

94-28809

DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS
FOR CROSSWATER

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 JUL 21 PM 2:49

MARY SUE PENHOLLOW
COUNTY CLERK

BY. J. Wallace DEPUTY

NO. 94-28809 FEE 335.00

DESCHUTES COUNTY OFFICIAL RECORDS

BEND TITLE CO.

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DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS FOR CROSSWATER

This DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR CROSSWATER (this "Declaration") is made this 20th day of July, 1994, by CROSSWATER DEVELOPMENT L.L.C., an Oregon limited liability company ("Declarant").

Recitals:

A. Declarant is the owner of the real property described on the attached Exhibits A and B. 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.

B. Declarant desires to ensure the attractiveness of the individual lots and parcels and facilities developed within the Properties; to prevent any future impairment of the Properties; and to preserve, protect, and enhance the values and amenities of the Properties.

Declaration:

NOW, THEREFORE, Declarant hereby declares that the Properties and any part thereof shall be held, sold, used, and conveyed subject to the terms of this Declaration, which shall run with the Properties and shall be binding upon and shall inure to the benefit of all parties having or acquiring any right, title, or interest in or to the Properties or any part thereof.

ARTICLE I

DEFINITIONS

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

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

1.2 "Articles of Incorporation" or "Articles" means the Articles of Incorporation of the Association, as filed with the Secretary of State for the State of Oregon, as these may be amended from time to time.

1.3 "Association" means Crosswater Owners' Association, Inc., an Oregon nonprofit mutual benefit corporation, and its successors and assigns.

1.4 "Board of Directors" or "Board" means the body responsible for administration of the Association, selected as provided in the Bylaws and generally serving the same role as the board of directors under the Oregon Nonprofit Corporations Act and the Oregon Planned Community Act.

1.5 "Building Envelope" means the building site or area within a Lot designated on the Site Analysis Plan.

1.6 "Bylaws" means the bylaws of the Association, as these may be amended from time to time.

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

1.8 "Common Expenses" means 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 Bylaws, and the Articles of Incorporation.

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

1.10 "Condominium Association" means the condominium owners' association to be formed with respect to Condominium Units pursuant to the Oregon Condominium Act.

1.11 "Condominium Class A Members" means the Owners of Condominium Units.

1.12 "Condominium Documents" means the declaration, bylaws, and other instruments governing the organization and administration of the condominium project to be formed within the Properties.

1.13 "Condominium Unit" means a condominium unit within the Properties created in accordance with the Oregon Condominium Act.

1.14 "County" means Deschutes County, Oregon.

1.15 "Crosswater" means the Properties described in Section 1.35.

1.16 "Crosswater Documents" means this Declaration, any Supplemental Declaration, the Bylaws, the Articles of Incorporation, the Design Guidelines, the Use Guidelines and Restrictions, and any other rules and regulations duly adopted by the Association.

1.17 "Declarant" means Crosswater Development L.L.C., an Oregon limited liability company, or any successor, successor-in-title, or assign who has or takes title to any portion of the property described on Exhibit A or B for the purpose of development and/or resale in the ordinary course of its business and who is designated as a Declarant in a recorded instrument executed by an immediately preceding Declarant.

1.18 "Design Guidelines" means the design guidelines and procedures adopted by the Design Review Committee pursuant to Article VI.

1.19 The "Design Review Committee" or "Committee" means the committee appointed pursuant to Article VI.

1.20 "Entry Property" means the area within the Properties that includes Tract L shown on the Plat of the initial Phase of Crosswater, the entry gatehouse facility serving the Properties, the access road to the clubhouse facility anticipated to be constructed on the Golf Course Parcel, and associated landscaping.

1.21 "Golf Course" means any parcel of land adjacent to or within the Properties which is privately owned by Declarant or its affiliates or their respective 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.

1.22 "Golf Course Class A Member" means the Owner of the Golf Course Parcel.

1.23 "Golf Course Parcel" means the tract within the Properties containing the Golf Course, as well as the clubhouse and turf management facility anticipated to be constructed thereon and any and all rights of access pertaining thereto.

1.24 "Improvement" means every structure or improvement of any kind, including, without limitation, buildings, fences, walls, trees, hedges, plantings, poles, driveways, parking areas, loading areas, ponds, lakes, recreational facilities, signs, changes in any exterior color or shape, and site work (such as, without limitation, excavation, grading, road construction, utility improvements, and removal of trees or plantings). "Improvement" does not include turf, shrub, or tree maintenance or replacement. "Improvement" does include both new construction and any subsequent exterior improvements.

1.25 "Initial Phase" means the 51 Units initially subjected to this Declaration by Declarant by execution and recordation of this Declaration in the official records of the County.

1.26 "Lot" means a platted or partitioned lot or tract within the Properties, including, without limitation, the Golf Course Parcel and the parcel containing the Condominium Units, but excluding any lot or tract marked on a Plat as common area or so designated in this Declaration or any Supplemental Declaration.

1.27 "Majority in Interest" means 51 percent or more of the class of Person in question.

1.28 "Maximum Units" means the 51 Units in the initial Phase of Crosswater, plus the 43 Units anticipated to be developed within the second Phase of Crosswater, plus the 25 Condominium Units anticipated to be developed within Crosswater, plus the 25 Units that may be developed within the property commonly known as the "Wade West Parcel."

1.29 "Member" means a Person entitled to membership in the Association, as provided in Section 9.2.

1.30 "Mortgage" means a mortgage or a trust deed; "Mortgagee" means a mortgagee or a beneficiary of a trust deed; and "Mortgagor" means a mortgagor or a grantor of a trust deed.

1.31 "Owner" means 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 the 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" means a natural person, a corporation, a partnership, a limited liability company, a trustee, or any other legal entity.

1.33 "Phase" means all Units simultaneously subjected to this Declaration by Declarant by execution and recordation of this Declaration or any Supplemental Declaration in the official records of the County.

1.34 "Plat" means any plat or planned development maps affecting the Properties or any part thereof recorded in the official records of the County, as such maps may be amended from time to time.

1.35 "Properties" means the real property described on Exhibit A, together with such additional property as may be subjected to this Declaration in accordance with Article II.

Exhibit A and the Supplemental Declaration which subjects additional property to this Declaration shall provide a legal description of the Common Area, if any, then added to the Properties.

1.36 "Single Family Class A Members" means the Class A Members other than the Condominium Class A Members and the Golf Course Class A Member.

1.37 "Site Analysis Plan" means the plan adopted by Declarant for each Lot setting forth the Lot's Building Envelope and other site planning conditions.

1.38 "Special Assessment" means an assessment levied in accordance with Section 11.4.

1.39 "Specific Assessment" means an assessment levied in accordance with Section 11.5.

1.40 "Supplemental Declaration" means an amendment or supplement to this Declaration filed pursuant to Article II which subjects additional property to this Declaration and which identifies the Common Area, if any, included within the additional property.

1.41 "Unit" means 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 the Golf Course Parcel. The term shall also include single-family detached houses on Lots and Condominium Units, as well as vacant land intended for development as such, but shall not include Common Area or property dedicated to the public. 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 in the County's authorization for development of such parcel or the site plan approved by Declarant, whichever is more recent, until such time as a subdivision 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 in the manner set forth above and the number of Units on the remaining land, if any, shall continue to be determined in accordance with this Section 1.41.

1.42 "Use Guidelines and Restrictions" shall have the meaning given in Section 4.2.

ARTICLE II

ANNEXATION AND WITHDRAWAL OF PROPERTY2.1 Annexation.2.1.1 Annexation Without Approval of Membership.

Declarant may from time to time and in its sole discretion unilaterally subject to the provisions of this Declaration all or any part of the real property described on Exhibit B by recording in the official records of the County a Supplemental Declaration describing the property to be annexed and specifically subjecting such property to the terms of this Declaration. The right reserved in the preceding sentence shall continue until the termination of the Class B membership pursuant to Section 9.3.2. Such Supplemental Declaration shall not require the consent of the Members, but shall require the consent of the owner of such property, if other than Declarant. There are no limitations (except those imposed by applicable governmental authorizations) on the number of Units that may be annexed hereunder, nor on the right of Declarant to annex common property. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration, unless otherwise provided therein.

2.1.2 Annexation With Approval of Membership.

The Association or 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 Members representing 67 percent of the total Class A voting power represented at a meeting duly called for such purpose, the approval of each first Mortgagee of a Unit, and the consent of Declarant so long as Declarant owns any property described on Exhibit A or B. Such annexation shall be accomplished by filing a Supplemental Declaration in the official records of the County 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 Secretary of the Association and by the owner of the annexed property. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration, unless otherwise provided therein.

2.1.3 Voting Rights. Upon annexation, additional Units so annexed shall be entitled to voting rights as set forth in Section 11.13.

2.1.4 Adjustment of Association Expenses. The formula to be used for reallocating the Common Expenses if additional Units are annexed, and the manner of reapportioning the Common Expenses if additional Units are annexed during a fiscal year, are set forth in Section 9.3.

2.1.5 Additional Covenants and Easements. Declarant may unilaterally subject any portion of the property submitted to

this Declaration initially or by Supplemental Declaration to additional covenants and easements, including, without limitation, covenants obligating the Association to maintain and insure such property on behalf of the Owners. 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 Declarant.

2.2 Withdrawal of Property. Declarant reserves the right, without prior notice and without the consent of any Person, to amend this Declaration for the purpose of removing property then owned by Declarant, its affiliates, or the Association from the coverage of this Declaration, to the extent such property was originally included in error, or as a result of any changes in Declarant's plans for the Properties, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Properties. The right reserved in the preceding sentence shall continue for as long as (i) Declarant has the right to annex additional property pursuant to this Article II and (ii) Crosswater Development L.L.C. or its affiliate is Declarant hereunder. If a portion of the Properties is so withdrawn, all voting rights otherwise allocated to Units being withdrawn shall be eliminated, and the Common Expenses shall be reallocated as provided in Section 11.13.

2.3 Assignment of Rights. Declarant may transfer or assign its right to annex or withdraw property pursuant to this Article II (subject to the limitations described in Section 2.2), provided that the transferee or assignee is the developer of at least a portion of the real property described in Exhibit 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 Declarant or any successor to annex or develop any of the property set forth in Exhibit B in any manner whatsoever.

ARTICLE III

PROPERTY RIGHTS IN COMMON AREA

3.1 Owners' Easements of Enjoyment. Every Owner shall have a non-exclusive right and easement of enjoyment in and to the Common Area, which easement shall be appurtenant to and shall pass with the title to every Unit, subject to:

3.1.1 The Crosswater Documents and the Condominium Documents;

3.1.2 Any restrictions or limitations contained in any deed conveying such property to the Association;

3.1.3 The right of the Board to adopt rules regulating the use and enjoyment of the Common Area, including, without limitation, 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;

3.1.4 The right of the Board to impose reasonable membership requirements and charge reasonable membership admission or other fees for the use of any recreational facility situated upon the Common Area;

3.1.5 The right of the Board to suspend the right of an Owner to use recreational facilities within the Common Area in accordance with the Crosswater Documents;

3.1.6 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 16.2.1; and

3.1.7 The right of the Association to grant temporary licenses to come upon the Properties in connection with special events held thereon.

3.2 Delegation of Use. Any Owner may delegate, in accordance with the Crosswater Documents, the Owner's right and easement of enjoyment in and to the Common Area to members of his or her family, permitted lessees, and social invitees.

ARTICLE IV

RESTRICTIONS ON USE

4.1 Plan of Development; Applicability; Effect.

4.1.1 Declarant has created Crosswater as a residential development and, in furtherance of its and every other Owner's interests, has established a general plan of development for Crosswater as a master planned community. The Properties are subject to architectural, design, and land development guidelines as set forth in Articles VI and VII. The Properties are also subject to guidelines and restrictions governing land use, individual conduct, and uses of or actions upon the Properties as provided in this Article IV. All provisions of this Declaration and of any Use Guidelines and Restrictions shall also apply to all occupants, tenants, guests, and invitees of any Unit or Owner.

4.1.2 Declarant promulgates Crosswater'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

Crosswater, all subject to the Board's and the Members' ability to respond to changes in circumstances, conditions, needs, and desires within the master planned community.

4.2 Board Power. Subject to the terms of this Article IV, the Board shall have the authority to adopt rules in implementation of, and not inconsistent with, this Article IV (such rules, "Use Guidelines and Restrictions"). 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. Members shall have a reasonable opportunity to be heard at a Board meeting prior to any action being taken. The Board shall send a copy of any proposed new rule to each Owner at least 30 days prior to its effective date. The rule shall become effective unless disapproved at a meeting by Members representing at least 67 percent of the total Class A voting power or by Declarant, so long as Declarant owns any property described on Exhibit A or B. The Board shall have all powers necessary and proper, subject to its exercise of sound business judgment and reasonableness, to implement the authority contained in this Section 4.2. The Board shall provide, without cost, a copy of the Use Guidelines and Restrictions then in effect to any requesting Member or Mortgagee.

4.3 Members' Power. The Members, at a meeting duly called for such purpose as provided in the Bylaws, may adopt, repeal, modify, limit, and expand Use Guidelines and Restrictions by a vote of 67 percent of the total Class A voting power and the approval of Declarant, so long as Declarant owns any property described on Exhibit A or B.

4.4 Owners' Acknowledgment. All Owners are subject to the provisions of this Article IV and the Use Guidelines and Restrictions and are given notice that (i) their ability to use their privately owned property is limited thereby and (ii) the Board and/or the Members may implement, develop, or amend the Use Guidelines and Restrictions in accordance with Sections 4.2 and 4.3, as the case may be. Each Owner by acceptance of a deed acknowledges and agrees that the use and enjoyment and marketability of his or her property may be affected by the provisions of this Article IV and that such provisions and/or the Use Guidelines and Restrictions may change from time to time.

4.5 Rights of Owners. Except as may be specifically set forth in Section 4.6, neither the Board nor the Members may adopt any rule in violation of the following provisions:

4.5.1 Equal Treatment. Similarly situated Owners and occupants shall be treated similarly.

4.5.2 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 proportionate use of the Common Area, including parking.

4.5.3 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.

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

4.5.5 Reasonable Rights to Develop. No rule or action by the Association or Board shall unreasonably impede Declarant's right to develop in accordance with authorizations obtained from the County or from any other applicable governmental authority.

4.6 Restrictions.

4.6.1 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 Declarant or the Association consistent with this Declaration and any Supplemental Declaration). Any Supplemental Declaration may impose stricter standards than those contained in this Article, and the Association shall have standing and the power to enforce such standards.

4.6.2 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, including posters, circulars, and billboards, except those required by law; those posted by Declarant or Declarant's agents, affiliates, successors, or assigns; those posted by the Association for informational or directional signage purposes; or those expressly permitted under the Design Guidelines.

(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, unless otherwise fully screened from view by Improvements approved in accordance with Article VI.

(iii) Active use of lakes, ponds, streams, or other bodies of water within the Properties or within any Golf Course, except to the extent expressly provided in this subparagraph. 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 Area 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. Fishing and boating shall be permitted on the bodies of water within the Properties, subject to rules and regulations adopted hereunder.

(iv) 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.

(v) 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.

(vi) Capturing, trapping, killing, or otherwise engaging in activities that threaten the protection of, wildlife (including, without limitation, migrating deer) 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. Approved fencing is required to ensure that domestic pets do not stray from the Owner's property. All dogs shall be kenneled, leashed, or under direct human supervision at all times. 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. Public hunting is permitted on the Deschutes River in accordance with regulations adopted by the State of Oregon Department of Fish and Wildlife.

(vii) 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. Native vegetation along the Deschutes River shall not be disturbed.

(viii) Excavation other than in connection with Improvements approved as provided in this Declaration. For purposes of this subsection, "excavation" means any disturbance of the surface of the land (except to the extent reasonably necessary for approved landscape planting) which results in a removal of earth, rock, or other substance a depth of more than 18 inches below the natural surface of the land.

(ix) Above-ground installations of electrical, telephone, cable television, or other utility services.

(x) Digging of wells or installation or operation of storage tanks, reservoirs, or power, telephone, or other utility lines (wire, pipe, or conduit), except by Declarant or in connection with water wells and works operated by the Association, public agencies, or duly certified public utility companies.

(xi) Constructing any Improvements, placing any landscaping, or suffering the existence of any other condition whatsoever which alters or interferes with the drainage pattern for the Properties, except to the extent expressly set forth in Section 5.6.

(xii) Throwing or dumping of trash, ashes, garbage, or other refuse or burning or other disposal of refuse out of doors. Each Owner shall provide suitable receptacles for the temporary storage and collection of refuse, disposal of which shall be provided either by a licensed solid waste company or the Association. All such receptacles shall be screened from public view and from the wind and protected from animal and other disturbance.

(xiii) Blasting or comparable activity; provided, however, that no approval of any blasting shall in any way release the Person conducting the blasting from liability in connection with the blasting, nor shall such approval in any way be deemed to make Declarant or the Association liable for any damage which may occur from blasting. The Owner performing or causing the performance of the blasting shall

defend and indemnify Declarant, the Association, and their respective members, managers, partners, officers, directors, and employees from any expense or liability resulting from such blasting.

(xiv) Construction or installation of temporary structures, other than pursuant to Sections 4.6.5 and 17.2.

(xv) Hanging of laundry or wash outside any building.

(xvi) Work on automobiles or other vehicle repair in any area exposed to public view.

(xvii) Obstruction, or interference with the free use, of any trails, except as may be reasonably required in connection with repairs.

(xviii) Discharge of firearms. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size.

(xix) 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 Declarant approved by Declarant with respect to its development and sale of the Properties or any part thereof or its use of any Units which it owns within the Properties.

(xx) Removing any rock, plant material, top soil, or similar items from any property of others.

(xxi) Careless disposition of cigarettes and other flammable materials.

4.6.3 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 VI; provided, however, that Declarant and the Association shall have the right, but not the 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 installed or constructed by or on behalf of any Owner (but specifically excluding Declarant, the Association, and the owner of the Golf Course) which draw upon water from creeks, streams, ponds, or other ground or surface waters within the Properties; and

(iii) Excessive exterior lighting on any Unit, as determined by the Board in its sole discretion.

4.6.4 Leasing.

(i) The leasing of a Unit shall not be considered a business or trade within the meaning of Section 4.6.2(xix). "Leasing," for purposes of this Declaration, is defined as regular, exclusive occupancy of a Unit by any Person other than the Owner or the members of the Owner's family, for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, or gratuity. 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. 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. All leases shall provide that the lessee and all occupants of the leased Unit shall be bound by the Crosswater Documents, and any failure of a lessee to comply with the Crosswater Documents shall be a default under the lease.

(ii) All leases shall be for a term of no less than 30 days, except (A) with the prior written consent of the Board or (B) in Units owned by Declarant.

(iii) 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 Crosswater Documents and regulations. The Board may adopt reasonable rules regulating leasing and subleasing.

(iv) Condominium Units shall not be subject to the restrictions contained in this Section 4.6.4.

4.6.5 Development. It shall be expressly permissible and proper for Declarant and Declarant's employees, agents, independent contractors, successors, and assigns involved in the construction of Improvements on, or the providing of utility service to, the Properties or other real property owned by Declarant, to perform such activities and to maintain upon portions of the Properties such facilities as may be reasonably required or convenient for construction and development of the Properties. This permission specifically includes, without limiting the generality of the foregoing, maintaining business offices, storage areas, construction yards and equipment, signs, and sales offices. However, no activity shall be performed and no facility shall be maintained on any portion of the Properties in such a way as to interfere unreasonably with the use, enjoyment, or access of any Owner and its tenants, employees, guests, or business invitees.

ARTICLE V

EASEMENTS

5.1 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 solely to acts of God 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, knowing, or negligent conduct on the part of, or with the knowledge and consent of, an Owner or occupant or the Association, as the case may be.

5.2 Easements for Utilities, Etc.

5.2.1 There are hereby reserved for Declarant (so long as Declarant owns any property described on Exhibit A or B), the Association, and the designees of each (which may include, without limitation, the County 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, ducts, shafts, flues, conduit installation areas, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas, electricity, and cable television, 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.

This easement shall not entitle the holders thereof 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. To the extent practicable, all such easements affecting a Unit shall be sited within the setback areas designated for such Unit.

5.2.2 Declarant specifically grants to the local water supplier, electric company, telephone company, sewer utility, cable television provider, and natural gas supplier easements across the Properties for 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. To the extent practicable, all such easements affecting a Unit shall be sited within the setback areas designated for such Unit.

5.2.3 Should any utility furnishing a service covered by the general easement set forth in this Section 5.2 request a specific easement by separate recordable document, either Declarant or the Association shall have, and are hereby given, the right and authority to grant such easement upon, across, over, or under any part or all of the Properties.

5.3 Declarant's Rights Incident to Construction and Sales. Declarant, for itself and its duly authorized agents, representatives, employees, successors, assigns, licensees, and Mortgagees, hereby retains a right and easement of ingress and egress over, in, upon, under, and across the Common Area and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of Improvements on the Properties or other real property owned by Declarant and to the sale and marketing of Units; provided, however, that no such right shall be exercised by Declarant in such a way as to interfere unreasonably with the occupancy, use, or enjoyment of, or access to, an Owner's Unit by that Owner or that Owner's family, tenants, employees, guests, or invitees.

5.4 Easements to Serve Additional Property. Declarant, for itself and its duly authorized agents, representatives, employees, successors, assigns, licensees, and Mortgagees, hereby reserves an easement over the Common Area for the purposes of enjoyment, use, access, and development of the property described on 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.

5.5 Easements for Golf Course.

5.5.1 Every Lot and the Common Area are burdened with an easement permitting golf balls to come upon such Lot or Common Area and for golfers at reasonable times and in a reasonable manner to come upon the Lot or Common Area to retrieve errant golf balls; provided, however, that if any golf ball is located within a fenced or walled area, the golfer shall seek the Owner's permission before entry into such area. 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: Declarant; the owner of the Golf Course; their respective successors, successors-in-title, or assigns; the Association or its Members (in their capacity as such); any builder or contractor (in their capacity as such); any officer, director, partner, member, manager, agent, or employee of any of the foregoing; or any officer, director, member, manager, agent, or employee of any partner.

5.5.2 The owner of the Golf Course and its 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 Area reasonably necessary, with or without the use of maintenance vehicles and equipment, for the operation, maintenance, repair, and replacement of the Golf Course.

5.5.3 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 owner of the Golf Course be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

5.5.4 The owner of the Golf Course and its 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 Area lying reasonably within range of golf balls hit from the Golf Course.

5.5.5 The owner of the Golf Course and its agents, successors, and assigns, as well as their respective guests, invitees, and 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 to the extent

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.

5.5.6 The owner of the Golf Course and its agents, successors, and assigns shall have a perpetual, non-exclusive easement over the Properties, to the extent reasonably necessary, 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.

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

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

5.5.9 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 owner of the Golf Course be held liable for any damage or injury resulting from the exercise of this easement. The owner of the Golf Course and its agents, successors, and assigns, as well as their respective guests, invitees, and 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.

5.6 Easements Regarding Drainage.

5.6.1 Every Lot and the Common Area shall be burdened with easements for natural drainage of storm water runoff from other portions of the Properties.

5.6.2 An easement is hereby reserved for Declarant, the Association, and the designees of each to enter upon across, over, in, and under any portion of the Properties for the purpose of changing, correcting, or otherwise modifying the grade or drainage channels of the Properties so as to improve the drainage of water. Best efforts by the holders thereof shall be made to use this easement in such a manner so as not to disturb the uses of the Owners, the Association, and Declarant, as applicable, to the extent possible; to undertake such drainage work promptly and expeditiously; and to restore any areas affected by such work to a slightly and usable condition as soon as reasonably possible following such work. No Person shall alter the natural drainage

on any Unit so as materially to increase the drainage of storm water onto adjacent portions of the Properties without the consent of the Owner of the affected property.

5.7 Irrigation. Certain irrigation ditches cross or may subsequently cross Units within dedicated easements shown on Plats of portions of the Properties. The beneficiary of such easements and the Association are hereby granted the right to maintain these ditches within such easements and to enter upon Units to the extent necessary to perform such maintenance.

5.8 Conservation Easement. Each Owner acknowledges the existence of a separate Conservation Easement granted for the benefit of the County which permits, among other activities, certain public recreational uses of the areas adjoining the Deschutes and Little Deschutes Rivers.

5.9 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 XIII, and to inspect for the purpose of ensuring compliance with the Crosswater Documents, which right may be exercised by the Board; the Design Review Committee; officers, agents, employees, and managers of the Association or any of the foregoing; 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 request 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 capacity.

5.10 Easements Deemed Created. All conveyances of Units after the date of recording of this Declaration shall be construed to grant and reserve the easements contained in this Article V, regardless of whether any specific reference to such easements appears in the instrument for such conveyance.

ARTICLE VI

DESIGN REVIEW COMMITTEE

6.1 Design Review. No Improvement shall be commenced, erected, placed, altered, added to, or maintained on, within, or beneath, or above the Properties until design plans and specifications showing the site layout, structural design, exterior elevations, exterior materials and colors, signs, landscaping, drainage, lighting, irrigation, utility facilities layout, and screening therefor have been submitted to and

approved in writing by the Design Review Committee. Notwithstanding the foregoing, any Owner may remodel, paint, or redecorate the interior of structures on his or her Unit without such approval. In addition, 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. 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. It is the intent and purpose of this Declaration to achieve a high standard of quality of workmanship and materials and to assure harmony of external design with existing Improvements and location with respect to topography and finished grade elevations.

6.2 Procedure. In all cases which require Committee approval or consent pursuant to this Declaration, the provisions of this Article VI shall apply. The procedure and specific requirements for Committee approval or consent may be set forth in Design Guidelines adopted from time to time by the Committee. The Design Guidelines shall not be inconsistent with this Declaration, but shall more specifically define and describe the design standards for Crosswater and the various uses therein. The Design Guidelines may be modified or amended from time to time by the Committee. The Committee may charge a reasonable fee to cover the cost of processing an application for its approval. Compliance with the design review process set forth in this Declaration is not a substitute for compliance with County building, zoning, and subdivision regulations, and each Owner is responsible for obtaining all approvals, licenses, and permits as may be required prior to commencing construction. WITHOUT LIMITATION OF THE FOREGOING, EACH OWNER ACKNOWLEDGES THAT DEVELOPMENT ACTIVITY ON LOTS WITHIN THE LANDSCAPE MANAGEMENT COMBINING ZONE CONTAINED WITHIN THE PROPERTIES MUST RECEIVE SITE PLAN APPROVAL FROM THE COUNTY IN ACCORDANCE WITH THE PROVISIONS OF APPLICABLE COUNTY ORDINANCES AND REGULATIONS AT THE TIME OF APPLICATION.

6.3 Variance. The Committee may authorize variances from compliance with any of its Design Guidelines when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. Such variances may only be granted, however, when unique circumstances dictate and no such variance shall (i) be effective unless in writing; (ii) be contrary to this Declaration; or (iii) estop the Committee from denying a variance in other circumstances. For purposes of this Section 6.3, 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.

6.4 Expert Consultation. The Committee may avail itself of technical and professional advice and consultants as it deems appropriate.

6.5 Committee Decision. The Committee shall render its decision on an application for approval of an Improvement or any other proposal submitted to it for approval or consent within 20 working days after it has received a complete written application therefor. A complete application shall specify the approval or consent requested and be accompanied by all material reasonably required or desired by it to make an informed decision on such application. If the Committee fails to render approval or disapproval of such application within 30 working days after the Committee has received a complete application, or if no suit to enforce the terms of this Declaration has been commenced within one year after completion of construction of the Improvement, approval will not be required and the related provisions of this Declaration shall be deemed to have been fully complied with.

6.6 Committee Discretion. The Committee may, at its sole discretion, withhold consent to any proposed Improvement if the Committee finds the proposed Improvement would be inappropriate for the particular Unit or incompatible with the design standards that the Committee intends for Crosswater. Consideration of siting, shape, size, color, design, height, solar access, impairment of the view from other Units, effect on the enjoyment of other Units or the Common Area, disturbance of existing terrain and vegetation, environmental impact, and any other factors which the Committee reasonably believes to be relevant, may be taken into account by the Committee in determining whether or not to approve or condition its approval of any proposed Improvement.

6.7 Membership; Appointment and Removal. The Committee shall consist of as many persons, but not less than three, as Declarant may from time to time appoint. Declarant may remove any member of the Committee from office at any time and may appoint new or additional members at any time. The Association shall keep on file at its principal office a list of the names and addresses of the members of the Committee. Declarant may at any time delegate, but shall, in any event, delegate at or prior to the turnover meeting described in Section 9.4, to the Board the right to appoint or remove members of the Committee. At such time as Declarant delegates to the Board the right to appoint or remove members of the Committee, or if Declarant fails to appoint members of the Committee, then the Board shall assume responsibility for appointment and removal of members of the Committee. If the Board has assumed the responsibility for appointment of the members of the Committee and fails to make such appointments, the Board shall serve as the Committee.

6.8 Operations. The members of the Committee shall annually elect a chairman, who shall conduct all meetings and

shall provide for reasonable notice to each member of the Committee prior to any meeting. The notice shall set forth the time and place of the meeting. Notice may be waived by any member.

6.9 Majority Action. The affirmative vote of a majority of the members of the Committee shall govern its actions and constitute the act of the Committee. A quorum of the Committee shall consist of a majority of the Committee's members. The Committee may render its decision only by written instrument setting forth the action taken by the members consenting thereto.

6.10 Limitation of Liability. The Committee shall use reasonable judgment in accepting or disapproving all plans and specifications submitted to it. Neither the Committee nor any individual Committee member shall be liable to any Person for any official act of the Committee in connection with submitted plans and specifications, except to the extent the Committee or any individual Committee member acted with malice or wrongful intent. Approval by the Committee does not necessarily assure approval by the County or other governmental agency. Notwithstanding that the Committee has approved plans and specifications, neither the Committee nor any of its members shall be responsible or liable to any Owner, occupant, or contractor with respect to any loss, liability, claim, or expense which may arise by reason of such approval. Neither the Board, the Committee, or any agent thereof, nor Declarant or any of its members, managers, employees, agents, or consultants, shall be responsible in any way for any defects in any plans or specifications submitted, revised, or approved in accordance with the provisions of the Crosswater Documents, nor for any structural or other defects in any work done according to such plans and specifications. The Association shall indemnify, hold harmless, and defend the Committee and its members in any suit or proceeding which may arise by reason of any of the Committee's decisions. The Association, however, shall not be obligated to indemnify any member of the Committee to the extent such member shall be adjudged to be liable for negligence or misconduct in the performance of his or her duty as a member of the Committee, unless (and then only to the extent that) the tribunal in which such action or suit is brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such Person is fairly and reasonably entitled to indemnification for such expense. The Association shall use all reasonable efforts to procure errors and omissions insurance coverage with respect to members of the Committee.

6.11 Nonwaiver. Consent by the Committee to any matter proposed to it or within its jurisdiction shall not be deemed to constitute a precedent or waiver impairing its right to withhold approval as to any similar matter thereafter proposed or submitted to it for consent.

6.12 Effective Period of Consent. The Committee's consent to any proposed Improvement shall automatically be revoked one year after issuance unless construction of the work has been commenced or the Owner has applied for and received an extension of time from the Committee.

6.13 Estoppel Certificate. Within 15 working days after written request therefor is delivered to the Committee by any Owner, and upon payment to the Committee of a reasonable fee, if any, fixed by the Committee to cover its costs, the Committee shall provide such Owner with an estoppel certificate executed by a member of the Committee and acknowledged, certifying with respect to any Unit owned by the Owner, that as of the date thereof, either: (i) all Improvements made or done upon or within such Unit by the Owner comply with this Declaration, or (ii) such Improvements do not so comply. If the estoppel certificate states that the Improvements do not comply, such certificate shall also identify the noncomplying Improvements and set forth with particularity the nature of such noncompliance. Any purchaser from the Owner, and any Mortgagee, shall be entitled to rely conclusively on such certificate with respect to the matters set forth therein.

6.14 Activities of Declarant. This Article VI shall not apply to the activities of Declarant, or its affiliates, nor to Improvements to the Common Area by or on behalf of the Association.

ARTICLE VII

CONSTRUCTION AND ALTERATION OF IMPROVEMENTS

7.1 General. The Design Guidelines and the general restrictions set forth in this Declaration shall govern the right of an Owner, Builder, or other Person to construct, reconstruct, refinish, alter, or maintain any Improvement upon, under, or above the Properties or any part thereof.

7.2 Site Analysis Plan. The construction of Improvements and the clearing of vegetation on any Lot shall be performed strictly in accordance with the Site Analysis Plan for that Lot. Upon its adoption by Declarant, the Site Analysis Plan for each Lot shall be maintained in the offices of the Association. A Site Analysis Plan may be modified only with the approval of the Design Review Committee, provided (i) the Building Envelope contained therein is no larger than in the prior Site Analysis Plan, (ii) the Owners of Lots in the immediate vicinity of the Lot at issue shall be given reasonable notice of the proposed modification prior to consideration by the Committee (unless the Committee determines that emergency circumstances warrant immediate action), and (iii) the modified Site Analysis Plan is in strict conformance with the requirements of Section 7.7.

7.3 Required 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.

7.4 Construction Methods. Specific rules regarding construction methods, including but not limited to excavation, drainage, utility lines, loading areas, waste storage, trash removal, materials storage, and transformers and meters, shall be set forth in the Design Guidelines, and all Owners shall comply with such rules.

7.5 Construction of Improvements. The construction of any building, including an Owner's dwelling (but excluding any building constructed by Declarant), including painting and all exterior finish, shall be pursued diligently and shall be completed within 18 months from the beginning of construction so as to present a finished appearance when viewed from any angle. In the event of undue hardship due to weather conditions, these periods may be extended for a reasonable length of time upon written approval of the Committee. Each dwelling shall have a house number and location approved by the Committee.

7.6 Landscape Completion. All landscaping on a Lot must be completed within six months from the date of completion of the dwelling constructed thereon. In the event of undue hardship due to weather conditions, this period may be extended for a reasonable length of time upon written approval of the Committee.

7.7 Setback, Maximum Height, and Minimum Yard Requirements. In addition to the requirements of Section 7.2, each Lot shall be subject to (i) the setback, maximum height, and minimum yard requirements, if any, shown on the Plat depicting such Lot or which are established by the governmental authority with jurisdiction over such Lot, and (ii) any land use review procedure established by the governmental authority with jurisdiction over such Lot for review and approval of variances from such requirements. Further, all Lots are subject to any more restrictive setback, maximum height, or minimum yard requirements as are established from time to time by the Committee. No Improvement shall be constructed or maintained in violation of any setback, maximum height, or minimum yard requirement, except with the written consent of the Committee and any applicable governmental approval.

ARTICLE VIII

RESTRICTIONS ON PARTITION AND COMBINATION

8.1 Units. No part of a Unit (including a Unit created by the combination of two or more Units in accordance with this Section 8.1) may be partitioned or separated from any other part thereof. No Units may be combined, except as provided in this

Section 8.1. Two or more Units may be combined into one only with the written consent of Declarant (or of the Association after termination of the Class B membership) and full compliance with all applicable state and County zoning and subdivision regulations, as well as any applicable Condominium Documents. Declarant's consent may be conditioned upon payment by the Owner or Owners concerned of all expenses incident to giving the consent, including legal and accounting fees. Every agreement and recorded instrument for combination of Units shall make adequate adjustment of voting rights and liability for payment of assessments appurtenant to or imposed on such Units.

8.2 Common Area. No Owner shall bring any action for partition or division of the Common Area. By acceptance of a deed or other instrument of conveyance or assignment, each Owner shall be deemed to have specifically waived such Owner's rights to institute or maintain a partition action or any other action designed to cause a division of the Common Area, and this Section 8.2 may be pleaded as a bar to any such action. Any Owner who shall institute or maintain any such action shall be liable to the Association for the Association's costs, expenses, and reasonable attorneys' fees in defending any such action.

ARTICLE IX

ASSOCIATION FUNCTION, MEMBERSHIP, AND VOTING RIGHTS

9.1 Function of Association. The Association shall be the entity responsible for management, maintenance, operation, and control of the Area of Common Responsibility. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules and regulations governing the use of the Properties as the Board may adopt. The Association shall also be responsible for administering and enforcing the design standards and controls set forth in this Declaration and in the Design Guidelines. The Association shall perform its functions in accordance with the Crosswater Documents.

9.2 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 9.3 and in the Bylaws, 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, limited liability company, or other legal entity may be exercised by any officer, director, partner, member, manager, 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. Membership in the Association shall commence, exist, and continue simply by virtue of ownership of a Unit, shall expire automatically upon the termination of such ownership, and need not be confirmed or evidenced by any certificate or acceptance of membership.

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

9.3.1 Class A. Class A Members shall be all Owners except the Class B Member, if any. The Single Family Class A Members shall have one equal vote for each Unit in which they hold the interest required for membership under Section 9.2. The Golf Course Class A Member shall have voting rights representing six percent of the total Class A voting power beginning on the first day of the first calendar month following the opening of the Golf Course. The Golf Course Class A Member shall have voting rights representing 12 percent of the total Class A voting power beginning on the first day of the first calendar month following the opening of the clubhouse facility anticipated to be constructed on the Golf Course Parcel. Declarant shall determine in good faith the dates of opening of the Golf Course and the clubhouse facility, respectively, for purposes of this Declaration. The Condominium Class A Members shall have voting rights representing 13 percent of the total Class A voting power beginning on the first day of the first calendar month following formation of the Condominium Association. The Single Family Class A Members shall have voting rights representing the remainder of the Class A voting power. Notwithstanding the foregoing, the Golf Course Class A Member and the Condominium Class A Members shall have special appointment rights in connection with the selection of directors of the Association, as provided in the Bylaws. All voting and appointment rights of the Condominium Class A Members pursuant to the Crosswater Documents may only be exercised by the Condominium Association; individual Owners of Condominium Units shall not be entitled to voting or appointment rights.

9.3.2 Class B. The Class B Member shall be Declarant. The Class B Member shall be entitled to voting rights equal to the product of (i) the voting power pertaining to any Unit owned by Declarant and (ii) three. If Declarant owns a majority of the Condominium Units, Declarant shall be deemed to own all of the Condominium Units for purposes of the preceding sentence. The Class B membership shall cease and be converted to Class A membership upon the earlier of the following:

(i) when 90 percent of the Maximum Units are owned by Owners other than Declarant;

(ii) December 31, 2003; or

(iii) when, in its discretion, Declarant so determines by recordation of an instrument expressly providing for such termination in the official records of the County.

From and after the happening of these events, whichever occurs first, the Class B Member shall be deemed to be a Class A Member entitled to one vote for each Unit in which it holds the interest required for membership under Section 9.2.

9.3.3 Exercise of Voting Rights. 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.

9.4 Turnover Meeting. Declarant shall call a meeting by giving notice to each Owner as provided in the Bylaws for the purpose of turning over administrative responsibility for the Properties to the Association not later than 120 days after the event set forth in Section 9.3.2 has occurred. If Declarant does not call the meeting required by this Section 9.4 within the required period, two or more Members may call such a meeting and give notice as required by this Section. At the turnover meeting, the directors then holding office shall resign and their successors shall be elected as provided in the Bylaws. At the turnover meeting, Declarant shall also deliver to the Association books, records, plans, contracts, and other appropriate documents and materials in Declarant's possession relating to the Association.

ARTICLE X

RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

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

10.2 Personal Property and Real Property for Common Use. The Association, through action of the Board, may acquire, hold, and dispose of tangible and intangible personal property and real property, subject to the provisions of Section 16.2. Declarant may convey to the Association improved or unimproved real estate located within the properties described in Exhibit 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. Declarant shall convey the Common Area included in the Initial Phase to the Association no later than the date of the turnover meeting described in Section 9.4.

10.3 Enforcement. The Association may exercise the rights and remedies set forth in the Crosswater Documents in order to enforce the provisions thereof. The Association, by contract or other agreement, may enforce County and city ordinances, if applicable, and permit governmental authorities to enforce applicable ordinances on the Properties for the benefit of the Association and its Members.

10.4 Implied Rights: Board Authority. The Association may exercise any other right or privilege given to it expressly by this Declaration or the other Crosswater Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Crosswater Documents or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

10.5 Governmental Interests. So long as Declarant owns any property described on Exhibit A or B, Declarant may designate sites within the Properties owned by Declarant or the Association for fire, police, utility facilities, public schools and parks, and other public facilities. The sites may include Common Area.

10.6 Assistance to Design Review Committee. The Association shall in all respects cooperate with and assist the Design Review Committee in the performance of the Committee's functions and in the enforcement of its decisions and the Design Guidelines.

10.7 Cooperation with Condominium Association and Owner of Golf Course. The Board shall assist the Condominium Association in the performance of its duties and obligations under the Condominium Documents, and the Association shall cooperate with the Condominium Association so that it can most efficiently and economically provide services to Owners of Condominium Units. The Board shall also cooperate with the owner of the Golf Course Parcel in connection with the operation of the Golf Course. It is contemplated that from time to time either the Association or the Condominium Association, or the Association and the owner of the Golf Course Parcel, as the case may be, may use the services of the other in the furtherance of their respective obligations, and they may contract with each other to better provide for such cooperation.

10.8 Professional Management. The Association may employ or contract for professional management services.

10.9 Indemnification. The Association shall indemnify every officer, director, Design Review Committee member, or other member of a committee established under the Bylaws 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 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 ORS 65.784, if the Association indemnifies or advances expenses pursuant to this Section or ORS 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.

10.10 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 NOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY FOR 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 CANNOT 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, AND 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.

10.11 Owners' Storage Yard. The Association is authorized to enter into a lease with respect to the owners' storage yard anticipated to be constructed within the Golf Course Parcel and to adopt regulations governing the use thereof.

ARTICLE XI

ASSESSMENTS

11.1 Creation of Assessments.

11.1.1 The Association is hereby authorized to levy assessments against each Unit for Association expenses as the Board may specifically authorize from time to time. There shall be three types of assessments for Association expenses: (i) Base Assessments to fund Common Expenses for the general benefit of all Units; (ii) Special Assessments, as described in Section 11.4; and (iii) Specific Assessments, as described in Section 11.5. 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.

11.1.2 All assessments, together with interest from the due date of such assessment at a rate determined in accordance with Section 11.14, late charges, costs, and reasonable attorneys' 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 11.8. Each such assessment, together with interest, late charges, costs, and reasonable attorneys' fees, shall also 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 personally liable for any assessments and other charges due at the time of conveyance unless expressly assumed by him or her, subject to the lien rights of the Association and to the continuing liability of the Person who was the Owner of the Unit at the time the assessment arose. 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.

11.1.3 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 shall be due and payable quarterly in advance on the first day of each fiscal quarter of the Association.

11.1.4 The Association shall, within 10 business days after request therefor, 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.

11.1.5 No Owner may exempt himself or herself from liability for assessments, whether 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 by it, or for inconvenience or discomfort arising from the making of repairs or Improvements, or from any other action it may take.

11.2 Computation of Base Assessment.

11.2.1 The Board shall prepare a budget covering the estimated Common Expenses during the coming year pursuant to the terms and provisions set forth in the Bylaws.

11.2.2 The Base Assessment 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 11.7 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.

11.2.3 The Base Assessment shall be allocated in the following manner:

(i) Beginning on the first day of the first calendar month following the opening of the Golf Course (as determined in good faith by Declarant), six percent of the Base Assessment shall be allocated to the Golf Course Parcel. Beginning on the first day of the first calendar month following the opening of the clubhouse facility anticipated to be constructed thereon, 12 percent of the Base Assessment shall be allocated to the Golf Course Parcel.

(ii) Beginning on the first day of the first calendar month following formation of the Condominium Association, 13 percent of the Base Assessment shall be allocated to the Condominium Units (all of which Units shall be assessed equally).

(iii) The remainder of the Base Assessment shall be allocated to the Units owned by the Single Family Class A Members (all of which Units shall be assessed equally).

11.2.4 Units (other than Condominium Units) owned by Declarant or Declarant's affiliates (excluding affiliates who are natural persons) shall not be subject to payment of the Base Assessment during the period in which there is Class B membership in the Association; provided, however, that if the aggregate Base Assessments with respect to any period during which there is Class B membership in the Association, if paid in full by the Owners whose Units are subject to payment of the Base Assessment, would not be sufficient to pay all actual operating expenses for which line items were included in the budget approved by the Board for that period, then Declarant shall promptly pay to the Association the amount of any such deficiency. Any amount paid to the Association by Declarant pursuant to this Section 11.2.4 shall be non-refundable and shall not be characterized as a loan or advance. Declarant shall have no obligation to make payments to the Association pursuant to this Section 11.2.4 with respect to deficiencies attributable to expenses not contemplated in the budget approved by the Board.

11.2.5 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 no more than 30 days after adoption of such budget.

11.3 Reserves. The budget described in Section 11.2.1 shall include provision for reserves which take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost.

11.4 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 11.6. Special Assessments shall be payable in such manner and at such times as may be determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. Special Assessments shall be allocated in the manner provided for Base Assessments pursuant to Section 11.2.3; provided, however, that Units owned by Declarant or Declarant's affiliates shall be subject to payment of Special Assessments in the same manner as if such Units were owned by Single Family Class A Members.

11.5 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 under the following circumstances:

11.5.1 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, snow removal, landscape maintenance, provision of firewood, 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; or

11.5.2 To cover costs incurred in bringing the Unit into compliance with the terms of the Crosswater Documents or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit or their respective licensees, invitees, or guests; provided, however, that the Board shall give the Unit Owner prior written notice and an opportunity for a hearing in accordance with the Bylaws before levying a Specific Assessment under this Section 11.5.2.

11.6 Limitation of Increases of Assessments.

11.6.1 Except for assessment increases necessary for emergency situations or to reimburse the Association pursuant to Section 11.5, the Board may not impose a Base Assessment or Specific Assessment that is more than 10 percent greater than each of those assessments for the immediately preceding fiscal year, nor impose a Special Assessment which, in the aggregate, exceeds 5 percent of the budgeted Common Expenses for the current fiscal year, without the affirmative vote of a majority of those Members represented at a meeting of the Association at which a quorum is present. For purposes of this Section, "quorum" means Members representing more than 50 percent of the total voting power of the Association. 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 from Declarant pursuant to Section 11.2.4.

11.6.2 An emergency situation is any one of the following:

(i) an extraordinary expense required by an order of a court;

(ii) an extraordinary expense necessary to repair or maintain the Properties or any part thereof for which the Association is responsible where a threat to personal safety on the Properties is discovered; or

(iii) an extraordinary expense necessary to repair or maintain the Properties or any part thereof 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 11.2.

11.7 Date of Commencement of Assessments. Subject to Section 11.1, the obligation to pay the assessments provided for herein shall commence as to all Units within each Phase on the

earlier of (i) the first day of the month following the first conveyance of a Unit in the Phase to an Owner other than Declarant or (ii) 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.

11.8 Lien for Assessments.

11.8.1 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), costs of collection (including attorneys' fees), recording fees, and a fee for preparing the notice of lien established from time to time by resolution of the Board. Such lien shall be superior to all other liens, except (i) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (ii) 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.

11.8.2 The Association may file a statement of lien by recording in the official records of the County a written statement with respect to the Unit, setting forth the name of the Owner, the legal description of the Unit, the name of the Association, and the amount of delinquent assessments then owing, which statement shall be duly signed and acknowledged by the President, Vice President, or duly authorized property manager of the Association, and which shall be served upon the Owner of the Unit by mail to the address of the Unit or at such other address as the Association may have in its records for the Owner. The Association may proceed to foreclose the lien in the manner provided in ORS Chapter 88 after the expiration of a 30-day period following the mailing of such notice.

11.8.3 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: (i) no right to vote shall be exercised on its behalf; (ii) no assessment shall be levied on it; and (iii) each other Unit shall be charged, in addition to its usual assessment, its 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.

11.8.4 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 a 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 a 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 11.7, including such acquirer and its successors and assigns.

11.9 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 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.

11.10 Capitalization of Association. Upon acquisition of record title to each Unit (other than the Golf Course Parcel and the Condominium Units) by its first Owner (other than Declarant), 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-fourth of the annual Base Assessment for Units owned by Single Family Class A Members for that year. This working capital contribution shall be acquired by each succeeding Owner of that Unit on such terms and conditions as the transferor and transferee of the Unit may determine. For purposes of this Section, the term "Base Assessment" shall be deemed to include the amount assessed against each such Unit, plus a pro rata allocation of any amounts the Association received from Declarant pursuant to Section 11.2.4. 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 sale escrows 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 Bylaws.

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

- (i) all Common Area; and
- (ii) any property dedicated to and accepted by any governmental authority or public utility.

11.12 Reallocation Upon Annexation or Withdrawal of Property. If additional property or Phases are annexed to or withdrawn from Crosswater, the Association shall, within 60 days

after the annexation, recompute the budget in accordance with Section 11.1 based upon the additional or withdrawn Units and Common Area and recompute all applicable assessments for each Unit. Newly annexed Units shall be subject to assessment in accordance with the provisions of Section 11.7. The Association shall send notice of any applicable assessment to the Owners of newly annexed Units not later than 60 days after the annexation. If additional property or Phases are annexed to Crosswater during the Association's fiscal year, the Association shall send notice of and shall collect adjustments to assessments for Units which were within Crosswater prior to the annexation. Notice of the adjustment in the assessments shall be sent to such Owners not later than 60 days after the annexation. Assessments under this Section 11.12 shall be due and payable on or before a date set forth in the notice which shall be not less than 30 days after the date the notice is mailed. To the extent that any adjustment results in a credit with respect to assessments payable by an Owner, such credit shall be applied toward the next occurring payment or payments of the applicable assessment.

11.13 Default in Payment of Assessments; Enforcement of Lien. If an assessment or other charge levied under the Crosswater Documents is not paid within 30 days after its due date, such assessment or charge shall become delinquent and shall bear interest from the due date until paid at the rate set forth in Section 11.14 and, in addition, the Association may exercise any or all of the following remedies:

11.13.1 Suspend such Owner's voting rights, if any, and right to use the recreational facilities within the Common Area;

11.13.2 Declare all remaining periodic installments of any annual assessment or any other amounts owed by such Owner to the Association immediately due and payable;

11.13.3 File a statement of lien against the Owner's Unit and foreclose the lien in accordance with Section 11.8;

11.13.4 Bring an action to recover monetary damages;
or

11.13.5 Exercise any other right or remedy available to it by law or in equity or under this Agreement.

11.14 Interest and Late Charges. Any amount not paid to the Association when due in accordance with the Crosswater Documents shall bear interest from the due date until paid at a rate three percentage points per annum above the prime rate offered by First Interstate Bank of Oregon as of the due date therefor, or at such other rate as may be established by the Board, but not to exceed the lawful rate of interest under the laws of the State of Oregon. A late charge may be charged for

each delinquent assessment in an amount established from time to time by resolution of the Board not to exceed 30 percent of such assessment.

ARTICLE XII

ENFORCEMENT OF COVENANTS

12.1 Remedies. In the event of any breach or other non-compliance with any provision of the Crosswater Documents (other than the provisions of Article XI), then, after affording the breaching Person reasonable notice and an opportunity to be heard in accordance with the Bylaws, the Association may exercise any or all of the following remedies:

12.1.1 Bring an action to recover monetary damages;

12.1.2 Institute a proceeding in equity to obtain injunctive or other equitable relief;

12.1.3 Suspend such Owner's voting rights, if any, and right to use the recreational facilities within the Common Area;

12.1.4 Exclude such Owner's contractors, subcontractors, agents, employees, or other invitees from the Properties (in the case of a violation of Article VI or VII);

12.1.5 Impose reasonable fines against such Owner in the manner and amount the Board deems appropriate in response to the violation;

12.1.6 Enter the offending Unit; remove, abate, modify, or replace the item which is the cause of such violation in a manner that results in conformance with the Crosswater Documents; and assess the cost thereof against the Unit and collect the same as a Specific Assessment, unless otherwise prohibited under this Declaration; or

12.1.7 Exercise any other right or remedy available to it by law or in equity or under this Agreement.

12.2 Rights of Owners. Any action to enforce the Crosswater Documents may be instituted by Declarant or the Board (or any property manager retained by the Board) in the name and on behalf of the Association. If, after written request from an aggrieved Owner, none of the foregoing Persons commences an action to enforce the Crosswater Documents within a reasonable period, then the aggrieved Owner may bring such an action independently.

12.3 Limitation of Liability.

12.3.1 Reasonable and good faith exercise of the rights of entry set forth in Sections 5.9 and 13.2 shall not

subject Declarant, the Association, the Design Review Committee, any other committee established under the Bylaws, or their respective partners, officers, directors, members, managers, agents, employees, or contractors to any liability for trespass, conversion, or other claim for damages.

12.3.2 Declarant, the Association, the Design Review Committee, any other committee established under the Bylaws, and their respective partners, officers, directors, members, managers, agents, employees, and contractors shall not be liable to any Owner or other Person for failure at any time to enforce any of the Crosswater Documents.

12.4 Recovery of Costs and Fees. In the event any suit or other proceeding is instituted to enforce any of the Crosswater Documents, the prevailing party in such proceeding shall recover its costs and expenses incurred in connection therewith, as well as such amount as the court may determine to be reasonable as attorneys' fees at trial and upon any appeal or petition for review thereof.

12.5 Nonexclusiveness and Accumulation of Remedies. An election to pursue any remedy provided for violation of the Crosswater Documents shall not prevent concurrent or subsequent exercise of other rights or remedies permitted thereunder. The remedies provided in this Declaration are not exclusive, but shall be in addition to all other remedies, including actions for damages and suits for injunctions and specific performance, available under applicable law or in equity.

ARTICLE XIII

MAINTENANCE

13.1 Association's Responsibility.

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

(i) all landscaping and other flora, parks, signage, structures, and Improvements, including any private streets, tennis courts, swimming pools, water features (excluding any such features used for irrigation of the Golf Course), fencing, and bicycle and pedestrian pathways or trails, situated upon the Common Area;

(ii) landscaping, sidewalks, street lights, and signage within the 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 after the date a Certificate of Occupancy is issued with respect to Improvements on such Unit;

(iii) the Entry Property, which shall be maintained and operated in a first-class manner to serve all residents of Crosswater;

(iv) such portion 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, including, without limitation, the historic cemetery located within the Properties; and

(v) any property and facilities owned by Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members, such property and facilities to be identified by written notice from Declarant to the Association and to remain a part of the Area of Common Responsibility and be maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.

13.1.2 No Owner shall engage a contractor for purposes of snow removal within Crosswater without the prior written approval by the Association of that contractor.

13.1.3 There are hereby reserved to the Association easements over the Properties to the extent necessary to enable the Association to fulfill its maintenance responsibilities pursuant to this Section 13.1.

13.1.4 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.

13.1.5 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 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.

13.1.6 In the event the Association fails, in the reasonable discretion of Declarant, to maintain and operate the Entry Property in a first-class manner, then Declarant (and its affiliates) shall have the right, but not the obligation, to maintain and operate the Entry Property to the extent appropriate to ensure conformance with such standard and to charge the cost thereof to the Association. Any charges incurred by Declarant (or its affiliates) pursuant to this Section 13.1.6 shall be due and payable by the Association within 30 days after the date of invoice therefor and shall bear interest at the rate of 12 percent per annum if not paid within this period. Declarant (and its affiliates) shall have an easement to enter upon the Entry Property for purposes of exercising Declarant's rights under this Section 13.1.6.

13.2 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 pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Unit. Each Owner shall also be responsible for landscaping (to the extent any landscaping is located therein), irrigation, and maintaining any area within public rights of way between such Owner's Lot and the paved roadway located in rights of way adjacent to such Owner's Lot from the date a Certificate of Occupancy is issued with respect to Improvements on such Lot. In addition to any other enforcement rights provided in the Crosswater Documents, if an Owner fails properly to perform his or her maintenance responsibility, the Association may enter onto the property in question and perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner as a Specific Assessment in accordance with Section 11.5. The Association shall afford the Owner reasonable notice and an opportunity to cure the failure to maintain in accordance with the Bylaws prior to entry, except when entry is required due to an emergency situation.

13.3 Standard of Performance. Maintenance, as used in this Article, shall include, without limitation, repair and replacement as needed, as well as such other duties (including 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 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.

ARTICLE XIV

INSURANCE AND CASUALTY LOSSES14.1 Association Insurance.

14.1.1 The Association, acting through the 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 Association may also obtain flood insurance covering the Common Area, if such coverage is reasonably available. 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. The Association shall have no insurance responsibility for any part of the Golf Course.

14.1.2 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 with respect to bodily injury and property damage and at least a \$3,000,000.00 limit per occurrence and in the aggregate. Such public liability insurance shall also include protection against water damage liability, liability for non-owned and hired automobiles, liability for property of others, and, if applicable, elevator collision, garage-keeper's liability, host liquor liability, contractual and all-written contract insurance, employers' liability insurance, and such other risks as shall customarily be covered with respect to projects similar in construction, location, and use to Crosswater.

14.1.3 Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses and shall be included in the Base Assessment.

14.1.4 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 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 the Bylaws, that the loss is the result of the negligence or willful conduct of one or more Owners or occupants, then the Board may specifically assess the full amount of such deductible against the Unit of such Owner or occupant, pursuant to Section 11.5.

14.1.5 All insurance coverage obtained by the Association shall:

(i) 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;

(ii) be written in the name of the Association as trustee for the benefitted parties and shall include a standard mortgagee's clause;

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

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

(v) have an inflation guard enforcement, if reasonably available; and

(vi) have a building ordinance or law 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.

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

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

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

(iii) preclude cancellation, invalidation, suspension, or non-renewal 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;

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

(v) require at least 30 days' prior written notice to the Association (and any Mortgagee or other insureds named therein) of any cancellation, substantial modification, or nonrenewal.

14.1.7 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.

14.1.8 The Association shall also 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-fourth 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.

14.2 Owners' Insurance.

14.2.1 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 the Association carries such insurance (which it is not obligated to do hereunder). In addition, each Owner may obtain such other and additional insurance coverage on and in relation to such Owner's Unit as such Owner concludes to be desirable; provided, however,

that none of such insurance coverages obtained by an Owner shall affect any insurance coverages obtained by the Association nor cause the diminution or termination of the coverage obtained by the Association. Any such insurance obtained by an Owner shall include a waiver of the particular insurance company's right of subrogation against the Association and other Owners.

14.2.2 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 such structures in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article VI. 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. If such repair or restoration is not commenced within 180 days from the date of such damage or destruction, or if repair and reconstruction is commenced but then abandoned for a period of more than 90 days, then the Association may, after notice and hearing as provided in the Bylaws, impose a reasonable fine on the Owner of the Unit until repair and reconstruction is commenced, unless the Owner can prove to the satisfaction of the Association that such failure is due to circumstances beyond the Owner's control.

14.3 Damage and Destruction.

14.3.1 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 Section, 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.

14.3.2 Any damage to or destruction of the Common Area shall be repaired or reconstructed unless Members representing at least 75 percent of the Class A voting power and Declarant, so long as Declarant owns any property described on Exhibit A or B, decide within 60 days after the loss not to repair or reconstruct. 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 shall be repaired or

reconstructed. Assessments of the Association shall not be abated during the period of insurance adjustment and repair and reconstruction.

14.3.3 If it is determined in the manner described above that damage or destruction to the Common Area 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 in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

14.4 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 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.

14.5 Repair and Reconstruction. If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board shall, without a vote of the Members, levy Special Assessments against the Units.

14.6 Association as Attorney in Fact. Each and every Owner hereby irrevocably constitutes and appoints the Association as such Owner's true and lawful attorney-in-fact in such Owner's name, place, and stead for the purpose of dealing with the Improvements on the Areas of Common Responsibility upon damage or destruction as provided in this Article or a complete or partial taking as provided in Article 14. Acceptance by any grantee of a deed or other instrument of conveyance from Declarant or from any Owner shall constitute appointment of the Association as attorney-in-fact as herein provided. As attorney-in-fact, the Association shall have full and complete authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any Owner which may be necessary or appropriate to exercise the powers granted to the Association as attorney-in-fact.

ARTICLE XV

CONDEMNATION

15.1 Partial 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 Members representing at least 67 percent of the total Class A voting power and of Declarant, so long as Declarant owns any property described on Exhibit A or B) by any authority having the power of condemnation or eminent domain ("Condemnation"), each Owner shall be entitled to written notice of such event. The

award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

15.1.1 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 Declarant, so long as Declarant owns any property described on Exhibit A or B, and Members representing at least 75 percent of the total Class A voting power shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Sections 14.4 and 14.5 regarding funds for the repair of damage or destruction shall apply.

15.1.2 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.

15.2 Complete Condemnation. If all of Crosswater is taken or otherwise disposed of in connection with a Condemnation, then the regime created by this Declaration shall terminate, and the portion of the Condemnation award attributable to the Common Area shall be distributed in proportion to the respective obligations for Base Assessments pertaining to the Units pursuant to Article XI, first to the Mortgagees and then to the Owners, as their interests may appear.

ARTICLE XVI

MORTGAGE PROVISIONS

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

16.1 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:

16.1.1 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.

16.1.2 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 Crosswater Documents relating to such Unit or the Owner or occupant thereof 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 Crosswater Documents which is not cured within 60 days.

16.1.3 Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

16.1.4 Any proposed action which would require the consent of a specified percentage of Eligible Holders.

16.2 Special FNMA/FHLMC Provision. So long as required by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of any other provision of this Declaration.

16.2.1 Unless at least 67 percent of the first Mortgagees or Members representing at least 67 percent of the total Association voting power entitled to cast consent, the Association shall not:

(i) 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);

(ii) 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 shall not be violative of this provision if such decision or subsequent declaration is otherwise authorized by this Declaration);

(iii) 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 Design Guidelines or other rules, regulations, guidelines, or restrictions in accordance with the Crosswater Documents

shall not constitute a change, waiver, or abandonment within the meaning of this provision);

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

(v) Use hazard insurance proceeds for any Common Area losses for other than the repair, replacement, or reconstruction of such property, except to the extent expressly set forth in this Declaration.

16.2.2 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 therefor from the Association.

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

16.3.1 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 Eligible Holders of first Mortgages on Units to which at least 51 percent of the votes of Units subject to Mortgages held by such Eligible Holders are allocated.

16.3.2 Any election to terminate the Association after substantial destruction or a substantial Condemnation shall require the approval of the Eligible Holders of first Mortgages on Units to which at least 51 percent of the votes of Units subject to Mortgages held by such Eligible Holders are allocated.

16.4 No Priority. No provision of the Crosswater Documents gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or Condemnation awards for losses to or a taking of the Common Area.

16.5 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.

16.6 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.

16.7 Applicability of Article. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Crosswater Documents or Oregon law for any of the acts set forth in this Article.

16.8 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 30 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 XVII

DECLARANT'S RIGHTS

17.1 Transfer of Rights. Any or all of the special rights and obligations of Declarant set forth in this Declaration or the other Crosswater Documents may be transferred to other Persons, without the consent of any Mortgagee or Owner, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration or in the other Crosswater Documents. No such transfer shall be effective unless it is in a written instrument signed by Declarant and duly recorded in the official records of the County. Nothing in this Declaration shall be construed to require Declarant or any successor to develop any of the property described on Exhibit B in any manner whatsoever.

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

17.3 Other 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. 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 Declarant.

17.4 Amendment. This Article may not be amended without the written consent of Declarant. The rights contained in this Article shall terminate upon the earlier of (i) 40 years after the date this Declaration is recorded or (ii) upon recording by Declarant of a written statement that all sales activity has ceased. Thereafter, Declarant may continue to use the Common Area for purposes stated in this Section only pursuant to a rental or lease agreement between Declarant and the Association which provides for rental payments based on the fair market rental value of any such portion of the Common Area.

ARTICLE XVIII

GOLF COURSE

18.1 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 Declarant or any other Person with regard to the continuing existence, ownership (including, without limitation, any representation regarding the continued ownership of the Golf Course Parcel by Declarant), or operation of the Golf Course, unless set forth in a written instrument executed by Declarant or such other Person, and no purported representation or warranty in such regard, either written or oral, shall ever be effective without an amendment to this Declaration executed by Declarant, unless set forth in a written instrument executed by Declarant or such other Person. Further, the ownership and/or operation of the Golf Course may change at any time and from time to time by virtue of, but without limitation, (i) the sale to or assumption of operations of the Golf Course by an independent entity or entities; (ii) 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 (iii) the transfer of ownership or control of the Golf Course to one or more affiliates, shareholders, employees, or independent contractors of Declarant. No consent of the Association or any Owner shall be required to effectuate such transfer or conversion.

18.2 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, and for such fees, 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.

18.3 View Impairment. Neither 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 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 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.

18.4 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 (including, without limitation, the provisions of Section 5.5), may be made without the written approval of the owner of the Golf Course. The foregoing shall not apply, however, to amendments made by Declarant.

18.5 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.

18.6 Maintenance of Golf Course. It is expressly understood and acknowledged that the owner of the Golf Course will be utilizing fertilizer and pesticides in connection with its maintenance of the Golf Course.

ARTICLE XIX

GENERAL PROVISIONS

19.1 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 Owners holding a majority of the voting power of the Association (and by Declarant, if Declarant then owns any property described on Exhibit A or B), 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.

19.2 Amendment.

19.2.1 By Declarant. Until the initial conveyance of a Lot to an Owner other than Declarant, Declarant may unilaterally amend this Declaration. Thereafter, until the termination of the Class B membership pursuant to Section 9.3, Declarant may unilaterally amend this Declaration; provided, however, that no such amendment shall materially and adversely affect any material rights of any Members hereunder without the consent of a Majority in Interest of the affected Members.

19.2.2 By Owners. In addition to the rights of Declarant pursuant to Section 19.2.1, this Declaration may be amended by the affirmative vote or written consent, or any combination thereof, of (i) Members representing 75 percent of the total Class A voting power and (ii) Declarant, so long as Declarant owns any of the Property described on Exhibit A or B. Notwithstanding the foregoing, no amendment to (i) the allocation of voting rights set forth in Section 9.3 or (ii) the allocation of responsibility for Base Assessments set forth in Section 11.2 shall be made without the consent of the Condominium Association (on behalf of the Condominium Class A Members) and the Golf Course Class A Member.

19.2.3 Mortgage Requirements. In addition, the approval requirements set forth in Article XVI shall be met if applicable.

19.2.4 Validity and Effective Date of Amendments. Amendments to this Declaration shall become effective upon recordation in the official records of the County, 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 provision of this Declaration.

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

19.2.6 Declarant Rights. No amendment may remove, revoke, or modify any right or privilege of Declarant without the

written consent of Declarant or the assignee of such right or privilege.

19.2.7 Regulatory Amendments. Notwithstanding the other provisions of this Section 19.2, Declarant shall have the right until the turnover meeting described in Section 9.4 to amend this Declaration (i) in order to comply with the requirements of any applicable statute, ordinance, rule, regulation, or guideline of the Federal Housing Administration, the Veterans Administration, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation; any department, bureau, board, commission, or agency of the United States or the State of Oregon; or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon, which insures, guarantees or provides financing for a planned community or lots in a planned community; (ii) to the extent necessary to bring any provision hereof into compliance with any applicable statute, ordinance, rule, regulation, or judicial determination; (iii) to the extent necessary to enable any reputable title insurance company to issue title insurance coverage on the Units; or (iv) to the extent otherwise necessary to satisfy the requirements of any governmental agency for approval of this Declaration. Notwithstanding the foregoing, no such amendment shall adversely affect the title to any Owner's Unit unless such Owner shall consent thereto in writing.

19.2.8 Boundaries. In no event shall an amendment of this Declaration change the boundaries of any Lot or Unit without the consent of the affected Owner.

19.2.9 Golf Course. The amendment rights contained in this Section 19.2 are expressly limited by the provisions of Section 18.4.

19.3 Severability. Invalidity 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.

19.4 Use of the Word "Crosswater". No Person shall use the word "Crosswater" 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 Declarant's prior written consent. However, Owners may use the word "Crosswater" 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 word "Crosswater" in its name.

19.5 Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to his or her Unit

(excepting transfers by operation of law) 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.

19.6 Revocation. This Declaration shall not be revoked, except as provided in Article XV regarding total Condemnation, without the consent of all of the Members in a written instrument duly recorded.

19.7 Construction. In interpreting words in this Declaration, unless the context shall otherwise provide or require, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders.

19.8 Headings. Headings are included only for purposes of convenient reference and shall not affect the meaning or interpretation of this Declaration.

19.9 Registration of Mailing Address. Each Member shall register his mailing address with the Secretary of the Association from time to time, and notices or demands intended to be served upon or given to a Member shall be personally delivered to or sent by mail, postage prepaid, addressed in the name of the Member at such registered mailing address.

19.10 Notice. All notices or requests shall be in writing. Notice to any Member shall be considered delivered and effective upon personal delivery, or three days after posting, when sent by certified mail, return receipt requested, to the address of such Member on file in the records of the Association at the time of such mailing. Notice to the Board, the Association, or the Design Review Committee shall be considered delivered and effective upon personal delivery, or three days after posting, when sent by certified mail, return receipt requested, to the Association, the Board, or the Committee at such address as shall be established by the Association from time to time by notice to the Members. General notices to all Members need not be certified, but may be sent by regular first class mail.

19.11 Waiver. No failure on the part of the Association, the Board, or the Committee to give notice of default or to exercise or to delay in exercising any right or remedy shall operate as a waiver, except as specifically provided herein in the event the Board or Committee fails to respond to certain requests. No waiver shall be effective unless it is in writing, signed by the President or Vice President of the Board on behalf

of the Association, or by the Chairman of the Committee on behalf of the Committee.

19.12 Conflicts Between Documents. In case of conflict between this Declaration and the Articles of Incorporation or the Bylaws, this Declaration shall control. In case of conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control. In case of conflict between this Declaration and the Design Guidelines or the Use Guidelines and Restrictions, this Declaration shall control.

IN WITNESS WHEREOF, Declarant has executed this Declaration this 20th day of July, 1994.

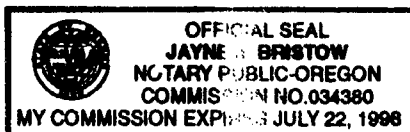
CROSSWATER DEVELOPMENT L.L.C., an Oregon limited liability company

By Chen

Title Pres, Lowe Sunriver Inc.
General Partner of Sunriver Resort
Limited Partnership, Member of
Crosswater Development L.L.C.

STATE OF OREGON)
County of Deschutes) ss.

The foregoing instrument was acknowledged before me on this 20th day of July, 1994 by Charles S. Peck, the President* of CROSSWATER DEVELOPMENT L.L.C., an Oregon limited liability company, on behalf of the limited liability company.



Jayne J. Bristow
Notary Public for Oregon
My Commission Expires: 7/22/98

AFTER RECORDING RETURN TO:

Mr. Gary D. Cole
Ball, Janik & Novack
101 S.W. Main Street
Suite 1100
Portland, OR 97204

*of Lowe Sunriver, Inc., General
Partner of Sunriver Resort Limited
Partnership, Member

EXHIBIT A

Lots 1 through 51, Tracts B through D and F through L and Nest Pine Drive, Little River Drive, Little River Court and Canoe Camp Drive, all in the plat of CROSSWATER PHASES 1 AND 2.

DEN

REGISTERED
PROFESSIONAL
LAND SURVEYOR

David K. Bateman

OREGON
JULY 26, 1976
DAVID K. BATEMAN
1068

Renew 12-31-95

DAVID EVANS AND ASSOCIATES, INC.
A PROFESSIONAL SERVICES CONSULTING FIRM
OFFICES IN OREGON, WASHINGTON, CALIFORNIA AND ARIZONA
709 N.W. WALL STREET, SUITE 102
BEND, OREGON 97701-2744
(503) 389-7614 FAX (503) 389-7623

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EXHIBIT B

PARCEL I

A portion of Sections 7, 8, 17 and 18 of Township 20 South and Range 11 East of the Willamette Meridian in Deschutes County, Oregon, being fully described as follows:

Commencing at a 3" brass cap at the north quarter corner of said Section 7; thence North 87°58'42" East 2648.63 feet to a 3" brass cap at the northeast corner of said Section 7; thence following the north line of said Section 8 North 89°53'35" East 1282.11 feet to a 5/8" iron rod at the west 1/16 corner on said north line; thence leaving said north line South 00°08'05" East 2579.35 feet along the east line of the west half of the northwest quarter of said Section 8 to a 5/8" iron rod on the westerly right-of-way of South Century Drive; thence leaving said east line South 00°36'54" West 1739.57 feet to a 5/8" iron rod with a 2" aluminum cap; thence 117.26 feet along the arc of a 2368.10 foot radius curve left (the long chord of which bears South 00°48'13" East 117.25 feet) to a 5/8" iron rod and the point of beginning said point being the southeast most corner of the plat of CROSSWATER PHASES 1 AND 2; thence 145.76 feet along the arc of a 2368.10 foot radius curve left (the long chord of which bears South 03°59'08" East 145.74 feet) to a 5/8" iron rod with a 2" aluminum cap; thence South 05°44'56" East 116.48 feet to a 5/8" iron rod on the east line of the west half of the southwest quarter of said Section 8; thence leaving said right-of-way South 00°07'44" East 632.78 feet to a 3" brass cap at the west 1/16 corner between said Sections 8 and 17; thence leaving said Section 8 and following the east line of the west half of the northwest quarter of said Section 17, South 00°00'27" West 625.35 feet to a 5/8" iron rod on said westerly right-of-way of South Century Drive; thence leaving said east line South 02°36'26" West 2100.15 feet to a 5/8" iron rod with a 2" aluminum cap on the south line of said northwest quarter of Section 17; thence leaving said westerly right-of-way South 89°04'30" West 1230.15 feet to a 5/8" iron rod with a 3/4" aluminum cap at the one-quarter corner between said Sections 17 and 18; thence leaving said Section 17 South 89°18'34" West 1322.94 feet to a 5/8" iron rod at the center-east 1/16 corner of said Section 18; thence North 00°06'27" East 2716.07 feet to a 3" brass cap at the east 1/16 corner between said Sections 7 and 18; thence leaving said Section 18 North 00°16'26" East 1331.50 feet to a 3" brass cap at the southeast 1/16 corner of said Section 7; thence following the southerly boundary of the plat of CROSSWATER PHASES 1 AND 2, North 89°06'04" East 350.68 feet to a 5/8" iron rod; thence North 83°37'46" East 376.86 feet to a 5/8" iron rod; thence South 06°22'11" East 48.80 feet to a 5/8" iron rod; thence South 08°45'21" East 35.00 feet to a 5/8" iron rod; thence North 81°14'39" East 110.09 feet to a 5/8" iron rod; thence 277.91 feet along the arc of a 317.50 foot radius curve left (the long chord of which bears North 56°10'07" East 269.12 feet) to a 5/8" iron rod; thence North 31°05'35" East 29.12 feet to a 5/8" iron rod; thence 174.94 feet along the arc of a 142.50 foot radius curve right (the long chord of which

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DAVID EVANS AND ASSOCIATES, INC.

A PROFESSIONAL SERVICES CONSULTING FIRM
OFFICES IN OREGON, WASHINGTON, CALIFORNIA AND ARIZONA
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bears North 66°15'48" East 164.16 feet) to a 5/8" iron rod; thence South 78°34'00" East 72.86 feet to a 5/8" iron rod; thence 322.21 feet along the arc of a 382.50 foot radius curve right (the long chord of which bears South 54°26'02" East 312.77 feet) to a 5/8" iron rod; thence South 30°18'05" East 222.66 feet to a 5/8" iron rod; thence 325.45 feet along the arc of a 617.50 foot radius curve left (the long chord of which bears South 45°24'01" East 321.70 feet) to a 5/8" iron rod; thence South 60°29'57" East 40.89 feet to a 5/8" iron rod; thence 130.36 feet along the arc of a 392.50 foot radius curve left (the long chord of which bears South 70°00'51" East 129.76 feet) to a 5/8" iron rod; thence South 79°31'45" East 132.38 feet to a 5/8" iron rod; thence 63.22 feet along the arc of a 392.50 foot radius curve left (the long chord of which bears South 84°08'36" East 63.15 feet) to a 5/8" iron rod; thence 76.33 feet along the arc of a 167.50 foot radius curve left (the long chord of which bears North 78°11'16" East 75.67 feet) to a 5/8" iron rod; thence North 65°07'59" East 129.89 feet to a 5/8" iron rod; thence 108.50 feet along the arc of a 250.00 foot radius curve right (the long chord of which bears North 77°34'00" East 107.65 feet) to a 5/8" iron rod; thence East 65.38 feet to the point of beginning. Contains 235.32 acres.

Also a portion of the southwest quarter of the northwest quarter of said Section 17 lying east of the South Century Drive right-of-way, being fully described as follows:

Beginning at a 2½" brass cap at the southeast corner of said southwest quarter of the northwest quarter; thence following the south line of said southwest quarter of the northwest quarter South 89°04'30" West 35.13 feet to the easterly right-of-way of South Century Drive; thence leaving said south line North 02°36'26" East 774.95 feet to a 5/8" iron rod on the east line of said southwest quarter of the northwest quarter; thence leaving said right-of-way south 00°00'27" West 773.58 feet to the point of beginning. Contains 0.31 acres.

PARCEL II

A portion of Sections 7 and 18 of Township 20 South and Range 11 East of the Willamette Meridian in Deschutes County, Oregon, being fully described as follows:

The east half of the southwest quarter and the southwest quarter of the southeast quarter of said Section 7 lying east of the Deschutes River and the northwest quarter of the northeast quarter and the east half of the northeast quarter of the northwest quarter of said Section 18, lying east of the Deschutes River.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

David K. Bateman

OREGON
JULY 24 1978
DAVID K. BATEMAN
1068

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Per new 12-31-95

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