515-132109

94-37067

352 - 1521
PREVIOUSLY RECORDED

AMENDED AND RESTATED

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

94-38009 FOR 353 - 0570

BROKEN TOP COMMUNITY

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this 21st day of September, 1994, by Broken Top Limited Partnership, an Oregon limited partnership ("Declarant").

WITNESSETH

WHEREAS, on October 27, 1992, Declarant executed that certain Declaration of Covenants, Conditions and Restrictions for Broken Top Community, which was filed of record in Book 280 at Page 1492, et seq., in the Deed Records of Deschutes County, Oregon ("Original Declaration"); and

WHEREAS, the Original Declaration has previously been supplemented and amended by those instruments recorded as follows:

FILING DATE	DEED BOOK	PAGE
July 8, 1993	304	1952
July 15, 1993	305	1498
August 26, 1993	310	0294
September 21, 1993	312	2226
November 23, 1993	320	0760
November 23, 1993	320	0762
December 15, 1993	322	2101
March 4, 1994	331	1085
August 8, 1994	347	2864, 2868, 2871
August 18, 1994	349	0498

(the Original Declaration, as supplemented and amended by the foregoing instruments, is hereafter referred to as the "Current Declaration"); and

WHEREAS, pursuant to Section 18.2 of the Current Declaration, the Declarant may unilaterally amend the Current Declaration as necessary to satisfy the requirements of any governmental agency for approval of the Declaration; and

WHEREAS, pursuant to Section 6.6 of the By-Laws of Broken Top Community Owners Association, Inc., attached as Exhibit "C" to the Current Declaration, the Declarant may unilaterally amend the By-Laws as necessary to satisfy the requirements of any governmental agency for approval of the By-Laws; and

WHEREAS, the approval of the Declaration by the California Real Estate Commissioner is necessary in order to obtain a Permit from the California Department of Real Estate to allow marketing and sale of Units in Broken Top to California residents in the State of California; and

WHEREAS, the California Real Estate Commissioner has required certain amendments to the Current Declaration as a condition of granting its approval:

NOW, THEREFORE, the Declarant hereby amends the Current Declaration by striking the entire text of the Original Declaration and all exhibits, amendments and supplements thereto and substituting in its place the following:

This document is being rerecorded for the purpose of substituting the correct Exhibit "C".

FATCO
141 Disgruntled
Bend, OR 97701

FIRST AMERICAN TITLE CO.
OF DESCHUTES COUNTY
P. O. BOX 323
BEND, OREGON 97709

353 - 0571

352 - 1522

AMENDED AND RESTATED

DECLARATION

of

COVENANTS, CONDITIONS, AND RESTRICTIONS

for

BROKEN TOP COMMUNITY

- TABLE OF CONTENTS -

		Page
I.	DEFINITIONS	1
1.1.	"Area of Common Responsibility"	1
1.2.	"Articles of Incorporation" or "Articles"	1
1.3.	"Association"	2
1.4.	"Base Assessment"	2
1.5.	"Board of Directors" or "Board"	2
1.6.	"Builder"	2
1.7.	"Broken Top"	2
1.8.	"Business" and "Trade"	2
1.9.	"By-Laws"	2
1.10.	"Class "B" Control Period"	2
1.11.	"California Real Estate Commissioner"	2
1.12.	"Common Area"	2
1.13.	"Common Expenses"	3
1.14.	"Community-Wide Standard"	3
1.15.	"Declarant"	3
1.16.	"Design Guidelines"	3
1.17.	"Exclusive Common Area"	3
1.18.	"Golf Course"	3
1.19.	"Master Plan"	3
1.20.	"Maximum Units"	3
1.21.	"Member"	3
1.22.	"Mortgage"	3
1.23.	"Mortgagee"	3
1.24.	"Mortgagor"	4
1.25.	"Neighborhood"	4
1.26.	"Neighborhood Assessments"	4
1.27.	"Neighborhood Association"	4
1.28.	"Neighborhood Expenses"	4
1.29.	"Office of the County Clerk"	4
1.30.	"O.R.S."	4
1.31.	"Owner"	4
1.32.	"Person"	4
1.33.	"Permit"	4
1.34.	"Phase"	4
1.35.	"Private Amenities"	5
1.36.	"Properties"	5
1.37.	"Retail Owner"	5
1.38.	"Special Assessment"	5
1.39.	"Specific Assessment"	5
1.40.	"Supplemental Declaration"	5
1.41.	"Unit"	5
1.42.	"Voting Member"	5

		Page
II.	PROPERTY RIGHTS	6
	2.1. Common Area	6
	2.2. Exclusive Common Area	6
	2.3. Private Amenities	7
III.	ASSOCIATION FUNCTION, MEMBERSHIP AND VOTING RIGHTS	8
	3.1. Function of Association	8
	3.2. Membership	8
	3.3. Voting	8
	3.4. Neighborhoods, and Voting Members	8
IV.	RIGHTS AND OBLIGATIONS OF THE ASSOCIATION	12
	4.1. Common Area	12
	4.2. Personal Property and Real Property for Common Use	12
	4.3. Enforcement	12
	4.4. Implied Rights; Board Authority	12
	4.5. Governmental Interests	12
	4.6. Indemnification	13
	4.7. Dedication of Common Areas	13
	4.8. Security	13
	4.9. Powers of the Association Relating to Neighborhoods	14
	4.10. Recycling Programs	14
	4.11. Public Gardens and Environmental Programs	14
	4.12. Wildlife Mitigation	14
V.	MAINTENANCE	14
	5.1. Association's Responsibility	14
	5.2. Owner's Responsibility	15
	5.3. Neighborhood's Responsibility	16
	5.4. Standard of Performance	16
	5.5. Party Walls and Similar Structures	16
VI.	INSURANCE AND CASUALTY LOSSES	17
	6.1. Association Insurance	17
	6.2. Owners Insurance	19
	6.3. Damage and Destruction	20
	6.4. Disbursement of Proceeds	20
	6.5. Repair and Reconstruction	21
VII.	NO PARTITION	21
VIII.	CONDEMNATION	21

Page

IX. ANNEXATION AND WITHDRAWAL OF PROPERTY 22

9.1. Annexation Without Approval of Membership 22
9.2. Annexation With Approval of Membership 22
9.3. Withdrawal of Property 22
9.4. Additional Covenants and Easements 23
9.5. Development of Additional Property 23
9.6. Amendment 23

X. ASSESSMENTS 23

10.1. Creation of Assessments 23
10.2. Computation of Base Assessment 24
10.3. Computation of Neighborhood Assessments 25
10.4. Reserve Budget and Capital Contribution 25
10.5. Special Assessments 26
10.6. Specific Assessments 26
10.7. Limitation of Increases of Assessments 26
10.8. Date of Commencement of Assessments 27
10.9. Lien for Assessments 27
10.10. Failure to Assess 28
10.11. Capitalization of Association 28
10.12. Exempt Property 28

XI. ARCHITECTURAL STANDARDS 28

11.1. General 28
11.2. Architectural Review 29
11.3. Guidelines and Procedures 30
11.4. Submission of Plans and Specifications 30
11.5. No Waiver of Future Approvals 31
11.6. Variance 31
11.7. Limitation of Liability 31
11.8. Enforcement 32

XII. USE GUIDELINES AND RESTRICTIONS 32

12.1. Plan of Development; Applicability; Effect 32
12.2. Board Power 33
12.3. Members' Power 33
12.4. Owners' Acknowledgment 33
12.5. Rights of Owners 33
12.6. Initial Use Guidelines and Restrictions 34

Page

XIII. EASEMENTS 37
13.1. Easements of Encroachment 37
13.2. Easements for Utilities, Etc 38
13.3. Easements to Serve Additional Property 38
13.4. Easements for Golf Course 38
13.5. Easements for Cross-Drainage 40
13.6. Right of Entry 40

XIV. MORTGAGE PROVISIONS 40

14.1. Notices of Action 40
14.2. Special FHLMC Provision 41
14.3. Other Provisions for First Lien Holders 42
14.4. Amendments to Documents 42
14.5. No Priority 43
14.6. Notice to Association 43
14.7. Amendment by Board 43
14.8. Applicability of Article XIV 43
14.9. Failure of Mortgagee to Respond 43

XV. DECLARANT'S RIGHTS 43

15.1. Transfer or Assignment 43
15.2. Development Activities 44
15.3. Additional Covenants 44
15.4. Special Declarant Rights 44

XVI. GOLF COURSE 45

16.1. Ownership and Operation of Golf Course 45
16.2. Right to Use 45
16.3. View Impairment 46
16.4. Limitations on Amendments 46
16.5. Jurisdiction and Cooperation 46

XVII. GENERAL PROVISIONS 46

17.1. Term 46
17.2. Amendment 46
17.3. Severability 48
17.4. Perpetuities 48
17.5. Litigation 48
17.6. Cumulative Effect; Conflict 48
17.7. Use of the Words "Broken Top" 48
17.8. Compliance 48
17.9. Notice of Sale or Transfer of Title 49
17.10. Attorneys' Fees 49
17.11. Enforcement of Bonded Obligations 49

AMENDED AND RESTATED

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

BROKEN TOP COMMUNITY

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR BROKEN TOP COMMUNITY ("Declaration") is made this ___ day of _____, 19_, by Broken Top Limited Partnership, an Oregon limited partnership ("Declarant").

Declarant is the owner of the real property described in Exhibit "A," which is attached and incorporated by reference. This Declaration imposes upon the Properties (as defined in Article I) 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.

Declarant hereby declares that all of the property described in Exhibit "A" and any additional property subjected to this Declaration by Supplemental Declaration (as defined in Article I) shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of and which shall run with the 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 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 covenants, or by 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 Section 10.8 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 By-Laws and generally serving the same role as the board of directors under the Oregon Nonprofit Corporations Act and the Oregon Planned Community Act.

1.6. "Builder": any Person which purchases one or more Units for the purpose of constructing improvements for later sale to consumers or parcels of land within the Properties for further subdivision, development, and/or resale in the ordinary course of such Person's business.

1.7. "Broken Top": the Properties as described in Section 1.36.

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. "By-Laws": the By-Laws of Broken Top Community Owners Association, Inc., attached as Exhibit "C" and incorporated by reference, as they may be amended.

1.10. "Class "B" Control Period": the period of time during which the Class "B" Member is entitled to appoint a majority of the members of the Board of Directors as provided in Section 3.3 of the By-Laws.

1.11. "California Real Estate Commissioner": the Real Estate Commissioner for the State of California or, if the duties and responsibilities of the Real Estate Commissioner for regulating the sale of out-of-state real estate are transferred to another state official, shall mean such other official.

1.12. "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. The term shall include the Exclusive Common Area, as defined below.

1.13. "Common Expenses": the actual and estimated expenses incurred or anticipated to be incurred by the Association for the general benefit of all Units, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to this Declaration, the By-Laws, and the Articles of Incorporation. Common Expenses shall not include any expenses incurred during the Class "B" Control Period for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs unless approved by Voting Members representing a majority of the total Class "A" vote of the Association.

1.14. "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.

1.15. "Declarant": Broken Top Limited Partnership, an Oregon limited partnership, or any successor, successor-in-title, or assign who has or takes title to any portion of the property described on Exhibits "A" or "B" for the purpose of development and/or resale in the ordinary course of business and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant.

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

1.17. "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 Article II.

1.18. "Golf Course": any parcel of land adjacent to or within the Properties which is privately owned by Broken Top Limited Partnership, an Oregon limited partnership, 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.

1.19. "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 property described on Exhibit "A" and a portion of the property described on Exhibit "B" which Declarant may from time to time anticipate subjecting to this Declaration. The Master Plan may also include subsequent plans approved by Deschutes County for the development of all or a portion of the property described on Exhibit "B" which Declarant may from time to time anticipate subjecting to this Declaration. Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration nor shall the exclusion of property described on Exhibit "B" from the Master Plan bar its later annexation in accordance with Article IX.

1.20. "Maximum Units": the 675 Units approved for development under the Master Plan approved on February 20, 1992 plus the maximum number of Units which may be developed in the property described on Exhibit "B" under the zoning designation of such property from time to time.

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

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

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

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

1.25. "Neighborhood": two or more Units which share interests other than those common to all Units, as more particularly described in Section 3.4. By way of illustration and not limitation, a condominium, townhome development, cluster home development, or single-family detached housing development might each be designated as separate Neighborhoods, or a Neighborhood may be comprised of more than one housing type with other features in common. In addition, each parcel of land intended for development as any of the above shall constitute a Neighborhood, subject to division into more than one Neighborhood upon development.

Where the context permits or requires, the term "Neighborhood" shall also refer to the Neighborhood Committee, if any, established in accordance with the By-Laws, or the Neighborhood Association established to act on behalf of the Owners of Units within the Neighborhood. Neighborhood boundaries may be established and modified as provided in Section 3.4.

1.26. "Neighborhood Assessments": assessments levied against the Units in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses, as described in Sections 10.1 and 10.4.

1.27. "Neighborhood Association": any condominium association or other owners association having concurrent jurisdiction over any Neighborhood.

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 capital repairs and replacements, as the Board may specifically authorize and as may be authorized herein or in Supplemental Declarations applicable to the Neighborhoods.

1.29. "Office of the County Clerk": The Office of the County Clerk of Deschutes County, Oregon.

1.30. "O.R.S.": The Oregon Revised Statute.

1.31. "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.

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

1.33. "Permit": a Permit issued by the California Real Estate Commissioner for the Units within any Phase of the Properties which authorizes the offering and/or sale of the registered Units in the state of California to California residents.

1.34. "Phase": all Units simultaneously subjected to this Declaration by the Declarant by its execution and recordation of this Declaration and each Supplemental Declaration in the Office of the County Recorder's. The property described on Exhibit "A" to this Declaration shall constitute the first Phase ("Phase I").

1.35. "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.

1.36. "Properties": the real property described in Exhibit "A," together with such additional property as is subjected to this Declaration in accordance with Article IX. Exhibit "A" and the Supplemental Declaration which subject additional property to the Declaration shall provide a legal description of the Common Area, if any.

1.37. "Retail Owner": an Owner other than the Declarant or Builder.

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

1.39. "Specific Assessment": assessments levied in accordance with Section 10.7.

1.40. "Supplemental Declaration": an amendment or supplement to this Declaration filed pursuant to Article IX which subjects additional property to this Declaration, and identifies the Common Area within the additional property, if any, and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein.

1.41. "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.

1.42. "Voting Member": the representative(s) selected by the Members within each Neighborhood as provided in Section 3.4(b) to be responsible for casting votes attributable to Units in the Neighborhood on matters requiring a vote of the membership (except as otherwise specifically provided in this Declaration and in the By-Laws). The term "Voting Member" shall include alternate Voting Members acting in the absence of the Voting Member and any Owners authorized to personally cast the votes for their respective Units pursuant to Section 3.4.

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 By-Laws 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 charge against such Owner's Unit remains delinquent, 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 By-Laws, or rules of the Association after notice and a hearing pursuant to the Section 3.23 of the By-Laws;

(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 4.7;

(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 51% of the total Class "A" votes;

(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; and

(i) The rights of certain Owners to the exclusive use of those portions of the Common Area designated "Exclusive Common Areas," as more particularly described in Section 2.2.

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.

The initial Common Area identified in Exhibit "A" has been conveyed to the Association. Additional Common Area may be conveyed to the Association subject to the provisions in Section 4.2.

2.2. Exclusive Common Area. Certain portions of the Common Area may be designated as Exclusive Common Area 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, 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, but shall not include any recreational facilities, lakes or other improvements which would reasonably be expected to require a Neighborhood Assessment in excess of 30% of the Base Assessment per Unit. The Exclusive Common Areas, if any, assigned to each Neighborhood shall be identified in the Supplemental Declaration applicable to that Neighborhood. All costs associated with maintenance, repair, replacement, and insurance of Exclusive Common Areas shall be assessed as a Neighborhood Assessment against the Owners of Units in those Neighborhoods to which the Exclusive Common Area is assigned.

Initially, the Declarant shall designate any Exclusive Common Area as such and shall assign the exclusive use thereof in the deed conveying the Common Area to the Association or on the plat of survey relating to such Common Area; provided, any such assignment shall not preclude the Declarant from later assigning use of the same Exclusive Common Area to additional Units and/or Neighborhoods, so long as the Declarant has a right to subject additional property to this Declaration pursuant to Section 9.1. Thereafter, a portion of the Common Area may be assigned as Exclusive Common Area of a particular Neighborhood or Neighborhoods and Exclusive Common Area may be reassigned upon the vote of Voting Members representing a majority of the total Class "A" votes in the Association, including a majority of the Class "A" votes within the Neighborhood(s) to which the Exclusive Common Areas are assigned, if applicable, and within the Neighborhood(s) to which the Exclusive Common Areas are to be assigned. As long as the Declarant owns any property described on Exhibits "A" or "B" for development and/or sale, any such assignment or reassignment shall also require the Declarant's consent.

The Association may, upon approval of a majority of the Owners of Units in the Neighborhood(s) to which certain Exclusive Common Areas are assigned, permit Owners of Units in 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 Expenses attributable to such Exclusive Common Areas.

2.3. Private Amenities. Access to and use of the Private Amenities is strictly subject to the rules and procedures of the respective Owners 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 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 executed or joined into by the Declarant or 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, (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, or (c) the conveyance of a Private Amenity 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 a transfer or conversion, except that no Private Amenity shall be transferred to the Association or any Neighborhood Association without the approval of Voting Members representing at least 51% of the total Class "A" votes in the Association or Neighborhood Association accepting 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 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 By-Laws the Articles and Oregon law.

3.2. Membership. Every Owner shall be a Member of the Association. There shall be only one membership per Unit. 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 the restrictions on voting set forth in Section 3.3 and in the By-Laws, 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. 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 from time to time by the Owner in a written instrument provided to the Secretary of the Association.

3.3. Voting. The Association shall have two classes of membership, Class "A" and Class "B."

(a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any. Class "A" Members shall have one equal vote for each Unit in which they hold the interest required for membership under Section 3.2; there shall be only one vote per Unit.

(b) Class "B". Class "B" Members shall be the Declarant and any Builders who are Owners. Class "B" Members shall be entitled to three votes for each Unit owned. Unless otherwise specified in this Declaration, the By-Laws or an agreement between Declarant and a Builder, the vote for each Unit owned by a Builder shall be exercised by the Declarant. The Class "B" membership shall cease and be converted to Class "A" membership upon the earlier of the following:

(i) the date on which 75% of the Maximum Units are owned by Retail Owners;

(ii) the seventh (7th) anniversary of the closing of escrow for the first Unit sold to a Retail Owner after the issuance of the first Permit;

(iii) when, in its discretion, the Declarant so determines.

From and after the happening of these events, whichever occurs first, the Class "B" Members shall be deemed to be Class "A" Members entitled to one vote for each Unit in which they hold the interest required for membership under Section 3.1. The Declarant shall have a right to approve and disapprove certain actions as provided in Article XV of this Declaration and in Section 3.18 of the By-Laws.

In the event Class "B" membership has not terminated when more than 50% of the Maximum Units are owned by Retail Owners, the Association shall form a "Transitional Advisory Committee" in accordance with O.R.S. §94.604 and Section 5.4 of the By-Laws. No later than when 75% of the Maximum Units are owned by Retail Owners, the Declarant shall call a meeting for the purpose of turning over administrative responsibilities to the Association in accordance with O.R.S. §§94.609 and 94.616.

(c) Exercise of Voting Rights. Except as otherwise specified in this Declaration or the By-Laws, the vote for each Unit owned by a Class "A" Member shall be exercised by the Voting Member representing the Neighborhood of which the Unit is a part, as provided in Section 3.4(b). The Voting Member may cast all such votes as it, in its discretion, deems appropriate except as otherwise provided in Section 3.4(b) below.

In any situation in which a Member is entitled personally to exercise the vote for his or her Unit and 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 and advise the Secretary of the Association in writing prior to any meeting. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it.

3.4. Neighborhoods and Voting Members.

(a) Neighborhoods. Every Unit shall be located within a Neighborhood. In the discretion of the Owner(s) and developer(s) of each Neighborhood, the Units within a particular Neighborhood 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 5.3 of the By-Laws, to represent the interests of such Owners.

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 Owners of a majority of Units within the Neighborhood, other than the Declarant, 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.

Exhibit "A" to this Declaration, and each Supplemental Declaration filed to subject additional property to this Declaration, shall initially assign the property described therein to a specific Neighborhood by name, which Neighborhood may be then existing or newly created. The Declarant may unilaterally amend this Declaration or any Supplemental Declaration to redesignate Neighborhood boundaries; provided, however, two or more Neighborhoods shall not be combined without the consent of Owners of a majority of the Units in the affected Neighborhoods.

The Owner(s), other than the Declarant, of a majority of the total number of Units 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) Voting Members. Voting Members shall be elected from each Neighborhood as follows:

One Voting Member and one alternate Voting Member shall be elected from each Neighborhood by a majority of the Class "A" votes attributable to Units in the Neighborhood. In addition, so long as any Unit within a Neighborhood is owned by a Class "B" Member, one Voting

Member and one alternate Voting Member shall be elected from such Neighborhood by a majority of the Class "B" votes attributable to Units in the Neighborhood.

Election of Voting Members may be conducted at a meeting or by mail, in the discretion of the Board of Directors; provided, upon written petition of Members holding at least 10% of the votes attributable to Units within any Neighborhood, the election for such Neighborhood shall be held at a meeting. The presence, in person or by proxy, of Members representing at least 30% of the total votes attributable to Units in the Neighborhood shall constitute a quorum at any Neighborhood meeting.

The Board shall call for the first election of the Voting Member(s) and alternate Voting Member(s) from a Neighborhood not later than one year after the first conveyance of a Unit in the Neighborhood to a Retail Owner other than a Builder. Subsequent elections shall be held within 30 days of the same date each year. Each Class "A" Member shall be entitled to cast one equal vote for each Unit which it owns in the Neighborhood for each position. The candidate for each position who receives the greatest number of votes shall be elected to serve a term of one year and until a successor is elected. Any Owner of a Unit in the Neighborhood may submit nominations for election or declare himself or herself a candidate in accordance with procedures which the Board shall establish.

Any Voting Member may be removed, with or without cause, upon the vote or written petition of Owners of a majority of the total number of Units owned by Class "A" Members in the Neighborhood which such Voting Member represents.

Until such time as the Board first calls for election of a Voting Member for a Neighborhood, the Owners within such Neighborhood may personally cast the votes attributable to their respective Units on any issue requiring a vote of the Voting Members under this Declaration, the By-Laws, or the Articles.

Except as otherwise specifically provided in the By-Laws, Articles of Incorporation or this Declaration, the Voting Member representing each class of membership within a Neighborhood may cast all votes which it represents as it, in its discretion, deems appropriate. Prior to taking a vote on whether to (i) institute litigation pursuant to Section 17.5, or (ii) impose an assessment in excess of the limitations set forth in Section 10.7, or (iii) amend this Declaration pursuant to Section 17.2, or (iv) dissolve the Association, or (v) dispose of the Association's assets in connection with any such dissolution, the Association shall distribute proxies to all Members allowing each Member to direct in writing how the Member's vote is to be cast on such issue by the Voting Member which represents him or her. The Voting Members shall be required to cast any votes for which specific proxies are filed with the Secretary of the Association in the manner directed in such proxies. All other votes may be cast as the Voting Member deems appropriate in its sole discretion.

An alternate Voting Member shall act in the absence of the Voting Member for which it is the designated alternate. Alternate Voting Members may attend meetings of the Voting Members, but shall not be entitled to vote except in the absence of the Voting Member 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 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. Declarant may convey to the Association improved or unimproved real estate located within the properties described in Exhibits "A" or "B," personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained as Common Area by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed; provided, the Declarant shall not convey to the Association as Common Area any property containing active recreational facilities or major structures (landscaping, signage, fences, sidewalks, trails, ponds, water features, and infrastructure shall not be considered active recreational facilities or major structures hereunder) unless approved by Voting Members representing a majority of the total Class "A" votes in the Association.

4.3. Enforcement. The Association may impose sanctions for violations of this Declaration, the By-Laws, or rules in accordance with procedures set forth in the By-Laws, 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 3.23 of the By-Laws, the Association may exercise self-help to cure violations, and may suspend any services it provides to the Unit of any Owner who is more than 30 days delinquent in paying any assessment or other charge due to the Association. 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 or the By-Laws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the By-Laws, Articles, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.5. Governmental Interests. So long as the Declarant owns any property described on Exhibits "A" or "B," the Declarant may designate sites within the Properties owned by Declarant for fire, police, utility facilities, public schools and parks, and other public facilities.

4.6. 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.

4.7. Dedication of Common Areas. The Association may dedicate portions of the Common Areas to the City of Bend or Deschutes County, Oregon, or to any other local, state, or federal governmental entity, subject to such approval as may be required by Section 14.2.

4.8. 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. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL 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, DECLARANT, AND ANY SUCCESSOR DECLARANT 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.

4.9. 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.

4.10. Recycling Programs. The Board may establish a recycling program and recycling center within the Properties and in such event, all occupants of Units shall support such program by recycling, to the extent reasonably practical, all materials which the Association's recycling program or center is set up to accommodate. The Association may, but shall have no obligation to, purchase recyclable materials in order to encourage participation and any income received by the Association as a result of such recycling efforts shall be used to reduce Common Expenses.

4.11. Public Gardens and Environmental Programs. The Board may establish gardens within the Common Area or designate spaces within the Common Area for the establishment of gardens to promote public awareness of and participation in conservation, management and enhancement of native vegetation, soils and geology and may establish programs to promote an understanding of the natural landscape and environment.

4.12. Wildlife Mitigation. The Association shall adhere to the Wildlife Plan prepared by Campbell-Craven Environmental Consultants and dated December 12, 1990 or successor plans approved by the Board, to the extent that its recommendations pertain to property subject to this Declaration.

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 paved roadway 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, or any contract or agreement for maintenance thereof entered into by the Association.

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 Voting Members representing 75% of the Class "A" votes and the Declarant, as long as the Declarant owns any property described on Exhibits "A" or "B," agree in writing to discontinue 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, 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.

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.

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. 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 paved roadway 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:

(a) 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;

(b) fronts on any roadway within the Properties shall maintain the landscaping on that portion of the Common Area or right-of-way between the property line and the nearest curb of such roadway; provided, there shall be no right to remove trees, shrubs or similar vegetation from this area without prior approval pursuant to Article XI.

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 benefitted 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 $3,000,000.00 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) benefitted 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 3.23 of the By-Laws, 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 benefitted 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 Unit of all debris and ruins and maintain 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.

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 the Voting Members representing at least 75% of the total Class "A" votes and the Declarant as long as the Declarant owns any property described in Exhibits "A" and "B" of the Declaration, 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 total vote of the Neighborhood Association decide within 60 days after the damage or destruction 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 the Neighborhood Association, as appropriate, and

placed in a capital improvements 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 Voting 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 Voting Members representing at least 67% of the total Class "A" votes in the Association and of the Declarant, as long as the Declarant owns any property described on Exhibits "A" or "B" of the Declaration) 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 the Declarant, so long as the Declarant owns any property described in Exhibits "A" or "B" of this Declaration, and Voting Members representing at least 75% of the total Class "A" votes in the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Sections 6.4 and 6.5 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 AND WITHDRAWAL OF PROPERTY

9.1. Annexation Without Approval of Membership. Prior to the issuance of the first Permit, Declarant may unilaterally subject to the provisions of this Declaration all or portions of the real property described in Exhibit "B" until all property described on Exhibit "B" has been subjected to this Declaration or 30 years after the recording of this Declaration, whichever is earlier. After the issuance of the first Permit, Declarant may unilaterally subject to the provisions of this Declaration all or any portion of the real property described in Exhibit "B," until the earlier of (a) the date on which all property described on Exhibit "B" has been subjected to this Declaration or (b) the later of (i) four years from the issuance of the most recent original Permit or (ii) four years from the date of recording of the most recent Supplemental Declaration to annex additional property.

Declarant may transfer or assign this right to annex property, provided that the transferee or assignee is the developer of at least a portion of the real property described in Exhibits "A" or "B" and that such transfer is memorialized in a written, recorded instrument executed by Declarant. Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any of the property set forth in Exhibit "B" in any manner whatsoever.

Such annexation shall be accomplished by filing a Supplemental Declaration in the Office of the County Clerk describing the property to be annexed and specifically subjecting it to the terms of this Declaration. Such Supplemental Declaration shall not require the consent of Voting Members, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

9.2. Annexation With Approval of Membership. The Association or the Declarant may subject any real property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of Voting Members representing 67% of the Class "A" votes of the Association represented at a meeting duly called for such purpose, and the consent of the Declarant so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1.

Such annexation shall be accomplished by filing a Supplemental Declaration in the Office of the County 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 unless otherwise provided therein.

9.3. Withdrawal of Property. The Declarant reserves the right to amend this Declaration so long as it has a right to annex additional property pursuant to this Article for the purpose of removing property then owned by the Declarant, its affiliates, or the Association from the coverage of this Declaration, to the extent originally included in error or as a result of any changes in the Declarant's plans for the Properties, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Properties. Such withdrawal may be accomplished without prior notice and without the consent of any Person if the property to be withdrawn is either

(a) located in a Phase in which no Units are owned by Retail Owners, or (b) withdrawn for the purpose of making minor adjustments in boundary lines which do not reduce the total number of Units subject to the Declaration; otherwise, such withdrawal shall require the approval of a majority of the Class "A" votes in the Association.

9.4. Additional Covenants and Easements. The Declarant may unilaterally subject any portion of the property submitted to this Declaration initially or by Supplemental Declaration to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through Neighborhood Assessments. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrent with or after the annexation of the subject property, and shall require the written consent of the owner(s) of such property, if other than the Declarant.

9.5. Development of Additional Property. If Declarant elects to annex all or portions of the property described on Exhibit "B" to Broken Top by filing one or more Supplemental Declarations submitting it to this Declaration, development of such property shall be limited to residential uses, which may include single family detached dwellings, single family attached dwellings, condominiums, multi-family dwelling structures, and related uses consistent with the types of uses contemplated by the detailed plan of phased development filed with the California Department of Real Estate, unless otherwise approved by Voting Members representing a majority of the total Class "A" votes in the Association. Any Common Areas developed within such additional property shall be subject to the limitations set forth in Section 4.2.

9.6. Amendment. This Article shall not be amended without the prior written consent of Declarant so long as the Declarant owns any property described in Exhibits "A" or "B."

Article X
ASSESSMENTS

10.1. Creation of Assessments. The Association is hereby authorized to levy assessments against each Unit subject to assessment under Section 10.8, including such Units as may be owned by the Declarant or Builders, 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 benefitting 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 10.9. 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 or her. 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. 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 or herself 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.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for payment of Common Expenses subject to Section 3.24 of the By-laws. The Declarant's payment of assessments may be reduced by the agreed value of any such services or materials provided by Declarant, in accordance with any such contract or agreement with the Association.

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 By-Laws. The budget shall include a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 10.4.

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.

So long as the Declarant has the right unilaterally to annex additional property pursuant to Article IX, the Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 10.1). Any such subsidy and the nature thereof shall be conspicuously disclosed as a line item in the Common Expense budget and shall be made known to the membership. The payment of such subsidy in any year shall under no circumstances obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

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 By-Laws. The Board shall be entitled to set such budget only to the extent that this Declaration, any Supplemental Declaration, or the By-Laws 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 a capital contribution establishing a reserve fund for repair and replacement of capital items maintained as a Neighborhood Expense, if any, within the Neighborhood.

Neighborhood Expenses shall be allocated equally among all Units within the benefitted 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 Owners within the Neighborhood, 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 benefitted 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 Capital 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 capital contribution 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 By-Laws 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 By-Laws, and rules, provided the Board gives the Voting Member 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 a majority vote of a quorum of Voting Members representing the Members which are subject to the applicable assessment at a meeting of the Association. For purposes of this Section, "quorum" means the Voting Members representing more than 50% of the members which are subject to the applicable assessment. Prior to any vote to authorize Special Assessments in excess of this limitation, the Association shall poll the Owners as required by Section 3.4(b). 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. Date of Commencement of Assessments. Subject to Section 10.1, the obligation to pay the assessments provided for herein shall commence as to all Units within each Phase on the earlier of: (a) the first day of the month following the first conveyance of a Unit in the Phase to a Retail Owner; or (b) the first day of the month following conveyance of the Common Area in the Phase to the Association. The first annual assessment shall be adjusted according to the number of days remaining in the fiscal year at the time assessments commence on the Unit.

10.9. 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. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 10.8, including such acquirer, its successors and assigns.

10.10. Failure to Assess. Failure of the Board to fix assessment amounts or rates or 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. Capitalization of Association. Upon acquisition of record title to each Unit by its first Retail Owner, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to one-sixth of the annual Base Assessment per Unit for that year. For purposes of this Section, the term "Base 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. This amount shall be in addition to, not in lieu of, the annual Base Assessment and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to the terms of this Declaration and the By-Laws.

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

(a) all Common Area;

(b) any property dedicated to and accepted by any governmental authority or public utility; and

(c) any property owned by a Neighborhood Association for the common use and enjoyment of its members, or owned by the members of a Neighborhood Association as tenants-in-common.

In addition, the Declarant shall have the right, but not the obligation, to grant exemptions to certain Persons qualifying for Section 501(c) status under the Internal Revenue Code so long as such Persons own property subject to this Declaration for purposes listed in Section 501(c).

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 appropriate committee under Section 11.2.

Any Owner may remodel, paint or redecorate the interior of structures on his or her 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 or licensed building designer.

This Article shall not apply to the activities of the Declarant, nor to improvements to the Common Area by or on behalf of the Association.

This Article may not be amended without the Declarant's written consent so long as the Declarant owns any land subject to this Declaration or subject to annexation to this Declaration.

11.2. Architectural 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 two committees as described in subsections (a) and (b). The members of the Committees 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 from time to time by the Board. 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.

(a) Design Review Committee. The Design Review Committee ("DRC") shall consist of at least three, but not more than five, persons. So long as Declarant, any affiliate of the Declarant, or any Builder owns any Unit primarily for development and/or sale, the Declarant retains the right to appoint all members of the DRC, who shall serve at the discretion of the Declarant. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon surrender of such right, the Board of Directors may appoint the members of the DRC, who shall serve and may be removed at the discretion of the Board of Directors, or it may dissolve the DRC, in its discretion, and transfer all its jurisdiction to the Modifications Committee established under Section 11.2(b).

The DRC shall have exclusive jurisdiction over all original construction on any Units owned by Declarant, any affiliates of Declarant or any Builder. In addition, the DRC shall have exclusive jurisdiction over original construction on all Units owned by Retail Owners until the earlier of (i) the date upon which Retail Owners own 90% of the Maximum Units, or (ii) the expiration of 25 years after the conveyance of the first Unit to a Retail Owner, after the issuance of the first Permit at which time the Modifications Committee shall assume such jurisdiction.

(b) Modifications Committee. The Board of Directors shall establish a Modifications Committee ("MC") to consist of at least three and no more than five persons, all of whom shall be appointed by and shall serve at the discretion of the Board. The MC shall have exclusive

jurisdiction over modifications, additions, or alterations made on or to existing structures on Units or containing Units and the adjacent open space, and shall assume exclusive jurisdiction over original construction on all such Units upon termination of the DRC's jurisdiction over Units owned by Retail Owners as specified in subsection (a) above. The MC may delegate its authority as to a particular Neighborhood to the Neighborhood Association, if any, so long as the MC has determined that such Neighborhood Association has in force review and enforcement practices, procedures, and appropriate standards at least equal to those of the MC. Such delegation may be revoked and jurisdiction reassumed at any time by written notice. The DRC shall have the right to veto any action taken by the MC or a Neighborhood Association which the DRC determines, in its sole discretion, to be inconsistent with the Design Guidelines.

11.3. Guidelines and Procedures. The Declarant shall prepare the initial design and development guidelines and application and review procedures ("Design Guidelines") which shall apply to all construction activities within the Properties. 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 DRC shall adopt such Design Guidelines at its initial organizational meeting and thereafter shall have sole and full authority to amend them. 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 and Builders 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 Declarant'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.

The MC may promulgate detailed procedures and standards governing its area of responsibility, consistent with those set forth in the Design Guidelines and subject to review and approval or disapproval by the DRC.

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 or MC, as appropriate. The Design Guidelines shall set forth the procedure for submission of the Plans.

(b) In reviewing each submission, the DRC or MC, as appropriate, 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 committees 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 or the MC, as appropriate, shall, within 45 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 such committee 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 appropriate committee 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 Declarant for reconsideration.

11.5. No Waiver of Future Approvals. Each Owner acknowledges that the members of the DRC and the MC 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. 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; (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.

11.7. 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 MC 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 Declarant, the Association, the Board, any committee, or 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.

11.8. 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 or the Declarant, 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 benefitted 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 By-Laws. In such event, neither the Association, its officers, or 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 and MC.

Article XII
USE GUIDELINES AND RESTRICTIONS

12.1. Plan of Development; Applicability; Effect. Declarant has created Broken Top 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 as a master planned community. 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 Voting 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 By-Laws, and the rules of the Association.

Declarant promulgates Broken Top's general plan of development 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 Voting Members' ability to respond to changes in circumstances, conditions, needs, and desires within the master planned community.

Declarant has prepared initial Use Guidelines and Restrictions which 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. Such initial Use Guidelines and Restrictions are set forth in Section 12.6. Based upon these Use Guidelines and Restrictions, the Board shall adopt the initial rules at its initial organizational meeting.

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 conspicuously publish notice of the proposal at least five business days prior to the Board meeting at which such action is to be considered. Voting 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 by Voting Members representing at least 67% of the total Class "A" votes and 67% of the total Class "B" votes, if the Class "B" membership still exists. The Board shall have no obligation to call a meeting of the Voting Members to consider disapproval except upon petition of the Voting Members as required for special meetings in Section 2.4 of the By-Laws.

The Board shall have all powers necessary and proper, subject to its exercise of sound business judgment and reasonableness, to effect the powers contained in this Section 12.2.

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 Voting Members, at a meeting duly called for such purpose as provided in Section 2.4 of the By-Laws, may adopt, repeal, modify, limit, and expand Use Guidelines and Restrictions and implementing rules by a vote of 67% of the total Class "A" votes and 67% of the total Class "B" votes, if the Class "B" membership still exists.

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 Voting Members may add, delete, modify, create exceptions to, or amend the Use Guidelines and Restrictions in accordance with Sections 12.2, 12.3, and 18.2.

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 Voting 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 housekeeping unit 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. Except as permitted by Section 2.2, 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.

(g) Reasonable Rights to Develop. No rule or action by the Association or Board shall unreasonably impede Declarant's right to develop in accordance with the Master Plan.

12.6. Initial 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 Declarant or the Association consistent with this Declaration and any Supplemental Declaration). Any Supplemental Declaration or 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:

(i) Posting of signs of any kind except those required by law, including posters, circulars and billboards; provided, the Declarant shall be entitled to post signs with Board approval;

(ii) 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;

(iii) 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, except that the Declarant and Builders, with Declarant's consent, shall be permitted to subdivide or change the boundary lines of Units which they own;

(iv) 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;

(v) 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; except in neighborhoods, if any, in which all Units are subjected to such a program by Declarant or its assigns;

(vi) Occupancy of a Unit by more than a single family. For purposes of this restriction, a single family shall be defined as any number of persons related by blood, adoption, or marriage living with not more than one person who is not so related as a single household unit, or no more than three persons who are not so related living together as a single household unit, and the household employees of either such household unit;

(vii) 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;

(viii) 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;

(ix) 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;

(x) 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 By-Laws, the Association shall not be obligated to take action to enforce this provision; and

(xi) 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.

This subsection shall not apply to any activity conducted by the Declarant or a Builder approved by the Declarant with respect to itsdevelopment and sale of the Properties or its use of any Units which it owns within the Properties, including the operation of a timeshare or similar program.

The leasing of a Unit shall not be considered a business or trade within the meaning of this subsection. "Leasing," for purposes of this Declaration, is defined as 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. 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 transient tenants may be accommodated in a Unit and all leases shall be for an initial term of no less than 30 days, except: (A) with the prior written consent of the Board or (B) as initially authorized by Declarant in Exhibit "A" or a Supplemental Declaration for Units located within certain Neighborhoods. The Owners may not amend this provision to prohibit leasing of Units within certain Neighborhoods authorized by Declarant for rental to transient tenants and for a term less than 30 days until: (A) 75% of the Units within a particular Neighborhood are owned by

Retail Owners and (B) with approval of 75% of the Class A Members, other than the Declarant, within that particular Neighborhood.

Notice of any lease, together with such additional information as may be required by the Board, 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, By-Laws, and the rules and regulations. The Board may adopt reasonable rules regulating leasing and subleasing.

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

(i) 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 Declarant and 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;

(ii) Sprinkler or irrigation systems or wells of any type which draw upon water from creeks, streams, ponds, or other ground or surface waters within the Properties; except that Declarant, the Association and the Golf Course shall have the right to collect and divert storm water runoff from streets and other hard surfaces for irrigation and other purposes;

(iii) Hedges, walls, dog runs, animal pens, or fences of any kind on any Unit except as approved in accordance with Article XI;

(iv) Open garage doors. Garage doors shall remain closed at all times except when entering and exiting the garage; and;

(v) Excessive exterior lighting on any Unit. The Board 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 Declarant, so long as the Declarant owns any property described on Exhibit "A" or "B," of this Declaration, the Association, and the designees of each (which may include, without limitation, Deschutes County, Oregon and any utility) 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.

Declarant specifically grants to the local water supplier, electric company, and natural gas supplier easements across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters and boxes. However, the exercise of this easement shall not extend to permitting entry into the dwelling on any Unit, nor shall any utilities be installed or relocated on the Properties, except as approved by the Board or Declarant.

13.3. Easements to Serve Additional Property. The Declarant hereby reserves for itself and its duly authorized agents, representatives, employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the property described in Exhibit "B," whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of vehicular traffic connected with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof is not made subject to this Declaration, the Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of maintenance of any access roadway serving such property.

13.4. 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 Declarant; the Association or its

Members (in their capacity as such); Broken Top Limited Partnership; its successors, successors-in-title to the Golf Course, or assigns; any successor Declarant; any builder or contractor (in their capacities as such); 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.

13.5. 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.

13.6. 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, By-Laws, 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 By-Laws, 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 By-Laws 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 By-Laws 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 Voting Members 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 51% 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 51% 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 Voting Members representing at least 67% of the Class "A" votes and of the Declarant, so long as it owns any land subject to this Declaration, 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 Voting Members representing at least 67% of the Class "A" votes and of the Class "B" Member, and the approval of Eligible Holders of first Mortgages on Units to which at least 51% of the votes of Units subject to a Mortgage appertain, shall be required materially to amend any provisions of the Declaration, By-Laws, or Articles of Incorporation, or to add any material provisions thereto which establish, provide for, govern, or regulate any of the following:

(i) voting;

(ii) assessments, assessment liens, or subordination of such liens;

(iii) reserves for maintenance, repair, and replacement of the Common Area;

(iv) insurance or fidelity bonds;

(v) rights to use the Common Area;

(vi) responsibility for maintenance and repair of the Properties;

(vii) expansion or contraction of the Properties or the addition, annexation, or withdrawal of Properties to or from the Association;

(viii) boundaries of any Unit;

(ix) leasing of Units;

(x) 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;

(xi) establishment of self-management by the Association where professional management has been required by an Eligible Holder; or

(xii) any provisions included in the Declaration, By-Laws, 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 By-Laws 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. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, 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
DECLARANT'S RIGHTS

15.1. Transfer or Assignment. Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the By-Laws may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration or the By-Laws. No such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Office of the County Clerk. Nothing in this Declaration shall be construed to require Declarant or any successor to develop any of the property set forth in Exhibit "B" in any manner whatsoever.

15.2. Development Activities. So long as construction and initial sales of Units shall continue, the Declarant and Builders authorized by Declarant may maintain and carry on upon portions of the Common Area such facilities and activities as may be reasonably required, appropriate, or incidental to the construction or sale of such Units, including, but not limited to, business offices, signs, model units, and sales offices. The Declarant and authorized Builders shall have easements for access to and use of such facilities. The Declarant's or Builder's unilateral right to use the Common Area for purposes stated in this paragraph shall not be exclusive and shall not unreasonably interfere with use of such Common Areas by Owners unless leased pursuant to a lease agreement with the Association providing for payment of reasonable rent.

15.3. Additional Covenants. No Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Properties without Declarant's review and written consent until the earlier of (a) the sale of 75% of the Maximum Units to Retail Owners, or (b) the fourteenth (14th) anniversary of the issuance of the first Permit, or (c) such earlier date as the Declarant may voluntarily relinquish its rights under this Section. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Declarant.

15.4. Special Declarant Rights. In addition to such rights as are reserved to the Declarant elsewhere in this Declaration and the By-Laws, until the earlier of (a) the sale of 75% of the Maximum Units to Retail Owners, or (b) the fourteenth (14th) anniversary of the issuance of the first Permit, or (c) such earlier date as the Declarant may voluntarily relinquish its rights hereunder, the Declarant shall have the following special rights:

(a) In addition to the approval requirements, if any, set forth elsewhere in this Declaration or the By-Laws, the Declarant's prior written approval shall be required

(i) for the adoption of any Special Assessment to be levied on Units owned by Declarant; provided, however, that the Declarant's approval shall not be necessary for Special Assessments levied in response to natural disasters or other unexpected emergencies, for civil litigation involving the Common Area; for repair, restoration, replacement or maintenance of the Common Area; or for any expenses listed in Cal. Civ. Code § 1366(b)1-4;

(ii) for the adoption of any budget which reflects more than a 20% change from the prior fiscal year in any line item of the Association's budget or in total budgeted Common Expenses, including reserves; provided, however, that the Declarant's approval shall not be necessary for budget adjustments necessary to compensate for unexpected inflation or for civil litigation involving the Common Area; or for repair, restoration, replacement or maintenance of the Common Area; or for any expenses listed in Cal. Civ. Code § 1366(b)1-4;

(iii) for the imposition of any membership, admission, use or similar fees for access to or use of any Common Areas;

(iv) to dissolve the Association, terminate this Declaration, or transfer any Common Areas; and

(v) to adopt any use restriction or rule which would restrict the types of real estate products or housing the Declarant or Builder would otherwise be permitted to offer within the Properties or limit the Declarant's or Builder's right to market or sell real estate within the Properties; provided, however, that the Declarant's approval shall not be necessary to adopt such rules applicable only to Neighborhoods in which more than seven (7) years have passed since the closing of escrow on the first Unit conveyed to a Retail Owner.

(b) The Declarant shall have the right to take action to enforce any provision of this Declaration, the By-Laws, the Articles, or Association rules promulgated pursuant to Article XII, by the exercise of self-help or by bringing suit in a court of appropriate jurisdiction, subject to the same notice and other procedures as may apply to such enforcement action if taken by the Association under this Declaration and the By-Laws. If the Declarant has first made written demand on the Association to take action, specifying the nature of the violation and providing a reasonable opportunity to take such action before the Declarant proceeds under this Section, then the Declarant shall be entitled to reimbursement from the Association for any costs actually incurred by Declarant in exercising its authority under this Section, including attorneys' fees and court costs, if it is the prevailing party in arbitration or litigation over such matter; provided, in the event of a dispute between the Declarant and the Association as to whether the Association is complying with this Declaration, the prevailing party in any arbitration or litigation of such matter shall be entitled to reimbursement from the other for its costs, including attorneys' fees and court costs.

Article XVI
GOLF COURSE

16.1. 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.

16.2. 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.

16.3. 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.

16.4. 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.

16.5. 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 XVII
GENERAL PROVISIONS

17.1. 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.

17.2. Amendment.

(a) By Declarant. Prior to the issuance of the first Permit, Declarant may unilaterally amend this Declaration. After the issuance of the first Permit and prior to the first conveyance

pursuant to such Permit, Declarant may unilaterally amend this Declaration; provided, any amendment constituting a material change shall require approval of the California Real Estate Commissioner. After the conveyance of any Unit pursuant to a Permit, the Declarant may unilaterally amend this Declaration only if such amendment is (i) necessary to bring any provision into compliance with any applicable
governmental statute, rule, regulation, or judicial determination; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage on the Units; or (iii) required by an institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable it to make, purchase, insure or guarantee mortgage loans on the Units; or (iv) otherwise necessary to satisfy the requirements of any governmental agency for approval of this Declaration; however, any such amendment shall not adversely affect the title to any Unit unless the Owner has consented thereto in writing and the California Real Estate Commissioner has approved such amendment. Thereafter and otherwise, this Declaration may be amended in accordance with Section 18.2(b).

(b) By Owners. Unless the Declarant has the right to amend this Declaration in accordance with Section 18.2(a), this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Members representing 75% of each class of Members. After conversion of the Class "B" membership to Class "A" membership, the Declaration may be amended by the vote or written consent of the Voting Members representing at least (a) 75% of the Members; and (b) 75% of the Members other than the Declarant.

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.

(c) Validity and Effective Date of Amendments. 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 an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority so to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke, or modify the rights or privileges of the Declarant nor modify any obligations of the Declarant, with respect to any of the following, without the written consent of the Declarant or the assignee of such right or privilege: (a) use of the Common Area; (b) membership rights in the Association; (c) maintenance; (d) property rights and development rights, including the phasing of development and the definition of Maximum Units; (e) rights and obligations regarding assessments; (f) rights and obligations regarding architectural standards; (g) special Declarant rights as stated in Section 15.4; or (h) rights to approve amendments

hereunder; nor shall any amendment make definitional or other technical changes to the Declaration that would diminish the Declarant's intended rights, nor otherwise make changes that are inconsistent with the original plan of development, without the written consent of the Declarant or the assignee of such right or privilege.

17.3. 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.

17.4. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

17.5. Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by Voting Members representing at least a majority of a quorum of the Class "A" Members. A Voting Member other than an Owner entitled to cast only the vote for its own Unit(s) pursuant to Section 3.4(b), shall not vote in favor of bringing or prosecuting any such proceeding unless authorized to do so by a vote of at least a majority of the quorum of all Class "A" Members in the Neighborhood represented by the Voting Member pursuant to the procedures set forth in Section 3.4 (b). This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article X; (c) proceedings involving challenges to ad valorem taxation; or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above. This provision shall apply in addition to the provisions of Article XVII, if applicable.

17.6. 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, by-laws, 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.

17.7. Use of the Words "Broken Top". No Person shall use the words "Broken Top" or any derivative, or any other term which Declarant may select as the name of this development or any component thereof, in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the words "Broken Top" in printed or promotional matter solely to specify that particular property is located within the Properties and the Association shall be entitled to use the words "Broken Top" in its name.

17.8. Compliance. Every Owner and occupant of any Unit shall comply with this Declaration, the By-Laws, 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).

17.9. Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board 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 Board 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.

17.10. Attorneys' Fees. In the event of an action instituted to enforce any of the provisions contained in this Declaration, the Articles of Incorporation or the By-Laws, 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 be a Special Assessment with respect to the Unit(s) involved in the action.

17.11. Enforcement of Bonded Obligations. In the event the improvements to the Common Area have not been completed prior to the issuance of a Permit covering the Properties by the California Real Estate Commissioner and the Association is an obligee under a bond or other arrangement, ("Bond"), to secure performance of the commitment of the Declarant or a Builder to complete such improvements, the following provisions shall apply:

(a) The Board shall consider and vote upon the question of action by the Association to enforce the obligations under the Bond with respect to any improvements for which a "Notice of Completion" has not been filed within 60 days after the completion date specified for such improvement in the "Planned Construction Statement" appended to the Bond. If the Association has given an extension in writing for the completion of any Common Area improvement, the Board shall consider and vote on the aforesaid question if a "Notice of Completion" has not been filed within 30 days after the expiration of such extension.

(b) In the event the Board determines not to initiate action to enforce the obligations under the Bond or in the event the Board fails to consider and vote upon such question, as provided above, the Board shall call a special meeting of the Voting Members for the purpose of voting to override such decision or such failure to act by the Board. Such meeting shall be called according to the provisions of the By-Laws dealing with meetings of the Voting Members, but in any event such meeting shall be held not less than 35 nor more than 45 days after receipt by the Board of a petition for such meeting, signed by Voting Members representing not less than 5% of the Members of the Association.

(c) The only Members entitled to vote at such a meeting shall be the Voting Members representing the Owners, other than the Declarant. A vote at such meeting of a majority of the Voting Members, other than the Declarant, to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association, and the Board shall thereafter implement such decision by initiating and pursuing appropriate action in the name of the Association.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Amended and Restated Declaration this 21st day of September, 1994.

BROKEN TOP LIMITED PARTNERSHIP, AN OREGON LIMITED PARTNERSHIP
ADDRESS: 61999 Broken Top Drive
Bend, Oregon 97702

By: Broken Top, Inc., General Partner

By: William T. Criswell
Name: William T. Criswell
Title: President

STATE OF OREGON)
) ss
COUNTY OF DESCHUTES)

The foregoing instrument was acknowledged before me this 21st day of September, 1994, by William T. Criswell, President of Broken Top, Inc., the General Partner of Broken Top Limited Partnership, an Oregon limited partnership, on behalf of the limited partnership.

OFFICIAL SEAL
CYNTHIA J. CHANDLER
NOTARY PUBLIC-OREGON
COMMISSION NO. 005532
MY COMMISSION EXPIRES MAY 11, 1995

Cynthia J. Chandler
Notary Public for Oregon
My Commission expires: 5/11/95

EXHIBIT "A"

Land Initially Submitted

A. The following lots, which shall be included within the "**Custom Lot Neighborhood**":

Lots 1 through and including 28 of Broken Top, a subdivision in Deschutes County, Oregon, as shown on the Plat recorded in Plat Book 7 at Page 274 of the Plat Records of Deschutes County, Oregon;

Lots 29 through and including 71 and Lots 100 through and including 109 of Broken Top, a subdivision in Deschutes County, Oregon, as shown on the Plat recorded in Plat Book 7 at Page 277 of the Plat Records of Deschutes County, Oregon;

Lots 113 through and including 116 of Broken Top, a subdivision in Deschutes County, Oregon, as shown on the Plat recorded in Cabinet D at Pages 25-26 of the Plat Records of Deschutes County, Oregon;

Lots 117 through and including 143 of Broken Top, a subdivision in Deschutes County, Oregon, as shown on the Plat recorded in Cabinet C at Page 758 of the Plat Records of Deschutes County, Oregon;

Lots 144 through and including 155 of Broken Top, a subdivision in Deschutes County, Oregon, as shown on the Plat recorded in Cabinet C at Page 762 of the Plat Records of Deschutes County, Oregon;

Lots 156 through and including 178 of Broken Top, a subdivision in Deschutes County, Oregon, as shown on the Plat recorded in Cabinet C at Page 760 of the Plat Records of Deschutes County, Oregon;

Lots 195 through and including 202 of Broken Top, a subdivision in Deschutes County, Oregon, as shown on the Plat recorded in Cabinet C at Page 799 of the Plat Records of Deschutes County, Oregon;

Lots 203 through and including 226 of Broken Top, a subdivision in Deschutes County, Oregon, as shown on the Plat recorded in Cabinet C at Page 800A of the Plat Records of Deschutes County, Oregon;

Lots 247 through and including 274 of Broken Top, a subdivision in Deschutes County, Oregon, as shown on the Plat recorded in Cabinet D at Page 17 of the Plat Records of Deschutes County, Oregon; and

Lots 275 through and including 301 and Lot 372 of Broken Top, a subdivision in Deschutes County, Oregon, as shown on the Plat recorded in Cabinet D at Page 15 of the Plat Records of Deschutes County, Oregon.

Lots 324 through 344 of Broken Top, a subdivision in Deschutes County, Oregon, as shown in the Plat recorded in the Plat Records in Cabinet D at Page 66-II of Deschutes County, Oregon.

TOGETHER WITH:

B. The following lots, which shall be included within the "Fall Creek Neighborhood":

Lots 72 through and including 99 and Lots 110 through and including 112 of Broken Top, a subdivision in Deschutes County, Oregon, as shown on the Plat recorded in Cabinet C at Page 756 of the Plat Records of Deschutes County, Oregon; and

Lots 179 through and including 194 of Broken Top, a subdivision in Deschutes County, Oregon, as shown on the Plat recorded in Cabinet C at Page 797 of the Plat Records of Deschutes County, Oregon.

TOGETHER WITH:

C. The following property which shall be included within the "Courtyards Neighborhood":

A parcel in the northeast quarter of Section 1 of Township 18 South and Range 11 East of the Willamette Meridian in Deschutes County, Oregon, described as follows:

Commencing at a 3" brass cap on a 2" galvanized iron pipe at the east 1/4 corner of said Section 1; thence North 00°49'44" East 1325.07 feet to a 2" aluminum cap at the north 1/16 corner on the east line of said Section 1; then South 57°43'36" West 440.98 feet to a 5/8" iron rod on the southerly right-of-way of Simpson Avenue and the point of beginning; thence leaving said southerly right-of-way South 40.95 feet to a 5/8" iron rod; thence South 34°56'33" West 579.69 feet to a 5/8" iron rod; thence West 116.98 feet to a 5/8" iron rod; then North 19°52'38" West 91.45 feet to a 5/8" iron rod; thence West 40.00 feet to a 5/8" iron rod on the easterly right-of-way of Broken Top Drive; thence following said right-of-way 360.94 feet along the arc of a 430.00 foot radius curve left (the long chord of which bears North 03°14'37" East 350.44 feet) to a

5/8" iron rod on said southerly right-of-way; thence leaving said easterly right-of-way North 63°51'33" East 56.34 feet to a 5/8" iron road; thence 260.64 feet along the arc of a 560.00 foot radius curve right (the long chord of which bears North 77°11'34" East 258.30 feet) to a 5/8" iron rod; thence South 89°28'25" East 197.83 feet to the point of beginning. Contains 3.75 acres.

TOGETHER WITH:

D. The following property:

1. All of the right of way for private roads designated as Broken Top Drive, Green Lakes Loop, Tam Lake Court, Red Meadow Court, and Simpson Avenue, as shown on the Plats for Broken Top filed in Plat Book 7 at Page 274 and in Plat Book 7 at Page 277 of the Plat Records of Deschutes County, Oregon.

2. Tracts B, C, E, F, G, and I designated as Common Area on the Plat for Broken Top filed in Plat Book 7 at Page 274 of the Plat Records of Deschutes County, Oregon.

3. Tract J, designated as Common Area on the Plat recorded in Plat Book 7 at Page 277 of the Plat Records of Deschutes County, Oregon.

4. Tract O of Broken Top, a subdivision in Deschutes County, Oregon, as shown on the Plat recorded in Cabinet D at Pages 16 and 17 of the Plat Records of Deschutes County, Oregon.

5. All of the right of way for private roads as shown on the Plat for Broken Top filed in Cabinet D at Pages 25 and 26 of the Plat Records of Deschutes County, Oregon.

6. All of the right of way for private roads designated as Tam McArthur Loop, Bounty Lake Court, Bunker Hill Court, and Rim Lake Court as shown on the Plat for Broken Top filed in Cabinet D at Pages 14, 15, 16 and 17 in the Plat Records of Deschutes County, Oregon.

7. All of the right of way for private roads designated as Broken Top Drive, Green Lakes Loop, Tam McArthur Loop, Moraine Court, and Fall Creek Loop as shown on the Plat for Broken Top filed in Cabinet C at Pages 706, 800A, 797, and 762 in the Plat Records of Deschutes County, Oregon.

8. All of the right of way for private roads designated as Broken Top Drive, Tam McArthur Loop, Soda Springs Drive, Fall Creek Loop, and Goose Creek Court as shown on the Plat for Broken Top filed in Cabinet C at Pages 756, 758, 760 and 762 of the Plat Records of Deschutes County, Oregon.

9. Tracts K, L, M, and N designated as Common Area on the Plat for Broken Top filed in Cabinet C at Pages 756 and 762 of the Plat Records of Deschutes County, Oregon.

SUBJECT, HOWEVER, to the following:

a. All easements shown on such Plats or created by the Declaration to which this Exhibit is attached.

b. Other matters of record.

EXHIBIT "B"

Land Subject to Annexation

TRACT A

A parcel in Section 1 and Section 2; the east half of the east half of Section 11; the west half of the northeast quarter, the northwest quarter, and the westerly 165 feet of the southwest quarter of Section 12; and a portion of the northwest quarter of the northwest quarter of Section 13 in Township 18 South and Range 11 East of the Willamette Meridian, Deschutes County, Oregon as shown on the attached Exhibit A and fully described as follows:

Beginning at the northwest corner of said Section 1; thence South 89/38'58" East 2200.06 feet along the north line of said Section 1; thence leaving said north line South 03/06'41" West 438.31 feet; thence 248.27 feet along the arc of a 455.00 foot radius curve right (the long chord of which bears South 58/58'26" West 245.20 feet); thence South 74/36'20" West 128.81 feet; thence 619.24 feet along the arc of a 551.00 foot radius curve left (the long chord of which bears South 42/24'35" West 587.16 feet); thence South 76/33'34" West 704.07 feet; thence South 56/10'22" West 1104.96 feet; thence South 14/18'05" West 290.00 feet; thence 997.41 feet along the arc of a 2680.00 foot radius curve right (the long chord of which bears South 30/15'49" East 991.66 feet); thence 1167.43 feet along the arc of a 2326.00 foot radius curve left (the long chord of which bears South 33/58'50" East 1155.21 feet); thence South 48/21'33" East 61.52 feet; thence South 38/17'25" West 20.03 feet; thence South 48/21'33" East 394.54 feet; thence 1019.41 feet along the arc of a 1305.00 foot radius curve right (the long chord of which bears South 25/58'51" East 993.69 feet); thence South 70/41'26" East 1197.32 feet; thence North 73/53'36" East 848.36 feet; thence North 14/24'17" West 164.90 feet; thence North 80/34'09" East 324.54 feet; thence North 79/56'20" East 589.34 feet; thence North 58/58'58" East 662.58 feet; thence North 06/06'26" West 333.46 feet; thence North 16/49'21" West 389.51 feet; thence North 666.43 feet; thence 209.60 feet along the arc of a 340.00 foot radius curve left (the long chord of which bears South 85/58'48" East 206.30 feet); thence 304.48 feet along the arc of a 1170.00 foot radius curve left (the long chord of which bears South 26/08'16" East 303.62 feet) to the east line of said Section 1; thence South 00/30'37" West 1762.67 feet to a brass cap at the southeast corner of said Section 1; thence North 89/52'23" West 1322.16 feet to a brass cap at the east one sixteenth corner between said Sections 1 and 12; thence South 00/39'59" West 2650.05 feet to a brass cap at the center east one sixteenth corner of said Section 12; thence along the north line of the south half of said Section 12 North 89/48'15" West 3806.54 feet to a 5/8" iron rod on a line parallel to and 165.00 feet east of the west line of said Section 12 when measured at right angles; thence along said parallel line South 00/43'27" West 2643.85 feet to a 5/8" iron rod on the south line of said Section 12; thence along said south line South 89/44'18" East 234 feet to the northerly right-of-way of Century Drive; thence South 71/55' West 423 feet to the west line said Section 13; thence leaving said northerly right-of-way North 01/28' East 133 feet to a brass cap at the northwest corner of said Section 13; thence South 89/44'17" West 1326.64 feet to a brass cap at the east one sixteenth corner between said Section 11 and Section 14; thence North 00/40'19" East 2644.70 feet to the center east one sixteenth corner of said Section 11; thence 00/40'19" East 2625.66 feet to the east one sixteenth corner between said Sections 2 and 11; thence South 88/54'12" West 1330.14 feet to a brass cap at the quarter corner

between said Sections 2 and 11; thence North 89/18'10" West 2644.92 feet to the southwest corner of said Section 2; thence North 00/40'47" East 2647.33 feet to a brass cap at the quarter corner between said Section 2 and Section 3; thence North 02/03'56" East 2710.99 feet to a brass cap at the northwest corner of said Section 2; thence South 89/03'55" East 2580.18 feet to a 5/8" iron rod at the quarter corner between said Section 2 and Section 35; thence North 89/53'01" East 2659.77 feet to the point of beginning. Contains 1197 acres.

TRACT B

A parcel in Section 1 and the southeast quarter of the northeast quarter of Section 2 and the northwest quarter of the northeast quarter and the northeast quarter of the northwest quarter of Section 12 in Township 18 South and Range 11 East of the Willamette Meridian, Deschutes County, Oregon as shown on the attached Exhibit A and fully described as follows:

Commencing at the northwest corner of said Section 1; thence South 89/38'58" East 2200.06 feet along the north line of said Section 1 to the point of beginning; thence South 89/38'58" East 443.91 feet to a brass cap at the quarter corner between Section 36 and said Section 1; thence South 89/46'53" East 2646.64 feet to a brass cap at the northeast corner of said Section 1; thence South 00/49'56" West 1324.95 feet to an aluminum cap at the north sixteenth corner between said Section 1 and Section 6; thence South 00/49'44" West 1325.07 feet to a brass cap at the quarter corner between said Section 1 and said Section 6; thence South 00/30'37" West 874.95 feet; thence leaving the east line of said Section 1, 304.48 feet along the arc of a 1170.00 foot radius curve right (the long chord of which bears North 26/08'16" West 303.62 feet); thence 209.60 feet along the arc of a 340.00 foot radius curve right (the long chord of which bears North 85/58'48" West 206.30 feet); thence South 666.43 feet; thence South 16/49'21" East 389.51 feet; thence South 06/06'26" East 333.46 feet; thence South 58/58'58" West 662.58 feet; thence South 79/56'20" West 589.34 feet; thence South 80/34'09" West 324.54 feet; thence South 14/24'17" East 164.90 feet; thence South 73/53'36" West 848.36 feet; thence North 70/41'26" West 1197.32 feet; thence 1019.41 feet along the arc of a 1305.00 foot radius curve left (the long chord of which bears North 25/58'51" West 993.69 feet); thence North 48/21'33" West 394.54 feet; thence North 38/17'25" East 20.03 feet; thence North 48/21'33" West 61.52 feet; thence 1167.43 feet along the arc of a 2326.00 foot radius curve right (the long chord of which bears North 33/58'50" West 1155.21 feet); thence 997.41 feet along the arc of a 2680.00 foot radius curve left (the long chord of which bears North 30/15'49" West 991.66 feet); thence North 14/18'05" East 290.00 feet; thence North 56/10'22" East 1104.96 feet; thence North 76/33'34" East 704.07 feet; thence 619.24 feet along the arc of a 551.00 foot radius curve right (the long chord of which bears North 42/24'35" East 587.16 feet); thence North 74/36'20" East 128.81 feet; thence 248.27 feet along the arc of a 455.00 foot radius curve left (the long chord of which bears North 58/58'26" East 245.20 feet); thence North 03/06'41" East 438.31 feet to the point of beginning. Contains 506.51 acres.

TRACT C

That portion of the Northwest Quarter of the Southwest Quarter (NW1/4 SW1/4) of Section Thirty-One (31), Township 17 South, Range 12, East of the Willamette Meridian, Deschutes County, Oregon, lying Southerly of Skyliners Road.

EXCEPT beginning at a point, 580 feet North of the SE corner of the NW1/4 SW1/4 of said Section 31; running thence South, 580 feet to the SE corner of said NW1/4 SW1/4 of said Section 31; thence West, 510 feet to a point; thence North, 540 feet to a point; thence in an Easterly direction to the point of beginning.

TOGETHER WITH all of the land South of Skyliners Road in Section 35 and 36, Township 17 South, Range 11, East of the Willamette Meridian, Deschutes County, Oregon.

TRACT D

The East Half of the Northeast Quarter (E1/2 NE1/4) of Section Twelve (12), Township 18 South, Range 11, East of the Willamette Meridian, Deschutes County, Oregon.

EXCEPT that portion lying southerly from a line running from the SW corner of said E1/2 NE1/4 to a point on the East boundary, located a distance of 330 feet North from the SE corner of said E1/4 NE1/4.

LESS AND EXCEPT THAT PROPERTY DESCRIBED ON EXHIBIT "A."

EXHIBIT "C"

BY-LAWS

OF

BROKEN TOP COMMUNITY ASSOCIATION, INC.

TABLE OF CONTENTS

PAGE

Article I 1
1.1. Name 1
1.2. Principal Office 1
1.3. Definitions 1

Article II 1
2.1. Membership 1
2.2. Place of Meetings 1
2.3. Annual Meetings 1
2.4. Special Meetings 1
2.5. Notice of Meetings 1
2.6. Waiver of Notice 1
2.7. Adjournment of Meetings 2
2.8. Voting 2
2.9. Proxies 2
2.10. Majority 2
2.11. Quorum. 2
2.12. Conduct of Meetings 2
2.13. Action Without a Meeting 2

Article III 2
3.1. Governing Body; Composition 2
3.2. Number of Directors 2
3.3. Directors During Class "B" Control Period 2
3.4. Nomination of Directors 3
3.5. Election and Term of Office 3
3.6. Removal of Directors and Vacancies 3
3.7. Organizational Meetings 4
3.8. Regular Meetings 4
3.9. Special Meetings 4
3.10. Waiver of Notice 4
3.11. Quorum of Board of Directors 4
3.12. Compensation 4
3.13. Conduct of Meetings 4
3.14. Open Meetings 4
3.15. Action Without a Formal Meeting 4
3.16. Powers 5
3.17. Duties 5
3.18. Right of Class "B" Member to Disapprove Actions 5
3.19. Management 6
3.20. Accounts and Reports 6
3.21. Borrowing 8
3.22. Rights of the Association 8
3.23. Enforcement 8
3.24. Prohibited Acts 8

Article IV 9
4.1. Officers 9
4.2. Election and Term of Office 9
4.3. Removal and Vacancies 9
4.4. Powers and Duties 9
4.5. Resignation 9
4.6. Agreements, Contracts, Deeds, Leases, Checks, Etc 10
4.7. Compensation 10

Article V 10
5.1. General 10

5.2. Covenants Committee 10
5.3. Neighborhood Committees 10
5.4. Transitional Advisory Committee 10

Article VI 11
6.1. Fiscal Year 11
6.2. Parliamentary Rules 11
6.3. Conflicts 11
6.4. Books and Records 11
(a) Inspection by Members and Mortgagees 11
(b) Rules for Inspection 11
(c) Inspection by Directors 11
6.5. Notices 11
6.6. Amendment 11

BY-LAWS

OF

BROKEN TOP COMMUNITY ASSOCIATION, INC.

Article I
Name, Principal Office, and Definitions

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

1.2. Principal Office. The principal office of the Association in the State of Oregon shall be located in Deschutes County. The Association may have such other offices, either within or outside the State of Oregon, as the Board may determine or as the affairs of the Association may require.

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

Article II
Association: Membership, Meetings, Quorum, Voting, Proxies

2.1. Membership. The Association shall have two classes of membership, Class "A" and Class "B", as more fully set forth in the Declaration, the terms of which pertaining to membership are incorporated by reference.

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

2.3. Annual Meetings. The first meeting of the Association, whether a regular or special meeting, shall be held within 45 days after the conveyance of 51% of the Units in the Properties to Retail Owners, but not later than six months after the first conveyance of a Unit to a Retail Owner after the issuance of the Permit. Meetings shall be of the Voting Members. Subsequent regular annual meetings shall be set by the Board so as to occur at least 30 days but not more than 120 days before the close of the Association's fiscal year on a date and at a time set by the Board.

2.4. Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting if so directed by resolution of the Board or upon a petition signed by Voting Members representing at least 10% of the Members of the Association. In accordance with O.R.S. §94.616, the Association shall call a special meeting not later than 120 days after the Class "B" membership has terminated for the purpose of turning over administrative responsibility to the Association. The meeting shall be of the Voting Members. If the Declarant fails to call the meeting, the Temporary Advisory Committee, if any, or any Owner may call the meeting in accordance with Oregon Revised Statute §94.609.

2.5. Notice of Meetings. Written or printed notice stating the place, day, and hour of any meeting of the Voting Members shall be delivered, either personally or by mail, to each Voting Member entitled to vote at such meeting, not less than 10 nor more than 50 days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting.

In the case of a special meeting or when otherwise required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Voting Member at his or her address as it appears on the records of the Association, with postage prepaid.

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

2.7. Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, a majority of the Voting Members who are present at such meeting may adjourn the meeting to a time not less than five nor more than 30 days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Voting Members in the manner prescribed for regular meetings.

The Voting Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough to leave less than a quorum, provided that Voting Members representing at least 25% of the Members of the Association remain in attendance, and provided that any action taken is approved by at least a majority of the votes required to constitute a quorum.

2.8. Voting. The voting rights of the Members shall be as set forth in the Declaration, and such voting rights provisions are specifically incorporated by reference. Voting of the Voting Members at a meeting may be by voice or ballot, except the election of directors which shall be by secret written ballot.

2.9. Proxies. Voting Members may not vote by proxy but only in person or through their designated alternates; provided, any Voting Member who is only entitled to cast the vote(s) for his or her own Unit(s) pursuant to Section 3.4(b) of the Declaration may cast such vote in person or by proxy until such time as the Board first calls for election of a Voting Member to represent the Neighborhood of which the Unit is a part. No proxy shall be valid unless it meets the requirement of O.R.S. §94.660 and is signed by the Owner or his or her duly authorized attorney-in-fact, dated, and filed with the Secretary of the Association prior to any meeting for which it is to be effective. No proxy shall be valid after one year from its date of execution unless otherwise specified in the proxy.

2.10. Majority. As used in these By-Laws, the term "majority" shall mean those votes, owners, or other group as the context may indicate totaling more than 50% of the total eligible number.

2.11. Quorum. Except as otherwise provided in these By-Laws or in the Declaration, the presence of the Voting Members representing a majority of the total votes in the Association shall constitute a quorum at all meetings of the Association.

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

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

Article III
Board of Directors: Number, Powers, Meetings

A. Composition and Selection.

3.1. Governing Body; Composition. The affairs of the Association shall be governed by a Board, each of whom shall have one equal vote. Except with respect to directors (a) appointed by the Class "B" Member during the Class "B" Control Period pursuant to Section 3.3, (b) elected by the Class "B" Member after the expiration of the Class "B" Control Period or (c) elected by the Class "A" votes held by Declarant after the conversion of the Class "B" membership to Class "A" membership pursuant to Section 3.3(b) of the Declaration, the directors shall be Members or spouses of such Members; provided, however, no person and his or her spouse may serve on the Board at the same time. In the case of a Member which is not a natural person, any officer, director, partner or trust officer of such Member shall be eligible to serve as a director unless otherwise specified by written notice to the Association signed by such Member. No Member may have more than one such representative on the Board at a time, except in the case of directors (a) appointed by the Class "B" Member during the Class "B" Control Period pursuant to Section 3.3, (b) elected by the Class "B" Member after the expiration of the Class "B" Control Period or (c) elected by the Class "A" votes held by Declarant after the conversion of the Class "B" membership to Class "A" membership pursuant to Section 3.3(b) of the Declaration.

3.2. Number of Directors. The number of directors in the Association shall be not less than three nor more than seven, as provided in Section 3.5. The initial Board shall consist of three directors as identified in the Articles of Incorporation.

3.3. Directors During Class "B" Control Period. Subject to the provisions of Section 3.5, the directors shall be appointed by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member until the first to occur of the following:

(a) when 75% of the Maximum Units have certificates of occupancy issued thereon and have been conveyed to Retail Owners;

(b) six years from the anniversary date of the conveyance of the first Unit to a Retail Owner after the issuance of the first Permit; or

(c) when, in its discretion, the Class "B" Member so determines.

3.4. Nomination of Directors. Except with respect to directors selected by the Class "B" Member, or the Declarant, as the case may be, pursuant to Section 3.1, nominations for election to the Board shall be made by a Nominating Committee. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board, and three or more Members or representatives of Members, with at least one representative from each Voting Group. The Nominating Committee shall be appointed by the Board not less than 30 days prior to each annual meeting of the Voting Members to serve a term of one year or until their successors are appointed, and such appointment shall be announced at each such annual meeting. The Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but in no event less than the number of positions to be filled from each slate as provided in Section 3.5. The Nominating Committee shall nominate separate slates for the directors, if any, to be elected at large by all Voting Members, and for the director(s) to be elected by the Voting Members representing the Units within each Voting Group. Nominations for each slate shall also be permitted from the floor. All candidates shall have a reasonable opportunity to communicate their qualifications to the Voting Members and to solicit votes.

3.5. Election and Term of Office. Notwithstanding any other provision of these By-Laws:

(a) Within one year after the first Unit is conveyed to a Retail Owner, the President shall call a special meeting to be held at which the Voting Members representing the Class "A" Members, other than the Declarant, shall elect one of the three directors who shall be an at-large director. The remaining two directors shall be appointees of the Class "B" Member. The director elected by the Voting Members shall not be subject to removal by the Class "B" Member and shall be elected for a term of two years or until the happening of the event described in subsection (b) below, whichever is shorter. If such director's term expires prior to the happening of the event described in subsection (b) below, a successor shall be elected for a like term.

(b) Within 30 days after the time that Retail Owners own 50% of the Maximum Units, or whenever the Class "B" Member earlier determines, the Board shall be increased to five directors. The President shall call a special meeting at which Voting Members representing the Class "A" Members, other than the Declarant, shall be entitled to elect two of the five directors, who shall serve as at-large directors. The remaining three directors shall be appointees of the Class "B" Member. The directors elected by the Voting Members shall not be subject to removal by the Class "B" Member and shall be elected for a term of two years or until the happening of the event described in subsection (c) below, whichever is shorter. If such directors' terms expire prior to the happening of the event described in subsection (c) below, successors shall be elected for a like term.

(c) Within 120 days after the termination of the Class "B" Control Period, the Board shall be increased to seven directors. The President shall call a meeting at which all directors shall be elected as follows: Subject to subsection (d) below, the directors shall be elected by Voting Members representing both Class "A" and Class "B" Members, with an equal number of directors elected from each Voting Group and any remaining directorships filled at large by the vote of all Voting Members. The majority of the directors shall be elected for a term of two years and the remaining directors shall be elected (or appointed as the case may be pursuant to subsection (d) below) for a term of one year, with each term to expire at the next annual meeting after the two-year or one-year period, as applicable. Successor directors shall be elected (or appointed as the case may be pursuant to subsection (d) below) at annual meetings to serve for two-year terms.

Each Voting Member shall be entitled to cast all votes attributable to the Units in the Neighborhood with respect to each vacancy to be filled from each slate on which such Voting Member is entitled to vote. There shall be no cumulative voting. The candidate(s) receiving the most votes shall be elected. For the first election held pursuant to this subsection, of the elected candidates, those receiving the most votes shall serve for two years. The directors elected by the Voting Members shall hold office until their respective successors have been elected. Directors may be elected to serve any number of consecutive terms.

(d) After the Class "B" Control Period, the Declarant shall have the right to appoint or elect at least 20% of the Board Members as long as the Declarant has the power to annex property pursuant to Article IX of the Declaration.

3.6. Removal of Directors and Vacancies. Any director elected by the Voting Members may be removed, with or without cause, by the vote of Voting Members holding a majority of the votes entitled to be cast for the election of such director. Any director whose removal is sought shall be given notice prior to any meeting called and noticed for that purpose. A director who was elected at large solely by the votes of Voting Members representing Class "A" Members (other than the Declarant), may be removed from office prior to the expiration of his or her term only by the votes of Voting Members representing a majority of the Class "A" Members (other than the Declarant). Upon removal of a director, a successor shall be elected by the Voting Members entitled to elect the director so removed to fill the vacancy for the remainder of the term of such director.

Any director elected by the Voting Members who has three consecutive unexcused absences from Board meetings, or who is more than 30 days delinquent in the payment of any assessment or other charge due the Association, may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and a successor may be appointed by the Board to fill the vacancy for the remainder of the term.

In the event of the death, disability, or resignation of a director, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Voting Members entitled to fill such directorship may elect a successor for the remainder of the term. Any director appointed by the Board shall be selected from among Members within the Voting Group represented by the director who vacated the position.

B. Meetings.

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

3.8. Regular Meetings. Regular meetings of the Board may be held at such time and place a majority of the directors shall determine, but at least four such meetings shall be held during each fiscal year with at least one per quarter. Notice of the time and place of the meeting shall be posted in a prominent place within the Properties and communicated to directors not less than four days prior to the meeting; provided, however, notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to holding of the meeting.

3.9. Special Meetings. Special meetings of the Board shall be held when called by written notice signed by the President or by any two directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by: (a) personal delivery; (b) first class mail, postage prepaid; (c) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (d) telegram, charges prepaid. All such notices shall be given at the director's telephone number or sent to the director's address as shown on the records of the Association. Notices of special meetings of the Board shall be posted in a prominent place within the Properties. Notices sent by first class mail shall be deposited into a United States mailbox at least four business days before the time set for the meeting. Notices given by personal delivery, telephone, or telegraph shall be delivered, telephoned, or given to the telegraph company at least 72 hours before the time set for the meeting.

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

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

3.12. Compensation. No director shall receive any compensation from the Association for acting as such unless approved by Voting Members representing a majority of the total Class "A" votes in the Association, other than the Declarant, at a regular or special meeting of the Association. Any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director, or any entity with which a director is affiliated, for services or supplies furnished to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board, excluding the interested director.

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

3.14. Open Meetings. Subject to the provisions of Section 3.15, all meetings of the Board shall be open to all Voting Members, but a Voting Member other than directors may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a director. In such case, the President may limit the time any Voting Member may speak. Notwithstanding the above, the President may adjourn any meeting of the Board and reconvene in executive session, excluding Voting Members, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, etc.

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

C. Powers and Duties.

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

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

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

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

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

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

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

(f) making and amending rules and regulations;

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

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

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

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

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

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

(m) making available to any prospective purchaser of a Unit, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Declaration, the Articles of Incorporation, the By-Laws, rules and all other books, records, and financial statements of the Association;

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

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

(p) assisting in the resolution of disputes between owners and others without litigation, as set forth in the Declaration.

3.18. Right of Class "B" Member to Disapprove Actions. Until 75% of the Maximum Units are owned by Retail Owners, the Declarant shall have a right to disapprove any action, policy or program of the Association, the Board and any committee which, in the judgment of the Declarant, would tend to impair rights of the Declarant or Builders under the Declaration or these By-Laws, or interfere with development, construction of any portion of the Properties, or diminish the level of services being provided by the Association.

No such action, policy or program shall become effective or be implemented until and unless:

(a) The Declarant shall have been given written notice of all meetings and proposed actions approved at meetings of the Association, the Board or any committee thereof by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, as it may change from time to time, which notice complies as to the Board meetings with Sections 3.8,

3.9, and 3.10 of these By-Laws and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth in reasonable particularity the agenda to be followed at said meeting; and

(b) The Declarant shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein. The Declarant, its representatives or agents shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. The Declarant shall have and is hereby granted a right to disapprove any such action, policy, or program authorized by the Association, the Board or any committee thereof, if Board, committee, or Association approval is necessary for such action. This right may be exercised by the Declarant, its successors, assigns, representatives, or agents at any time within 10 days following the meeting held pursuant to the terms and provisions hereof. This right to disapprove may be used to block proposed actions but shall not extend to the requiring of any action or counteraction on behalf of any committee, or the Board or the Association. The Declarant shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

(c) This Section may not be amended without the express written consent of the Declarant until 75% of the Maximum Units have been conveyed to Retail Owners.

3.19. Management. The Board may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy making authority or those duties set forth in Sections 3.17(a) and 3.17(i). The Declarant, or an affiliate of the Declarant, may be employed as managing agent or manager.

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

The Association shall not be bound, either directly or indirectly, by any management contract executed during the Class "B" Control Period unless such contract contains a right of termination exercisable by the Association, with or without cause and without penalty, at any time after termination of the Class "B" Control Period upon not more than 30 days written notice.

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

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

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

(c) cash accounts of the Association shall not be commingled with any other accounts;

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

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

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

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

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

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

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

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

(E) a disclosure statement that the Declarant or a Builder is contributing "in kind" services or material pursuant to a contract with the Association, if any, and that their assessment obligation may be reduced or abated by the amount of the agreed value of such services or materials; and

(F) a disclosure statement that a subsidy contract exists between the Declarant and the Association, if that is the case.

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

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

In lieu of distributing the budget as specified in the above paragraphs of this Section 3.20, the Board may elect to distribute a summary of the budget ("Summary") to all its Members with a written notice that the budget is available at the business office of the Association or at another suitable location within the boundaries of the Properties and that copies will be provided upon request at the expense of the Association. If any Member requests a copy of the budget, the Association shall provide such copy to the Member by first-class United States mail and deliver such copy within five days of such request. The written notice that is distributed to each of the Members shall be in at least 10 point bold type on the front page of the Summary.

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

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

(A) a balance sheet as of the end of the fiscal year;

(B) an income and expense statement for the fiscal year (This operating statement shall include a schedule of assessments received and receivables identified by the numbers of the Units and the name(s) of the Owners assessed.); and

(C) a statement of changes in financial position for the fiscal year.

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

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

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

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

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

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

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

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

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

3.21. Borrowing. The Association shall have the power to borrow money for the purpose of maintenance, repair or restoration of the Area of Common Responsibility without the approval of the Voting Members. The Board shall also have the power to borrow money for other purposes; provided, that the proposed borrowing is for the purpose of modifying, improving, or adding amenities to the Area of Common Responsibility. Such borrowing shall be in accordance with Section 3.24(a). During the Class "B" Control Period, no Mortgage lien shall be placed on any portion of the Common Area without the affirmative vote or written consent of Voting Members representing at least a majority of the Members other than the Declarant.

3.22. Rights of the Association. The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or Neighborhood and other owners or residents associations, both within and outside the Properties. Such agreements shall require the consent of a majority of the total number of directors of the Association.

3.23. Enforcement. In addition to such other rights as are specifically granted under the Declaration, the Board shall have the power to impose reasonable fines. A fine, other than a penalty for nonpayment of assessments, shall not constitute a lien upon the Unit of the violating Owner. The Board shall also have the power to suspend an Owner's right to vote or any person's right to use the Common Area for violation of any duty imposed under the Declaration, these By-Laws, or any rules and regulations duly adopted hereunder; provided, however, nothing herein shall authorize the Board to limit ingress and egress to or from a Unit or to suspend an Owner's right to vote due to nonpayment of assessments. In addition, the Board may suspend any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than 30 days delinquent in paying any assessment or other charges owed to the Association. In the event that any occupant, guest or invitee of a Unit violates the Declaration, By-Laws, or a rule and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Association. The failure of the Board to enforce any provision of the Declaration,

By-Laws, or any rule shall not be deemed a waiver of the right of the Board to do so thereafter.

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

(b) Hearing. If a hearing is requested within the allotted 10 day period, the hearing shall be held before the Covenants Committee, if any, or if none, before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

(c) Appeal. Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board. To perfect this right, a written notice of appeal must be received by the manager, President, or Secretary of the Association within 10 days after the hearing date.

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

3.24. Prohibited Acts. The Board shall not take any of the following actions except with the written consent or vote of the Voting Members representing at least a majority of the Members other than the Declarant:

(a) to incur aggregate expenditures for capital improvements to the Area of Common Responsibility in any fiscal year in excess of 5% of the budgeted Common Expenses of the Association for that fiscal year;

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

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

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

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

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

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

(iv) lease agreements for laundry room fixtures and equipment of a duration not to exceed five years, provided that the lessor is not an entity in which Declarant has a direct or indirect interest of 10% or more;

(v) agreements for cable television services and equipment or satellite television services and equipment not to exceed five years duration, provided that the supplier is not an entity in which Declarant has a direct or indirect interest of 10% or more; and

(vi) agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services thereof, not to exceed five years duration, provided that the supplier is not an entity in which Declarant has a direct or indirect interest of 10% or more.

(e) no contract with the Association negotiated by Declarant shall exceed a term of one year except as may otherwise be provided in paragraph (d) of this Section.

Article IV
Officers

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

4.2. Election and Term of Office. The officers of the Association shall be elected annually by the Board at the first meeting of the Board following each annual meeting of the Voting Members, as set forth in Article III.

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

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

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

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

4.7. Compensation. Compensation of officers shall be subject to the same limitations as compensation of directors under Section 3.12 hereof.

Article V
Committees

5.1. General. The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

5.2. Covenants Committee. In addition to any other committees which the Board may establish pursuant to Section 5.1, the Board may appoint a Covenants Committee consisting of at least three and no more than seven Members. Acting in accordance with the provisions of the Declaration, these By-Laws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Section 3.23 of these By-Laws.

5.3. Neighborhood Committees. In addition to any other committees appointed as provided above, each Neighborhood which has no formal organizational structure or association may elect a Neighborhood Committee to determine the nature and extent of services, if any, to be provided to the Neighborhood by the Association in addition to those provided to all Members of the Association in accordance with the Declaration. Upon written petition signed by 25% of the Owners within any Neighborhood, the Board shall call for an election of a Neighborhood Committee for such Neighborhood no later than 60 days from receipt of such petition. Such first election may be held at a meeting or by written ballot at the discretion of the Board. Such Neighborhood Committees, if formed, shall consist of three members; provided, however, by vote of at least 51% of the Owners within the Neighborhood this number may be increased to five.

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

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

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

Committee members shall be elected for a term of one year or until their successors are elected, whichever is longer. It shall be the responsibility of the Neighborhood Committee to determine the nature and extent of services, if any, to be provided to the Neighborhood by the Association in addition to those provided to all Members of the Association in accordance with the Declaration. A Neighborhood Committee may advise the Board on any other issue, but shall not have the authority to bind the Board.

In the conduct of its duties and responsibilities, each Neighborhood Committee shall abide by the notice and quorum requirements applicable to the Board under Sections 3.8, 3.9, 3.10 and 3.11 and the procedural requirements set forth in Sections 3.13, 3.14, and 3.15; provided, however, the term "Voting Member" shall refer to the Owners of Units within the Neighborhood. Each Neighborhood Committee shall elect a chairman from among its members who shall preside at its meetings; provided, however, the Voting Member shall be responsible for transmitting any and all communications to the Board. The Voting Member from each Neighborhood shall be an ex officio member of the Neighborhood Committee, if any, for such Neighborhood.

The Voting Members from each Neighborhood shall be elected and serve in accordance with Section 3.4(b) of the Declaration.

5.4. Transitional Advisory Committee. In addition to any other committees appointed as provided above, the Board shall establish pursuant to O.R.S. §94.604, a Transitional Advisory Committee when more than 50% of the Maximum Units are owned by Retail Owners and Class "B" membership has not yet terminated.

Article VI
Miscellaneous

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

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

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

6.4. Books and Records.

(a) Inspection by Members and Mortgagees. The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Unit, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Unit: the Declaration, By-Laws, and Articles of Incorporation, any amendments to the foregoing, the rules of the Association, the membership register, the most recent Financial Statement, the current Budget, books of account, the Statement of Planned Community Information prepared in accordance with O.R.S. §94.750, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the office of the Association or at such other place within the Properties as the Board shall designate.

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

(i) notice to be given to the custodian of the records;

(ii) hours and days of the week when such an inspection may be made; and

(iii) payment of the cost of reproducing copies of documents requested.

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

6.5. Notices. Unless otherwise provided in these By-Laws, all notices, demands, bills, statements, or other communications under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid:

(a) if to a Member or Voting Member, at the address which the Member or Voting Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member or Voting Member; or

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

6.6. Amendment.

(a) By Declarant Member. Prior to the conveyance of the first Unit to a Retail Owner and prior to the issuance of the first Permit, Declarant may unilaterally amend these By-Laws. After the issuance of the first Permit and prior to the first conveyance pursuant such Permit, Declarant may unilaterally amend these By-Laws; provided any amendment constituting a material change shall require the approval of the Commissioner. After the conveyance of any Unit, the Declarant may unilaterally amend these By-Laws at any time if such amendment is (i) necessary to bring any provision hereof into compliance with any applicable governmental statutes, rule or regulation, or judicial determination; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Units; or (iv) otherwise necessary to satisfy the requirements of any governmental agency for approval of these By-Laws. However, any such amendment shall not adversely affect the title to any Unit unless the affected Owner shall consent thereto in writing and such amendment is approved by the Commissioner if applicable. The Commissioner's approval is required if the amendment constitutes a material change and a Unit has been conveyed pursuant to a Permit.

(b) By Members Generally. Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Members representing 51% of each class of Members. After conversion of the Class "B" membership to Class "A" membership, these By-Laws may be amended by the vote or written consent of the Voting Members representing at least: (a) 75% of the Members; and (b) 75% of the Members other than the Declarant.

STATE OF OREGON)
COUNTY OF DESCHUTES) ss.

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

94 SEP 21 PM 3:57

MARY SUE PENNOLLOW
COUNTY CLERK

BY: _____ DEPUTY

NO. 94-37067 FEE 38.00

DESCHUTES COUNTY OFFICIAL RECORDS

EXHIBIT "C"

AMENDED AND RESTATED

BY-LAWS

OF

BROKEN TOP COMMUNITY ASSOCIATION, INC.

TABLE OF CONTENTS

353 - 0648

PAGE

I. NAME, PRINCIPAL OFFICE, AND DEFINITIONS 1

1.1. Name 1
1.2. Principal Office 1
1.3. Definitions 1

II. ASSOCIATION: MEMBERSHIP, MEETINGS, QUORUM, VOTING, PROXIES 1

2.1. Membership 1
2.2. Place of Meetings 1
2.3. Annual Meetings 1
2.4. Special Meetings 1
2.5. Notice of Meetings 2
2.6. Waiver of Notice 2
2.7. Adjournment of Meetings 2
2.8. Voting 2
2.9. Proxies 3
2.10. Majority 3
2.11. Quorum 3
2.12. Conduct of Meetings 3
2.13. Action Without a Meeting 3

III. BOARD OF DIRECTORS: NUMBER, POWERS, MEETINGS 3

3.1. Governing Body; Composition 3
3.2. Number of Directors 4
3.3. Directors During Class "B" Control Period 4
3.4. Nomination and Election Procedures 4
3.5. Election and Term of Office 5
3.6. Removal of Directors and Vacancies 6
3.7. Organizational Meetings 6
3.8. Regular Meetings 6
3.9. Special Meetings 6
3.10. Waiver of Notice 7
3.11. Quorum of Board of Directors 7
3.12. Compensation 7
3.13. Conduct of Meetings 7
3.14. Open Meetings 8
3.15. Action Without a Formal Meeting 8
3.16. Powers 8
3.17. Duties 8
3.18. Right of Declarant to Disapprove Actions 9
3.19. Management 11
3.20. Accounts and Reports 11

PAGE

3.21. Borrowing 15
3.22. Rights of the Association 15
3.23. Enforcement 15
3.24. Prohibited Acts 16

IV. OFFICERS 18

4.1. Officers 18
4.2. Election and Term of Office 18
4.3. Removal and Vacancies 18
4.4. Powers and Duties 19
4.5. Resignation 19
4.6. Agreements, Contracts, Deeds, Leases, Checks, Etc 19
4.7. Compensation 19

V. COMMITTEES 19

5.1. General 19
5.2. Covenants Committee 19
5.3. Neighborhood Committees 19
5.4. Transitional Advisory Committee 20

VI. MISCELLANEOUS 21

6.1. Fiscal Year 21
6.2. Parliamentary Rules 21
6.3. Conflicts 21
6.4. Books and Records 21
(a) Inspection by Members and Mortgagees 21
(b) Rules for Inspection 21
(c) Inspection by Directors 21
6.5. Notices 22
6.6. Amendment 22

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BY-LAWS

OF

BROKEN TOP COMMUNITY ASSOCIATION, INC.

Article I
Name, Principal Office, and Definitions

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

1.2. Principal Office. The principal office of the Association in the State of Oregon shall be located in Deschutes County. The Association may have such other offices, either within or outside the State of Oregon, as the Board may determine or as the affairs of the Association may require.

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

Article II
Association: Membership, Meetings, Quorum, Voting, Proxies

2.1. Membership. The Association shall have two classes of membership, Class "A" and Class "B," as more fully set forth in the Declaration, the terms of which pertaining to membership are incorporated by reference.

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

2.3. Annual Meetings. The first meeting of the Association membership, whether a regular or special meeting, shall be held within 45 days after the conveyance of 51% of the Units in the Properties to Retail Owners, but not later than six months after the first conveyance of a Unit to a Retail Owner after the issuance of the Permit. Subsequent regular annual meetings shall be set by the Board so as to occur at least 30 days but not more than 120 days before the close of the Association's fiscal year on a date and at a time set by the Board.

2.4. Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting if so directed by resolution of the Board or upon a petition signed by Voting Members representing at least 5% of the Members of the Association. In accordance with O.R.S. §94.616, the Association shall call a special meeting not later than 120 days after the Class "B" membership has terminated for the purpose of turning over administrative responsibility to the Association. The

meeting shall be of the Members. If the Declarant fails to call the meeting, the Temporary Advisory Committee, if any, or any Owner may call the meeting in accordance with Oregon Revised Statute §94.609.

2.5. Notice of Meetings. Written or printed notice stating the place, day, and hour of any meeting of the Members shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting, not less than 10 nor more than 50 days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting.

In the case of a special meeting or when otherwise required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Member at his or her address as it appears on the records of the Association, with postage prepaid.

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

2.7. Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, a majority of the Members who are present at such meeting may adjourn the meeting to a time not less than five nor more than 30 days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed for regular meetings.

The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough to leave less than a quorum, provided that Members representing at least 25% of the total votes in the Association remain in attendance, and provided that any action taken is approved by at least a majority of the votes required to constitute a quorum.

2.8. Voting. The voting rights of the Members shall be as set forth in the Declaration, and such voting rights provisions are specifically incorporated by reference. Voting at a meeting may be by voice or written ballot, except the election of directors which shall be by secret written ballot.

2.9. Proxies. Any Member entitled to personally cast the vote for his or her Unit may vote in person or by proxy. Voting Members may not vote by proxy but only in person or through their designated alternates; provided, any Voting Member who is only entitled to cast the vote(s) for his or her own Unit(s) pursuant to Section 3.4(b) of the Declaration may cast such vote in person or by proxy until such time as the Board first calls for election of a Voting Member to represent the Neighborhood of which the Unit is a part. No proxy shall be valid unless it meets the requirement of O.R.S. §94.660 and is signed by the Owner or his or her duly authorized attorney-in-fact, dated, and filed with the Secretary of the Association prior to any meeting for which it is to be effective. No proxy shall be valid after one year from its date of execution unless otherwise specified in the proxy.

2.10. Majority. As used in these By-Laws, the term "majority" shall mean those votes, owners, or other group as the context may indicate totaling more than 50% of the total eligible number.

2.11. Quorum. Except as otherwise provided in these By-Laws or in the Declaration, the presence of the persons entitled to cast a majority of the total votes in the Association shall constitute a quorum at all meetings of the Association.

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

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

Article III
Board of Directors: Number, Powers, Meetings

A. Composition and Selection.

3.1. Governing Body; Composition. The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one equal vote. Except with respect to directors (a) appointed by the Class "B" membership during the Class "B" Control Period pursuant to Section 3.3, (b) elected by the Class "B" Members after the expiration of the Class "B" Control Period, or (c) elected by the Declarant after the Class "B" Control Period pursuant to Section 3.5(d) of these By-Laws, the directors shall be Members or spouses of such Members; provided, however, no person and his or her spouse may serve on the Board at the same time. In the case of a Member which is not a natural person, any officer, director, partner or trust officer

of such Member shall be eligible to serve as a director unless otherwise specified by written notice to the Association signed by such Member. No Member may have more than one such representative on the Board at a time, except in the case of directors (a) appointed by the Class "B" membership during the Class "B" Control Period pursuant to Section 3.3, (b) elected by the Class "B" Members after the expiration of the Class "B" Control Period or (c) elected by the Declarant after the termination of the Class "B" Control Period pursuant to Section 3.5(d) of the Declaration.

3.2. Number of Directors. The number of directors in the Association shall be not less than three nor more than seven, as provided in Section 3.5. The initial Board shall consist of three directors as identified in the Articles of Incorporation.

3.3. Directors During Class "B" Control Period. Subject to the provisions of Section 3.5, the directors shall be appointed by the Class "B" membership acting in its sole discretion and shall serve at the pleasure of the Class "B" membership until the first to occur of the following:

(a) the date on which 75% of the Maximum Units have been conveyed to Retail Owners;

(b) the sixth (6th) anniversary of the conveyance of the first Unit to a Retail Owner after the issuance of the first Permit; or

(c) the date of termination of the Class "B" Membership pursuant to Section 3.3(b) of the Declaration; or

(d) when, in its discretion, the Class "B" membership so determines.

3.4. Nomination and Election Procedures.

(a) Nominations and Declarations of Candidacy. Prior to each election of directors, the Board shall prescribe the opening date and the closing date of a reasonable filing period in which each and every eligible person who has a bona-fide interest in serving as a director may file as a candidate for any position to be filled by Class "A" votes. The Board shall also establish such other rules and regulations as it deems appropriate to conduct the nomination of directors in a fair, efficient and cost-effective manner. Except with respect to directors selected by the Class "B" membership, or the Declarant, as the case may be, pursuant to Section 3.1, nominations for election to the Board may also be made by a Nominating Committee. The Nominating Committee, if any, shall consist of a Chairman, who shall be a member of the Board, and three or more Members or representatives of Members. The Nominating Committee, if any, shall be appointed by the Board not less than 30 days prior to each annual meeting of the Members to serve a term of one year or until their successors are appointed, and such appointment shall be announced at each such annual meeting. The Nominating Committee may make as many nominations for election to the Board as it shall in its discretion determine, but shall ensure that there is at least one candidate for each position to be filled. Nominations shall also be permitted from the floor. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

(b) Election Procedures. All elections shall be held by mail. The Secretary shall cause notice of the elections to be mailed or delivered to each Member at least 10 days prior to the closing date established by the Board for filing of ballots. Such notice shall be accompanied by a written ballot listing all candidates for each vacancy who have qualified in accordance with the procedures described in subsection (a) above, and all candidates for each vacancy nominated by the Nominating Committee, if any. The notice shall specify the name and address to which the ballots should be returned and the date by which they must be received in order to be counted, which date shall be the "election date."

3.5. Election and Term of Office. Notwithstanding any other provision of these By-Laws:

(a) Within one year after the first Unit is conveyed to a Retail Owner, the President shall call for an election by which the Class "A" Members, other than the Declarant, shall elect one of the three directors. The remaining two directors shall be appointed by the Class "B" membership. The director elected by the Class "B" Members shall not be subject to removal by the Class "B" Members and shall be elected for a term of two years or until the happening of the event described in subsection (b) below, whichever is shorter. If such director's term expires prior to the happening of the event described in subsection (b) below, a successor shall be elected for a like term.

(b) Within 30 days after the time that Retail Owners own 50% of the Maximum Units, or whenever the Class "B" Member earlier determines, the Board shall be increased to five directors. The President shall call for an election by which the Class "A" Members, other than the Declarant, shall be entitled to elect two of the five directors. The remaining three directors shall be appointed by the Class "B" membership. The directors elected by the Voting Members shall not be subject to removal by the Class "B" Members and shall be elected for a term of two years or until the happening of the event described in subsection (c) below, whichever is shorter. If such directors' terms expire prior to the happening of the event described in subsection (c) below, successors shall be elected for a like term.

(c) Within 120 days after the termination of the Class "B" Control Period, the Board shall be increased to seven directors. The President shall call for an election by which the directors shall be elected as follows: Subject to subsection (d) below, the directors shall be elected by the votes of both Class "A" and Class "B" Members. The majority of the directors shall be elected for a term of two years and the remaining directors shall be elected (or appointed as the case may be pursuant to subsection (d) below) for a term of one year, with each term to expire at the next annual meeting after the two-year or one-year period, as applicable. Successor directors shall be elected (or appointed as the case may be pursuant to subsection (d) below) at annual meetings to serve for two-year terms.

Each Member may cast the entire vote assigned to his Unit for each position to be filled from the slate of candidates on which such Member is entitled to vote. There shall be no cumulative voting. The candidate(s) receiving the most votes shall be elected. The directors elected by the

Members shall hold office until their respective successors have been elected. Directors may be elected to serve any number of consecutive terms.

(d) After the Class "B" Control Period, the Declarant shall have the right to appoint or elect at least 20% of the Directors as long as the Declarant has the power to annex property pursuant to Article IX of the Declaration.

3.6. Removal of Directors and Vacancies. Any director elected by the Members may be removed, with or without cause, by the vote of Members holding a majority of the votes entitled to be cast for the election of such director. Any director whose removal is sought shall be given notice prior to any meeting called and noticed for that purpose. A director who was elected solely by the votes of Class "A" Members (other than the Declarant), may be removed from office prior to the expiration of his or her term only by the votes of a majority of the Class "A" Members (other than the Declarant). Upon removal of a director, a successor shall be elected by the Members entitled to elect the director so removed to fill the vacancy for the remainder of the term of such director.

Any director elected by the Class "A" Members other than Declarant who has three consecutive unexcused absences from Board meetings, or who is more than 30 days delinquent in the payment of any assessment or other charge due the Association, may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and a successor may be appointed by the Board to fill the vacancy until the next annual meeting, at which time the Members entitled to fill such directorship may elect a successor for the remainder of the term.

In the event of the death, disability, or resignation of a director, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Members entitled to fill such directorship may elect a successor for the remainder of the term.

B. Meetings.

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

3.8. Regular Meetings. Regular meetings of the Board may be held at such time and place a majority of the directors shall determine, but at least four such meetings shall be held during each fiscal year with at least one per quarter. Notice of the time and place of the meeting shall be posted in a prominent place within the Properties and communicated to directors not less than four days prior to the meeting; provided, however, notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to holding of the meeting.

3.9. Special Meetings. Special meetings of the Board shall be held when called by written notice signed by the President or by any two directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by: (a) personal delivery; (b) first class mail, postage

prepaid; (c) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (d) telegram, charges prepaid. All such notices shall be given at the director's telephone number or sent to the director's address as shown on the records of the Association. Notices of special meetings of the Board shall be posted in a prominent place within the Properties. Notices sent by first class mail shall be deposited into a United States mailbox at least four business days before the time set for the meeting. Notices given by personal delivery, telephone, or telegraph shall be delivered, telephoned, or given to the telegraph company at least 72 hours before the time set for the meeting.

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

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

3.12. Compensation. No director shall receive any compensation from the Association for acting as such unless approved by Voting Members representing a majority of the total Class "A" votes in the Association, other than the Declarant, at a regular or special meeting of the Association. Any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director, or any entity with which a director is affiliated, for services or supplies furnished to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board, excluding the interested director.

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

3.14. Open Meetings. Subject to the provisions of Section 3.15, all meetings of the Board shall be open to all Voting Members, but a Voting Member other than directors may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a director. In such case, the President may limit the time any Voting Member may speak. Notwithstanding the above, the President may adjourn any meeting of the Board and reconvene in executive session, excluding Voting Members, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, etc.

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

C. Powers and Duties.

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

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

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

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

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

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

(e) depositing all funds received on behalf of the Association in a bank depository which it shall approve, and using such funds

to operate the Association; provided, any reserve fund may be deposited, in the directors' best business judgment, in depositories other than banks;

(f) making and amending rules and regulations;

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

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

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

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

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

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

(m) making available to any prospective purchaser of a Unit, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Declaration, the Articles of Incorporation, the By-Laws, rules and all other books, records, and financial statements of the Association;

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

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

(p) assisting in the resolution of disputes between owners and others without litigation, as set forth in the Declaration.

3.18. Right of Declarant to Disapprove Actions. Until 75% of the Maximum Units are owned by Retail Owners, or the fourteenth (14th) anniversary of the issuance of the first Permit, whichever is earlier, the Declarant shall have a right to disapprove any actions, policies or programs of the Association, the Board and any committee, which directly or indirectly impair the rights of Declarant or Builders under the Declaration or these By-Laws, or interfere with development or construction on any portion of the Properties in accordance with the Master Plan, or diminish the level of services being provided by the Association as of the termination of the Class "B" Control

Period, as more fully provided in this section. This right shall be exercisable only by the Declarant, its successors and assigns who specifically take this power in a recorded instrument. Without limiting the generality of the foregoing, the right to disapprove shall specifically apply to the following:

(a) Reduction in the level of maintenance being provided to all or part of the Common Area as of the termination of the Class "B" Control Period;

(b) Conveyance by the Association to third parties of all or part of the Common Area;

(c) Modification and enforcement of the Design Guidelines and application procedures of the Design Review Committee promulgated pursuant to Article XI of the Declaration;

(d) Alterations in the method of fixing and collecting assessments pursuant to Article X of the Declaration; and

(e) Amendment of any of the use restrictions set forth in Article XII of the Declaration which would tend to impair rights of the Declarant or interfere with the development or construction on any portion of the Properties.

No such action, policy or program shall become effective or be implemented until and unless:

(a) The Declarant shall have been given written notice of all meetings and proposed actions approved at meetings of the Association, the Board or any committee thereof by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, as it may change from time to time, which notice complies as to the Board meetings with Sections 3.8, 3.9, and 3.10 of these By-Laws and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth in reasonable particularity the agenda to be followed at said meeting; and

(b) The Declarant shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein. The Declarant, its representatives or agents shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. The Declarant shall have and is hereby granted a right to disapprove any such action, policy, or program authorized by the Association, the Board or any committee thereof, if Board, committee, or Association approval is necessary for such action. This right may be exercised by the Declarant, its successors, assigns, representatives, or agents at any time within 10 days following the meeting held pursuant to the terms and provisions hereof. This right to disapprove may be used to block proposed actions but shall not extend to the requiring of any action or counteraction on behalf of any committee, or the Board or the Association. The Declarant shall not use its right to disapprove

to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

(c) This Section may not be amended without the express written consent of the Declarant as long as the Declarant has any rights hereunder.

3.19. Management. The Board may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy making authority or those duties set forth in Sections 3.17(a) and 3.17(i). The Declarant, or an affiliate of the Declarant, may be employed as managing agent or manager.

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

The Association shall not be bound, either directly or indirectly, by any management contract executed during the Class "B" Control Period unless such contract contains a right of termination exercisable by the Association, with or without cause and without penalty, at any time after termination of the Class "B" Control Period upon not more than 30 days written notice.

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

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

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

(c) cash accounts of the Association shall not be commingled with any other accounts;

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

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

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

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

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

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

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

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

(E) a disclosure statement that the Declarant or a Builder is contributing "in kind" services or material pursuant to a contract with the Association, if any, and that their assessment obligation may be reduced or abated by the amount of the agreed value of such services or materials; and

(F) a disclosure statement that a subsidy contract exists between the Declarant and the Association, if that is the case.

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

The portions of the Budget relating to particular Neighborhoods shall become effective unless disapproved by a majority of the Owners of Units in the Neighborhood for which the Neighborhood Budget applies. There shall be no obligation to call a meeting for the purpose of considering the Neighborhood Budget except on petition of Owners of at least 10% of the Units in such Neighborhood; and provided, further, the right to disapprove shall only apply to those line items in the Neighborhood Budget which are attributable to

services requested by the Neighborhood. In the event the portions of the proposed Budget relating to any Neighborhood is disapproved or the Board fails for any reason to determine the Neighborhood Budget for any year, then and until such time as such budget shall have been determined as provided herein, the Neighborhood Budget in effect for the immediately preceding year shall continue for the current year.

In lieu of distributing the Budget as specified in the above paragraphs of this Section 3.20, the Board may elect to distribute a summary of the Budget ("Summary") containing at least the items required under Section 3.20(f)(i)(A) through (D), to all its Members with a written notice that the Budget is available at the business office of the Association or at another suitable location within the boundaries of the Properties and that copies will be provided upon request at the expense of the Association. If any Member requests a copy of the Budget, the Association shall provide such copy to the Member by first-class United States mail and deliver such copy within five days of such request.

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

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

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

(A) a balance sheet as of the end of the fiscal year;

(B) an income and expense statement for the fiscal year (This operating statement shall include a schedule of assessments received and receivables identified by the numbers of the Units and the name(s) of the Owners assessed.); and

(C) a statement of changes in financial position for the fiscal year.

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

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

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

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

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

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

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

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

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

(h) The Board shall do all of the following:

(i) At least once every three years, cause a study to be conducted of the reserve account requirements, if the current replacement value of the major components which the Association is obligated to repair, replace, restore or maintain is equal to or greater than one-half of the gross Budget for any fiscal year.

(ii) Annually review the reserve account study and shall consider and implement necessary adjustments to its analysis of the reserve account requirements as a result of that review.

(iii) Cause the reserve account study to include at a minimum:

(A) Identification of the major components which the Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a remaining useful life of less than 30 years.

(B) Identification of the probable remaining useful life of the components identified in (A) above as of the date of the study.

(C) An estimate of the cost of repair, replacement, restoration or maintenance of each major component identified in (A) above during and at the end of its useful life.

(D) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore or maintain each major component during and at the end of its useful life, after subtracting total reserve funds as of the date of the study.

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

3.21. Borrowing. The Association shall have the power to borrow money for the purpose of maintenance, repair or restoration of the Area of Common Responsibility without the approval of the Voting Members. The Board shall also have the power to borrow money for other purposes; provided, that the proposed borrowing is for the purpose of modifying, improving, or adding amenities to the Area of Common Responsibility. Such borrowing shall be in accordance with Section 3.24(a). During the Class "B" Control Period, no Mortgage lien shall be placed on any portion of the Common Area without the affirmative vote or written consent of Voting Members representing at least a majority of the Members other than the Declarant.

3.22. Rights of the Association. The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or Neighborhood and other owners or residents associations, both within and outside the Properties. Such agreements shall require the consent of a majority of the total number of directors of the Association.

3.23. Enforcement. In addition to such other rights as are specifically granted under the Declaration, the Board shall have the power to impose reasonable fines. A fine, other than a penalty for nonpayment of assessments, shall not constitute a lien upon the Unit of the violating Owner. The Board shall also have the power to suspend an Owner's right to vote or any person's right to use the Common Area for violation of any duty imposed under the Declaration, these By-Laws, or any rules and regulations duly adopted hereunder; provided, however, nothing herein shall authorize the Board to limit ingress and egress to or from a Unit or to suspend an Owner's right to vote due to nonpayment of assessments. In addition, the Board may suspend any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than 30 days delinquent in paying any assessment or other charges owed to the Association. In the event that any occupant, guest or invitee of a Unit violates the Declaration, By-Laws, or a rule and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Association. The failure of the Board to enforce any provision of the Declaration, By-Laws, or any rule shall not be deemed a waiver of the right of the Board to do so thereafter.

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

(b) Hearing. If a hearing is requested within the allotted 10 day period, the hearing shall be held before the Covenants Committee, if any, or if none, before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

(c) Appeal. Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board. To perfect this right, a written notice of appeal must be received by the manager, President, or Secretary of the Association within 10 days after the hearing date.

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

3.24. Prohibited Acts. The Board shall not take any of the following actions except with the written consent or vote of the Voting Members representing at least a majority of the Members other than the Declarant:

(a) to incur aggregate expenditures for capital improvements to the Area of Common Responsibility in any fiscal year in excess of 5% of the budgeted Common Expenses of the Association for that fiscal year;

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

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

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

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

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

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

(iv) lease agreements for laundry room fixtures and equipment of a duration not to exceed five years, provided that the lessor is not an entity in which Declarant has a direct or indirect interest of 10% or more;

(v) agreements for cable television services and equipment or satellite television services and equipment not to exceed five years duration, provided that the supplier is not an entity in which Declarant has a direct or indirect interest of 10% or more; and

(vi) agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services thereof, not to exceed five years duration, provided that the supplier is not an entity in which Declarant has a direct or indirect interest of 10% or more.

(e) no contract with the Association negotiated by Declarant shall exceed a term of one year except as may otherwise be provided in paragraph (d) of this Section.

(f) (i) The Board shall not expend funds designated as reserve funds for any purpose other than:

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

(B) Litigation involving the purposes set forth in (A) above.

(ii) Notwithstanding the provisions of (f)(i) above the Board:

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

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

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

Article IV
Officers

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

4.2. Election and Term of Office. The officers of the Association shall be elected annually by the Board at the first meeting of the Board following each annual meeting of the Voting Members, as set forth in Article III.

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

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

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

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

4.7. Compensation. Compensation of officers shall be subject to the same limitations as compensation of directors under Section 3.12 hereof.

Article V
Committees

5.1. General. The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

5.2. Covenants Committee. In addition to any other committees which the Board may establish pursuant to Section 5.1, the Board may appoint a Covenants Committee consisting of at least three and no more than seven Members. Acting in accordance with the provisions of the Declaration, these By-Laws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Section 3.23 of these By-Laws.

5.3. Neighborhood Committees. In addition to any other committees appointed as provided above, each Neighborhood which has no formal organizational structure or association may elect a Neighborhood Committee to determine the nature and extent of services, if any, to be provided to the Neighborhood by the Association in addition to those provided to all Members of the Association in accordance with the Declaration. Upon written petition signed by 25% of the Owners within any Neighborhood, the Board shall call for

an election of a Neighborhood Committee for such Neighborhood no later than 60 days from receipt of such petition. Such first election may be held at a meeting or by written ballot at the discretion of the Board. Such Neighborhood Committees, if formed, shall consist of three members; provided, however, by vote of at least 51% of the Owners within the Neighborhood this number may be increased to five.

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

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

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

Committee members shall be elected for a term of one year or until their successors are elected, whichever is longer. It shall be the responsibility of the Neighborhood Committee to determine the nature and extent of services, if any, to be provided to the Neighborhood by the Association in addition to those provided to all Members of the Association in accordance with the Declaration. A Neighborhood Committee may advise the Board on any other issue, but shall not have the authority to bind the Board.

In the conduct of its duties and responsibilities, each Neighborhood Committee shall abide by the notice and quorum requirements applicable to the Board under Sections 3.8, 3.9, 3.10 and 3.11 and the procedural requirements set forth in Sections 3.13, 3.14, and 3.15; provided, however, the term "Voting Member" shall refer to the Owners of Units within the Neighborhood. Each Neighborhood Committee shall elect a chairman from among its members who shall preside at its meetings; provided, however, the Voting Member shall be responsible for transmitting any and all communications to the Board. The Voting Member from each Neighborhood shall be an ex officio member of the Neighborhood Committee, if any, for such Neighborhood.

The Voting Members from each Neighborhood shall be elected and serve in accordance with Section 3.4(b) of the Declaration.

5.4. Transitional Advisory Committee. In addition to any other committees appointed as provided above, the Board shall establish pursuant to

O.R.S. §94.604, a Transitional Advisory Committee when more than 50% of the Maximum Units are owned by Retail Owners and Class "B" membership has not yet terminated.

Article VI
Miscellaneous

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

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

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

6.4. Books and Records.

(a) Inspection by Members and Mortgagees. The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Unit, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Unit: the Declaration, By-Laws, and Articles of Incorporation, any amendments to the foregoing, the rules of the Association, the membership register, the most recent Financial Statement, the current Budget, books of account, the Statement of Planned Community Information prepared in accordance with O.R.S. §94.750, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the office of the Association or at such other place within the Properties as the Board shall designate.

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

(i) notice to be given to the custodian of the records;

(ii) hours and days of the week when such an inspection may be made; and

(iii) payment of the cost of reproducing copies of documents requested.

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

6.5. Notices. Unless otherwise provided in these By-Laws, all notices, demands, bills, statements, or other communications under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid:

(a) if to a Member or Voting Member, at the address which the Member or Voting Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member or Voting Member; or

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

6.6. Amendment.

(a) By Declarant. Prior to the issuance of the first Permit, Declarant may unilaterally amend these By-Laws. After the issuance of the first Permit and prior to the first conveyance pursuant such Permit, Declarant may unilaterally amend these By-Laws; provided, any amendment constituting a material change shall require the approval of the Commissioner. After the conveyance of any Unit pursuant to a Permit, the Declarant may unilaterally amend these By-Laws only if such amendment is (i) necessary to bring any provision hereof into compliance with any applicable governmental statutes, rule or regulation, or judicial determination; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Units; or (iv) otherwise necessary to satisfy the requirements of any governmental agency for approval of these By-Laws; however, any such amendment shall not adversely affect the title to any Unit unless the affected Owner has consented thereto in writing and such amendment has been approved by the California Real Estate Commissioner

(b) By Members Generally. Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Members representing 51% of each class of Members. After conversion of the Class "B" membership to Class "A" membership, these By-Laws may be amended by the vote or written consent of the Voting Members representing at least: (a) 75% of the Members; and (b) 75% of the Members other than the Declarant.

In addition, the approval requirements set forth in Article XIV of the Declaration 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.

(c) Validity and Effective Date of Amendments. Amendments to these By-Laws 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 six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

If an Owner consents to any amendment to the Declaration or these By-Laws, it will be conclusively presumed that such Owner has the authority so to consent and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke, or modify any right or privilege of Declarant specifically reserved herein so long as such right or privilege is in effect under the terms of these By-Laws without the written consent of Declarant or the assignee of such right or privilege.

DOCS3841

STATE OF OREGON)
COUNTY OF DESCHUTES) SS.

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

94 SEP 28 AM 11:35

MARY SUE PENHOLLOW
COUNTY CLERK

BY: _____ DEPUTY

NO. 94-38009 FEE 515

DESCHUTES COUNTY OFFICIAL RECORDS