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# BROKEN TOP COMMUNITY ASSOCIATION

AMENDED AND RESTATED

BYLAWS

for

BROKEN TOP COMMUNITY

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**BTCA BYLAWS**  
**- TABLE OF CONTENTS -**

	<b>Page</b>
<b>Article I. General Provisions</b>	<b>1</b>
1.1. Name .....	1
1.2. Organized Under Oregon Statutes .....	1
1.3. Principal Office .....	1
1.4. Registered Office and Registered Agent.....	1
1.5. Definitions.....	2
<b>Article II. Association Members and Meetings</b>	<b>2</b>
2.1. Membership.....	2
2.2. Place of Meetings.....	2
2.3. Annual Meetings .....	2
2.4. Special Meetings .....	2
2.5. Notice of Meetings.....	2
2.6. Waiver of Notice.....	2
2.7. Quorum.....	3
2.8. Adjourned Meetings.....	3
2.9. Voting.....	3
2.10. Proxies.....	3
2.11. Conduct of Meetings.....	4
2.12. Action Without a Meeting.....	4
<b>Article III. Board of Directors</b>	<b>4</b>
<b>A. . Composition and Selection</b> .....	<b>4</b>
3.1. Governing Body; Composition .....	4
3.2. Number of Directors .....	4
3.3. Nomination and Election Procedures.....	4
3.4. Vacancies .....	5
3.5. Term Limit .....	5
3.6. Removal of Directors .....	6
3.7. Organization Meeting.....	6

<b>B. Meetings</b>	6
3.8. Regular Meetings	6
3.9. Special Meetings	6
3.10. Waiver of Notice	7
3.11. Quorum and Voting	7
3.12. Compensation	7
3.13. Conduct of Meetings	7
3.14. Open Meetings	7
3.15. Action Without a Formal Meeting	8
3.16. Director Conflict of Interest	8

<b>C. Powers and Duties</b>	8
3.17. Powers	8
3.18. Duties	8
3.19. Management	10
3.20. Accounts and Records	10
3.21. Borrowing	13
3.22. Enforcement	13
3.23. Prohibited Acts	15

#### **Article IV. Officers** 16

4.1. Officers	16
4.2. Election and Term of Office	16
4.3. Removal and Vacancies	16
4.4. Powers and Duties	16
4.5. Resignation	17
4.6. Agreements, Contracts, Deeds, Leases, Checks, Etc.	17
4.7. Compensation	17

#### **Article V. Neighborhood Representative** 17

5.1. Neighborhood Representative	17
5.2. Election and Removal Procedures for Neighborhood Representatives	17
5.3. Duties of Neighborhood Representative	18

#### **Article VI. Committees** 18

6.1. General	18
6.2. Hearings and Appeals Committee	18
6.3. Neighborhood Committees	19

<b>Article VII. Miscellaneous</b>	<b>20</b>
7.1. Fiscal Year.....	20
7.2. Parliamentary Rules .....	20
7.3. Conflicts .....	20
7.4. Books and Records.....	20
7.5. Notices.....	21
7.6. Electronic Notice.....	21
7.7. Electronic Ballot.....	22
7.8. Amendment .....	22
7.9. Waiver.....	22
7.10. Provisions Independent.....	22
7.11. Previous Bylaws Superseded.....	23

**AMENDED AND RESTATED BYLAWS  
OF  
BROKEN TOP COMMUNITY ASSOCIATION, INC.,  
an Oregon nonprofit corporation**

**Recitals:**

Broken Top Community Association, Inc., an Oregon nonprofit corporation ("Association") serves as an entity pursuant to the Oregon Planned Community Act, codified at Chapter 94 of the Oregon Revised Statutes, for the management of a residential planned development commonly known as Broken Top, which has been established upon certain real property located in Deschutes County, Oregon, more particularly described on Exhibit "1" of these bylaws.

The Association desires to supersede the Bylaws now in effect, and all amendments thereto and to fully replace them with these Amended and Restated Bylaws; NOW THEREFORE,

**Article I  
General Provisions**

1.1. Name. The name of the Association shall be Broken Top Community Association, Inc. ("Association").

1.2. Organized Under Oregon Statutes. The Association is a homeowners' association organized in accordance with the Oregon Nonprofit Corporation Act, codified at O.R.S. Chapter 65, and the Oregon Planned Community Act, codified at O.R.S. Chapter 94, to operate the Association. These bylaws are amended and restated pursuant to the Oregon Planned Community Act and expressly incorporate by reference all of the provisions therein.

1.3. Principal Office. The principal office of the Association shall be maintained in the State of Oregon at such place as the Board of Directors of the Association ("Board") may determine from time to time. The Association may have such other offices, either within or outside the State of Oregon, as the Board may determine or as the affairs of the Association may require.

1.4. Registered Office and Registered Agent. The registered office of the Association shall be located in the State of Oregon at such place as may be fixed from time to time by the Board upon filing such notices as may be required by law. Any change in the registered agent or registered office shall be effective upon filing such change with the Secretary of State of the State of Oregon unless a later date is specified. The Association does not intend to amend the Association Declaration or these Bylaws each time there is a change in the Association's registered agent or registered office.

1.5. Definitions. The words used in these Bylaws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that Declaration of Covenants, Conditions, and Restrictions for Broken Top Community filed in the Office of the County Clerk ("Declaration"), unless the context indicates otherwise.

## **Article II**

### **Association Members and Meetings**

2.1. Membership. The Association shall have one class of membership. Each Owner of a Unit shall be a Member of the Association; however, in the case of Units which are subject to installment contracts of sale, the contract purchasers shall be the members and not the contract sellers who are merely holding title as collateral.

2.2. Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as may be designated by the Board either within the Properties or as convenient thereto as possible and practical.

2.3. Annual Meetings. The Association shall hold at least one meeting of the Owners each calendar year. The annual meeting shall be set by the Board so as to occur at least 30 days but not more than 120 days before the close of the Association's fiscal year on a date and at a time set by the Board.

2.4. Special Meetings. The President may call special meetings of the Owners. In addition, it shall be the duty of the President to call a special meeting if so directed by resolution of the Board or upon a petition of the Members as set forth in O.R.S. 94.650. At any such special meeting, only such business shall be transacted as shall have been set forth in the notice of such meeting.

2.5. Notice of Meetings. Notice of all meetings of the Association shall be in writing, stating the place, day, and hour of the meeting and shall be delivered, either personally, electronically, or by mail, to each Member, not less than 10 or more than 50 days before the date of such meeting. In the case of a special meeting or when otherwise required by statute or these Bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice. Written notice shall be effective, whether or not received, if mailed to the last known address of a Member shown on the books of the Association's Secretary and shall be effective as of the date mailed or personally delivered. If a Member has provided the Secretary with an email address for delivery of notices and has authorized in writing the transmittal of notices by email, written notice shall be effective, whether or not received, upon email transmittal.

2.6. Waiver of Notice. Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of

the Members, either before or after such meeting. Attendance at a meeting by a Member shall be deemed waiver by such Member of notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

## 2.7. Quorum.

(a) Except as otherwise provided in these Bylaws or in the Declaration, the presence, in person or by proxy, of Members entitled to cast twenty percent (20%) of the Total Vote shall constitute a quorum at all meetings of the Association. The Members present at a duly called or held meeting at which a quorum is present may only continue to do business as long as a quorum of Members remains at the meeting.

(b) At an adjourned annual or special meeting, which was adjourned for any reason, the quorum for the reconvened meeting remains 20% of the Total Vote, in person or by proxy.

(c) Except as otherwise provided in the governing documents for any duly organized Neighborhood Association, the presence, in person or by proxy, of Members entitled to cast twenty percent (20%) of the Neighborhood Total Vote shall constitute a quorum at all meetings of that Neighborhood.

2.8. Adjourned Meetings. If any meeting of the Association cannot be held because a quorum is not present, a majority of the Members who are present at such meeting may adjourn the meeting to a time not less than 5 nor more than 30 days from the time the original meeting was called. New notices of the adjourned meeting shall promptly be sent to all Members in the manner prescribed for meetings of Members. At the reconvened meeting, any business may be transacted which might have been transacted at the meeting originally called.

2.9 Voting. The voting rights of the Members shall be as set forth in the Declaration, and such voting rights provisions are specifically incorporated by reference. Voting at a meeting may be by voice or written ballot as directed by the Board, except the election of Directors which shall be by secret written ballot. The affirmative vote by a Majority of the Total Vote (or Neighborhood Total Vote, as the case may be), is the act of the Members, unless a different percentage of approval is required by the Declaration, these Bylaws or Oregon law.

2.10. Proxies. Any Member entitled to personally cast the vote for his Unit may vote in person or by proxy. No proxy shall be valid unless it meets the requirements of O.R.S. 94.660 and is signed by the Member or his duly authorized agent or attorney-in-fact, dated, and filed with the Secretary of the Association at least three (3) days prior to any meeting for which it is to be effective. No proxy shall be valid after one year from its date of execution.

2.11. Conduct of Meetings. The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring at the meeting.

2.12. Action Without a Meeting. Any action required or permitted by law to be taken at a meeting of the Members may be taken without a meeting, without prior notice and without a vote if written consent specifically authorizing the proposed action is signed by persons entitled to cast at least the minimum number of votes necessary to authorize such action at a meeting if all persons entitled to vote thereon were present. Such consents shall be signed within 60 days after receipt of the earliest dated consent, dated and delivered to the Association at its principal place of business in the State of Oregon. Such consents shall be filed with the minutes of the Association, and shall have the same force and effect as a vote of the Members.

### **Article III** **Board of Directors**

#### **A. COMPOSITION AND SELECTION.**

3.1. Governing Body; Composition. The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one equal vote. No Unit may have more than one representative Member on the Board at the same time. Any Member of the Association may serve on the Board, however, the Unit for each Member must be in Good Standing as defined in the Declaration.

3.2. Number of Directors. The number of Directors in the Association shall be not less than three or more than seven.

#### 3.3. Nomination and Election Procedures.

(a) Nominations and Declarations of Candidacy. The Members shall elect from among themselves a Board of Directors. Prior to each election of Directors, the Board shall prescribe the opening date and the closing date of a reasonable filing period in which each and every eligible person who has a bona-fide interest in serving as a Director may file as a candidate for any position. The Board shall also establish such other rules and regulations as it deems appropriate to conduct the nomination of Directors in a fair, efficient and cost-effective manner. Nominations for election to the Board may also be made by a Nominating Committee. The Nominating Committee, if any, shall consist of a Chairman, who shall be a current member of the Board, and three or more Members. The Nominating Committee, if any, shall be appointed by the Board not less than 30 days prior to each annual meeting of the Members to serve a term of one year or until their successors are appointed. The Nominating Committee may make as many nominations for election to the Board as it shall in its discretion determine, but shall ensure that there is at least one candidate for each position to be filled. All candidates



shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

(b) Election Procedures. Except as otherwise prohibited or limited by the Declaration, these Bylaws or the Oregon Planned Community Act, the act of electing Directors shall be taken by written ballot without meeting. The Secretary shall cause notice of the elections to be mailed or delivered to each Member at least 10 days prior to the closing date established by the Board for filing of ballots. Such notice shall be accompanied by a written ballot listing all candidates for each vacancy who have qualified in accordance with the procedures described in subsection (a) above, and all candidates for each vacancy nominated by the Nominating Committee, if any. The notice shall specify the name and address to which the ballots should be returned and the date by which they must be received in order to be counted, which date shall be the "election date."

Each Member may cast the entire vote assigned to his Unit for each position to be filled from the slate of candidates on which such Member is entitled to vote. The candidate(s) receiving the most votes shall be elected. The directors elected by the Members shall hold office until their respective successors have been elected.

There shall be no cumulative voting. There shall be no absentee ballots.

3.4 Vacancies. Vacancies in the Board of Directors caused by any reason other than the removal by vote of the Association or by vote of the Directors may be filled by vote of the majority of the remaining Directors, even though they may constitute less than a Board quorum. Each person so elected shall serve as a Director for the remainder of the unexpired term of the Director he is replacing.

3.5. Term Limit. No Member shall be eligible for nomination or election to serve more than two consecutive three-year terms as a Director. The time of Board service by any Director appointed to fulfill the unexpired term of a former director under Section 3.4 above is excluded from the calculation of "consecutive three-year terms" in this Section, but in no event shall any Director serve on the Board for an uninterrupted period of longer than eight years. A unit owner who is no longer eligible for service as a Director under this section will be eligible once again after a period of twelve (12) months has elapsed between the end of service and the next date of Director service, whether said Board service is by election or appointment.

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### 3.6 Removal of Directors.

(a) Removal by Members. At any duly called special meeting of the Association, the entire Board or any individual Director may be removed from office by the affirmative vote of Members holding a majority of the Total Votes. If any or all Directors are so removed, successor Directors shall be elected at the same meeting. The notice of such meeting must state that removal of Directors is to be considered and, further, that a substitute Director shall be elected at the same meeting for the then unexpired term of the Director(s) so removed. Any Director whose removal has been proposed shall be given notice prior to any meeting and shall be given an opportunity to be heard at the meeting.

(b) Removal by Directors: Any Director may be removed by the affirmative vote of a majority of the Directors present at a regular or special board meeting at which a quorum is present if (i) he has three consecutive unexcused absences from Board meetings, (ii) his Unit is not in Good Standing as defined in the Declaration, or (iii) the other Directors have determined he has violated the code of conduct adopted by the Board and then in effect. Any Director whose removal has been proposed shall be given an opportunity to be heard at the meeting.

3.7 Organization Meeting. The first meeting of the Board following each annual meeting of the Members shall be held within 10 days thereafter at such time and place the Board shall fix.

## **B. MEETINGS.**

3.8. Regular Meetings. Regular meetings of the Board may be held at such time and place a majority of the Directors shall determine, but at least four such meetings shall be held during each fiscal year with at least one per quarter. Notice of the time and place of the meeting shall be posted in a prominent place within the Properties and communicated to Directors not less than four (4) days prior to the meeting; provided, however, notice of a meeting need not be given to any Director who has signed a waiver of notice or a written consent to holding of the meeting. Notices given by personal delivery, telephone, or electronically shall be delivered, telephoned, or emailed at least 72 hours before the time set for the meeting.

3.9. Special Meetings. Special meetings of the Board shall be held when called by written notice signed by the President or by any two Directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each Director: (a) by personal delivery; (b) by first class mail, postage prepaid; (c) by telephone communication, either directly to the Director or to a person at the Director's office or home who would reasonably be expected to communicate such notice promptly to the Director; or (d) by electronic means. All such notices shall be given at the Director's telephone number or sent to the Director's address (physical or email), as shown on the records of the Association. Notices of special meetings of the Board shall be posted in a prominent place within the Properties. Notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given

by personal delivery, telephone, or electronically shall be delivered, telephoned, or emailed at least 72 hours before the time set for the meeting.

3.10. Waiver of Notice. The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if a quorum is present. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any Director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.11 Quorum and Voting. At all meetings of the Board, a majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these Bylaws or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a majority of the Directors present at such meeting may adjourn the meeting to a time not less than five (5) nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.12. Compensation. No Director shall receive any compensation from the Association for acting as such unless approved by a majority of the Total Vote. Any Director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other Directors. Subject to Section 3.16 below, nothing herein shall prohibit the Association from compensating a Director, or any entity with which a Director is affiliated, for services or supplies furnished to the Association in a capacity other than as a Director pursuant to a contract or agreement with the Association, provided that such Director's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board, excluding the interested Director.

3.13. Conduct of Meetings. The President shall preside over all meetings of the Board, and the Secretary shall keep a minute book of meetings of the Board, recording all resolutions adopted by the Board and all transactions and proceedings occurring at such meetings.

To the extent permitted by the Oregon Planned Community Act, the Board of Directors may permit any or all of the Directors to participate in a regular or special meeting by, or conduct the meeting through, use of any means of communication by which all Directors may simultaneously hear or read each other's communications during the meeting. A Director participating in the meeting by this means is deemed to be present in person at the meeting.

3.14. Open Meetings. Subject to the provisions of Section 3.15, all meetings of the Board shall be open to all Members, but Members other than Directors may not participate in

any discussion or deliberation unless permission to speak is requested on his behalf by a Director. In such case, the President may limit the time any Member may speak. Notwithstanding the above, the Board may close the meeting to Members and meet in executive session, to discuss matters of a sensitive nature, such as consultation with legal counsel, personnel matters, contract negotiations or collection of unpaid assessments.

Any means of communication utilized during a Board Meeting to allow a Director who is not physically present to participate in said meeting must also allow for Members present at the Board meeting to hear or read the Directors' communications during the meeting, except during times when the Directors are meeting in executive session.

3.15. Action Without a Formal Meeting. Any action to be taken at a meeting of the Directors or any action that may be taken at a meeting of the Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors, and such consent shall have the same force and effect as a unanimous vote. Written consent or consents shall be filed with the minutes of the proceedings of the Board. An explanation of the action to be taken or actually taken by the Board shall be given to the Members of the Association within three (3) days after all written consents have been obtained. The explanation shall be given in the same manner as provided in the Bylaws for the giving of notice of regular meetings of the Board. Failure to give notice shall not render the action to be taken or actually taken invalid.

3.16 Director Conflict of Interest. A Director has a conflict of interest if he has any material interest, whether personal or financial, in the result of any action to be taken by the Board. If any other Director, or any five Members, declare at a Board meeting that a Director has a conflict of interest with regard to any matter under consideration, that Director and Board shall follow the conflict of interest protocol adopted by the Board and then in effect, if any, and if there is no such protocol, follow the conflict of interest requirements in the Oregon Nonprofit Act, codified at O.R.S. 65.357-65.367.

## **C. POWERS AND DUTIES.**

3.17. Powers. The Board shall have all of the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Declaration, these Bylaws, the Articles, and as provided by law. The Board may do or cause to be done all acts and things as are not by the Declaration, Articles, these Bylaws, or Oregon law directed to be done and exercised exclusively by the Members.

3.18. Duties. The duties of the Board shall include, without limitation:

(a) preparation and adoption of annual budgets and establishing each Owner's share of the Common Expenses and Neighborhood Expenses;

(b) levying and collecting assessments from the Owners to fund the Common Expenses and Neighborhood Expenses;

(c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility;

(d) designating, hiring, and dismissing the personnel necessary to carry out the rights and responsibilities of the Association and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(e) depositing all funds received on behalf of the Association in a bank depository which it shall approve, and using such funds to operate the Association; provided, any reserve fund may be deposited, in the Directors' best business judgment, in depositories other than banks;

(f) making and amending rules and regulations, including but not limited to rules and regulations regarding Transient Occupancy as defined in the Declaration;

(g) opening of bank accounts on behalf of the Association and designating the signatories required;

(h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Declaration and these Bylaws;

(i) enforcing by legal means the provisions of the Declaration, these Bylaws, and the rules adopted by it and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association;

(j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;

(k) paying the cost of all services rendered to the Association or its Members and not chargeable directly to specific Owners;

(l) keeping books with detailed accounts of the receipts and expenditures of the Association;

(m) making available to any prospective purchaser of a Unit, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Declaration, the Articles of

Incorporation, the Bylaws, rules and all other books, records, and financial statements of the Association;

(n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Properties; and

(o) indemnifying a Director, officer or committee Member, or former Director, officer or committee Member of the Association to the extent such indemnity is required by Oregon law, the Articles of Incorporation and the Declaration.

3.19. Management. The Board may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy making authority or those duties set forth in Sections 3.18(a) and 3.18(i).

The Board may delegate to one or more of its Members the authority to act on behalf of the Board on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board.

3.20. Accounts and Reports. The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

(a) accrual accounting, as defined by generally accepted accounting principles, shall be employed;

(b) accounting and controls should conform to generally accepted accounting principles;

(c) cash accounts of the Association shall not be commingled with accounts of other associations or any other persons whatsoever, but this shall not prevent the Association from holding all of its funds, whether operating or reserves, for the Main Association or the Neighborhoods, in one or more commingled accounts, so long as the Association keeps accurate records of the amounts attributable to each entity and each purpose;

(d) no remuneration shall be accepted by the managing agent or Association personnel from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; anything of value received shall be immediately given over to the Association;

(e) any financial or other interest which the managing agent, Association personnel, or Directors may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board;

(f) the following financial and related information shall be regularly prepared and distributed by the Board to all Members of the Association:

(i) The Board shall cause a Budget for the Association, (which includes the budget for each of the Neighborhoods, if any), to be prepared for each fiscal year of the Association, a copy of which shall be distributed to each Member of the Association not less than 45 nor more than 60 days before the beginning of the fiscal year to which the Budget relates. A copy of the Budget shall be distributed personally or by mail or other manner reasonably designed to provide delivery to each of the Members of the Association. The Budget shall include the following information:

(A) the estimated revenue and expenses of the Association on an accrual basis for the forthcoming fiscal year;

(B) the amount of the total cash reserves of the Association currently available for the replacement or major repair of the Area of Common Responsibility and for contingencies;

(C) an estimate of the current replacement costs of the estimated remaining useful life of, and the methods of funding to defray future repair, replacement or additions to, those major components of the Area of Common Responsibility; and

(D) a general statement setting forth the procedures used by the Board in the calculation and establishment of reserves to defray the future repair, replacement or additions to major components of the Area of Common Responsibility.

The Budget shall become effective unless disapproved by a majority of the Total Vote at a meeting of the Members. There shall be no obligation to call a meeting for the purpose of considering the Budget except on petition of the Members as provided for special meetings in Section 2.4 of the Bylaws, which petition must be presented to the Board within 10 days of mailing of the Budget. In the event the proposed Budget is disapproved or the Board fails for any reason to determine the Budget for any year, then and until such time as a Budget shall have been determined as provided herein, the Budget in effect for the immediately preceding year shall continue for the current year.

The portions of the Budget relating to particular Neighborhoods shall become effective unless disapproved by a majority of the Neighborhood Total Vote. There shall be no obligation to call a meeting for the purpose of considering the Neighborhood Budget except on petition of Owners of at least 10% of the Units in such Neighborhood; and provided, further, the right to disapprove shall only apply to those line items in the Neighborhood Budget which are attributable to services requested by the Neighborhood. In the event the portions of the proposed Budget relating to any Neighborhood is disapproved or the Board fails for any reason to determine the Neighborhood Budget for any year, then and until such time as such budget shall have been determined as provided herein, the Neighborhood Budget in effect for the

immediately preceding year shall continue for the current year.

In lieu of distributing the Budget as specified in the above paragraphs of this Section, the Board may elect to distribute a summary of the Budget ("Summary") containing at least the items required under parts (f)(i)(A) through (D) of this Section, to all its Members with a written notice that the Budget is available at the business office of the Association or at another suitable location within the boundaries of the Properties and that copies will be provided upon request at the expense of the Association. If any Member requests a copy of the Budget, the Association shall provide such copy to the Member by first-class United States mail and shall mail such copy within five (5) days of such request.

The written notice that is distributed to each of the Members shall be in at least 10 point bold type on the front page of the Summary.

In the event the Board elects to distribute the Budget Summary, upon written request for the Association's most recent Budget by any Member, the Association shall, within 10 days of the mailing or delivery of the request, provide to any Member of the Association a copy of the Budget. The Association may charge a fee for this service, which shall not exceed the reasonable cost to prepare and reproduce the Budget.

(ii) The Board shall cause an annual report ("Financial Statement") to be prepared in accordance with generally accepted accounting principles to be distributed to each Member of the Association within 120 days after close of the Association's fiscal year. A copy of the Financial Statement shall be distributed by U.S. mail or other manner reasonably designed to provide delivery to each of the Members of the Association, and shall consist of:

- (A) a balance sheet as of the end of the fiscal year;
- (B) an income and expense statement for the fiscal year; and
- (C) a statement of changes in financial position for the fiscal year.

The Financial Statement shall be prepared by an independent accountant for any fiscal year in which the gross income to the Association exceeds \$75,000.00. If the Financial Statement is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the Association that the statements were prepared without independent audit or review of the books and records of the Association.

(iii) A statement of the Association's policies and practices in enforcing its remedies against Members for default in the payment of assessments, including the recording and foreclosing of liens against Units, to be distributed to Members of the Association within 60 days before the beginning of each fiscal year.



(g) The Board shall do the following not less frequently than quarterly:

(i) cause a current reconciliation of the Association's operating accounts to be made and review the same;

(ii) cause a current reconciliation of the Association's reserve accounts to be made and review the same;

(iii) review the current year's actual reserve revenues and expenses compared to the current year's Budget;

(iv) review the most current account statements prepared by the financial institution where the Association has its operating and reserve accounts;

(v) review an income and expense statement for the Association's operating and reserve accounts; and

(vi) review the delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments which remain delinquent. (Any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless otherwise determined by the Board.)

(h) The Board shall comply with the reserve study and reserve account requirements of O.R.S. 94.595. For purposes of this subsection (h), the term "reserve account requirements" means the estimated funds which the Board has determined are required to be available at a specified point in time to repair, replace or restore those major components which the Association is obligated to maintain.

3.21 Borrowing. The Association shall have the power to borrow money for the purpose of maintenance, repair or restoration of the Area of Common Responsibility without the approval of the Members. The Board shall also have the power to borrow money for other purposes; provided, that the proposed borrowing is for the purpose of modifying, improving, or adding amenities to the Area of Common Responsibility. Such borrowing shall be in accordance with Section 3.23(a).

3.22. Enforcement. In addition to such other rights as are specifically granted under the Declaration, the Board shall have the power to impose reasonable fines. All fines are enforceable as assessments and shall constitute a lien upon the Unit of the violating Owner. The Board shall also have the power to suspend an Owner's right to vote or any person's right to use the Common Area for violation of any duty imposed under the Declaration, these Bylaws, or any rules and regulations duly adopted hereunder; provided, however, nothing herein shall authorize the Board to limit ingress and egress to or from a Unit or to suspend an Owner's right to vote due to nonpayment of assessments. In addition, the Board may suspend any services

provided by the Association to an Owner or the Owner's Unit if the Owner is more than 30 days delinquent in paying any assessment or other charges owed to the Association. In the event that any occupant, guest or invitee of a Unit violates the Declaration, Bylaws, or a rule and a fine is imposed, the Owner shall pay the fine upon notice from the Association. The failure of the Board to enforce any provision of the Declaration, Bylaws, or any rule shall not be deemed a waiver of the right of the Board to do so thereafter.

(a) Notice. Prior to imposition of any sanction hereunder or under the Declaration, the Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than 15 days within which the alleged violator may present a written request for a hearing to the Board or the Hearings and Appeals Committee, if any, appointed pursuant to Article VI; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within 15 days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed; provided the Board or the Hearings and Appeals Committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the 15 day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

(b) Hearing. If a hearing is requested within the allotted 15 day period, the hearing shall be held before the Hearings and Appeals Committee, if any, or if none, before the Board; the hearing shall be held in executive session, if permitted by law, otherwise in open meeting. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, Director, or agent who delivered such notice. The notice requirement shall also be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

(c) Appeal. Following a hearing before the Hearings and Appeals Committee, the violator shall have the right to appeal the decision to the Board. To perfect this right, a written notice of appeal must be received by the manager, President, or Secretary of the Association within 15 days after the hearing date.

(d) Additional Enforcement Rights. Notwithstanding anything to the contrary in this Article, the Board may elect to enforce any provision of the Declaration, these Bylaws, or the rules of the Association by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations however, only in accordance with any applicable ordinance(s) of the City of Bend or County of Deschutes, if applicable) or, following compliance with procedures set forth in the Declaration, by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought

shall pay all costs, including reasonable attorney's fees actually incurred.

3.23. Prohibited Acts. The Board shall not take any of the following actions except with the written consent or vote of a majority of the Total Vote:

(a) to incur aggregate expenditures for new items of common property, that are not replacements or enhancements of existing common property, in any fiscal year in excess of 5% of the budgeted Common Expenses of the Association for that fiscal year;

(b) to sell during any fiscal year property of the Association having an aggregate fair market value greater than 5 % of the budgeted Common Expenses of the Association for that fiscal year;

(c) to pay compensation to Directors or officers of the Association for services performed in the conduct of the Association's business; provided, however, the Board may cause a Director or officer to be reimbursed for expenses incurred in carrying on the business of the Association;

(d) to enter into a contract with a third Person wherein the third Person will furnish goods or services for the Area of Common Responsibility or the Association for a term longer than five (5) years with the following exceptions:

(i) a management contract, the terms of which have been approved by the U.S. Department of Veterans Affairs ("VA") or the U.S. Department of Housing and Urban Development ("HUD") if either agency is guaranteeing or insuring a mortgage in the Properties;

(ii) a contract with a public utility company, if the rates charged for the materials or services are regulated by the Public Utilities Commission; provided, however, the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate; and

(iii) prepaid casualty and/or liability insurance policies not to exceed three years duration, provided that the policy permits short rate cancellation by the insured.

(e) expend funds designated as reserve funds for any purpose other than:

(i) the repair, restoration, replacement or maintenance of major components for which the Association is obligated and for which the reserve fund was established, or

(ii) litigation involving the purposes set forth in (i) above,

(f) notwithstanding the provisions of (e) above, the Board:

(i) may authorize the temporary transfer of money from the reserve account to the Association's operating account to meet short-term cash flow requirements or other expenses.

(ii) shall cause the transferred funds to be restored to the reserve account within three years of the date of the initial transfer; however, the Board may, upon making a documented finding that a delay of restoration of the funds to the reserve account would be in the best interests of the Association, delay the restoration until such time it reasonably determines to be necessary.

(iii) shall exercise prudent fiscal management in delaying restoration of the transferred funds to the reserve account and shall, if necessary, levy a Special Assessment to recover the full amount of the expended funds within the time limits specified in (ii) above. Any such Special Assessments shall not be subject to the limitations specified in Section 10.7 of the Declaration.

#### **Article IV** **Officers**

4.1. Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer. The President, Vice President, Secretary and Treasurer shall be elected from among the Members of the Board; other officers may, but need not be Members of the Board. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties prescribed by the Board. Any two or more offices may be held by the same person, except the offices of President and Secretary.

4.2. Election and Term of Office. The officers of the Association shall be elected annually by the Board at the first meeting of the Board following each annual meeting of the Members.

4.3. Removal and Vacancies. Any officer may be removed by the Board whenever in its judgment the best interests of the Association will be served thereby. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board for the unexpired portion of the term.

4.4. Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

4.5. Resignation. Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4.6. Agreements, Contracts, Deeds, Leases, Checks, Etc. All agreements, contracts, deeds, leases, checks, and other instruments of the Association (other than for the withdrawal of reserve funds) shall be executed by at least two officers or by such other person or persons as may be designated by resolution of the Board. The Board shall require signatures for the withdrawal of reserve funds of either two Members of the Board or a Member of the Board and officer of the Association who is not also a Member of the Board. For purposes of this section, "reserve funds" means monies the Board has identified in the Budget for use to defray the future repair or replacement of, or additions, to those major components which the Association is obligated to maintain.

4.7. Compensation. Compensation of officers shall be subject to the same limitations as compensation of Directors.

## **Article V**

### **Neighborhood Representative**

5.1. Neighborhood Representative. The Neighborhood Representative from each Neighborhood shall serve in accordance with the Declaration and these Bylaws.

5.2. Election and Removal Procedures for Neighborhood Representatives. Members of a Neighborhood shall elect from among themselves a Neighborhood Representative and an Alternate Neighborhood Representative to serve a term of two (2) years as follows:

(a) The Board of Directors may establish the Election Procedures for Neighborhood Representatives.

(b) If the Board of Directors does not establish specific Election Procedures for Neighborhood Representative elections, the procedures, the Election Procedures set forth in Section 3.3(b) of these Bylaws shall control the election of the Neighborhood Representative and the Alternate Neighborhood Representative.

(c) Candidates for Neighborhood Representative and Alternate Neighborhood Representative may be requested to submit an application to the Association in advance of any election for those positions. The Board will establish deadlines for applications, if any, in advance of any scheduled election for Neighborhood Representatives.

(d) Any Neighborhood Representative may be removed, with or without cause, upon the vote or written petition of Owners of a majority of the Neighborhood Total Vote for the Neighborhood which such Neighborhood Representative represents. If the Neighborhood Representative is removed, or is unable to serve, the Alternate Neighborhood Representative will become the Neighborhood Representative until the next regular election for Neighborhood Representatives is held. If the Alternate Neighborhood Representative is removed under this section, or is unable to serve, the Alternate Neighborhood Representative will remain vacant unless an election for a replacement Alternate Neighborhood Representative is called for by either the Board or a majority of the Neighborhood Total Vote. In the event both the Neighborhood Representative and the Alternate Neighborhood Representative are removed, or are unable to serve, an election for replacement Neighborhood Representatives shall promptly occur.

(e) There are no term limits for Neighborhood Representatives and Alternate Neighborhood Representatives.

5.3. Duties of Neighborhood Representative. The duties of the Neighborhood Representative are to represent the Neighborhood Association, Neighborhood Committee, or Neighborhood on matters involving the Association or the Board, and these duties may include, but are not limited to: (a) approval of the annual Neighborhood Budget and review of Neighborhood financial statements, (b) development of a plan with the Association to fulfill a Neighborhood's obligations under Section 5.3 of the Declaration, (c) communicate with the represented Owners within the Neighborhood to relay information and announcements from the Association, (d) regulate Neighborhood rules and regulations, (e) if requested, create a Neighborhood Design Review Committee consistent with the Declaration, and (f) such other duties assigned to it by the Board.

## **Article VI** **Committees**

6.1. General. Unless otherwise provided in the Declaration or these Bylaws, the Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

6.2. Hearings and Appeals Committee. In addition to any other committees which the Board may establish pursuant to Section 6.1, the Board may appoint a Hearings and Appeals Committee consisting of at least three and no more than seven Members. Acting in accordance with the provisions of the Declaration, these Bylaws, and resolutions the Board may adopt, the Hearings and Appeals Committee, if established, shall be the tribunal of the Association and shall conduct all hearings held pursuant to Section 3.22 of these Bylaws.

6.3 Neighborhood Committees. In addition to any other committees appointed as provided above, each Neighborhood which has no formal organizational structure or association may elect a Neighborhood Committee to determine the nature and extent of services, if any, to be provided to the Neighborhood by the Association in addition to those provided to all Members of the Association in accordance with the Declaration. Upon written petition signed by 25% of the Neighborhood Total Vote, the Board shall call for an election of a Neighborhood Committee for such Neighborhood no later than 60 days from receipt of such petition. Such first election may be held at a meeting or by written ballot at the discretion of the Board. Such Neighborhood Committees, if formed, shall consist of three members; provided, however, by vote of at least a majority of the Neighborhood Total Vote, this number may be increased to five.

Each Owner of a Unit within a Neighborhood may cast the vote(s) assigned to his Unit in the Declaration for each vacancy to be filled on the Neighborhood Committee. The candidate(s) receiving the most votes shall be elected. The Owners of Units within the Neighborhood holding at least one-third (1/3) of the Neighborhood Total Vote, represented in person or by proxy, shall constitute a quorum at any meeting of the Neighborhood.

In the event a Neighborhood Committee has been formed for a particular Neighborhood, subsequent members of the committee shall be elected by the vote of Owners of Units within that Neighborhood at their annual meeting. The annual meeting date shall be set by the Neighborhood Committee so as to occur within the same month of the first election of such committee.

Committee members shall be elected for a term of two years or until their successors are elected, whichever is longer.

It shall be the responsibility of the Neighborhood Committee to determine the nature and extent of services, if any, to be provided to the Neighborhood by the Association in addition to those provided to all Members of the Association in accordance with the Declaration. A Neighborhood Committee may advise the Board on any other issue, but shall not have the authority to bind the Board.

Each Neighborhood Committee shall adopt rules and procedures for the operation of such committee, (including but not limited to procedures for calling the annual meeting), which shall be distributed to all Owners within such Neighborhood; provided however, that such rules and procedures do not conflict with any provisions of the Declaration, Articles, these Bylaws or rules and regulations of the Association.

In the conduct of its duties and responsibilities, each Neighborhood Committee shall abide by the notice and quorum requirements applicable to the Board under these Bylaws. Each Neighborhood Committee shall elect a chairman from among its members who shall preside at its meetings. If the Neighborhood Representative is not an elected member of the Neighborhood Committee, the Neighborhood Representative shall be an ex officio member of the Neighborhood Committee and the Neighborhood Representative shall be responsible for

transmitting any and all communications related to the Neighborhood or Neighborhood Committee to the Board.

## **Article VII** **Miscellaneous**

7.1. Fiscal Year. The fiscal year of the Association shall be set by resolution of the Board. In the absence of a resolution, the fiscal year shall be the calendar year.

7.2. Parliamentary Rules. Except as may be modified by Board resolution, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with Oregon law, the Articles of Incorporation, the Declaration, or these Bylaws.

7.3. Conflicts. If there are conflicts between the provisions of Oregon law, the Articles of Incorporation, the Declaration, and these Bylaws, the provisions of Oregon law, the Declaration, the Articles of Incorporation, and the Bylaws (in that order) shall prevail.

7.4. Books and Records.

(a) Inspection by Members and Mortgagees. The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Unit, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his interest in a Unit: the Declaration, Bylaws, and Articles of Incorporation, any amendments to the foregoing, the rules of the Association, the Membership register, the most recent Financial Statement, the current Budget, books of account, the Statement of Association Information prepared in accordance with O.R.S. 94.667 (if any), and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the office of the Association or at such other place within the Properties as the Board shall designate. The Association may withhold from examination or duplication certain records consistent with O.R.S. 94.670(9).

(b) Rules for Inspection. The Board shall establish reasonable rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made;
- (iii) payment of the cost of reproducing copies of documents requested;

and

(iv) whether the duplicated copies may be provided in an electronic format.



(c) Inspection by Directors. Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make a copy of relevant documents at the expense of the Association.

7.5. Notices. Unless otherwise provided in these Bylaws, all notices, demands, bills, statements, or other communications under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by U.S. Mail, first class postage prepaid:

(a) if to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member; and it shall be the Member's responsibility to notify the Secretary of a change of address. Whenever a Unit is owned by two or more persons/entities, the co-owners must designate one contact address for that Unit and it is the obligation of that contact Member to provide Corporation notices to the other co-owners. If a Unit owner has provided the Secretary with an email address for delivery of notices and has authorized in writing the transmittal of notices by email, then whenever notice is required to be given under the Oregon Planned Community Act, the Declaration or these bylaws, written notice shall be effective, whether or not received, upon email transmittal; or

(b) if to the Association, the Board, or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

7.6 Electronic Notice: In the discretion of the Board, any notice, information or other written material required to be given to an owner or director under the Declaration or Bylaws or the Oregon Planned Community Act, may be given by electronic mail, facsimile or other form of electronic means. For the purpose of this section, "notice" shall mean any notice, information or other written material as discussed above.

(a) The Board shall as necessary enact procedures for a Member to request notice by electronic means. Once a Member has requested notification by electronic means, the Board may provide notice by electronic means until such a time the member requests in writing that the Board discontinue providing electronic notice.

(b) Notice sent electronically shall be deemed completed and effective once the sender of the notice has completed the transmission of the information. The sender shall be under no obligation to provide alternative notice or any other additional notice except in the event the sender of the notice has a reasonable basis to believe the electronic notice was not received by its intended recipient. An electronic return receipt, read receipt, or any other confirmation is not necessary for electronic notice to be considered completed and effective under this section.

- (c) Nothing in this section shall require the Board to provide electronic notice.
- (d) This section may not be used to give notice of
  - (i) failure to pay an assessment;
  - (ii) foreclosure of an association lien under O.R.S. 94.709; or
  - (iii) an action the association may take against the owner.

7.7 Electronic Ballot: In the discretion of the Board, the Association may conduct a vote by electronic ballot, as outlined in O.R.S. 94.661.

7.8. Amendment.

(a) Generally. These Bylaws may be amended only by the affirmative vote or written consent, or any combination thereof, of a majority of the Total Vote.

(b) Validity and Effective Date of Amendments. Amendments to these Bylaws shall become effective upon recordation in the Office of the County Clerk unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within twelve months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provision of these Bylaws.

7.9 Waiver. No restriction, condition, obligation or provision contained in these Bylaws shall be deemed to have abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

7.10 Provisions Independent. The provisions of these bylaws shall be deemed independent and severable. The invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision of these bylaws.

*[intentionally left blank]*

7.11 Previous Bylaws Superseded. These Bylaws supersede all previous bylaws of the Association including those recorded October 27, 1992, in Volume 280 at Page 1532, (1529-1545), amended and restated as recorded on September 21, 1994, in Volume 352 at Page 1521 (1584-1597), rerecorded on September 28, 1994, in Volume 353 at Page 0570 (0647-0672), deed records of Deschutes County, Oregon.

### CERTIFICATION

The undersigned President and Secretary of Broken Top Community Association, Inc. hereby certify that the Amended and Restated Bylaws set forth above, consisting of 27 pages including this page, the cover page and the table of contents, are a true and complete copy of the bylaws adopted by at least a majority of the Total Vote.

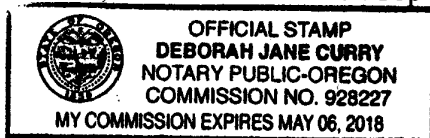
BROKEN TOP COMMUNITY ASSOCIATION, INC.

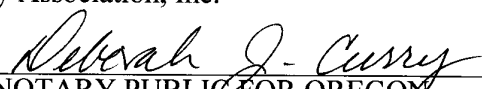
By:   
Peter L. Deuel, President

By:   
Alexis Scharff, Secretary

STATE OF OREGON           )  
                                      )ss.  
County of Deschutes       )

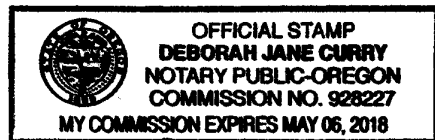
The foregoing instrument was acknowledged before me on this 18<sup>th</sup> day of August, 2015, by PETER L. DEUEL, President for Broken Top Community Association, Inc.




  
NOTARY PUBLIC FOR OREGON  
My commission expires: 5-6-2018

STATE OF OREGON           )  
                                      )ss.  
County of Deschutes       )

The foregoing instrument was acknowledged before me on this 18<sup>th</sup> day of August, 2015, by ALEXIS SCHARFF, Secretary for Broken Top Community Association, Inc.



  
NOTARY PUBLIC FOR OREGON  
My commission expires: 5-6-2018