECORDS

PAGE 19. RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS