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# **BROKEN TOP COMMUNITY ASSOCIATION**

**AMENDED AND RESTATED**

**DECLARATION**

**of**

**COVENANTS, CONDITIONS, AND RESTRICTIONS**

**for**

**BROKEN TOP COMMUNITY**

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**BTCA DECLARATION**  
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**SECOND AMENDED AND RESTATED**  
**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**  
**FOR BROKEN TOP COMMUNITY ASSOCIATION, INC.**

THIS SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR BROKEN TOP COMMUNITY ("Declaration") has been approved by a vote of the Members of Broken Top Community Association, Inc., an Oregon non-profit corporation, the results of which were tabulated and approved on July 28, 2015. This is an amendment and restatement of an earlier Amended and Restated Declaration dated September 21, 1994, recorded with Deschutes County, Oregon, on September 29, 1994, as Doc. No. 94-37067(amending and restating the version recorded on October 27, 1992, as Doc. No. 92-35804)("Original Declaration")(rerecorded on September 28, 1994, as Doc. No. 94-38009).

Broken Top Limited Partnership, an Oregon limited partnership, was owner of the real property described as Exhibit A on the Original Declaration (hereafter referred to as "Declarant"). Declarant developed the real property consistent with an approved Master Plan, and recorded the Original Declaration to impose upon the Properties mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Properties, and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Properties. Thereafter, Declarant added additional properties subject to the Master Plan by way of Supplemental Declarations recorded with Deschutes County, Oregon. All of the properties now subject to the Master Plan are contained on the attached Exhibit "1" and hereafter referred to as the "Broken Top Properties."

Declarant had declared that all of the property described as the Broken Top Properties were to be held, sold, used and conveyed subject to certain easements, restrictions, covenants, and conditions, for the purpose of protecting the value and desirability of, and which were to run with, the Broken Top Properties. The undersigned, on behalf of the Broken Top Community Associations, Inc. hereby declares that the Broken Top Properties continue to be held, sold, used and conveyed subject to the easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the Broken Top Properties real property subjected to this Declaration. This Declaration shall be binding on and shall inure to the benefit of all parties having

any right, title, or interest in the Broken Top Properties (Properties) or any part thereof, their heirs, successors, successors-in-title, and assigns.

## **Article I** **DEFINITIONS**

The terms used in this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1. "Area of Common Responsibility": the Common Area, together with those areas, if any, which by the terms of this Declaration, any Supplemental Declaration or other applicable covenant, or contract become the responsibility of the Association.

1.2. "Articles of Incorporation" or "Articles": the Articles of Incorporation of Broken Top Community Association, Inc., as filed with the Secretary of State, Corporation Division of the Business Registry for the State of Oregon.

1.3. "Association": Broken Top Community Association, Inc., an Oregon nonprofit mutual benefit corporation, its successors and assigns.

1.4. "Base Assessment": assessments levied on all Units subject to assessment under Article X to fund Common Expenses for the general benefit of all Units, as more particularly described in Sections 10.1 and 10.2.

1.5. "Board of Directors" or "Board": the body responsible for administration of the Association, selected as provided in the Bylaws and generally serving the same role as the board of directors under the Oregon Nonprofit Corporations Act (O.R.S. Chapter 65) and the Oregon Planned Community Act (O.R.S. Chapter 94).

1.6. "Broken Top": the Properties as described in Section 1.35.

1.7. "Broken Top Limited Partnership": an Oregon limited partnership which developed the Properties and acted as the "Declarant" of Broken Top as that term is defined in O.R.S. 94.550(9); Broken Top Limited Partnership may also be referred to as "Declarant" in this Declaration.



1.8. "Business" and "Trade": shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

1.9. "Bylaws": the Bylaws of Broken Top Community Owners Association, Inc., as they may be amended.

1.10. "Common Area": all real and personal property which the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners.

1.11. "Common Expenses": the actual and estimated expenses incurred or anticipated to be incurred by the Association for the general benefit of all Units which may include a reasonable reserve for repairs and replacements, as the Board may find necessary and appropriate pursuant to this Declaration, the Bylaws, and the Articles of Incorporation.

1.12. "Community-Wide Standard": the standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard may be more specifically determined by the Board of Directors and the Design Review Committee.

1.13. "Design Guidelines": the architectural guidelines and procedures adopted by the Association pursuant to Article XI and applicable to all Units within the Properties.

1.14. "Exclusive Common Area": a portion of the Common Area intended for the exclusive use or primary benefit of one or more, but less than all, Neighborhoods, as more particularly described in Section 2.2.

1.15. "Golf Course": any parcel of land adjacent to or within the Properties which is privately owned by BT Members Club, Inc., an Oregon non-profit corporation, its successors, successors-in-title, or assigns, and which is operated as a golf course, and all related and supporting facilities and improvements operated in connection with such golf course.

1.16. "Good Standing": a Member is in Good Standing if all monies due from that Member to the Association are not more than 90 days in arrears, including but not limited to Assessments as further described in Article X.

1.17. "Leasing": the regular, exclusive occupancy of a Unit by any person other than the Owner, for which the Owner receives any consideration or benefit, including but not limited to, a fee, service, gratuity, or emolument.

1.18. "Majority": those votes, owners, or other group as the context may indicate totaling more than 50% of the total eligible number.

1.19. "Master Plan": the Master Plan for the Development of Broken Top Community as approved by Deschutes County on February 20, 1992 as File No. M-92-1, as it may be amended, which plan includes the Broken Top Properties.

1.20. "Member": a Person entitled to membership in the Association, as provided in Section 3.2.

1.21. "Mortgage": a mortgage, a deed of trust, a deed to secure debt, or any other form of security deed.

1.22. "Mortgagee": a beneficiary or holder of a Mortgage.

1.23. "Mortgagor": any Person who gives a Mortgage.

1.24. "Neighborhood": two or more Units which share interests other than those common to all Units, as more particularly described in Section 3.4. The Neighborhoods are:

Custom Homes	403	Units
Fall Creek	81	Units
Bridge Creek	36	Units
Tyrion Sky	40	Units
Painted Ridge	29	Units
Courtyards	20	Units
Arrowood Trails I	9	Units
Arrowood Trails II	8	Units
Whisper Ridge	18	Units
TOTAL	644	

1.25. "Neighborhood Assessments": assessments levied against the Units in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses, as described in Sections 10.1 and 10.3.

1.26. "Neighborhood Association": any condominium association or other owners association having concurrent jurisdiction over any Neighborhood. As used in this Declaration, if no Neighborhood Association or Neighborhood Committee has been formed or is no longer active, this term shall also apply to the Neighborhood as represented by the Neighborhood Representative or Neighborhood Committee (if any).

1.27. "Neighborhood Committee": the committee formed by a Neighborhood pursuant to Section 6.3 of the Bylaws in those Neighborhoods having no formal organizational structure or association.

1.28. "Neighborhood Expenses": the actual and estimated expenses incurred or anticipated to be incurred by the Association for the benefit of the Owners and occupants of Units within a particular Neighborhood or Neighborhoods, which may include a reasonable reserve for repairs and replacements, as the Board may find necessary and appropriate pursuant to this Declaration, the Bylaws, and the Articles of Incorporation.

1.29. "Neighborhood Representative": the representative(s) selected by the Members for each Neighborhood as provided in Section 3.4(b) and the Bylaws to be responsible for interfacing with the Association and the Board for matters related to Units in the Neighborhood. The term "Neighborhood Representative" shall include alternate Neighborhood Representative acting in the absence of the Neighborhood Representative.

1.30. "Office of the County Clerk": the Office of the County Clerk of Deschutes County, Oregon.

1.31. "O.R.S.": the Oregon Revised Statute.

1.32. "Owner": one or more Persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, then upon recording of such contract, the purchaser (rather than the fee owner) will be considered the Owner, if the contract specifically so provides. All Owners are Members in the Association as provided in this Declaration.

1.33. "Person": a natural person, a corporation, a partnership, a trustee, or any other legal entity.

1.34. "Private Amenities": certain real property and any improvements and facilities thereon located adjacent to, in the vicinity of, or within the Properties, which are privately owned and operated by Persons other than the Association for recreational and related purposes, on a club membership basis, use fee basis, or otherwise, and shall include, without limitation, the Golf Course, if any.

1.35. "Properties": the real property described as the Broken Top Properties.

1.36. "Single Family": any number of persons related by blood, adoption, marriage, civil union or domestic partnership living with not more than one person who is not so related as a single household unit, or no more than two persons who are not so related living together as a single household unit, and no more than two household employees of either such household (unless an exception is granted by the Board, allowing a different household composition, following request of the Owner and Board consideration of the circumstances to support the exception).

1.37. "Special Assessment": assessments levied in accordance with Section 10.5.

1.38. "Specific Assessment": assessments levied in accordance with Section 10.6.

1.39. "Transient Occupancy": occupancy of a Unit where the occupancy is charged on a periodic basis less than 30 days (such as daily or weekly) and the occupant rents the Unit for temporary occupancy and not as a principal residence. Transient Occupancy may apply to a room or suite of rooms in a Unit or the entire Unit and may also apply to Units concurrently occupied by the Owner.

1.40. "Total Vote": the total eligible vote for the Properties, based on the number of Units in Broken Top.

1.41. "Neighborhood Total Vote": that portion of the total eligible vote for a particular Neighborhood.

1.42. "Unit": a portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. The term shall include, by way of illustration but not limitation, condominium units, townhouse units, cluster homes, patio or zero lot line homes, and single-family detached houses on separately platted lots, as well as vacant land intended for development as such, but shall not include Common Areas, common property of any Neighborhood Association, or property dedicated to the public. In the case of a building within a condominium or other structure containing multiple dwellings, each dwelling shall be deemed to be a separate Unit.

In the case of a parcel of vacant land or land on which improvements are under construction, the parcel shall be deemed to contain the number of Units designated for residential use for such parcel on the Master Plan or the site plan approved by Declarant, whichever is more recent, until such time as a subdivision plat or condominium plat is filed of record on all or a portion of the parcel. Thereafter, the portion encompassed by such plat shall constitute a separate Unit or Units as determined above and the number of Units on the remaining land, if any, shall continue to be determined in accordance with this paragraph.

## **Article II**

### **PROPERTY RIGHTS**

2.1. Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) This Declaration, the Bylaws and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The right of the Board to adopt rules regulating the use and enjoyment of the Common Area, including rules restricting use of recreational facilities within the Common Area to occupants of Units and their guests and rules limiting the number of guests who may use the Common Area;
- (d) The right of the Board to suspend the right of an Owner to use recreational facilities within the Common Area (i) for any period during which any

Owner is not in Good Standing, and (ii) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation, of the Declaration, any applicable Supplemental Declaration, the Bylaws, or rules of the Association after notice and a hearing pursuant to the Section 3.22 of the Bylaws;

(e) The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area pursuant to Section 4.6;

(f) The right of the Board to impose reasonable membership requirements. The Board may charge reasonable membership, admission, or other fees for the use of any recreational facility situated upon the Common Area upon approval of a majority of the Total Vote;

(g) The right of the Board to permit use of any recreational facilities situated on the Common Area by persons other than Owners, their families, lessees and guests upon payment of use fees established by the Board;

(h) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the approval requirements set forth in Section 14.2 of this Declaration and O.R.S. 94.665; and

(i) Any Owner may extend his or her right of use and enjoyment to the members of his or her family, permitted lessees, and social invitees, subject to reasonable Board regulation. An Owner who has the right to and does lease his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit.

2.2 Exclusive Common Area. Certain portions of the Common Area may be designed as Exclusive Common Area, previously by the Declarant or by the Neighborhood as provided below, and reserved for the exclusive use or primary benefit of Owners, occupants and invitees of Units within a particular Neighborhood or Neighborhoods. By way of illustration only, Exclusive Common Areas may include entry features, landscaped medians and cul-de-sacs, and other portions of the Common Area within a particular Neighborhood or Neighborhoods. All costs associated with maintenance, repair, replacement, and insurance of an Exclusive Common Area shall be assessed as a Neighborhood Assessment against the Owners of Units in those Neighborhoods to which the Exclusive Common Area is assigned.

Upon approval by a majority of both the Total Vote and the affected Neighborhood Total Vote (or Neighborhoods Total Vote, as the case may be), either (1) a portion of the Common Area may be assigned as Exclusive Common Area of a particular Neighborhood or Neighborhoods or (2) Exclusive Common Area may be reassigned to the Association or another Neighborhood or Neighborhoods.

The Association may, upon approval of a majority of the Neighborhood Total Vote (or Neighborhoods Total Vote, as the case may be) to which certain Exclusive Common Areas are assigned, permit Owners from other Neighborhoods to use all or a portion of such Exclusive Common Areas upon payment of reasonable user fees, which fees shall be used to offset the Neighborhood Expense attributable to such Exclusive Common Area.

2.3. Private Amenities. Access to and use of the Private Amenities is strictly subject to the rules and procedures of the respective owner(s) of the Private Amenities, and no Person gains any right to enter or to use those facilities by virtue of membership in the Association or ownership or occupancy of a Unit.

All Persons, including all Owners, are hereby advised that no representations or warranties, either written or oral, have been or are made by the Declarant, the Association or any other Person with regard to the nature or size of improvements to, or the continuing ownership or operation of the Private Amenities. No purported representation or warranty, written or oral, in conflict with this Section shall be effective without an amendment to this Declaration joined into by the owner(s) of the Private Amenity(ies) which are the subject thereof.

The ownership or operational duties of and as to the Private Amenities may change at any time and from time to time by virtue of, but without limitation, (a) the sale to or assumption of operations by an independent entity or (b) conversion of the membership structure to an "equity" club or similar arrangement whereby the members of a Private Amenity or an entity owned or controlled thereby become the owner(s) and/or operator(s) of the Private Amenity. No consent of the Association, any Neighborhood Association, or any Owner shall be required to effectuate such a transfer or conversion, except that no Private Amenity shall be transferred to the Association, or any Neighborhood Association, unless at least 75% of the Total Vote in the Association, or Neighborhood Association, accepts such transfer.

Rights to use the Private Amenities will be granted only to such persons, and on such terms and conditions, as may be determined by their respective owners. Such owners shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of their respective Private Amenities and to terminate use rights altogether.

### **Article III**

#### **ASSOCIATION FUNCTION, MEMBERSHIP AND VOTING RIGHTS**

3.1. Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Common Areas. The Association shall be the primary entity responsible for enforcement of this Declaration, the Bylaws and such reasonable rules regulating use of the Properties as the Board may adopt. The Association shall also be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration and in the Design Guidelines. The Association shall perform its functions in accordance with this Declaration, the Bylaws, the Articles and Oregon law.

3.2. Membership. Every Owner shall be a Member of the Association. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights and privileges of an Owner who is a natural person may be exercised by the Member or the Member's spouse or domestic partner. The membership rights of an Owner which is a corporation, partnership or other legal entity may be exercised by any officer, director, partner, or trustee, or by any other individual designated by the Owner in a written instrument provided to the Secretary of the Association.

3.3. Voting. Each Unit has one vote. Except as otherwise specified in this Declaration or the Bylaws, the vote for each Unit shall be exercised by the Member who owns the Unit. 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 this Declaration, the Bylaws or Oregon law.

(a) In any situation where there is more than one Owner of a particular



Unit, the vote for such Unit shall be exercised as such co-Owners determine among themselves.

(b) In any situation where the Unit is owned by a corporation, partnership or other legal entity, the vote for such Unit shall be exercised as directed by the corporation, partnership or other legal entity.

(c) Any Unit's vote shall be suspended if more than one person seeks to exercise it.

(d) Any Unit's vote shall be suspended if any co-Owner of any Unit provides notice to the Secretary of the Association of a dispute between the co-Owners with respect to how a Unit's vote shall be exercised. The notice must be provided to the Secretary of the Association in writing prior to the vote occurring, or in the case of a written ballot, prior to the deadline for ballots to be returned. The vote shall be disregarded completely by the Association unless there is a written withdrawal of the dispute or approval by all co-Owners.

#### 3.4 Neighborhoods and Neighborhood Representatives.

(a) Neighborhoods. Every Unit shall be located within a Neighborhood. In the discretion of the Owners within each Neighborhood, the Units therein may be subject to additional covenants and/or the Unit Owners may all be members of a Neighborhood Association in addition to being Members of the Association. However, a Neighborhood Association shall not be required except in the case of a condominium or as otherwise required by law. The Owners of Units within any Neighborhood which does not have a Neighborhood Association may elect a Neighborhood Committee, as described in Section 6.3 of the Bylaws, to represent the interests of such Owners. Any additional Neighborhood covenant may not be less restrictive on the Properties in that Neighborhood, except as permitted in Article XII.

Any Neighborhood may request that the Association provide a higher level of service or special services for the benefit of Units in such Neighborhood and, upon the affirmative vote, written consent, or a combination thereof, of a majority of the Neighborhood Total Vote, the Association shall provide the requested services. The cost of such services shall be assessed against the Units within such Neighborhood as a Neighborhood Assessment pursuant to Article X.

The documents establishing the Broken Top Properties initially assigned the property described therein to a specific Neighborhood by name, as detailed in Section 1.24.

The Owners of a majority of the Neighborhood Total Vote within any Neighborhood may at any time petition the Board of Directors to divide the property comprising the Neighborhood into two or more Neighborhoods or to combine two or more Neighborhood into one Neighborhood. Such petition shall be in writing and shall include a plat of survey of the entire parcel which indicates the boundaries of the proposed Neighborhood(s) or otherwise identifies the Units to be included within the proposed Neighborhood(s). Such petition shall be granted upon the filing of all required documents with the Board unless the Board of Directors denies such application in writing within 30 days of receipt. The Board may deny an application only upon determination that (i) there is no reasonable basis for distinguishing between the areas proposed to be divided into separate Neighborhoods in the case of a Neighborhood division application or (ii) there is a reasonable basis for distinguishing between the two or more Neighborhoods proposed to be consolidated into one Neighborhood in the case of a Neighborhood consolidation application. All applications and copies of any denials shall be filed with the books and records of the Association and shall be maintained as long as this Declaration is in effect.

(b) 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. An Alternate Neighborhood Representative shall act in the absence of the Neighborhood Representative for which it is the designated alternate.

#### **Article IV**

#### **RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

4.1. Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and control the Common Area, the Area of Common Responsibility and all improvements thereon (including, without limitation, furnishings, equipment, and common landscaped areas), and shall keep it in good, clean, attractive and sanitary condition, order, and repair, consistent with this Declaration and the Community-Wide Standard.

4.2. Personal Property and Real Property for Common Use. The Association may acquire, hold, and dispose of tangible and intangible personal

property and real property, subject to any approval required by O.R.S. 94.665. Any such property acquired or held by the Association shall be maintained as Common Area at the Association's expense for the benefit of its Members.

4.3. Enforcement. The Association may impose sanctions for violations of this Declaration, the Bylaws, or rules in accordance with procedures set forth in the Bylaws, including reasonable monetary fines and suspension of the right to vote and to use any recreational facilities within the Common Area. In addition, in accordance with Section 3.22 of the Bylaws, the Association may exercise self-help to cure violations, and may suspend any services it provides to the Unit of any Owner who is not in Good Standing. Subject to the limitations imposed by Section 16.4 of this Declaration, the Board may seek relief in any court for violations or to abate nuisances.

The Association, by contract or other agreement, may enforce county and city ordinances, if applicable, and permit the City of Bend and Deschutes County to enforce applicable ordinances on the Properties for the benefit of the Association and its Members.

4.4. Implied Rights; Board Authority. The Association may exercise any other right or privilege given to it expressly by this Declaration, the Bylaws, O.R.S. Chapter 94, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the Bylaws, Articles, or Oregon law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.5. Indemnification. The Association shall indemnify every officer, director, and committee member against all expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member.

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer,

director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Pursuant to O.R.S. 65.784, if the Association indemnifies or advances expenses pursuant to this Section or O.R.S. 65.391-65.401, the Association shall report the indemnification or advance in writing to the Members with or before the notice of the next meeting of the Members.

4.6. Dedication or Transfer of Common Areas. The Association may dedicate or transfer all or any portion of the Common Areas provided it has obtained the approval required by O.R.S. 94.665.

4.7. Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. THE ASSOCIATION SHALL NOT IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTIES, NOR SHALL ANY OF THEM BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR OF INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM CAN NOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES, UNDERSTANDS AND COVENANTS TO INFORM ITS TENANTS THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES ARE NOT INSURERS AND THAT EACH PERSON USING THE PROPERTIES ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO UNITS AND TO THE CONTENTS OF UNITS RESULTING FROM ACTS OF THIRD PARTIES.

4.8. Powers of the Association Relating to Neighborhoods. The Association shall have the right to require that any Neighborhood Association perform such maintenance or repairs to the common property of the Neighborhood Association or take such other action as the Board reasonably determines to be necessary to maintain the Community-Wide Standard within the Properties. If the Neighborhood Association fails to perform after written notice from the Association and a reasonable opportunity to do so, the Association shall be entitled to effect such action and to assess the Units in such Neighborhood for their pro rata share of any expenses incurred by the Association in taking such action in the manner provided in Section 10.6. Such assessments may be collected as a Specific Assessment hereunder and shall be subject to all lien rights provided for herein.

4.9 Dissolution of Association. Dissolution of the Association is authorized if it is approved by at least 75% of the Total Vote. Except as provided in this Section 4.9, the provisions of O.R.S. 65.624 apply to the process for authorization of dissolution.

## **Article V** **MAINTENANCE**

5.1. Association's Responsibility. The Association shall maintain and keep in good repair the Area of Common Responsibility, which shall include, but need not be limited to:

(a) all landscaping and other flora, parks, signage, structures, and improvements, including any private streets, bike and pedestrian pathways/trails, situated upon the Common Area;

(b) landscaping, sidewalks, street lights and signage within public rights-of-way within or abutting the Properties, and landscaping and other flora within any public utility easements and conservation easements within the Properties (subject to the terms of any easement agreement relating thereto); provided, however, that it shall be the responsibility of each Owner to landscape, irrigate, and maintain any area within public rights of way between such Owner's Unit and the first pavement, whether a roadway or paved pathway, located in rights of way adjacent to such Owner's unit from the date a Certificate of Occupancy is issued with respect to improvements on such Unit; and

(c) such portions of any additional property included within any Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, other applicable covenant, or any contract or agreement for maintenance thereof entered into by the Association, or other areas included in the Area of Common Responsibility as approved by the Board.

There are hereby reserved to the Association easements over the Properties as necessary to enable the Association to fulfill such responsibilities. The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for reasonable periods as necessary to perform required maintenance or repairs, unless 75% of the Total Vote approve the discontinuation such operation.

The Association may assume maintenance responsibility for property within any Neighborhood, in addition to that designated by any Supplemental Declaration, either by agreement with the Neighborhood or because, in the opinion of the Board, the level and quality of service then being provided is not consistent with the Community-Wide Standard. All costs of maintenance pursuant to this paragraph shall be assessed as a Neighborhood Assessment only against the Units within the Neighborhood to which the services are provided. The provision of services in accordance with this Section shall not constitute discrimination within a class.

The Association may maintain other property which it does not own, including, without limitation, privately owned homes which become abandoned or foreclosed, publicly owned property, conservation easements held by nonprofit entities, and other property dedicated to public use, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. Whenever possible and practicable, the Association shall require reimbursement for all expenses incurred in maintaining such other properties. Nothing in this Section shall be construed to require the Association to maintain property it does not own.

Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Units in the manner of and as part of the Base Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants, or agreements with the owner(s) thereof. All costs associated

with maintenance, repair and replacement of Exclusive Common Areas shall be a Neighborhood Expense assessed as a Neighborhood Assessment solely against the Units within the Neighborhood(s) to which the Exclusive Common Areas are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

The Association shall maintain as part of its records a map of Broken Top illustrating those areas for which the Association has the responsibility to maintain.

5.2. Owner's Responsibility. Each Owner shall maintain his or her Unit and all structures, parking areas, landscaping, and other improvements comprising the Unit in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association or a Neighborhood pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Unit or included in the Area of Common Responsibility as approved by the Board. Each Owner shall also be responsible for landscaping, irrigating and maintaining any area within public right of way between such Owner's Unit and the first pavement, whether a roadway or paved pathway located in rights of way adjacent to such Owner's Unit from the date a Certificate of Occupancy is issued with respect to improvements on such Unit. In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner in accordance with Section 10.6. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

5.3. Neighborhood's Responsibility. Upon Board resolution, the Owners of Units within each Neighborhood shall be responsible for paying, through Neighborhood Assessments, the costs of operating, maintaining and insuring certain portions of the Area of Common Responsibility within or adjacent to such Neighborhood. This may include, without limitation, the costs of maintaining any signage, entry features, right-of-way and open space between the Neighborhood and adjacent public roads and private streets within the Neighborhood, regardless of ownership and regardless of the fact that such maintenance may be performed by the Association; provided, however, all Neighborhoods which are similarly situated shall be treated the same.

Any Neighborhood Association whose common property is adjacent to any portion of the Common Area upon which a wall is constructed, other than a wall which forms part of a building, shall maintain that portion of the Common Area between the wall and the Neighborhood Association's property line.

Any Neighborhood Association having any responsibility for maintenance of property within such Neighborhood shall perform such maintenance responsibility in a manner consistent with the Community-Wide Standard. If it fails to do so, the Association may perform such responsibilities and assess the costs against all Units within such Neighborhood as provided in Section 10.6.

5.4. Standard of Performance. Maintenance, as used in this Article, shall include, without limitation, repair and replacement as needed, as well as such other duties, which may include irrigation, as the Board may determine necessary or appropriate to satisfy the Community-Wide Standard. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants.

Notwithstanding anything to the contrary contained herein, the Association, and/or an Owner and/or a Neighborhood Association shall not be liable for property damage or personal injury occurring on, or arising out of the condition of, property which it does not own unless and only to the extent that it has been negligent in the performance of its maintenance responsibilities.

5.5. Party Walls and Similar Structures.

(a) General Rules of Law to Apply. Each wall, fence, driveway or similar structure built as a part of the original construction on the Units which serves and/or separates any two adjoining Units shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance. All Owners who make use of the party structure shall share the cost of reasonable repair and maintenance of such structure equally.

(c) Damage and Destruction. If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used



the structure may restore it. If other Owners subsequently use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Right to Contribution Runs With Land. The right of an Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

## **Article VI**

### **INSURANCE AND CASUALTY LOSSES**

6.1. Association Insurance. The Association, acting through its Board or its duly authorized agent, shall obtain blanket "all-risk" property insurance, if reasonably available, for all insurable improvements on the Common Area and on other portions of the Area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a loss. The Association shall have the authority to and interest in insuring any privately or publicly owned property for which the Association has maintenance or repair responsibility. Such property shall include, by way of illustration and not limitation, any insurable improvements on or related to parks, rights-of-way, medians, easements, and walkways which the Association is obligated to maintain. If blanket "all-risk" coverage is not generally available at reasonable cost, then the Association shall obtain fire and extended coverage, including coverage for vandalism and malicious mischief. The face amount of the policy shall be sufficient to cover the full replacement cost of the insured property. The cost of such insurance shall be a Common Expense to be allocated among all Units subject to assessment as part of the annual Base Assessment.

In addition, the Association may, upon request of a Neighborhood, and shall, if so specified in a Supplemental Declaration applicable to the Neighborhood, obtain and continue in effect adequate blanket "all-risk" property insurance on all insurable improvements within such Neighborhood, if reasonably available. If "all-risk" property insurance is not generally available at reasonable cost, then fire and extended coverage may be substituted. Such coverage may be in such form as the Board of Directors deems appropriate. The face amount of the policy shall be sufficient to cover the full replacement cost of all structures to be insured. The costs shall be charged to the Owners of Units within the benefited Neighborhood as a Neighborhood Assessment. All policies shall provide for a

certificate of insurance to be furnished to each Member insured, to the Association, and to the Neighborhood Association, if any.

The Association shall have no insurance responsibility for any part of any Private Amenity property.

The Association also shall obtain a public liability policy on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the public liability policy shall have at least a \$1,000,000.00 combined single limit as respects bodily injury and property damage and at least a \$10,000,000.00 limit per occurrence and in the aggregate.

Except as otherwise provided above with respect to property within a Neighborhood, premiums for all insurance on the Area of Common Responsibility shall be Common Expenses and shall be included in the Base Assessment. However, premiums for insurance on Exclusive Common Areas may be included in the Neighborhood Assessment of the Neighborhood(s) benefited unless the Board reasonably determines that other treatment of the premiums is more appropriate.

The policies may contain a reasonable deductible which shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the required coverage. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Neighborhood Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with Section 3.22 of the Bylaws, that the loss is the result of the negligence or willful conduct of one or more Owners or occupants, then the Board may specifically assess the full amount of such deductible against the Unit of such Owner or occupant, pursuant to Section 10.6.

All insurance coverage obtained by the Association shall:

(a) be written with a company authorized to do business in Oregon which holds a Best's rating of A or better and is assigned a financial size category of IX or larger as established by A. M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating which is available;

(b) be written in the name of the Association as trustee for the benefited parties. Policies on the Common Area shall be for the benefit of the Association and its Members. Policies secured on behalf of a Neighborhood shall be for the benefit of the Neighborhood Association, if any, the Owners of Units within the Neighborhood, and their Mortgagees, as their interests may appear;

(c) vest in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss;

(d) not be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees; and

(e) have an inflation guard endorsement, if reasonably available. If the policy contains a co-insurance clause, it shall also have an agreed amount endorsement. The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Deschutes County, Oregon area.

The Board shall use reasonable efforts to secure insurance policies containing endorsements that:

(a) waive subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests;

(b) waive the insurer's rights to repair and reconstruct instead of paying cash;

(c) preclude cancellation, invalidation, suspension, or nonrenewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;

(d) exclude individual Owners' policies from consideration under any "other insurance" clause; and

(e) require at least 30 days prior written notice to the Association of any cancellation, substantial modification, or nonrenewal.

The Association shall also obtain, as a Common Expense, worker's compensation insurance and employer's liability insurance, if and to the extent required by law, directors' and officers' liability coverage, if reasonably available, and flood insurance, if advisable.

The Association also shall obtain, as a Common Expense, a fidelity bond or bonds, if generally available at reasonable cost, covering all persons responsible for handling Association funds. The Board shall determine the amount of fidelity coverage in its best business judgment but, if reasonably available, shall secure coverage equal to not less than one-sixth of the annual Base Assessments on all Units plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least 30 days prior written notice to the Association of any cancellation, substantial modification or nonrenewal.

6.2. Owners Insurance. By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry blanket "all-risk" property insurance on its Unit(s) and structures thereon providing full replacement cost coverage less a reasonable deductible, unless either the Neighborhood in which the Unit is located or the Association carries such insurance (which they are not obligated to do hereunder).

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his or her Unit, he or she shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article XI of this Declaration. Alternatively, the Owner shall clear the land associated with the Unit of all debris and ruins and maintain the land associated with the Unit in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds necessary to perform the Owner obligations under this Section.

Additional recorded covenants applicable to any Neighborhood may establish more stringent requirements regarding the standards for rebuilding or reconstructing structures on the Units within such Neighborhood and the standards for clearing and maintaining the Units in the event the structures are not rebuilt or reconstructed.

6.3. Damage and Destruction.

(a) Immediately after damage or destruction to all or any part of the Properties covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

(b) Any damage to or destruction of the Common Area shall be repaired or reconstructed unless 75% of the Total Vote decide within 60 days after the loss not to repair or reconstruct.

Any damage to or destruction of the common property of any Neighborhood Association shall be repaired or reconstructed unless the Unit Owners representing at least 75% of the Neighborhood Total Vote decide within 60 days after the loss not to repair or reconstruct. If the Neighborhood Association's covenants, if any, require a greater percentage of Unit Owners within the Neighborhood to approve, then such provision shall control.

If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such 60 day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area or common property of a Neighborhood Association shall be repaired or reconstructed.

(c) If determined in the manner described above that the damage or destruction to the Common Area or to the common property of any Neighborhood Association shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and maintained by the Association or the Neighborhood Association, as applicable, in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

6.4. Disbursement of Proceeds. Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association or

Neighborhood Association, as appropriate, and placed in that Neighborhood Association's reserve account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

6.5. Repair and Reconstruction. If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors shall, without a vote of the Members, levy Special Assessments against those Unit Owners responsible for the premiums for the applicable insurance coverage under Section 6.1.

## **Article VII**

### **NO PARTITION**

Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the Properties or such portion thereof have been removed from the provisions of this Declaration. This Article shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

## **Article VIII**

### **CONDEMNATION**

If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of 75% of the Total Vote), by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking 75% of the Total Vote shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Article VI regarding funds for the repair of damage or destruction shall apply.

If the taking does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such

restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

## **Article IX** **ANNEXATION WITH APPROVAL OF MEMBERS.**

The Association may subject any real property to the provisions of this Declaration with the consent of the owner of such property and approval by at least 75% of the Total Vote. Such annexation shall be accomplished by filing a Supplemental Declaration in the Office of the Clerk describing the property to be annexed and specifically subjecting it to the terms of this Declaration. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the annexed property. Any such annexation shall be effective upon filing with the Office of the Clerk unless otherwise provided therein.

## **Article X** **ASSESSMENTS**

10.1. Creation of Assessments. The Association is hereby authorized to levy assessments against each Unit subject to assessment for Association expenses as the Board may specifically authorize from time to time. There shall be four types of assessments for Association expenses: (a) Base Assessments to fund Common Expenses for the general benefit of all Units; (b) Neighborhood Assessments for Neighborhood Expenses benefiting only Units within a particular Neighborhood or Neighborhoods; (c) Special Assessments as described in Section 10.5; and (d) Specific Assessments as described in Section 10.6. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties is deemed to covenant and agree to pay these assessments.

All assessments, (except as otherwise provided in Section 10.6 (b)) together with interest from the due date of such assessment at a rate determined by the Association (not to exceed the highest rate allowed by Oregon law), late charges, costs, and reasonable attorney's fees, shall be a charge and continuing lien upon each Unit against which the assessment is made until paid, as more particularly provided in Section 10.8. Each such assessment, together with interest, late charges, costs, and reasonable attorney's fees, also shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. Upon a transfer of title to a Unit, the grantee shall not be liable for any

assessments and other charges due at the time of conveyance unless expressly assumed by him. No first Mortgagee who obtains title to a Unit by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

Assessments shall be paid in such manner and on such dates as the Board may establish. If the Board so elects, assessments may be paid in two or more installments. In the event installment payments are allowed, the nature of the debt is not in any way changed or altered in any manner which could affect the Association's rights under this Declaration and Oregon law related to unpaid assessments.

Unless the Board otherwise provides, the Base Assessment and any Neighborhood Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his or her Unit, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

The Association shall, upon request, furnish to any Owner liable for any type of assessment a certificate in writing signed by an officer of the Association setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

No Owner may exempt himself from liability for assessments, by nonuse of Common Area, abandonment of his or her Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

10.2. Computation of Base Assessment. The Board shall prepare a budget covering the estimated Common Expenses during the coming year pursuant to the terms and provisions set forth in Section 3.20(f) of the Bylaws. The budget shall include an assessment contribution to maintain a reserve fund in accordance with a budget separately prepared as provided in Section 10.4.

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The Base Assessment shall be levied equally against all Units and shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Units subject to assessment under Section 10.8 on the first day of the fiscal year for which the budget is prepared and the number of Units reasonably anticipated to become subject to assessment during the fiscal year.

The Board shall send a copy of the budget and notice of the amount of the Base Assessment for the following year to each Owner not less than 45 nor more than 60 days prior to the beginning of the fiscal year for which it is to be effective.

10.3. Computation of Neighborhood Assessments. The Board shall prepare a separate budget covering the estimated Neighborhood Expenses for each Neighborhood on whose behalf Neighborhood Expenses are expected to be incurred during the coming year pursuant to the terms and provisions set forth in Section 3.20(f) of the Bylaws. The Board shall be entitled to set such budget only to the extent that this Declaration, any Supplemental Declaration, or the Bylaws specifically authorizes the Board to assess certain costs as a Neighborhood Assessment. Any Neighborhood may request that additional services or a higher level of services be provided by the Association, and in such case, any additional costs shall be added to such budget. Such budget shall include an assessment contribution establishing a reserve fund for repair and replacement of items maintained as a Neighborhood Expense, if any, within the Neighborhood.

Neighborhood Expenses shall be allocated equally among all Units within the benefited Neighborhood; provided, if so specified in the Supplemental Declaration applicable to such Neighborhood or if so directed by petition signed by a majority of the Neighborhood Total Vote, any portion of the assessment intended for exterior maintenance of structures, insurance on structures, or replacement reserves which pertain to particular structures shall be levied on each of the benefited Units in proportion to the benefit received.

The Board shall cause a copy of such budget and notice of the amount of the Neighborhood Assessment for the coming year to be delivered to each Owner of a Unit in the Neighborhood not less than 45 nor more than 60 days prior to the beginning of the fiscal year.

All monies collected as Neighborhood Assessments shall be held and used by the Association solely for the benefit of the Neighborhood on whose behalf such monies were collected, and the Association shall maintain separate books and records of such receipts and expenditures.

10.4. Reserve Budget and Assessment Contribution. The Board shall annually prepare reserve budgets for both general and Neighborhood purposes which take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost and in accordance with O.R.S. 94.595. The Board shall set the required assessment contribution of funds in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual Base Assessments or Neighborhood Assessments, as appropriate, over the budget period.

10.5. Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted subject to the limitations set forth in Section 10.7. Such Special Assessment may be levied against the entire membership, if such Special Assessment is for Common Expenses, or against the Units within any Neighborhood if such Special Assessment is for Neighborhood Expenses. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

10.6. Specific Assessments. The Board shall have the power to levy Specific Assessments against a particular Unit or Units constituting less than all Units within the Properties or within a Neighborhood, as follows:

(a) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Unit or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners (which might include, without limitation, landscape maintenance, handyman service, pool cleaning, pest control, etc.), which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner; and

(b) to cover costs incurred in bringing the Unit into compliance with the terms of this Declaration, any applicable Supplemental Declaration, the Bylaws or

rules, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their licensees, invitees, or guests; provided, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing before levying a Specific Assessment under this subsection (b).

The Association may also levy a Specific Assessment against any Neighborhood to reimburse the Association for costs incurred in bringing the Neighborhood into compliance with the provisions of the Declaration, any applicable Supplemental Declaration, the Articles, the Bylaws, and rules, provided the Board gives the Neighborhood Representative from such Neighborhood prior written notice and an opportunity to be heard before levying any such assessment.

10.7. Limitation of Increases of Assessments. Notwithstanding any provision to the contrary, and except for assessment increases necessary for emergency situations or to reimburse the Association pursuant to Section 10.6, the Board may not impose a Base Assessment or Neighborhood Assessment that is more than 20% greater than each of those assessments for the immediately preceding fiscal year nor impose a Special Assessment which in the aggregate exceeds 5% of the budgeted Common Expenses or Neighborhood Expenses, as the case may be, for the current fiscal year, without approval by a majority of the Total Vote, or Neighborhood Total Vote if a Neighborhood Expense, at a meeting of the Members or Neighborhood. For purposes of this Section, the term "Base Assessment" or "Neighborhood Assessment" shall be deemed to include the amount assessed against each Unit plus a pro rata allocation of any amounts the Association received through any subsidy or maintenance agreement, if any, in effect for the year immediately preceding the year for which the assessment is to be increased.

An emergency situation is any one of the following:

- (a) an extraordinary expense required by an order of a court;
- (b) an extraordinary expense necessary to repair or maintain the Properties or any part of them for which the Association is responsible where a threat to personal safety on the Properties is discovered; or
- (c) an extraordinary expense necessary to repair or maintain the Properties or any part of them for which the Association is responsible which could not have been reasonably foreseen by the Board in preparing and distributing the pro forma budget pursuant to Section 10.2. However, prior to the

imposition or collection of such an assessment, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. Such resolution shall be distributed to the Members with the notice of such assessment.

10.8. Lien for Assessments. All assessments authorized in this Article shall constitute a lien against the Unit against which they are levied until paid unless otherwise specifically precluded in this Declaration. The lien shall also secure payment of interest, late charges (subject to the limitations of Oregon law), and costs of collection (including attorneys fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. The Association may enforce such lien, when delinquent, by suit, judgment, and foreclosure.

The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association. The Association may sue for unpaid Common Expenses and costs without foreclosing or waiving the lien securing the same.

The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Unit due prior to such acquisition of title.

10.9. Failure to Assess. Failure of the Board to fix assessment amounts or rates or any mistake by the Board or Association staff in the calculation of a Unit's assessment shall not be deemed a waiver, modification, or release of any Owner from the obligation to pay assessments.

10.10. Failure to Deliver. Failure to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments and Neighborhood Assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

10.11. Exempt Property. The following property shall be exempt from payment of Base Assessments, Neighborhood Assessments, and Special Assessments:

- (a) All Common Area; and
- (b) Any property dedicated to and accepted by any governmental authority or public utility.

## **Article XI**

### **ARCHITECTURAL STANDARDS**

11.1. General. No structure shall be placed, erected, or installed upon any Unit, and no improvements (including staking, clearing, excavation, grading and other site work, exterior alteration of existing improvements, planting or removal of landscaping materials, and installation or removal of an irrigation system) shall take place except in compliance with this Article and the Design Guidelines and upon approval of the Design Review Committee, as further described herein.

Any Owner may remodel, paint or redecorate the interior of structures on his Unit without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structures on the Unit shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

All dwellings and landscaping constructed or placed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect, licensed building designer or licensed landscape architect.

This Article shall not apply to improvements to the Common Area by or on behalf of the Association.

11.2. Architectural and Design Review. Responsibility for administration of the Design Guidelines, as defined below, and review of all applications for construction and modifications under this Article shall be handled by the Design Review Committee ("DRC"). The members of the DRC need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers or similar professionals, whose compensation, if any, shall be established by the Board upon recommendation of the DRC. The Board may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review.

The DRC shall consist of at least three but not more than five persons. The Board of Directors shall appoint the Chair of the DRC, who shall then nominate the other members of the DRC subject to Board confirmation. The Chair and the other members shall then serve and may be removed at the discretion of the Board. The DRC shall have jurisdiction over all Broken Top Common Areas, all signs, and all original construction and modification of any Unit, including landscaping and tree removal.

11.3 Guidelines and Procedures. The design and development guidelines and application and review procedures ("Design Guidelines") which shall apply to all construction activities within the Properties have been adopted by the Association. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary from one portion of the Properties to another depending upon the location, unique characteristics, and intended use.

The Board of Directors shall have sole authority to amend the Design Guidelines, although the DRC may recommend amendments for the Board's consideration and approval. Any amendments to the Design Guidelines shall apply to construction and modifications commenced after the date of such amendment only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced.

The DRC shall make the Design Guidelines available to Owners who seek to engage in development or construction within the Properties and all such Persons shall conduct their activities in accordance with such Design Guidelines.

In the Association's discretion, such Design Guidelines may be recorded in the Office of the County Clerk, in which event the recorded version, as it may unilaterally be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time. Notwithstanding this Section, there is nothing in this Section which requires the Board to record the Design Guidelines. In the event the Design Guidelines are not recorded, the DRC shall keep a copy of the current and all previous versions of the Design Guidelines in the Association's records. If the Design Guidelines are not recorded, the records of the DRC shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

#### 11.4. Submission of Plans and Specifications.

(a) No construction or improvements shall be commenced, erected, placed or maintained on any Unit, nor shall any exterior addition, change or alteration be made thereto, until the plans and specifications ("Plans") showing site layout, structural design, exterior elevations, exterior materials and colors, signs, landscaping, drainage, lighting, irrigation, utility facilities layout, and screening therefor shall have been submitted to and approved in writing by the DRC. The Design Guidelines shall set forth the procedure for submission of the Plans.

(b) In reviewing each submission, the DRC may consider visual and environmental impact, ecological compatibility, natural platforms and finish grade elevation, harmony of external design with surrounding structures and environment, and location in relation to surrounding structures and plant life. The DRC may require relocation of native plants within the construction site or the installation of an irrigation system for the landscaping including the natural plant life on the Unit as a condition of approval of any submission.

The DRC shall, within 45 calendar days after receipt of each submission of the Plans, advise the party submitting the same, in writing, at an address specified by such party at the time of submission, of (i) the approval of Plans, or (ii) the segments or features of the Plans which are deemed by the DRC to be inconsistent or not in conformity with this Declaration and/or the Design Guidelines, the reasons for such finding, and suggestions for the curing of such objections. In the event the DRC fails to advise the submitting party by written notice within the time set forth above of either the approval or disapproval of the Plans, approval shall be deemed to have been given. Notice shall be deemed to have been given at the time the envelope containing such notice, properly addressed, and postage

prepaid, is deposited with the U. S. Postal Service, registered or certified mail, return receipt requested. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery.

(c) If construction does not commence on a project for which Plans have been approved within 12 months of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the Plans to the DRC for reconsideration.

11.5. No Waiver of Future Approvals. Each Owner acknowledges that the members of the DRC will change from time to time and that interpretation, application and enforcement of the Design Guidelines may vary accordingly. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

11.6. Appeal of DRC decision. If an Owner wishes to appeal the decision of the DRC, an additional review of the project may be requested. The purpose of this second review is to discuss specific objections and any mitigating circumstances that may justify a change in the DRC's decision. If the DRC upholds its previous decision, the Owner may appeal the final DRC decision to the Board of Directors. Any appeal to the Board of Directors shall be made in writing within fifteen (15) days of the DRC's final decision and shall contain specific objections or mitigating circumstances justifying the appeal. A final, conclusive decision shall be made by the Board of Directors of the Association promptly after receipt of such appeal. The Board of Directors may establish reasonable fees for secondary review of an application by the DRC and appeal to the Board of Directors, which must be paid in full prior to appellate review and may also establish reasonable rules to effectuate this Section 11.6.

11.7. Variance. The DRC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, containing the unique circumstances; (b) be contrary to this Declaration; or (c) estop the DRC from denying a variance in other circumstances. For purposes of this Section, the



inability to obtain approval of any governmental agency, the issuance of any permit, the cost of compliance, or the terms of any financing shall not be considered a hardship warranting a variance.

11.8. Limitation of Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and neither the DRC nor the Association shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Association, the Board, any committee, nor member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Unit.

11.9. Enforcement. Any structure or improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Board, Owners shall, at their own cost and expense, remove such structure or improvement and restore the land to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Board or its designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the benefited Unit and collected as a Specific Assessment unless otherwise prohibited in this Declaration.

Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded by the Board from the Properties, subject to the notice and hearing procedures contained in the Bylaws. In such event, neither the Association, its officers, nor directors shall be held liable to any Person for exercising the rights granted by this paragraph.

In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the DRC.

## **Article XII**

### **USE GUIDELINES AND RESTRICTIONS**

12.1. Plan of Development; Applicability; Effect. Broken Top has been created as a residential and recreational development and, in furtherance of its and every other Owner's interests, has established a general plan of development for Broken Top Properties. The Properties are subject to the Design Guidelines and the land development, architectural, and design provisions described in Article XI, as well as the rules and restrictions governing land use, individual conduct, and uses of or actions upon the Properties described in this Article XII ("Use Guidelines and Restrictions"). This Declaration and resolutions of the Board or the Members adopted pursuant to this Article establish affirmative and negative covenants, easements, and restrictions on the Properties.

All provisions of this Declaration and of any Association rules shall also apply to all occupants, tenants, guests and invitees of any Unit. Any lease on any Unit shall provide that the lessee and all occupants of the leased Unit shall be bound by the terms of this Declaration, the Bylaws, and the rules of the Association.

Broken Top's general plan of development was promulgated in order to protect all Owners' quality of life and collective interests, the aesthetics and environment within the Properties, and the vitality of and sense of community within Broken Top all subject to the Board's and the Member's ability to respond to changes in circumstances, conditions, needs, and desires within the master planned community.

The Use Guidelines and Restrictions contain general provisions applicable to all of the Properties, as well as specific provisions which may vary within the Properties depending upon the location, characteristics, and intended use. The Use Guidelines and Restrictions are set forth in Section 12.6.

12.2. Board Power. Subject to the terms of this Article XII and to its duty of care and undivided loyalty to the Association and its Members, the Board shall implement and manage the Use Guidelines and Restrictions through rules which adopt, modify, cancel, limit, create exceptions to, or expand the Use Guidelines and Restrictions; provided, no rule adopted by the Board shall be inconsistent with the terms of this Declaration. Prior to any such action, the Board shall publish conspicuous notice of the proposal at least five business days prior to the Board meeting at which such action is to be considered. Members shall have a

reasonable opportunity to be heard at a Board meeting prior to action being taken.

The Board shall send a copy of any proposed new rule or amendment to each Owner at least 30 days prior to its effective date. The rule shall become effective unless disapproved at a meeting of Members by a majority of the Total Vote. The Board shall have no obligation to call a meeting of the Members to consider disapproval except upon petition of the Members as required for special meetings in Section 2.4 of the Bylaws.

The Board shall have all powers necessary and proper, subject to its exercise of sound business judgment and reasonableness, to affect the powers contained in this Article XII.

The Board shall provide, without cost, a copy of the Use Guidelines and Restrictions and rules then in effect to any requesting Member or Mortgagee.

12.3. Members' Power. The Members, at a meeting duly called for such purpose as provided in Section 2.4 of the Bylaws, may adopt, repeal, modify, limit, and expand Use Guidelines and Restrictions and implementing rules by a majority vote of Total Vote.

12.4. Owners' Acknowledgment. All Owners are subject to the Use Guidelines and Restrictions and are given notice that (a) their ability to use their privately owned property is limited thereby, and (b) the Board and/or the Members may add, delete, modify, create exceptions to, or amend the Use Guidelines and Restrictions in accordance with this Declaration.

Each Owner by acceptance of a deed acknowledges and agrees that the use and enjoyment and marketability of his or her property can be affected by this provision and that the Use Guidelines and Restrictions and rules may change from time to time.

12.5. Rights of Owners. Except as may be specifically set forth in Section 12.6, neither the Board nor the Members may adopt any rule in violation of the following provisions:

(a) Equal Treatment. Similarly situated Owners and occupants shall be treated similarly.

(b) Household Composition. No rule shall interfere with the freedom of occupants of Units to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a Single Family as that term is defined in this Declaration and to limit the total number of occupants permitted in each Unit on the basis of the size and facilities of the Unit and its fair share use of the Common Area, including parking.

(c) Activities Within Unit. No rule shall interfere with the activities carried on within the confines of Units, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the Unit, that block the views from other Units, or that create an unreasonable source of annoyance.

(d) Pets. Unless the keeping of pets in any Neighborhood is prohibited by Supplemental Declaration at the time of the sale of the first Unit in such Neighborhood, no rule prohibiting the keeping of ordinary household pets shall be adopted thereafter over the objection of any affected Owner expressed in writing to the Association. The Association may adopt reasonable regulations designed to minimize damage and disturbance to other Owners and occupants, including regulations requiring damage deposits, waste removal, leash controls, noise controls, occupancy limits based on size and facilities of the Unit and fair share use of the Common Area. Nothing in this provision shall prevent the Association from requiring removal of any animal that presents an actual threat to the health or safety of residents or from requiring abatement of any nuisance or unreasonable source of annoyance.

(e) Allocation of Burdens and Benefits. The initial allocation of financial burdens and rights to use Common Areas among the various Units shall not be changed to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from adopting generally applicable rules for use of Common Areas, or from denying use privileges to those who abuse the Common Area, violate rules or this Declaration, or fail to pay assessments. This provision does not affect the right to increase the amount of assessments as provided in Article X.

(f) Alienation. No rule shall prohibit transfer of any Unit, or require consent of the Association or Board for transfer of any Unit. The Association

shall not impose any fee on transfer of any Unit greater than an amount reasonably based on the costs to the Association of the transfer.

12.6. Use Guidelines and Restrictions.

(a) General. The Properties shall be used only for residential, recreational, and related purposes (which may include, without limitation, offices for any property manager retained by the Association or business offices for the Association consistent with this Declaration). Any additional covenants imposed on the property within any Neighborhood may impose stricter standards than those contained in this Article and the Association shall have standing and the power to enforce such standards.

(b) Restricted Activities. The following activities are prohibited within the Properties unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board:

- 1) Posting of signs of any kind except those required by law, including posters, circulars and billboards;
- 2) Parking of commercial vehicles, recreational vehicles, mobile homes, boats or other watercraft, or other oversized vehicles, stored vehicles or inoperable vehicles in places other than enclosed garages;
- 3) Subdivision of a Unit into two or more Units after a subdivision plat including such Unit has been approved and filed with the appropriate governmental authority, or changing the boundary lines of any Unit;
- 4) Active use of lakes, ponds, streams, or other bodies of water within the Properties or within any Golf Course, except that the owner of the Golf Course, and its agents, successors and assigns, shall have the exclusive right and easement to retrieve golf balls from bodies of water within the Common Areas which are within range of golf balls hit from the Golf Course. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds, streams or other bodies of water within or adjacent to the Properties;

- 5) Operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years;
- 6) Occupancy of a Unit by more than a Single Family;
- 7) Capturing, trapping or killing wildlife within the Properties, except in circumstances posing an imminent threat to the safety of persons using the Properties, and raising, breeding or keeping of animals, livestock, or poultry of any kind, except that a reasonable number of dogs, cats, or other usual and common household pets may be permitted in a Unit. However, those pets which are permitted to roam free, or, in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Units shall be removed upon request of the Board. If the pet owner fails to honor such request, the Board may remove the pet;
- 8) Activities which materially disturb or destroy the vegetation, wildlife, or air quality within the Properties or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution;
- 9) Any construction, erection, or placement of ornamentation or other objects or equipment, permanently or temporarily, on the outside portions of the Unit, whether such portion is improved or unimproved;
- 10) The discharge of firearms within the Properties is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size. Notwithstanding anything to the contrary contained herein, or in the Bylaws, the Association shall not be obligated to take action to enforce this provision;
- 11) Any business, trade, garage sale, moving sale, rummage sale, or similar activity, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (A) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (B) the business activity conforms to all zoning requirements for the Properties; (C) the business activity does not involve regular visitation of the Unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Properties; and (D) the business activity is consistent with the residential character of

the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board; and

- 12) The Leasing of a Unit as restricted by this subsection. Units may be leased only in their entirety. No fraction or portion may be leased. No structure on a Unit other than the primary residential dwelling shall be leased or otherwise occupied for residential purposes, except that any Unit comprised of more than one acre of land may make residential use of such a structure for an ancillary use such as in-law suite or nanny suite, but not for independent leasing. There shall be no subleasing of Units or assignment of leases unless prior written approval is obtained from the Board. All leases shall be in writing.

No Unit shall be used for Transient Occupancy and all Leasing shall be for an initial term of no less than 30 days except: (A) with the prior written consent of the Board or (B) for Units located within the Courtyards Neighborhood, as initially authorized by the Declarant in that Neighborhood's Supplemental Declaration. The Owners in the Courtyards Neighborhood may modify the rental restriction in any manner with the approval of at least 75% of the Neighborhood Total Vote for the Courtyards Neighborhood.

Notwithstanding the requirement of this subsection that all Leasing must be for an initial term of not less than 30 days, the Board may by resolution, rule or regulation require all Leasing to be for an initial period of more than 30 days, in which event, said Board resolution, rule or regulation: (A) is expressly permitted to be more restrictive than this subsection and (B) expressly does not conflict with this Declaration.

Notice of any Lease, together with such additional information as may be required by the Association, shall be given to the Board by the Unit Owner within 10 days of execution of the lease. The Owner must make available to the lessee copies of the Declaration, Bylaws, and the rules and regulations. The Board may adopt reasonable rules regulating Transient Occupancy, Leasing and subleasing. Except as limited by this section regarding the Courtyards Neighborhood and consistent with Section 3.4(a), any Neighborhood is specifically permitted to adopt other Leasing and Transient Occupancy rules and regulations for that particular Neighborhood that are in addition to the rules and regulations adopted by the Board.

(c) Prohibited Conditions. The following shall be prohibited within the Properties:

- 1) Except as allowed by Federal law, exterior antennas, aerials, satellite dishes, or other apparatus for the transmission of television, radio, satellite, or other signals of any kind unless completely contained within the dwelling on the Unit so as not to be visible from outside the dwelling or otherwise approved pursuant to Article XI; provided, the Association shall have the right, without obligation, to erect or install and maintain such apparatus for the benefit of all or a portion of the Properties;
- 2) Hedges, walls, dog runs, animal pens, or fences of any kind on any Unit except as approved in accordance with Article XI;
- 3) Open garage doors. Garage doors shall remain closed at all times except when entering and exiting the garage or when the Owner is working on the Unit or its landscaping; and;
- 4) Excessive exterior lighting on any Unit. The Board through the DRC shall in its sole discretion determine whether any exterior lighting is excessive.

### **Article XIII** **EASEMENTS**

13.1. Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, an Owner, occupant, or the Association.

13.2. Easements for Utilities, Etc. There are hereby reserved unto the Association and its designees access and maintenance easements upon, across, over, and under all of the Properties to the extent reasonably necessary for the purpose of replacing, repairing, and maintaining cable television systems, master



television antenna systems, security and similar systems, roads, walkways, bicycle pathways, trails, ponds, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas, and electricity, and for the purpose of installing any of the foregoing on property which it owns or within easements designated for such purposes on recorded plats of the Properties. This easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any existing dwelling on a Unit, and any damage to a Unit resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of this easement shall not unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

### 13.3. Easements for Golf Course.

(a) Every Unit and the Common Area and the common property of any Neighborhood Association are burdened with an easement permitting golf balls unintentionally to come upon such Common Area, Units or common property of a Neighborhood and for golfers at reasonable times and in a reasonable manner to come upon the Common Area, common property of a Neighborhood, or the exterior portions of a Unit to retrieve errant golf balls; provided, however, if any Unit is fenced or walled, the golfer shall seek the Owner's permission before entry. The existence of this easement shall not relieve golfers of liability for damage caused by errant golf balls. Under no circumstances shall any of the following Persons be held liable for any damage or injury resulting from errant golf balls or the exercise of this easement: the Association or its Members (in their capacity as such); Broken Top Club, its successors, successors-in-title to the Golf Course, or assigns; any officer, director or partner of any of the foregoing, or any officer or director of any partner.

(b) The owner of the Golf Course, its respective agents, successors and assigns, shall at all times have a right and non-exclusive easement of access and use over those portions of the Common Areas reasonably necessary, with or without the use of maintenance vehicles and equipment, for the operation, maintenance, repair and replacement of the Golf Course.

(c) The Properties immediately adjacent to the Golf Course are hereby burdened with a non-exclusive easement in favor of the Golf Course for overspray of water from any irrigation system serving the Golf Course. Under no circumstances shall the Association or the owners of the Golf Course be held

liable for any damage or injury resulting from such overspray or the exercise of this easement.

(d) The owner of the Golf Course, its respective agents, successors and assigns, shall have a perpetual, exclusive easement of access over the Properties for the purpose of retrieving golf balls from bodies of water within the Common Areas lying reasonably within range of golf balls hit from the Golf Course.

(e) The owner of the Golf Course, its respective agents, successors and assigns, as well as its guests, invitees, employees, and authorized users of the Golf Course, shall at all times have a right and non-exclusive easement of access and use over all roadways and golf cart paths, if any, located or to be located within the Properties reasonably necessary to travel to and from the Golf Course and the right to park their vehicles on the streets within the Properties at reasonable times before, during and after golf tournaments and other similar functions held at the Golf Course, subject to the terms of that certain Agreement and Covenant to Share Costs recorded in Book 320, Page 764, at the Office of the County Clerk of Deschutes County, Oregon.

(f) The owner of the Golf Course, its respective agents, successors and assigns, shall have a perpetual non-exclusive easement, to the extent reasonably necessary, over the Properties, for the installation, operation maintenance, repair, replacement, monitoring and controlling of irrigation systems and equipment, including, without limitation, wells, pumps and pipelines, serving all or portions of the Golf Course.

(g) The owner of the Golf Course, its respective agents, successors and assigns, shall have a perpetual, non-exclusive easement to the extent reasonably necessary, over the Properties for the installation, maintenance, repair, replacement and monitoring of utility lines, wires, drainage pipelines and pipelines serving all or portions of the Golf Course.

(h) The Properties are hereby burdened with easements in favor of the Golf Course for natural drainage of storm water runoff from the Golf Course.

(i) The Properties are hereby burdened with easements in favor of the Golf Course for golf cart paths serving the Golf Course. Under no circumstances shall the Association or the owners of the Golf Course be held liable for any damage or injury resulting from the exercise of this easement.

(j) The owner of the Golf Course, its respective agents, successors and assigns, as well as its guests invitees, employees, and authorized users of the Golf Course shall at all times have a right and non-exclusive easement of access and use over the golf cart paths located within the Properties.

13.4. Easements for Cross-Drainage. Every Unit and the Common Area shall be burdened with easements for natural drainage of storm water runoff from other portions of the Properties; provided, no Person shall alter the natural drainage on any Unit so as to materially increase the drainage of storm water onto adjacent portions of the Properties without the consent of the Owner of the affected property.

13.5. Right of Entry. The Association shall have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance pursuant to Article V hereof, and to inspect for the purpose of ensuring compliance with this Declaration, any Supplemental Declaration, Bylaws, and rules, which right may be exercised by any member of the Board, the Association, officers, agents, employees, and managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board, but shall not authorize entry into any single family detached dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.

#### **Article XIV** **MORTGAGE PROVISIONS**

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units in the Properties. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

14.1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible

Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Declaration or Bylaws relating to such Unit or the Owner or Occupant which is not cured within 60 days. Notwithstanding this provision, any holder of a first Mortgage is entitled to written notice upon request from the Association of any default in the performance by an Owner of a Unit of any obligation under the Declaration or Bylaws which is not cured within 60 days;

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders.

14.2. Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least 67% of the first Mortgagees or Total Vote representing at least 67% of the total Association vote entitled to be cast consent, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Area which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this subsection);

(b) Change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Unit (a decision, including contracts, by the Board or provisions of any declaration subsequently recorded on any portion of the Properties regarding assessments for Neighborhoods or other similar areas shall not be subject to this provision where such decision or subsequent declaration is otherwise authorized by this

Declaration.);

(c) By act or omission change, waive, or abandon any scheme of regulations or enforcement pertaining to architectural design, exterior appearance or maintenance of Units and the Common Area (the issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision.);

(d) Fail to maintain insurance, as required by this Declaration; or

(e) Use hazard insurance proceeds for any Common Area losses for other than the repair, replacement, or reconstruction of such property.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

14.3. Other Provisions for First Lien Holders. To the extent possible under Oregon law:

(a) Any restoration or repair of the Properties after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with this Declaration and the original plans and specifications unless the approval is obtained of the Eligible Holders of first Mortgages on Units to which at least a majority of the votes of Units subject to Mortgages held by such Eligible Holders are allocated.

(b) Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Eligible Holders of first Mortgages on Units to which at least a majority of the votes of Units subject to Mortgages held by such Eligible Holders are allocated.

14.4. Amendments to Documents. The following provisions do not apply to amendments to the constituent documents or termination of the Association made as a result of destruction, damage, or condemnation pursuant to Section 14.3(a) and (b), or to the addition of land in accordance with Article IX.

(a) The consent of Members representing at least 67% of the Members, and the approval of the Eligible Holders of first Mortgages on Units to which at least 67% of the votes of Units subject to a Mortgage appertain, shall be required to terminate the Association.

(b) The consent of Members representing at least 67% of the Members, and the approval of Eligible Holders of first Mortgages on Units to which at least a majority of the votes of Units subject to a Mortgage appertain, shall be required materially to amend any provisions of the Declaration, Bylaws, or Articles of Incorporation, or to add any material provisions thereto which establish, provide for, govern, or regulate any of the following:

- 1) voting;
- 2) assessments, assessment liens, or subordination of such liens;
- 3) reserves for maintenance, repair, and replacement of the Common Area;
- 4) insurance or fidelity bonds;
- 5) rights to use the Common Area;
- 6) responsibility for maintenance and repair of the Properties;
- 7) expansion or contraction of the Properties or the addition, annexation, or withdrawal of Properties to or from the Association;
- 8) boundaries of any Unit;
- 9) leasing of Units;
- 10) imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer, or otherwise convey his or her Unit;
- 11) establishment of self-management by the Association where professional management has been required by an Eligible Holder; or

- 12) any provisions included in the Declaration, Bylaws, or Articles of Incorporation which are for the express benefit of holders, guarantors, or insurers of first Mortgages on Units.

14.5. No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

14.6. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

14.7. Amendment by Board. Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of its respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may record an amendment to this Article to reflect such changes.

14.8. Applicability of Article XIV. Except as provided in Section 14.7, nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or Oregon law for any of the acts set out in this Article.

14.9. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

## **Article XV**

### **GOLF COURSE**

15.1. Ownership and Operation of Golf Course. All Persons, including all Owners, are hereby advised that no representations or warranties have been or are made by the Declarant or any other Person with regard to the continuing existence, ownership or operation of the Golf Course, if any, and no purported representation

or warranty in such regard, either written or oral, shall ever be effective without an amendment to this Declaration executed or joined into by the Declarant. Further, the ownership and/or operation of the Golf Course, if any, may change at any time and from time to time by virtue of, but without limitation, (a) the sale to or assumption of operations of the Golf Course by an independent entity or entities; (b) the creation or conversion of the ownership and/or operating structure of the Golf Course to an "equity" club or similar arrangement whereby the Golf Course or the rights to operate it are transferred to an entity which is owned or controlled by its members; or (c) the transfer of ownership or control of the Golf Course to one or more affiliates, shareholders, employees, or independent contractors of the

Declarant. No consent of the Association, any Neighborhood Association, or any Owner shall be required to effectuate such transfer or conversion.

15.2. Right to Use. Neither membership in the Association nor ownership or occupancy of a Unit shall confer any ownership interest in or right to use the Golf Course. Rights to use the Golf Course will be granted only to such persons, and on such terms and conditions, as may be determined from time to time by the owner of the Golf Course. The owner of the Golf Course shall have the right, from time to time in its sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of the Golf Course, including, without limitation, eligibility for and duration of use rights, categories of use and extent of use privileges, and number of users, and shall also have the right to reserve use rights and to terminate use rights altogether, subject to the provisions of any outstanding membership documents.

15.3. View Impairment. Neither the Declarant, the Association nor the owner or operator of the Golf Course guarantees or represents that any view over and across the Golf Course from adjacent Units will be preserved without impairment. The owner of the Golf Course, if any, shall have no obligation to prune or thin trees or other landscaping, and shall have the right, in its sole and absolute discretion, to add trees and other landscaping to the Golf Course from time to time. In addition, the owner of the Golf Course may, in its sole and absolute discretion, change the location, configuration, size and elevation of the tees, bunkers, fairways and greens on the Golf Course from time to time. Any such additions or changes to the Golf Course may diminish or obstruct any view from the Units and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.



15.4. Limitations on Amendments. In recognition of the fact that the provisions of this Article are for the benefit of the owner of the Golf Course, no amendment to this Article, and no amendment in derogation of any rights reserved or granted to the owner of the Golf Course by other provisions of this Declaration, may be made without the written approval of the owner of the Golf Course. The foregoing shall not apply, however, to amendments made by the Declarant.

15.5. Jurisdiction and Cooperation. It is Declarant's intention that the Association and the owner of the Golf Course shall cooperate to the maximum extent possible in the operation of the Properties and the Golf Course. Each shall reasonably assist the other in upholding the Community-Wide Standard. The Association shall have no power to promulgate rules and regulations affecting activities on or use of the Golf Course.

## **Article XVI**

### **GENERAL PROVISIONS**

16.1. Term. This Declaration shall run with and bind the Properties, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, for a term of 40 years from the date this Declaration is recorded. After such time, this Declaration shall be automatically extended for successive periods of 10 years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding each extension, agreeing to amend, in whole or in part, or terminate this Declaration, in which case this Declaration shall be amended or terminated as specified therein.

16.2. Amendment. This Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of 75% of the Total Vote. In addition, the approval requirements set forth in Article XIV hereof shall be met if applicable. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

Amendments to this Declaration 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 one year 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 provisions of this Declaration.

If a Member consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Member has the authority so to consent, and no contrary provision in any Mortgage or contract between the Member and a third party will affect the validity of such amendment.

16.3. Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

16.4. Litigation. The Association has the authority to initiate judicial and administrative proceedings to carry out its duties as an Association and to protect the Broken Top Master Plan and the provisions of this Declaration and Bylaws. If the cost of any such judicial or administrative proceeding during the current fiscal year may reasonably be estimated to be less than 5% of the annual Operating Budget of the Association for the year, no vote of the Members shall be required. If the cost of any such judicial or administrative proceeding during the current fiscal year may reasonably be estimated to be more than 5% of the annual Operating Budget, the Board shall obtain the approval of a majority of the Total Vote to initiate the proceeding. Notwithstanding the prior sentence, the Board may initiate the proceeding if it determines circumstances require an immediate action, and hold the vote promptly thereafter. If less than a majority of the Total Vote approves the proceeding, the Board shall promptly terminate it.

16.5. Cumulative Effect; Conflict. The covenants, restrictions, and provisions of this Declaration shall be cumulative with those of any Neighborhood and the Association may, but shall not be required to, enforce the covenants, conditions, and provisions of any Neighborhood; provided, however, in the event of conflict between or among such covenants and restrictions, and provisions of any articles of incorporation, Bylaws, rules and regulations, policies, or practices adopted or carried out pursuant thereto, those of any Neighborhood shall be subject and subordinate to those of the Association. The foregoing priorities shall apply, but not be limited to, the liens for assessments created in favor of the Association.

16.6. Compliance. Every Owner and occupant of any Unit shall comply with this Declaration, the Bylaws, and the rules of the Association. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, by the Association or, in a proper case, by any aggrieved Unit Owner(s).

16.7. Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Association at least seven days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Association may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

16.8. Attorneys' Fees and Costs. In the event of an action instituted or defended to enforce any of the DRC provisions contained in this Declaration, the Articles of Incorporation, any decision or ruling, or the Bylaws, the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgment, reasonable attorneys' fees and costs of such suit. In the event the Association is a prevailing party in such action, the amount of such attorneys' fees and costs shall include the value for Association's staff time devoted to the action, and shall be a Special Assessment with respect to the Unit(s) involved in the action.

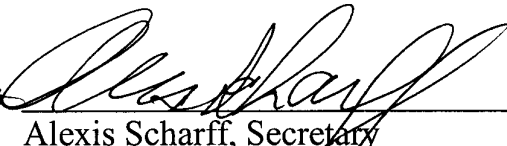
*[CERTIFICATION NEXT PAGE]*

## CERTIFICATION

The undersigned President and Secretary of Broken Top Community Association, Inc. hereby certify that the Amended and Restated Declaration of Covenants, Conditions, and Restrictions set forth above, consisting of 61 pages including this page, the cover page and the table of contents, are a true and complete copy of the declaration adopted by at least seventy-five percent of the Total Vote.

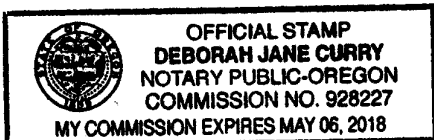
BROKEN TOP  
COMMUNITY ASSOCIATION, INC.


By:   
Peter L. Deuel, President

By:   
Alexis Scharff, Secretary

STATE OF OREGON           )  
  )ss.  
County of Deschutes       )

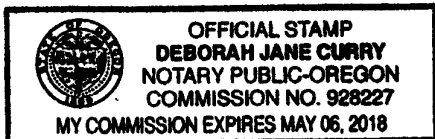
The foregoing instrument was acknowledged before me on this 18<sup>th</sup> day of August, 2015, by PETER L. DEUEL, President for Broken Top Community Association, Inc.




  
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

