

98-20709

**DECLARATION OF  
BRIDGE CREEK VILLAGE AT BROKEN TOP**

THIS DECLARATION is made this 19<sup>TH</sup> day of MAY, 1998, by **Broken Top Condominium Associates LLC**, an Oregon limited liability company ("Developer").

**O B J E C T I V E S**

Developer owns property located in Broken Top in Deschutes County, Oregon. Developer proposes to develop the property described on Exhibit A attached hereto, as a townhome development to be known as Bridge Creek Village.

Developer has recorded the plat of Bridge Creek Village at Broken Top in the plat records of Deschutes County, Oregon. Developer desires to subject the property described in such plat to the covenants, conditions, restrictions, and charges set forth herein for the benefit of such property and its present and subsequent owners.

NOW, THEREFORE, Developer hereby declares that the property covered in the plat of Bridge Creek Village at Broken Top, more particularly described on Exhibit A attached hereto, shall be held, sold, and conveyed subject to the following easements, covenants, conditions, restrictions, and charges, which shall run with such property and shall be binding upon all parties having or acquiring any right, title or interest in such property or any part thereof and shall inure to the benefit of each owner thereof. Declarant has subjected the property covered by this Declaration to the Master Declaration by Supplemental Declaration dated September 22, 1995.

**ARTICLE 1**

**DEFINITIONS**

As used in this Declaration, the terms set forth below shall have the following meanings:

1.1 "Association" means the nonprofit corporation to be formed to serve as the association of Owners (as hereinafter defined) as provided in Article 8 hereof, and its successors and assigns.

1.2 "Bridge Creek Village" means property designated in Section 2.1 of this Declaration which constitutes a Neighborhood as defined in the Master Declaration and any property covered by any Supplemental Declaration recorded in accordance with Section 2.2.

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1.3 "Building" means one of nine duplex buildings situated on lots 1 through 18, Bridge Creek Village at Broken Top together with any building containing Living Units on any property annexed pursuant to Section 2.2.

1.4 "Common Areas" means all areas designated as "Common Area" on the plat of Bridge Creek Village at Broken Top including any Common Areas designated as such in any Supplemental Declaration.

1.5 "Declarant" means Broken Top Limited Partnership, an Oregon limited partnership, any person who succeeds to any special Declarant right and to whom all of the Declarant's ownership interest in Bridge Creek Village is transferred, or any person, other than Owners, to whom the Declarant has transferred, for purposes of resale, all of Declarant's ownership interest in Bridge Creek Village.

1.6 "Developer" means Broken top Condominium Associates, an Oregon limited liability company.

1.7 "Improvement" means every temporary or permanent structure or improvement of any kind, including but not limited to a house, fence, wall, driveway, swimming pool, storage shelter or other product of construction efforts on or in respect to any property within Bridge Creek Village, including landscaping, and every alteration, painting, or reconstruction thereof.

1.8 "Living Unit" means one of the 18 Living Units included in the Buildings together with any units designated for separate residential occupancy annexed pursuant to Section 2.2.

1.9 "Lot" means a platted or legally partitioned lot, within Bridge Creek Village.

1.10 "Master Association" means the association formed pursuant to the Master Declaration.

1.11 "Master Declaration" means the Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Broken Top Community dated September 21, 1994, as amended and supplemented from time to time.

1.12 "Mortgage" means a mortgage, trust deed, or land sales contract; "mortgagee" means a mortgagee, beneficiary of a trust deed, or vendor under a land sales contract; and "mortgagor" means a mortgagor, grantor of a trust deed, or vendee under a land sales contract.

1.13 "Owner" means the person or persons, including Developer, owning any Living Unit, including any vendee under a recorded land sales contract to whom possession has passed, but

does not include a tenant or holder of a leasehold interest or a person holding only a security interest in a Living Unit, including any vendor under a recorded land sales contract who has given up possession. The rights, obligations, and other status of being an Owner commence upon acquisition of the ownership of a Living Unit and terminate upon disposition of such ownership, but termination of ownership shall not discharge an Owner from obligations incurred prior to termination.

1.14 "Supplemental Declaration" means an instrument annexing additional real property to Bridge Creek Village.

All capitalized terms not otherwise defined herein shall have the meaning given such terms in the Master Declaration.

## ARTICLE 2

### PROPERTY SUBJECT TO THIS DECLARATION

2.1 Initial Development. Developer hereby declares that all of the real property described on Exhibit A attached hereto, is owned and shall be owned, conveyed, hypothecated, encumbered, used, occupied, and improved subject to this Declaration. The initial development includes 18 Living Units.

2.2 Annexation of Additional Property. Developer may from time to time and in its sole discretion annex to Bridge Creek Village any portion of the property described on Exhibit B attached hereto. Annexation of such property shall be accomplished as follows:

(a) Supplemental Declaration. Developer shall record a Supplemental Declaration which shall be executed by or bear the approval of Developer and shall, among other things, describe the real property to be annexed, establish any additional limitations, uses, restrictions, covenants, and conditions which are intended to be applicable to such property, and declare that such property is held and shall be held, conveyed, hypothecated, encumbered, used, occupied, and improved subject to this Declaration.

(b) Effect of Annexation. The property included in any such annexation shall thereby become a part of Bridge Creek Village and subject to this Declaration, and Developer and the Association shall have and shall accept and exercise administration of this Declaration with respect to such property.

(c) Voting Rights. Upon annexation, additional Living Units so annexed shall be entitled to voting rights as set forth in Section 8.3 below.

2.3 Limitation on Annexation. The number of Living Units which Developer may create or annex to Bridge Creek Village is limited to 36 Living Units. There is no limitation on the right of Developer to annex Common Areas.

### ARTICLE 3

#### PARTY WALLS, INSURANCE, AND DAMAGE OR DESTRUCTION

3.1 Party Walls. Party walls shall be governed by the provisions of the Master Declaration.

3.2 Property Insurance. The Association, through the Board of Directors, shall obtain and maintain at all times and shall pay for out of operating assessments the property insurance including, but not limited to, fire, extended coverage, vandalism, and malicious mischief covering both the common areas and the Living Units, including fixtures, equipment, and other property which would ordinarily be required to be covered by a holder of a first mortgage.

There may be named as an insured, on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any insurance trust agreement or any successor to such trustee (each of whom shall be referred to herein as the "Insurance Trustee"), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance.

Each Owner appoints any Insurance Trustee or substitute Insurance Trustee designated by the Association, as an attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association or any Insurance Trustee shall receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for Owners and their first mortgage holders, as their interests may appear.

3.3 Liability Insurance. Liability insurance shall be maintained by the Master Association pursuant to the Master Declaration.

### ARTICLE 4

#### PROPERTY RIGHTS IN COMMON AREAS

4.1 Owners' Easements of Enjoyment. Subject to provisions of the Master Declaration and this Declaration, every

Owner and such Owner's invitees shall have a right and easement of enjoyment in and to the Common Areas.

4.2 Title to Common Areas. Fee title to the Common Areas shall be conveyed by Developer to, and must be accepted by, the Association free and clear of liens securing the payment of money.

4.3 Utility Easements. Developer or the Association may (and, to the extent required by law, shall) grant or assign easements to Developer, municipalities, communication companies, or other utilities over Common Areas performing utility services, and the Association may grant free access thereon to police, fire, and other public officials and to employees of utility companies and communications companies serving Bridge Creek Village.

4.4 Use of the Common Areas. Except as otherwise provided in the Master Declaration or this Declaration, the Common Areas shall be reserved for the use and enjoyment of all Owners and no private use may be made of the Common Areas. Nothing herein shall prevent the placing of a sign or signs upon the Common Areas for the purpose of identifying Bridge Creek Village, provided such signs are approved pursuant to the Master Declaration.

4.5 Alienation of the Common Areas. The Association may not by act or omission seek to abandon, partition, subdivide, encumber, cause the Common Area to be subject to any security interest, sell, or transfer the Common Areas owned directly or indirectly by the Association for the benefit of the Owners unless the holders or at least 80 percent of the Class A voting rights (as described in Section 8.3(b) below) and the Class B member (as defined in Section 8.3(b) below), if any, have given their prior written approval. This provision shall not apply to the easements described in this Section 4.3. A sale, transfer, or encumbrance of the Common Area or any portion of the Common Area in accordance with this Section 4.5 may provide that the Common Area so conveyed shall be released from any restriction imposed on such Common Area by this Declaration. No sale, transfer, or encumbrance, may, however, deprive any Owner of such Owner's right of access or support without the written consent of the Owner.

4.6 Delegation of Use. Any Owner may delegate, in accordance with the Bylaws of the Association, such Owner's right of enjoyment of the Common Areas to the members of such Owner's family or tenants who reside in the Living Unit.

4.7 Access Easement. Each Owner and each Owner's invitees, Developer, and Developer's assigns shall have the right

to use all access easements shown on the plat of Bridge Creek Village at Broken Top.

## ARTICLE 5

### PROPERTY RIGHTS IN LIVING UNITS

5.1 Use and Occupancy. Except as otherwise expressly provided in this Declaration, the Owner of a Living Unit in Bridge Creek Village shall be entitled to the exclusive use and benefit of such Living Unit.

5.2 Easements Reserved. In addition to any easements shown on the recorded plats, Developer hereby reserves the following easements for the benefit of Developer and the Association:

(a) Exterior and Landscaping Maintenance. The Association, its managers, and contractors shall have the right to enter upon each Lot and Living Unit to the extent reasonably necessary for maintenance and repair of landscaping on the Lots and exterior portions of the Living Units.

(b) Right of Entry. Any representative of the Association authorized by it may at any reasonable time, and from time to time at reasonable intervals, enter upon any Lot for the purpose of determining whether or not the use of and/or Improvements on such Lot are then in compliance with this Declaration. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Lot.

## ARTICLE 6

### RESTRICTIONS ON USE OF LIVING UNITS

6.1 Occupancy. No Owner shall occupy, use, or permit his Lot or Living Unit, or any part thereof, to be used in any manner that would violate the terms of the Master Declaration.

6.2 Master Declaration. Each Owner shall at all times comply with all applicable provisions of the Master Declaration.

## ARTICLE 7

### ARCHITECTURAL REVIEW

Any Owner proposing to construct any Improvements within Bridge Creek Village (including any exterior alteration, addition, destruction, or modification to any such Improvements) shall follow the procedures and shall be subject to the approvals

required by the Master Declaration. Failure to follow such procedures or obtain such approvals shall be deemed a breach of this Declaration.

## ARTICLE 8

### ASSOCIATION

Developer shall organize a neighborhood association of all of the Owners within Bridge Creek Village. Such Association, its successors, and assigns, shall be organized under the name "Bridge Creek Village Homeowners Association, Inc.," or such similar name as Developer shall designate, and shall have such property, powers, and obligations as are set forth in this Declaration for the benefit of Bridge Creek Village and all Owners of property located therein.

8.1 Organization. Developer shall, before the first Living Unit is conveyed to an Owner, organize the Association as a nonprofit mutual benefit corporation under the Oregon Nonprofit Corporation Act.

8.2 Membership. Every Owner of one or more Living Units shall, immediately upon creation of the Association and thereafter during the entire period of such Owner's ownership of one or more Living Units, be a member of the Association. Such membership shall commence, exist, and continue simply by virtue of such ownership, shall expire automatically upon termination of such ownership, and need not be confirmed or evidenced by any certificate or acceptance of membership.

8.3 Voting Rights. Voting rights within the Association shall be allocated as follows:

(a) Living Units. Except as provided in Section 8.3(b) with respect to the Class B member, Living Units shall be allocated one vote per Living Unit.

(b) Classes of Voting Membership. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Developer (except that beginning on the date on which the Class B membership is converted to Class A membership, and thereafter, Class A members shall be all Owners including the Developer). Class A members shall be entitled to voting rights for each Living Unit owned computed in accordance with Section 8.3(a) above. When more than one person holds an interest in any Living Unit, all such persons shall be members. The vote for such Living Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Living Unit.

Class B. The Class B member shall be Developer and shall be entitled to three times the voting rights computed under Section 8.3(a) for each Living Unit or unimproved Lot owned by Developer. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

(i) When Living Units on seventy-five percent (75%) of the Lots have been sold and conveyed to Owners other than Developer; or

(ii) At such earlier time as Developer may elect in writing to terminate Class B membership; or

(iii) Upon the expiration of seven years from the date hereof.

8.4 Powers and Obligations. The Association shall have, exercise, and perform all of the following powers, duties, and obligations:

(a) Declaration. The powers, duties, and obligations granted to the Association by this Declaration.

(b) Statutory Powers. The powers, duties, and obligations of a mutual benefit nonprofit corporation pursuant to the Oregon Nonprofit Corporation Act as it may be amended from time to time.

(c) General. Any additional or different powers, duties, and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to this Declaration.

The powers and obligations of the Association may from time to time be amended, repealed, enlarged or restricted by changes in this Declaration made in accordance with the provisions herein, accompanied by changes in the Articles of Incorporation or Bylaws of the Association made in accordance with such instruments and with the Oregon Nonprofit Corporation Act.

8.5 Liability. Neither the Association nor any officer or member of its Board of Directors shall be liable to any Owner for any damage, loss or prejudice suffered or claimed on account of any action or failure to act by the Association, any of its officers or any member of its Board of Directors, provided only that the officer or Board member has acted in good faith in accordance with the actual knowledge possessed by him.

8.6 Interim Board; Turnover Meeting. Developer shall have the right to appoint an interim board of three directors or



more, who shall serve as the Board of Directors of the Association until replaced by Developer or their successors have been elected by the Owners at the turnover meeting described in this Section. Developer shall call a meeting by giving notice to each Owner as provided in the Bylaws of the Association for the purpose of turning over administrative responsibility for Bridge Creek Village to the Association not later than one hundred twenty (120) days after Living Units on seventy-five percent (75%) of the Lots in Bridge Creek Village have been sold and conveyed to Owners other than Developer. If Developer does not call a meeting required by this Section within the required time, the Transitional Advisory Committee described in Section 8.7 below or any Owner may call a meeting and give notice as required in this Section. At the turnover meeting the interim directors shall resign and their successors shall be elected by the Owners and Developer as provided in this Declaration and the Bylaws of the Association.

8.7 Transitional Advisory Committee. Developer or Owners shall form a transitional advisory committee (the "Transitional Advisory Committee") to provide for the transition from administrative responsibility by Developer of Bridge Creek Village to administrative responsibility by the Association. Not later than the sixtieth (60th) day after the Developer has conveyed to Owners other than Developer Living Units on fifty percent (50%) of the Lots in Bridge Creek Village, Developer shall call a meeting of Owners for the purpose of selecting the Transitional Advisory Committee. The Transitional Advisory Committee shall consist of three or more members. The Owners, other than Developer, shall select two or more members. Developer may select no more than one member.

(a) Developer Failure to Call Meeting. An Owner may call a meeting of Owners to select the Transitional Advisory Committee if the Developer fails to do so as provided above.

(b) Owners' Failure to Select Members. Notwithstanding the foregoing, if the Owners do not select members for the Transitional Advisory Committee as described above, Developer shall have no further obligation to form the Transitional Advisory Committee.

(c) Turnover Meeting. The requirement for formation of a Transitional Advisory Committee shall not apply once the turnover meeting specified in Section 8.6 above has been held.

8.8 Developer Control After Turnover. After the turnover meeting described in Section 8.6 above, Developer shall continue to have the voting rights described in Section 8.3(b) above. In addition, a majority of the Board of Directors of the Association shall be elected by Developer, as Class B member, with the balance of the Board of Directors elected by the Class A

members. After termination of Class B membership, all directors shall be elected by the Class A members.

8.9 Association Rules and Regulations. The Association from time to time may adopt, modify, or revoke such rules and regulations governing the conduct of persons and the operation and use of Lots, Living Units, and the Common Areas as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the property within Bridge Creek Village. A copy of the rules and regulations, upon adoption, and a copy of each amendment, modification or revocation thereof, shall be delivered by the Association Board of Directors promptly to each Owner and shall be binding upon all Owners and occupants of all Living Units upon the date of delivery. The method of adoption of such rules shall be as provided in the Bylaws of the Association.

## ARTICLE 9

### MAINTENANCE

9.1 Maintenance and Lighting of Common Areas. The Association shall perform all maintenance upon Common Areas.

9.2 Maintenance of Utilities. The Association shall perform or contract to perform maintenance of all private utilities within Common Areas, such as sanitary sewer service lines and lift station, domestic water service lines, storm water detention facilities, and storm drainage lines, except to the extent such maintenance is performed by the utilities furnishing such services.

9.3 Maintenance of Building Exteriors and Landscaping. Maintenance of the exterior of the Buildings and landscaping on the Lots and Common Areas shall be the responsibility of the Association except as hereinafter provided. Exterior maintenance of Buildings shall include painting and reroofing as well as routine maintenance. Each Owner shall be responsible for the cost of maintaining landscaping installed by such Owner which requires an unusual amount of maintenance and for maintenance of landscaping on patios and decks. The Association may adopt regulations permitting Owners to maintain landscaping on their Lots. Owners shall also be responsible for the cost of any repairs necessitated by the negligence or intentional misconduct of such Owner or such Owner's guests or invitees.

9.4 Master Association. It is anticipated that the Association Board of directors will contract with the Master Association for performance of certain services to be provided by the Association and in connection therewith, the Association may

delegate to the Master Association such duties of the Association as the Association Board of Directors deems appropriate.

#### ARTICLE 10

##### ASSESSMENTS

All Living Units shall be assessed equally. Assessments will be levied and collected as provided in the Master Declaration. The rights of holders of Mortgages will be protected as provided in the Master Declaration.

#### ARTICLE 11

##### ENFORCEMENT

11.1 Remedies. In the event any Owner or the invitee of any Owner shall violate any provision of this Declaration, the Bylaws of the Association or any rules or regulations adopted by the Association governing the use of Lots, Living Units, or Common Areas, then the Association, acting through its Board of Directors, may notify the Owner in writing that the violations exist and that such Owner is responsible for them, and may, after reasonable notice and opportunity to be heard, do any or all of the following: (a) suspend the Owner's voting rights and right to use the Common Areas for the period that the violations remain unabated, or for any period not to exceed sixty (60) days for any infraction of its rules and regulations, (b) bring suit or action against such Owner to enforce this Declaration, or (c) impose fines as provided in Section 11.7. Nothing in this section, however, shall give the Association the right to deprive any Owner of access to and from such Owner's Living Unit.

11.2 Nonqualifying Improvements and Violation of General Protective Covenants. In the event any Owner constructs or permits to be constructed on such Owner's Lot an Improvement contrary to the provisions of this Declaration, or causes or permits any Improvement, activity, condition or nuisance contrary to the provisions of this Declaration to remain uncorrected or unabated on such Owner's Lot, then the Association acting through its Board of Directors may notify the Owner in writing of any such specific violations of this Declaration and may require the Owner to remedy or abate the same in order to bring the Owner's Lot, the Improvements thereon, and the Owner's use thereof, into conformance with this Declaration. If the Owner is unable, unwilling, or refuses to comply with the Association's specific directives or remedy or abatement, or the Owner and the Association cannot agree to a mutually acceptable solution within the framework and intent of this Declaration, after notice and opportunity to be heard and within sixty (60) days of written notice to the Owner, then the Association acting through its Board of Directors, shall have, in addition to any other rights

or remedies provided in this Declaration, at law or in equity, the right to do any or all of the following:

(a) Remove Cause of Violation. Enter onto the offending Lot, without being subject to any trespass, conversion or any other claim for damages, and remove the cause of such violation, or alter, repair or change the item which is in violation of the Declaration in such a manner as to make it conform thereto, in which case the Association may assess such Owner for the entire cost of the work done.

(b) Suit or Action. Bring suit or action against the Owner on behalf of the Association and other Owners to enforce this Declaration.

11.3 Nonexclusiveness of Remedies. An election by the Association to pursue any remedy provided for violation of this Declaration shall not prevent concurrent or subsequent exercise of another remedy permitted hereunder.

## ARTICLE 12

### MISCELLANEOUS PROVISIONS

12.1 Amendment and Repeal. This Declaration, or any provision hereof, may be amended or repealed by the vote or written consent of Owners holding not less than seventy-five percent (75%) of the Class A votes, together with the vote or written consent of the Class B member, if such membership has not been terminated as provided herein. Any such amendment or repeal shall become effective only upon recordation in the Deed Records of Deschutes County, Oregon, of a certificate of the president or secretary of the Association setting forth in full the amendment, amendments or repeal so approved and certifying that such amendment, amendments or repeal have been approved in the manner required by this Declaration. In no event shall an amendment under this section create, limit or diminish special Developer rights without Developer's written consent, or change the boundaries of any Lot or any uses to which any Lot is restricted unless the Owners of the affected Lots unanimously consent to the amendment.

12.2 Regulatory Amendments. Notwithstanding the provisions of Section 12.1 above, until termination of the Class B membership, Developer shall have the right to amend this Declaration or the Bylaws of the Association in order to comply with the requirements of any applicable statute, ordinance, or regulation or of the Federal Housing Administration, the Veterans Administration, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, any department, bureau, board, commission or agency

of the United States or the State of Oregon, or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon which insures, guarantees or provides financing for a planned community or lots in a planned community.

12.3 Duration. This Declaration shall run with the land and shall be and remain in full force and effect at all times with respect to all property included in Bridge Creek Village and the Owners thereof for an initial period of thirty (30) years commencing with the date on which this document is recorded. Thereafter, this Declaration shall continue to run with the land and be and remain in full force and effect at all times with respect to all property in Bridge Creek Village and the Owners thereof for successive additional periods of ten (10) years each. The continuation from the initial or any additional period into the next subsequent period shall be automatic and without the necessity of any notice, consent or other action whatsoever; provided, however, that this Declaration may be terminated at the end of the initial or any additional period by resolution approved not less than six (6) months prior to the intended termination date by the vote or written consent of Owners owning not less than seventy-five percent (75%) of the Class A votes and the vote or written consent of the Class B member, if any. Any such termination shall become effective only if prior to the intended termination date a certificate of the president or secretary of the Association, certifying that termination as of a specified termination date has been approved in the manner required herein, is duly acknowledged and recorded in the Deed Records of Deschutes County, Oregon. Such termination shall not have the effect of denying any Owner access to such Owner's Lot unless such Owner and any mortgagee of such Lot have consented in writing to the termination.

12.4 Joint Owners. In any case in which two or more persons share the ownership of any Living Unit, regardless of the form of ownership, the responsibility of such persons to comply with this Declaration shall be a joint and several responsibility and the act or consent of any one or more of such persons shall constitute the act or consent of the entire ownership interest; provided, however, that in the event such persons disagree among themselves as to the manner in which any vote or right of consent held by them shall be exercised with respect to a pending matter, any such person may deliver written notice of such disagreement to the Association, and the vote or right of consent involved shall then be disregarded completely in determining the proportion of votes or consents given with respect to such matter.

12.5 Lessees and Other Invitees. Lessees, invitees, contractors, family members, and other persons entering Bridge Creek Village under rights derived from an Owner shall comply with all of the provisions of this Declaration restricting or

regulating the Owner's use, improvement, or enjoyment of such Owner's Lot, Living Unit, and other areas within Bridge Creek Village. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner.

12.6 Nonwaiver. Failure by the Association or by an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

12.7 Construction; Severability. This Declaration and any Supplemental Declaration shall be liberally construed as one document to accomplish the purposes stated in the introductory paragraphs hereof. Nevertheless, each provision of this Declaration and any Supplemental Declarations shall be deemed independent and severable, and the invalidity or partial invalidity of any provision shall not affect the validity or enforceability of the remaining part of that or any other provision.

12.8 Notices and Other Documents. All notices and other communications under this Declaration shall be in writing and shall be deemed to have been given on the day of delivery when delivered by personal service and to have been given three business days after delivery to the United States mails certified or registered mail, return receipt requested, addressed to the party to which such notice is directed at the last address for such person shown in the Association's records.

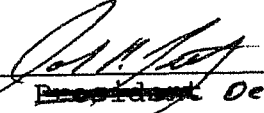
(a) Change of Address. Any party hereto may change the address to which notices shall be directed by giving ten days' written notice of such change to the Association delivered as provided herein.

12.9 Conflict. In case of any conflict between the terms of this Declaration and the terms of the Master Declaration, the terms of the Master Declaration shall control.

IN WITNESS WHEREOF, Developer has executed this Declaration as of the day and year first above written.

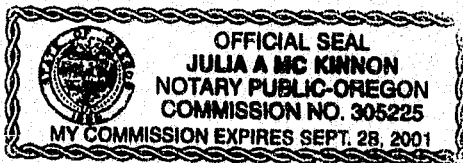
**BROKEN TOP CONDOMINIUM ASSOCIATES  
LLC**

By **The Pennbrook Company, Member**

By   
Its **President Development Director**

STATE OF OREGON           )  
                                   ) SS  
 COUNTY OF                )

The foregoing instrument was acknowledged before me on this 19<sup>th</sup> day of May Development Dir., 1998, by John Lietz who is the President of The Pennbrook Company, Member of Broken Top Condominium Associates LLC, an Oregon limited liability company, on its behalf.



Julia A. McKinnon  
 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:

98 MAY 19 AM 10:46

MARY SUE PENHOLLOW  
 COUNTY CLERK

BY. [Signature] DEPUTY

NO. 98-26709 FEE 75-  
 DESCHUTES COUNTY OFFICIAL RECORDS