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STATE OF OREGON
COUNTY OF DESCHUTES

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I hereby certify that the attached instrument was received and duly recorded in Deschutes County records:

DATE AND TIME: Mar. 6, 2000; 3:41 p.m.

RECEIPT NO: 17974

DOCUMENT TYPE: Planned Community Subdivision Declaration

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Mary Sue Penhollow

MARY SUE PENHOLLOW
DESCHUTES COUNTY CLERK

116 2000. 8646-1

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BRAEBERN HOMEOWNERS ASSOCIATION, INC.

THIS DECLARATION (hereinafter "CCRs") is made this 2nd day of March, 2000 by Michael Knoell and Frank Baker (hereinafter "Declarant").

RECITALS

1. Declarant is the Owner of the real property described on Exhibit "A" attached and has a Lease on land located between Braebern and Century Drive (the "Property") and desires to create a planned community known as Braebern ("Braebern") with permanent roadways and open spaces for the benefit of the community.

2. Declarant is reserving the right, but not undertaking the obligation, to annex additional property to the Association and subject it to the terms and provisions of these CCRs, the Articles and the Bylaws of the Association.

3. Declarant desires to provide for the preservation and enhancement of the property and amenities in Braebern and to provide for the maintenance of the Property and improvements, and to this end, desires to subject the Property to the covenants, conditions restrictions, easements, charges and liens set forth in these CCRs. These CCRs are for the benefit of the Property and the Owner of any Lot. The provisions contained in paragraph 4.19 are for the benefit of Sunrise Village Lots as described in these CCRs.

4. Declarant deems it desirable for the efficient preservation of the values and amenities in such community to create a non-profit corporation, to which should be delegated and assigned the powers of owning, maintaining and administering the Common Property and facilities, administering and enforcing the CCRs, collecting and disbursing the assessments and charges, and promoting the recreation, health, safety and welfare of the residents.

5. Declarant, in obtaining governmental approval for Braebern, entered into an Agreement with Sunrise Village Lots. The Agreement provides for architectural controls and building restrictions on certain lots, and provides for enforcement of those restrictions by any Owner of a Sunrise Village Lot.

6. Declarant declares that the Property shall be held, transferred, sold, conveyed and occupied subject to the provisions of the Oregon Planned Community Act, ORS 94.550 et seq., and to the CCRs, easements, charges and liens set forth in these CCRs.

ARTICLE 1. DEFINITIONS

1.1 "ARB" shall mean the Architectural Review Board.

1.2 "Articles" shall mean the Articles of Incorporation for the non-profit corporation, Braebern Homeowners Association, Inc., as filed with the Oregon Corporation Division.

1.3 "Association" shall mean the Braebern Homeowners Association, Inc., its successors and assigns.

1.4 "Board of Directors" and "Board" shall mean the Board of Directors of the Association.

1.5 "Braebern" shall mean all real property, Common Property, and all improvements located upon the real property, subject to these CCRs, as more particularly set forth on Exhibit "A" attached, together with such additional Lots and Common Property as may, from time-to-time, be annexed to the Association.

1.6 "Building" shall mean any structure built and maintained for support, shelter or enclosure of persons, animals, chattels, or property of any kind.

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1.7 "Bylaws" shall mean the Bylaws of the Association.

1.8 "Common Property" shall mean that area of land shown on the recorded plat of the Property and described on attached Exhibit "B," any Common Property that is conveyed to the Association in the future, including any improvements, which are intended to be devoted to the common use and enjoyment of the Members and which land has been conveyed to the Association.

1.9 "CCRs" shall mean the covenants, conditions, and restrictions set forth in this document as amended from time-to-time and all other provisions set forth in these CCRs.

1.10 "Declaration" shall mean the covenants, and restrictions set forth in this document as amended from time-to-time and all other provisions set forth in these CCRs.

1.11 "Declarant" shall mean Michael Knoell and Frank Baker, their successors or assigns.

1.12 "General Plan of Development" shall mean Declarant's general plan of development of the Property as approved by appropriate governmental agencies and as set forth in these CCRs.

1.13 "Hillside Lots" shall mean any or all of Lots 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60 and 61 as identified in the preliminary plat of Century Village as disclosed on the Master Plan of Century Village on file with the City of Bend and shown on attached Exhibit "C." It is anticipated that these Lots, when platted, shall be Lots 43 through 61 of Braebern.

1.14 "Living Unit" or "Unit" shall mean any portion of a structure situated upon the Property designed and intended for use and occupancy as a residence by a single family.

1.15 "Lot" shall mean Lots in Braebern, whether dedicated in these CCRs or subsequently annexed to Braebern.

1.16 "One and One-half Story Lots" shall mean those Hillside Lots identified as any or all of Lots 44, 45, 51, 55, 60 and 61 as identified in the preliminary plat of Braebern. One and One-Half Story structure is a structure wherein the second story is built entirely within the sloped ceiling of the attic area and dormer areas.

1.17 "Occupant" shall mean 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.

1.18 "Owner" shall mean 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.

1.19 "Property" shall mean all real property, the Common Property and all improvements located on the real property subject to these CCRs, as more particularly set forth on Exhibit "A" attached, together with such additional Lots and Common Property as may, from time-to-time, be annexed to the Association.

1.20 "Rules and Regulations" shall mean the Rules and Regulations and policies adopted by the Board of Directors of the Association or the ARB as may be from time to time amended.

1.21 "Single Story Lots" shall mean those Hillside Lots identified as any or all of Lots 43, 46, 47, 48, 49, 50, 52, 53, 54, 56, 57, 58 and 59 as identified in the preliminary plat of Braebern.

1.22 "Street(s)" shall mean any street, highway or other thoroughfare within or adjacent to Braebern and shown on any recorded subdivision or partition map, or survey map or record, whether designated thereon as street, boulevard, place, drive, road, terrace, way, lane, circle or otherwise.

1.23 "Structure" shall mean anything constructed or built, any edifice or building of any kind, or any piece of work artificially built up or composed of parts jointed together in some definite manner, which requires location on the ground or is attached to something having a location on the ground, including swimming and wading pools and covered patios, excepting outdoor areas such as paved areas, driveways or walks.

1.24 "Sunrise Village Lots" shall mean the following lots in the Sunrise Village Subdivision, Deschutes County, Oregon:

Plat of Outback Section, Block 1, Lots 32, 33, 34 and 35
Plat of West Knolls Section, Block 28, Lots 2 and 3, and Block 29, Lots 2, 3, and 4.

In no event shall these covenants be interpreted to include a Sunrise Village Lot as a part of Braebern, Deschutes County, Oregon.

ARTICLE 2. PROPERTY SUBJECT TO THESE CCRs

The real property which is and shall be held, transferred, sold, conveyed and occupied subject to these CCRs is located in Bend, Deschutes County, Oregon and is described on attached Exhibit "A." In addition, Declarant may subject additional property to these CCRs.

ARTICLE 3. GENERAL PLAN OF DEVELOPMENT

3.1 **General.** Declarant has developed the Property with buildable residential Lots, including single family lots and townhouse lots with Common Property. The Common Property shall include parks, streets and open space for use of the Owners, members, occupants, guests and invitees of the Association.

3.2 **Common Property.** The legal description of the real property, which is or shall become Common Property is described on attached Exhibit "B." Declarant may transfer additional Common Property.

3.3 **Annexation.** It is the intent of Declarant to further develop Braebern in general accordance with the attached Exhibit "C" by annexing all or part of Lot 72, shown on Exhibit "A."

3.3.1 The procedure for this annexation is as follows:

Declarant may develop land, possibly in phases, with standard residential improvements including streets, curbs, utilities, common areas, etcetera. All improvements would be done in a similar manner and of a similar quality to Phase I improvements. Upon completion of improvements, the plat for that new phase would be recorded, and that part of the property would become subject to all privileges and limitations of the Braebern Homeowners Association, Inc. Declarant will notify the Association that additional land is now a part of the Association. Landscaped areas in each new phase would be fully developed within a reasonable period of the recordation of the plat for that phase.

3.3.2 The maximum number of lots to be included in Braebern is 71.

3.3.3 Common property in future phases would include: (1) the street area (including sidewalks, curbs and landscaping); (2) additional park areas shown on Exhibit "C" as I and II; and, (3) additional berm areas adjacent to the berm areas in Phase I.

3.3.4 The Owners of Lots in annexed areas would be accorded the same voting rights as Owners of Lots in Phase I.

3.3.5 The formula to be used for reallocating the common expenses upon the annexation of additional Lots to the Association shall be as described in paragraph 8.2.2 (Basis for Assessment). If Lots are annexed during the fiscal year, common expenses shall be reapportioned equally among all Lots on the beginning of the next month following annexation.

ARTICLE 4. USE RESTRICTIONS; ARCHITECTURAL CONTROLS AND MAINTENANCE RESPONSIBILITIES

4.1 General.

4.1.1 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.

4.1.2 Common Property. No Owner shall construct or place any structure, material, planting, equipment or any object of any kind on any portion of the Common Property, unless granted written permission by the Board of Directors.

4.2 Use. All Lots and Living Units shall be used for residential, recreation and vacation purposes only. No retail or industrial use shall be allowed on any Lot or in any Living Unit. Commercial use in a residence may be allowed provided it is an owner-operated business with no employees; that there are no more than three business visitors per day; that the appropriate governmental permits have been obtained and maintained; and, the use is approved by the Association.

4.3 Architectural Standards.

4.3.1 Structures and Landscaping on Lots. Except as otherwise specifically provided in these CCRs, no fence, outbuilding, residential building, other structure of any type, or landscaping shall be erected, placed, altered, repaired, replaced or permitted to remain on any Lot other than the original Living Units as originally constructed or replaced in a manner having a substantially similar appearance to the original Living Unit or as approved by the ARB.

4.3.2 Number. Not more than one Living Unit, not more than one three car garage and not more than one accessory building incidental to residential use shall be constructed on any Lot.

4.3.3 Height. Except as restricted in paragraph 4.19, entitled Sunrise Village Restrictions, all Living Units or structures shall be two stories or less in height. Basements which include daylight, split entry and split level type shall not be considered in determining the number of stories in the dwelling.

4.3.4 Location. All structures shall be located on each parcel so as to be as compatible as possible with the natural surroundings, other residences, and other criteria as determined by the Board of Directors.

4.3.5 Guidelines and Procedures. The Declarant shall prepare the initial design and development guidelines ("Design Guidelines") that shall apply to all construction activities within the Property. The Design Guidelines may contain general provisions applicable to all Property, as well as specific provisions which vary from one portion of the Property to another, depending upon the location, unique characteristics and intended use. The ARB shall adopt the Design Guidelines at its initial meeting and thereafter shall have the sole and full authority to amend them. Any amendments to the Design Guidelines shall apply to construction modifications commenced after the date of such amendment only and shall not require modifications or removal of structures previously approved. The ARB shall make the Design Guidelines available to owners and builders who intend on construction within the Property.

4.4 Time of Construction. All buildings shall be completed within six (6) months from the date construction is commenced in accordance with the plans approved by the ARB.

4.5 Underground Utilities and Satellite Dishes. No outdoor overhead wire or service drop for the distribution of electric energy or for telecommunication purposes, nor any pole, tower or other structure for independent reception, transmission or support of any of the above shall be erected, placed or maintained within the Property. Satellite dishes and receivers shall be subject to ARB approval.

4.6 Landscaping. All portions of the Lot shall be landscaped within one (1) month following the completion of a Living Unit. However, in the event the Living Unit is completed between November 1st and March 1st, the landscaping

shall be completed by April 1st to allow for the installation of landscaping during the growing season. Landscape shall be maintained in a neat and clean manner. All landscape is subject to the Design Guidelines and approval by the ARB.

4.7 **Trees.** Except as restricted in paragraph 4.19, entitled Sunrise Village Restrictions, tree preservation and planting of new trees is encouraged. Trees shall not be planted or removed without the written consent of the ARB.

4.8 **Cleanliness.** Each parcel and its improvements shall be maintained in a clean and attractive condition, in good repair and in such fashion as to not create a fire hazard or visual pollution.

4.9 **Screening.** All garbage, trash, cuttings, refuge, garbage containers, clothes lines, wood piles and other service facilities shall be screened from view of the streets.

4.10 **Tarps.** The use of brightly colored tarps, including blue tarps, is prohibited.

4.11 **Lighting.** All exterior lighting shall be subject to ARB approval.

4.12 **Signs.** Except as provided in paragraph 9.2, other Lot Owners may place one (1) "For Sale" sign on their Lot only. The maximum size of the sign shall be seven hundred fifty (750) square inches. Signs of any other type are prohibited without the consent of the ARB.

4.13 **Pets.** The maximum number of dogs and cats allowed in any living unit is two (2) adult dogs and two (2) cats. Dogs shall be prohibited from running at large and shall be kept under the owners control at all times when outside. Excessive barking is prohibited. Owners of dogs shall clean up after their dogs. Breeding of dogs or cats for commercial purposes is prohibited. The Board of Directors shall have the right to require any Owner to remove any pet that is a nuisance or that interferes with the right to quiet enjoyment in Braebern. Any dispute arising out of this Section shall be decided by a Majority of the Board of Directors. Any decision of the Board on this matter shall be binding upon the affected Owner.

4.14 **Use of the Common Property.** No Owner shall place or cause to be placed on any portion of the Common Property any trash, structure, equipment, improvement, furniture, package or object of any kind.

4.15 **Nuisances.** Nuisances are prohibited upon the Property. Any use or practice that is a reasonable source of annoyance to Owners or which interferes with the peaceful possession and proper use of the Property by its Owners is prohibited. All parts of any Lot and Living Unit shall be kept in a clean and sanitary condition and free from fire hazard. No Owner will permit any use of his or her Lot or make any use of the Common Property that will increase the cost of insurance upon the Common Property.

4.16 **Improper, Offensive or Unlawful Use.** No improper, offensive or unlawful use will be made of the Property nor any part of it.

4.17 **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 concealed behind such structures as may properly be built pursuant to the CCRs and may be left outdoors only for the period reasonably required for collection and removal.

4.18 **Manufactured Homes.** Campers, mobile homes, trailers or manufactured homes as described in ORS 446.003(20)a and as amended from time-to-time are prohibited for use as a residence. Only designed and site built homes are permitted.

4.19 **Sunrise Village Restrictions.**

4.19.1 **Easements.** Restrictions on Hillside Lots as set forth in this Section are declared and agreed to be established with the purpose of protecting the desirability and attractiveness of Sunrise Village Lots. By execution and filing of this Declaration, Declarant grants to Sunrise Village Lots an easement for an unobstructed view corridor above

the maximum height limitations as established by construction standards, setback limitations, fence restrictions, dormer restrictions, and roof flashing restrictions as set forth in paragraph 4.19.3 (Building Restrictions) for Hillside Lots.

4.19.2 Architectural Controls and Procedure. Notwithstanding any approval procedures set forth in this Declaration, any Owner proposing to construct any building or structure on the Hillside Lots (including any exterior alteration, addition, destruction, or modification to any such building or structure) is prohibited from constructing buildings or structures in violation of paragraph 4.19.3 (Building Restrictions). No plans disclosing a building or structure in violation of paragraph 4.19.3 (Building Restrictions) may be approved by any reviewing body, nor shall any plans in violation of paragraph 4.19.3 (Building Restrictions) be deemed approved by the failure of a reviewing body to review or act on an application or submission of plans.

Proposed buildings and structures to Hillside Lots shall be submitted to the Board of Directors of The Sunrise Village Association not less than thirty (30) days prior to commencement of construction. Notice under this Section is intended to provide an opportunity to Owners of Sunrise Village Lots an opportunity to review proposed building plans or structure plans prior to construction and to bring enforcement action as set forth in paragraph 4.19.9 (Enforcement) and to prevent construction in violation of paragraph 4.19.3 (Building Restrictions). This paragraph 4.19.2 creates no approval authority for the Sunrise Village Association.

4.19.3 Building Restrictions.

4.19.3.1. Construction Standards. No structure shall be erected, altered, placed or permitted to remain on any Hillside Lot which violates these building restrictions.

4.19.3.2 Maximum Number of Stories. Residences on Single Story Lots may not exceed a single story. Residences on One and One-Half Story Lots may not exceed one and one-half (1½) stories. For purposes of this paragraph 4.19.3.2, a garage space accessible from street level and located on the street side (north side) is not included in the number of stories in the residence.

4.19.3.3 Height. The highest point of any structure on a Single Story Lot shall not exceed seventeen (17) feet above natural grade of the land surface as it existed on July 1, 1999. The highest point of any structure on a One and One-Half Story Lot shall not exceed twenty five (25) feet above natural grade of the land surface as it existed on July 1, 1999.

Height shall be measured from the point where the rear of the residence, as originally constructed, intersects the natural grade of the land surface as it existed on July 1, 1999, but in no event shall height be measured from a point less than 11 vertical feet from street level. It shall be a rebuttable presumption that the City of Bend Topographic survey map completed nearest in time prior to the platting of Braebern represents the natural grade of the land surface as it existed on July 1, 1999. Height shall be measured vertically to the highest point of any portion of any structure or device, physically attached to the land surface or to any structure on the Lot. In no event shall the point of height measurement be closer than 18 feet (21 feet for Hillside Lot 60, and 23 feet for Hillside Lots 55 and 61) measured horizontally from and perpendicular to the rear Lot line as originally platted.

4.19.3.4 Main Floor Level. The main floor level shall not be more than one foot above the point where the back of the home, exclusive of any push out structure, intersects the natural grade, but in no event shall the main floor level be required to be less than eleven vertical feet from street level.

4.19.3.5 Tree Height. No tree on Hillside Lots shall exceed the permissible structure height restriction for the Lot the tree is planted on.

4.19.3.6 Setbacks. Reasonable efforts shall be used to minimize front yard setbacks to eight (8) feet for Hillside Lots while allowing limited setback variations necessary to prevent a row house effect. Notwithstanding this provision authorizing variation from an eight foot front yard setback, the 18 foot rear yard setback shall be maintained.

The minimum rear yard setback for Hillside Lots 55 and 61 is twenty-three (23) feet, for Lot 60 is twenty-one (21) feet, and for all other Hillside Lots is eighteen (18) feet. Reasonable efforts shall be utilized to build farther down slope than necessary to provide an 18 foot rear yard set back while taking into consideration physical constraints present on the building site and the design objective of preventing a row house effect for residences on hillside Lots as viewed form the street. The rear yard setback is measured perpendicularly from the rear lot line as originally platted to the nearest vertical wall of the residential structure, excluding an encroaching pushout structure, patio and/or deck as authorized below. Buildings or structures within the rear yard setback are prohibited.

A temporary barrier will be erected on Lots 59, 60 and 61 during any filling or grading at a point reasonable to minimize any disruption of land behind the established setback herein.

Notwithstanding the prohibition against buildings and structures in the rear yard setback, encroachments of the rear year setback are authorized for the following structures:

4.19.3.6.1 a pushout structure as part of the main residential structure of up to four feet by twelve feet in dimension may encroach on the eighteen foot rear yard setback.

4.19.3.6.2 patios, decks, coverings thereto, retaining walls less than three (3) feet high necessary for construction and siting of the patio or deck, subject to the following limitations:

4.19.3.6.2.1 Floor level of patios and decks shall be within 2 feet of the main level of the residence;

4.19.3.6.2.2 Use of quality building materials is required. Lath or lattice made of lath is prohibited as a side or overhead covering material;

4.19.3.6.2.3 Covering structures are limited to 11 feet above the patio or deck floor level;

4.19.3.6.2.4 Design review by Declarant, Declarant's successor, or Braebern ARB is required; and

4.19.3.6.2.5 Retaining walls shall not be engineered and are authorized solely as needed for the patio or deck, and not for purposes of leveling the lot in order to construct or install structures otherwise prohibited by height limitations herein.

4.19.3.6.3 Other "structures" as allowed in the City setback areas, including eave overhangs of up to twenty-four inches (24"), subject to design approval as in 4.19 below.

4.19.4 Fencing. Fencing at or near rear property lines is prohibited. Braebern ARC approval is required for landscape screening around structures.

4.19.5 Roofs. Roof flashing shall be painted and maintained to match roof color.

4.19.6 Dormers. No dormers facing the Sunrise Village Lots shall be constructed.

4.19.7 Yards. Yards shall be landscaped and maintained in an orderly, clean and attractive manner. Unsightly rear year storage is prohibited.

4.19.8 Duration and Amendment of this Declaration. Notwithstanding any provision providing for the termination or amendment of this Declaration, provisions set forth in paragraphs 1.6, 1.13, 1.14, 1.21, 1.22, 1.23, 1.24 and 4.19 may not be amended without the unanimous consent of Owners of Sunrise Village Lots. In the event this Declaration is terminated, paragraphs 1.6, 1.13, 1.14, 1.21, 1.22, 1.23, 1.24 and 4.19 are deemed to survive as a Deed

restriction on the Hillside Lots, said Deed restriction benefiting Sunrise Village Lots and enforceable by the Owners of Sunrise Village Lots.

4.19.9 Enforcement

4.19.9.1 Paragraph 4.19.3 (Building Restrictions) of this Declaration is specifically enforceable by any Owner of Sunrise Village Lots. Any breach of this Declaration shall subject the breaching party to any and all legal remedies, including damages or the destruction, removal or the enjoining of any offending improvement, building, structure or condition.

4.19.9.2 In the event that legal suit or legal action is instituted for the enforcement of this Declaration or for any remedy for the breach of this Declaration, the prevailing party shall recover the from the losing party the prevailing party's reasonable attorney fees and costs (including costs of depositions, transcriptions, court reporter fees, copying fees, and expert witness fees and expenses) incurred in such suit or action (or any appeal therefrom) as adjudged by the trial or appellate court.

4.19.9.3 The failure of any Owner of any Sunrise Village lot to enforce any covenant or restriction set forth in paragraph 14.19.3 (Building Restrictions) shall not be deemed a waiver to enforce any restriction thereafter.

4.20 Architectural Review Board ("ARB").

4.20.1 Composition. Unless delegated as described in paragraph 4.19.7, the Board of Directors shall serve also as an ARB. A quorum for the ARB action shall be a Majority of its Members.

4.20.2 Duties. The ARB shall regulate the external design, appearance, location and maintenance of all Property and improvements, whether on a Lot or the Common Property. Notwithstanding the above, the interpretation of paragraphs 1.6, 1.13, 1.14, 1.21, 1.22, 1.23, 1.24, and 4.19 shall be as agreed between the Association and Sunrise Village Lot Owners. In the event the Association and Sunrise Lot Village Owners do not agree, disputes shall be resolved as described in paragraph 4.19.9.2. In all other cases, the interpretation of these CCRs regarding the architectural, building, landscaping and maintenance standards described above, is exclusively delegated to the ARB. The ARB may 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 these CCRs to regulate use of outdoor drying lines, trash containers, planting, maintenance and care of vegetation, antennas, regulation of signs from the Property, and other rules as appropriate.

4.20.3 Approval Required. No Living Unit, outbuilding, fence, wall, other structure of any type or landscaping 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, other structure or landscaping 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 have been submitted to and approved in writing by the ARB as to the harmony of external design, materials, color and location in relation to surrounding structures and topography.

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

4.20.5 Appeal. The decision of the ARB under this Article, including any failure to approve or disapprove within the time allowed, shall not be subject to appeal. Notwithstanding the above, the interpretation of paragraphs 1.6, 1.13, 1.14, 1.21, 1.22, 1.23, 1.24, and 4.19 shall be as agreed between the Association and Sunrise Village Lot Owners. In the event the Association and Sunrise Lot Village Owners do not agree, disputes shall be resolved as described in paragraph 4.19.9.2.

4.20.6 Exemptions. Any act of Declarant in implementing the General Plan of Development with respect to any Lot or any portion of the Common Property in the development is exempt from the provisions of this Article.

4.20.7 Delegation. The Board of Directors may delegate the duties of the ARB to a committee appointed by the Board composed of not less than three (3) Owners.

ARTICLE 5. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

5.1 Members. Each Owner shall be a mandatory Member of the Association. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of any Lot. Transfer of ownership of a Lot automatically transfers membership in the Association. Occupants and Owners shall be governed and controlled by these CCRs, the Articles, Bylaws, and Rules and Regulations of the Association.

5.2 Proxy. Unless the Bylaws provide otherwise, each Owner may cast his or her vote by absentee ballot or pursuant to a proxy executed by the Owner. An Owner may not revoke a proxy given pursuant to this Section except by actual notice of revocation to the person presiding over a meeting of the Association. A proxy shall not be valid if it is undated or purports to be revocable without notice. A proxy shall terminate one (1) year after its date, unless the proxy specifies a shorter term.

5.3 Voting Rights.

5.3.1 Members. Members shall be entitled to one (l) vote for each Lot owned with respect to all matters upon which Owners are entitled to vote.

5.3.2 Declarant. Notwithstanding paragraph 5.3.1, Declarant reserves the right to vote on behalf of all Members of the Association, until one hundred eighty (180) days after Declarant has sold eighty-five percent (85%) of the Lots in the Property or until Declarant terminates this reservation of special Declarant rights by notice in writing to the Association.

5.4 Voting by Lot. When more than one (1) person or entity owns a Lot, the vote for such Lot may be cast as they shall determine, but in no event will fractional voting be allowed. Fractionalized or split votes shall be disregarded, except for purposes of determining a quorum. The total number of votes as of such Termination Date and thereafter, shall be equal to the total number of Lots annexed to the Property and subject to these CCRs as of such Termination Date.

5.5 Procedure. All meetings of the Association, the Board of Directors, the ARB, and Association committees shall be conducted in accordance with such rules of order as may from time to time be adopted by the Board of Directors. A tie vote does not constitute a Majority or approval of any motion or resolution.

ARTICLE 6. DECLARANT CONTROL

6.1 Interim Board and Officers. Declarant reserves administrative control of the Association until one hundred eighty (180) days after Declarant has sold eighty-five percent (85%) of the Lots in the Property or until Declarant terminates the reservation of special Declarant rights by notice in writing to the Association. Declarant, in his or her sole discretion, shall have the right to appoint and remove Members of a three-Member Interim Board of Directors, which shall manage the affairs of the Association, and which shall be invested with all powers and rights of the Board of Directors. Notwithstanding the provisions of this Section, at the Turnover Meeting at least one (l) Director shall be elected by Owners other than Declarant, even if Declarant otherwise has voting power to elect all Directors.

6.2 Transitional Advisory Committee. Declarant shall form Transitional Advisory Committee to provide for the transition of administrative control of the Association from Declarant to the Owners. Not later than the sixtieth (60th) day after Declarant has conveyed Lots representing fifty percent (50%) or more of the Lots in the first phase of the planned community other than to a successor to Declarant or the Declarant has conveyed ten (10) Lots in the planned community to Owners other than the successor to Declarant.

6.3 **Turnover Meeting.** Declarant shall call a meeting for the purpose of turning over administrative control of the Association from Declarant to the Owners within ninety (90) days after the expiration of the period of Declarant control. Declarant shall give notice of the meeting to each Owner as provided in the Bylaws. If Declarant does not call the meeting required under this Section, any Owner may do so.

ARTICLE 7. COMMON PROPERTY

7.1 **Obligations of the Association.** Subject to the rights of Owners set forth in these CCRs, the Association shall be responsible for the exclusive management and control of the Common Property and any improvements, and shall keep the property in good, clean, attractive and sanitary condition, order and repair.

7.2 **Members' Easement of Enjoyment.** Subject to the provisions of these CCRs, 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.

7.3 **Rules and Fees.** The Association shall establish reasonable rules and charge reasonable assessments and fees for capital expenditures, maintenance, and upkeep of the Common Property.

7.4 **Suspension of Member's Right.** The Association may 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 Association may suspend the right of a Member to use any Common Property for any other infraction of the CCRs, Bylaws or the Rules and Regulations of the Association; provided, however, that no such suspension pursuant to this subsection shall deprive an Owner of access to his or her Lot.

7.5 **Sale of Common Property.** As provided by ORS 94.665, the Association may sell, dedicate or transfer or create a security interest on any portion of the Common Property, if such sale dedication and transfer is approved by the Declarant so long as Declarant retains the right to vote for Members. If Declarant has terminated his right to vote for Members, dedication or transfer must be approved by eighty percent (80%) of the votes held by Owners other than Declarant.

7.6 **Damage or Destruction of Common Property by Owner.** In the event any Common Property is damaged or destroyed by an Owner or any of his or her guests, tenants, licensees, agents or Members of his or her family, the Association may repair such damage in a good and workmanlike manner. 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.

7.7 **Description of Common Property Improvements.** The Common Property improvements to be constructed by Declarant shall include streets, alleys, a small park area of approximately 4,900 square feet, entry ways and landscaping.

7.8 **Deed to Common Property.** Declarant shall deed the Common Property in Phase I to the Association on or before May 1, 2000.

ARTICLE 8. MAINTENANCE ASSESSMENTS/SPECIAL ASSESSMENTS

8.1 ***Creation of the Lien and Personal Obligation of Assessments.*** Declarant and each Owner of any Lot by acceptance of a deed shall pay the Association (l) regular assessments or charges for common expenses, and (2) special assessments as provided in these CCRs or as approved by the Board of Directors. All such assessments, together with interest at a rate established from time-to-time by 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 until paid.

8.2 General Assessments.

8.2.1 Purpose of Assessments. The assessments levied under this Article shall be used for the purpose of promoting the recreation, health, safety and welfare of the Owners, and for the improvement and maintenance of the Property, including payment of premiums for insurance required under these CCRs, to fund a replacement reserve for items which the Association has maintenance responsibility, 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.

8.2.2 Basis for Assessment. There shall be two levels of assessments against Lots dependent upon whether such Lots have been improved with a substantially completed Living Unit.

8.2.2.1 Unimproved Lots. Lots that have not been improved with a substantially completed Living Unit shall be assessed equally with other such Lots. The assessment against such unimproved Lots shall include only amounts attributable to the Common Property Reserve Account, together with amounts attributable to the liability insurance premium covering the Common Property. Declarant, at Declarant's option, may accrue the Common Property Reserve Account portion of the assessment for an unimproved Lot until such Lot is conveyed to an Owner other than Declarant at which time the accrued amount is due to the Association. Owner may not accrue the liability insurance portion. Unimproved Lots in phases of Braebern which are not yet developed will not be assessed until that phase is completed and recorded.

8.2.2.2 Improved Lots. Lots that have been improved with a substantially completed Living Unit shall be assessed equally with other such Lots. The assessment of Lots improved with substantially complete Living Units shall include the following items:

8.2.2.2.1 Expenses of administration.

8.2.2.2.2 Expenses of maintenance, repair or replacement of all improvements and buildings on the Common Property.

8.2.2.2.3 Any deficit in common expenses for any prior period.

8.2.2.2.4 Utilities for the Common Property and other utilities with a common meter or that are commonly billed, such as water and sewer.

8.2.2.2.5 The cost of any professional management desired by the Board of Directors.

8.2.2.2.6 Any other items properly chargeable as an expense of the Association.

8.2.2.2.7 Reserve items.

All initial, general and special assessments shall be equally allocated among the Lots, except that improved and unimproved Lots shall be assessed in different manners as described herein.

8.2.2.3 Townhome Lots. In addition to the assessment for an improved Lot, Owners of townhomes (Lots 2, 3, 4, 5, 8, 9, 11, 12, 13, 14, 67, 68, 69, and 70) shall be assessed for the following:

8.2.2.3.1 All yard areas of the townhomes shall be maintained by the Association with the cost being paid by the townhome Owners.

8.2.2.3.2 The roof and exterior paint of the townhomes shall be maintained by the Association with the cost of maintenance being paid by the townhome Owners.

8.2.2.3.3 In all respects, townhomes shall be maintained in first class condition.

8.2.2.3.4 Reserve accounts shall be established by the Board of Directors to ensure that when the following repairs or capital improvements are necessary, funds are available:

8.2.2.3.4.1 Roof;

8.2.2.3.4.2 Exterior paint; and

8.2.2.3.4.3 Miscellaneous.

8.2.3 Method of Assessment. The Board of Directors shall determine the annual assessment. Both annual and special assessments shall be fixed at a uniform rate for all Lots as described in paragraph 8.2.2. The Board shall set the date(s) such assessments 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, attorneys fees and costs as provided.

8.3 Date of Commencement of Annual Assessments. The general assessments with respect to the Lots shall commence at the time the Directors declare, but in no event later than the first day of the month following the conveyance of a Lot to an Owner other than Declarant. The pro rata annual assessment shall commence, with respect to an improved Lot, upon the substantial completion of a Living Unit on such Lot.

8.4 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 common 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, for exterior painting, if the Common Property includes exterior painted surfaces, and for such other items as may be required by these CCRs or the Bylaws. The reserve account need not include those items that could reasonably be funded from operating assessments. The assessments pursuant to this Section shall accrue from the date of conveyance of the first Lot in the Property. Declarant, at 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 Declarant, at which time such accrued assessments shall be paid to the Association.

8.5 Reserve Study. The Board of Directors shall annually conduct a reserve study or review and update an existing study of the Common Property components to determine the reserve account requirements. The reserve study shall include:

8.5.1 Identification of all items for which reserves are required to be established;

8.5.2 The estimated remaining useful life of each item as of the date of the reserved study;

8.5.3 The estimated cost of maintenance, repair or replacement of each item at the end of its useful life; and

8.5.4 A thirty (30) year plan with regular and adequate contributions, adjusted by estimated inflation and interest earned on reserves, to meet the maintenance, repair and replacement schedule.

8.6 Special Assessments. The Board of Directors shall have the power to levy special assessments against an Owner or all Owners in the following manner for the following purposes:

8.6.1 To correct a deficit in the operating budget;

8.6.2 To collect amounts due to the Association from an Owner for breach of the Owner's obligations under the CCRs, these Bylaws, or the Association's Rules and Regulations, by vote of a Majority of the Board;

8.6.3 To compensate the Association for damage done by Owner or Owner's guests or invitees to Common Property;

8.6.4 To make repairs or renovations to the Common Property; or

8.6.5 To make capital acquisitions, additions or improvements; provided, however, that Declarant reserves a special Declarant right to approve any such assessment until the Termination Date.

8.7 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 an assessment or foreclose a lien upon the Property. No such action or judgment shall be a waiver of the lien of the Association. No Owner may waive or otherwise escape liability for the assessments by non-use of the Common Property or abandonment of his or her Lot.

ARTICLE 9. DECLARANT'S SPECIAL RIGHTS

Until the Living Units on all Lots on the Property have been constructed, fully completed and sold, with respect to the Common Property and each Lot on the Property, Declarant shall have the following special rights:

9.1 Sales Office and Model. Declarant shall have the right to maintain a sales office and model residence on one or more of the Lots which Declarant owns or leases. Declarant, prospective purchasers, and their agents shall have the right to use and occupy the sales office and model residences during reasonable hours any day of the week.

9.2 "For Sale" Signs. Declarant may maintain a reasonable number of "For Sale" signs at reasonable locations on the Property, including, without limitation, the Common Property.

ARTICLE 10. CONDEMNATION OF COMMON PROPERTY

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

10.1 Representation by Association. The Board of Directors of the Association shall have the sole authority, right and duty to represent each of the Owners for the purpose of negotiating and contesting, if it deems 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.

10.2 Allocation of Condemnation Award. The Board of Directors of the Association shall treat the proceeds of any condemnation award received by it with respect to the Common Property as an asset of the Association.

10.3 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 11. GENERAL PROVISIONS

11.1 Records. The Board of Directors shall preserve and maintain Minutes of the meetings of the Association, the Board and any committees. The Board of Directors shall also keep detailed and accurate financial records including individual assessment accounts of Owners, the balance sheet and income and expense statements. Individual assessment accounts shall designate the name and address of the Owner or Owners of the Lot, the amount of each assessment as it becomes due, amounts paid upon the account, and the balance due on the assessments. The Minutes of the Association, the Board and Committees, and the Association's financial records shall be reasonably available for review and copying by the Owners. A reasonable charge may be imposed by the Association for providing copies.

11.2 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 later

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imposed by any of the provisions of these CCRs 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 shall not be a waiver of their right to do so thereafter. In the event suit or action is commenced to enforce the terms and provisions of these CCRs, the prevailing party shall be entitled to its attorney 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 attorney fees, to be set by the appellate court. In addition, the Association shall be entitled to its reasonable attorney fees incurred in any enforcement activity taken to collect delinquent assessments, whether or not suit or action is filed.

11.3 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect the other provisions, which shall remain in full force and effect.

11.4 Duration. Subject to the provisions of 4.17.8 (relating to duration and amendment of provisions benefiting Sunrise Village Lot Owners' consent), the covenants and restrictions of these CCRs shall run with and bind the land for a term of thirty-five (35) years from the date of these CCRs 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 ninety percent (90%) of the first mortgagees; provided, however, amendments which do not constitute rescission of the planned community may be adopted as provided in these CCRs; provided, however, that if any of the provisions of these CCRs 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.

11.5 Amendment. Except as limited by the provisions of 4.17.8 (relating to duration and amendment of provisions benefiting Sunrise Village Lot Owners), these CCRs may be amended at any time by an instrument approved by not less than seventy-five percent (75%) of the total votes. Any amendment must be executed, recorded and certified as provided by law; provided, however, that no amendment of these CCRs shall effect an amendment of the Bylaws, the Articles of Incorporation without compliance with the provisions of such documents, and the Oregon Non-Profit Corporation Act; provided further, no amendment affecting the general plan of development or any other right of Declarant may be effected without the express written consent of Declarant or its successors and assigns.

11.6 Release of Right of Control. Declarant may give up its right of control, in writing, at any time by notice to the Association.

11.7 Unilateral Amendment by Declarant. Except as limited by the provisions of 4.17.8 (relating to duration and amendment of provisions benefiting Sunrise Village Lot Owners), Declarant may amend these CCRs in order to comply with the requirements of the Federal Housing Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Mortgage Loan Corporation, any department, bureau, board, commission or agency of the United States or the State of Oregon, or any other state in which the Lots are marketed and sold, or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon, or such other state, the approval of which entity is required in order for it to insure, guarantee or provide financing in connection with development of the Property and sale of Lots. Prior to the Turnover Meeting, no such amendment shall require notice to or approval by any Member.

11.8 Resolution of Document Conflicts. In the event of a conflict among any of the provisions in the documents governing Braebern, such conflict shall be resolved by looking to the following documents in the order shown below:

11.8.1 Declaration of Covenants, Conditions and Restrictions ("CCRs");

11.8.2 Articles of Incorporation;

11.8.3 Bylaws; and

11.8.4 Rules and Regulations.

2000-8646-15

IN WITNESS WHEREOF, the undersigned Developers, have executed this instrument this 2nd day of March, 2000.

BRAEBERN HOMEOWNERS ASSOCIATION, INC.

Michael Knoell

Frank Baker

STATE OF OREGON)
) ss.
County of Deschutes)

On this 2nd day of March, 2000, personally appeared the above-named Michael Knoell and acknowledged the foregoing instrument to be his voluntary act.

OFFICIAL SEAL
GINA R WHIPKEY
NOTARY PUBLIC-OREGON
COMMISSION NO.059010
MY COMMISSION EXPIRES OCT. 30, 2000

Notary Public for Oregon

STATE OF OREGON)
) ss.
County of Deschutes)

On this 2nd day of March, 2000, personally appeared the above-named Frank Baker and acknowledged the foregoing instrument to be his voluntary act.

OFFICIAL SEAL
GINA R WHIPKEY
NOTARY PUBLIC-OREGON
COMMISSION NO.059010
MY COMMISSION EXPIRES OCT. 30, 2000

Notary Public for Oregon

2000-8646-16

PROPERTY INCLUDED

All land shown on the Phase I Plat of Braebern, as recorded in Deschutes County Records, except Lot 72, Volume 2000, page 2534 on January 24, 2000.

EXHIBIT A
1 OF 1

2000-8646-17

COMMON PROPERTY

The common property, as shown on the recorded plat of Braebern, Phase I, consists of the following:

Common Lot A: The streets and alleys including curbs, sidewalks, and landscaping.

Common Lot B: A small park area of approximately 4900 square feet, which will be developed with a trail and landscaping.

Common Lot C: The southwest part of the entry and berm area which will be developed with a trail, berm, landscaping and a water feature.

Common Lot D: The northeast part of the entry and berm area which will be developed with a trail, berm, and landscaping.

EXHIBIT B
1 OF 1

2000-8646-18

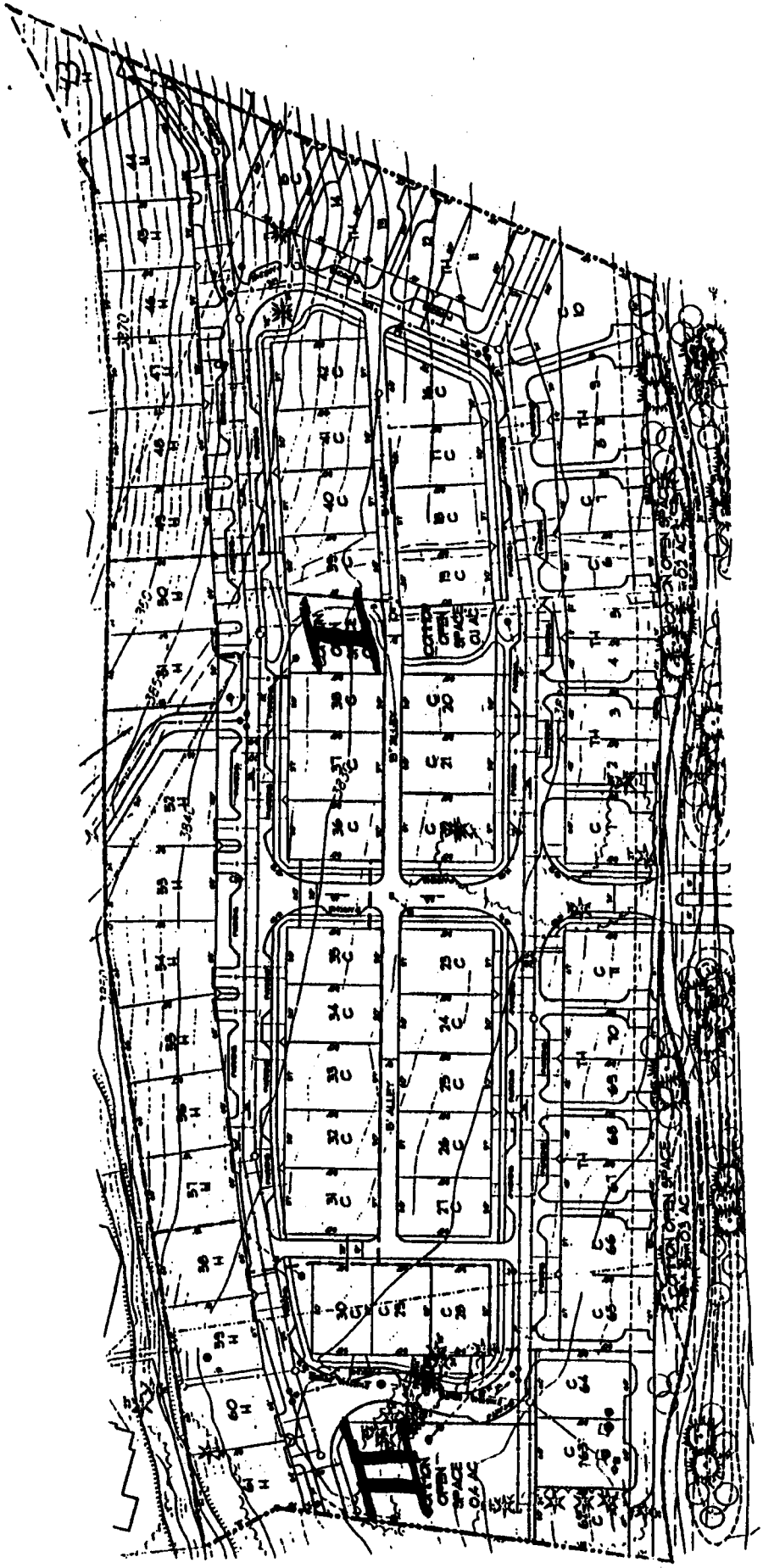

EXHIBIT C
1 OF 1