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**DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS FOR
FOR DESCHUTES LANDING
AMENDED AND RESTATED**

Bend, Oregon

Deschutes Landing LLC

Declarant

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**DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR DESCHUTES LANDING**

THIS DECLARATION is made this 19th day of July, 2007 by **Deschutes Landing LLC**, an Oregon limited liability company ("**Declarant**") to supersede any and all previously recorded Declarations of Protective Covenants, Conditions, Restrictions and Easements for Deschutes Landing.

RECITALS

A. This Declaration of Protective Covenants, Conditions, Restrictions and Easements for Deschutes Landing (the "Declaration") replaces and supersedes the Declaration of Protective Covenants, Conditions, Restrictions and Easements for Deschutes Landing that was recorded December 15, 2005 in the records of Deschutes County, Oregon as Documents 2005-86137, and amended by the First Amendment of the Declaration of Protective Covenants, Conditions, Restrictions and Easements for Deschutes Landing recorded April 14, 2006 in the records of Deschutes County Oregon as Document 2006-25601, and as amended by the Second Amendment of the Declaration of Protective Covenants, Conditions, Restrictions and Easements for Deschutes Landing recorded June 19, 2007 in the records of Deschutes County Oregon as Document 2007-34579.

B. Declarant owns or controls certain real property within the City of Bend, Deschutes County, Oregon. Declarant proposes to develop this property as a planned development to be known as "**Deschutes Landing**".

C. Declarant hopes to create in Deschutes Landing a carefully planned community, which will provide an attractive place to live. Declarant will provide leadership in organizing and administering Deschutes Landing to accept the responsibility for community administration by the time the development is complete.

D. The purpose of this Declaration is to provide for the ownership, maintenance and use of certain Common Areas, which will be owned and operated by an owners association for the benefit of all properties now or later made subject to this Declaration.

E. Funds for the maintenance and operation of Common Areas and exteriors of all Living Units generally will be provided through assessments against those who purchase property within Deschutes Landing, although to assist with the development of Deschutes Landing, Declarant may from time to time itself provide some improvements. For the protection of all Owners of property in Deschutes Landing there will be a system designed to assure that each person who purchased property in Deschutes Landing will pay an equitable share of the moneys necessary for the maintenance and development of Common Areas.

F. Purchasers of property within Deschutes Landing hereby consent to the Master Plan for Deschutes Landing approved by the City of Bend, as the same may subsequently be amended. By adoption of such Master Plan and this Declaration, Declarant is not committing itself to take any action for which definite provision is not made below. One who acquires property in Deschutes Landing will have the advantage of any further development of Deschutes Landing, but shall not have any legal right to insist that there be development except as provided in this instrument or in the instruments which hereafter may be recorded annexing areas to Deschutes Landing and subjecting areas to this Declaration.

G. Declarant has recorded the plat of Deschutes Landing in the plat records of Deschutes County, Oregon. Declarant desires to subject the property described in such plat to the conditions, restrictions and charges set forth in this instrument for the benefit of such property and its present and subsequent owners, and to establish such property as a Class I planned community under the Oregon Planned Community Act, ORS 94.550 to 94.783.

H. Deschutes Landing is situated within River Bend and is subject to the River Bend Master Declaration and Master Bylaws.

NOW, THEREFORE, Declarant hereby declares that the property described in Section 2.1 below shall be held, sold and conveyed subject to the following easements, covenants, restrictions and charges, which shall run with such property and shall be binding upon all parties having or acquiring any right, title or interest in such property or any part thereof and shall inure to the benefit of each owner thereof.

Article 1

DEFINITIONS

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

1.1 "Additional Property". means any land, whether or not owned by Declarant, which is made subject to this Declaration as provided in Section 2.3 below.

1.2 "Architectural Review Committee" **or "The Committee"** means the committee appointed pursuant to Article 7 below.

1.3 "Assessments" means all assessments and other charges, fines and fees imposed by the Association on an Owner in accordance with this Declaration or the Bylaws of the Association or provisions of the Oregon Planned Community Act, including, without limitation, Annual Assessments, Special Assessments, Emergency Assessments, Limited Common Area Assessments and Individual Assessments as described in Article 10 below.

1.4 "Association" means the nonprofit corporation to be formed to serve as the owners association as provided in Article 8 below and its successors and assigns.

1.5 "Board of Directors" or "the Board" means the duly appointed or elected board of directors of the Association, which is invested with the authority to operate

the Association and to appoint the officers of the Association. Prior to the Turnover Meeting, Declarant will appoint the Board of Directors. After the Turnover Meeting, the Owners will elect the Board of Directors.

1.6 "Building" means the single structure composed of Living Units with party walls. Each building shall contain more than two (2) but not more than four (4) Living Units.

1.7 "Bylaws" means the duly adopted bylaws of the Association set forth in the attached Exhibit A as the same may hereafter be amended or replaced.

1.8 "Common Areas" means those lots or tracts designated as such on any plat of the Property, or in this Declaration or any declaration annexing Additional Property to Deschutes Landing, including any Improvements thereon, and shall also include Common Easement Areas, Limited Common Areas and any Lots converted to Common Areas as provided in Section 2.6 below.

1.9 "Common Easement Areas" means those easements established for the benefit of all property within Deschutes Landing pursuant to this Declaration or any plat or declaration annexing Additional property to Deschutes Landing.

1.10 "Declarant" means Deschutes Landing LLC, an Oregon limited liability company, and its successors and assigns if such successor or assignee should acquire Declarant's interest in the remainder of the proposed project site, or less than all of such property if a recorded instrument executed by Declarant assigns to the transferee all of Declarant's rights under this Declaration.

1.11 "Deschutes Landing" means the Initial Development and any Additional property annexed to this Declaration.

1.12 "Front Yard" means the area between the predominant wall plane of the Living Unit toward any street and including any side yard adjoining the street and includes any portion of the street right of way between the curb and the Lot Line.

1.13 "Improvement" means every structure or improvement of any kind, including but not limited to a fence, wall, driveway, swimming pool, storage shelter, landscaping or other product of construction efforts on or in respect to the Property.

1.14 "Initial Development" means the real property referred to in Section 2.1 below.

1.15 "Limited Common Areas" means those Common Areas established for the exclusive use or enjoyment of certain Lots as designated in this Declaration or any declaration annexing property to Deschutes Landing, including Limited Common Easement Areas.

1.16 "Limited Common Easement Areas" means those easements established for the exclusive use or enjoyment of Certain Lots as designated in this Declaration or any declaration annexing property to Deschutes Landing.

1.17 "Living Unit" means a building or a portion of a building located upon a Lot within the Property and designated for separate residential occupancy.

1.18 "Lot" means a platted lot within the Property.

1.19 "Manager" means the person or firm with whom the Association contracts to provide management services pursuant to Section 9.6.

1.20 "Master Association" means River Bend Master Association, Inc., an Oregon nonprofit mutual benefit corporation, its successors, and assigns.

1.21 "Master Bylaws" means the bylaws of the Master Association as are in effect from time to time.

1.22 "Master Declaration" means collectively (a) the Amended and Restated Master Declaration of Covenants for River Bend dated November 4, 1997, and recorded on June 26, 1998, in the real property records of Deschutes County, Oregon at Book 499 at page 2948, and such supplemental declarations as have been adopted and recorded from time to time, and (b) the Supplemental Declaration of Covenants, Conditions, and Restrictions for River end for Northside Terrace recorded on June 30, 1998, in the real property records of Deschutes County, Oregon at Book 10 at pages 140-144.

1.23 "Master Plan" means the Development Plan of Deschutes Landing approved by the City of Bend, Oregon, as the same may hereafter be amended.

1.24 "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.

1.25 "Owner" means the person or persons, including Declarant, owning any Lot in the Property, but does not include a tenant or holder of a leasehold interest or a person holding only a security interest in a Lot. The rights, obligations and other status of being an Owner commence upon acquisition of the ownership of a Lot and terminate upon disposition of such ownership, but termination of ownership shall not discharge an Owner from obligations incurred prior to termination.

1.26 "Private Way" means any area which is designated a "private way", "private street", or "private easement" in the plat of Deschutes Landing.

1.27 "Public Areas" means areas dedicated to the public or established for public use in any plat of the Property, or so designated in this Declaration or the declaration annexing such property to Deschutes Landing.

1.28 "Sold" means that legal title has been conveyed or that a contract of sale has been executed and recorded under which the purchaser has obtained the right to possession.

1.29 "The Property" means Deschutes Landing.

1.30 "This Declaration" means all of the easements, covenants, restrictions and charges set forth in this instrument, together with any rules or regulations promulgated hereunder, as the same may be amended or supplemented from time to time in accordance with the provisions hereof.

1.31 "Turnover Meeting" means the meeting called by Declarant pursuant to Section 8.7 below, at which Declarant will turnover administrative responsibility for the Property to the Association.

Article 2

NAME; CLASSIFICATION; PROPERTY SUBJECT TO AGREEMENT; COMMENCEMENT AND TERMINATION OF STATUS.

2.1 Initial Development. Declarant hereby declares that all of the real property described below is owned and shall be owned, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration:

All real property within that certain plat entitled "Deschutes Landing" filed in the plat records of Deschutes County, Oregon, on December 15, 2005 as Record Number 2005-86132.

2.2 Land Classifications within Initial Development. All land within the Initial Development is included in one or another of the following classifications:

(a) Lots, which shall consist of Lots 1 through 37 of the plat of the Initial Development.

(b) Public Areas, which shall be the Pedestrian Trail, located within Tract C and the Public Pedestrian Access Easement located between Lots 15 and 16, as shown on the plat of the Initial Development.

(c) Common Areas, which shall be Tracts A, B, C, D, E, F, and G, together with the Private Ways of Theater Drive and Crestline Drive as shown on the plat of the Initial Development.

(d) Common Easement Areas shall be the Utility Easements located on Theater Drive and Crestline Drive as shown on the plat of the Initial Development, and the refuse enclosures which will be installed on Lots and Common Areas within the Initial Development.

(e) There are no Limited Common Areas within the Initial Development.

(f) Limited Common Easement Areas shall be the Storm Drain Easements and the Private Utility Service Easement Areas as shown on the plat of the Initial Development.

2.3 Annexation of Additional Property. Declarant may from time to time and in its sole discretion annex to Deschutes Landing as Additional Property any real property now or hereafter acquired by it, and may also from time to time and in its sole discretion permit other holders of real property to annex the real property owned by them to Deschutes Landing. The annexation of such Additional Property shall be accomplished as follows:

(a) The owner or owners of such real property shall record a declaration which shall be executed by or bear the approval of Declarant and shall, among other things, describe the real property to be annexed, designate the Project of which such property is a part, establish land classifications for the Additional Property, establish any additional limitations, uses, restrictions, covenants and conditions which are intended to be applicable to such Additional Property, and declare that such property is held and shall be held, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration.

(b) The Additional property included in any such annexation shall thereby become a part of Deschutes Landing and this Declaration, and the Declarant and the Association shall have and shall accept and exercise administration of this Declaration with respect to such property.

(c) Notwithstanding any provision apparently to the contrary, a declaration with respect to any Additional Property may:

i. Establish such new land classifications and such limitations, uses, restrictions, covenants and conditions with respect to such Additional Property as Declarant may deem to be appropriate for the development of the Additional Property.

ii. With respect to existing land classifications, establish additional or different limitations, uses, restrictions, covenants and conditions with respect to such property as Declarant may deem to be appropriate for the development of such Additional Property.

(d) There is no limitation on the number of Lots or Living Units, which Declarant may create or annex to Deschutes Landing, except as may be established by applicable ordinances of the City of Bend. Similarly, there is no limitation on the right of Declarant to annex common property, except as may be established by the City of Bend.

(e) Declarant does not agree to build any specific future Improvement, but does not choose to limit Declarant's right to add additional Improvements.

(f) Upon annexation to Deschutes Landing, additional Lots so annexed shall be entitled to voting rights as set forth in Section 8.3 below.

(g) The formula to be used for reallocating the common expenses if additional Lots are annexed and the manner of reapportioning the common expenses if additional Lots are annexed during a fiscal year are set forth in Section 10.11 below.

2.4 Improvements. Declarant agrees to build all improvements necessary for the Private Streets, Trails and Refuse Enclosures in Deschutes Landing. Declarant does not agree to build any additional improvement but does not choose to limit Declarant's right to add improvements not described in this Declaration.

2.5 Withdrawal. Declarant may withdraw property from Deschutes Landing only by duly adopted amendment to this Declaration, except that Declarant may withdraw all or a portion of the Initial Development or any Additional Property annexed pursuant to a declaration described in Section 2.3 above at any time prior to the sale of the first Lot in the respective plat of the Initial Development or in the case of Additional property, prior to the sale of the first Lot in the property annexed by supplemental declaration, subject to the prior approval of the City of Bend. Such withdrawal shall be by declaration, subject to the prior approval of the City of Bend. Such withdrawal shall be by a declaration executed by Declarant and recorded in the deed records of Deschutes County, Oregon. If a portion of the Property is so withdrawn, all voting rights otherwise allocated to Lots being withdrawn shall be eliminated, and the common expenses shall be reallocated as provided in Section 10.11 below. Such right of withdrawal shall not expire except upon sale of the first Lot within the applicable phase of the Property as described above.

2.6 Conversion of Lots to Common Areas. Declarant may elect to build common facilities on one or more Lots and designate such Lots as Common Areas by a declaration recorded in the deed records of Deschutes County, Oregon. Declarant, as owner of the Lots, shall execute such declaration.

2.7 Commencement and Termination of Status. The rights, obligations, and other status of being an Owner commence upon acquisition of the ownership of a Living Unit and terminate upon disposition of such ownership, but termination of ownership shall not discharge an Owner from obligation incurred prior to termination.

Article 3

PARTY WALLS, INSURANCE, AND DAMAGE OR DESTRUCTION

3.1 Party Walls.

(a) General Rules of Law to Apply. Each wall that divides two Living Units, and which is placed on the divided line between the Lots as shown on the attached recorded plat of Deschutes Landing, shall constitute a party wall, and, to the extent not

inconsistent with the provisions of this Article, the general rules of law regarding party walls shall apply thereto.

(b) Sharing of Repair and Maintenance. The cost of repair and maintenance of a party wall shall be shared equally by the Owners whose Living Units are divided by such wall.

The obligation herein created shall be attached to and will run with the land and shall be binding on all successors in interest to the Lots it being the intent hereto, to create a continuing obligation on the part of each owner of the Lots present or future, to share in the maintenance of the Party Wall. Each owner of a Lot shall have a perpetual easement in that part of the Living Unit of the other owner on which the Party Wall is located for Party Wall purposes.

If a Lot owner or his agent disturbs the Party Wall in any way, such owner shall bear the full cost and responsibility of returning the Party Wall to the condition it was prior to such disturbance. In the event such owner refuses or neglects to restore said Party Wall, the other Lot owner may have such repairs made and assess the Lot owner for the cost of such repairs, except those common elements required by state building code as defined in ORS 455.010, as may be modified or replaced, shall be maintained without exception. Failure of the Lot owners to properly maintain and repair the Party Wall may be subject to possible enforcement actions by building officials or affected parties to facilitate the repairs and maintenance required through application of a local housing or nuisance abatement ordinance, or an existing building or property maintenance code.

(c) Party Walls- Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, other than the negligence of either party sharing the wall, then the Owners shall, at their joint expense, repair or rebuild the party wall, and each party, its successors and assigns, shall have the right to the full use of the wall so repaired or rebuilt. If either party's action or negligence causes the damage to or destruction of the wall, such negligent party shall bear the entire cost of repair or reconstruction. In the event of any dispute as to the cause of the damage or repair or restoration of the party wall, the matter shall be determined by arbitration. .

(d) Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his or her negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(e) Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

(f) The Lot owners shall hold harmless, defend, and indemnify the City of Bend, Oregon and its agents, and employees against all claims, demands, actions, and suits,

including attorney's fees and costs brought against any of them arising out of the failure to properly design, locate, construct, repair or maintain the Party Wall.

3.2 Easement. No Owner shall alter or change a party wall in any manner, interior decoration excepted. Each party wall shall always remain in its present location. Each adjacent Owner shall have a perpetual easement in that part of the Living Unit of the adjacent Owner on which the party wall is located, for Party Wall purposes. Notwithstanding any provision in the Declaration,

(a) Each Lot is granted an easement over every other Lot to the extent necessary for the maintenance, repair, and improvement of the party wall connected to such Lot, along with any roof, crickets, and eaves that cross property lines.

(b) An Easement is hereby reserved in favor the Declarant, and following the Turnover meeting described in Section 8.7 of the Declaration, in favor of the Association and its designees over and across each Lot for the purposes of maintaining and repairing any party walls, roof, crickets, and eaves that cross property lines on any Lot. The Association may maintain and make such repairs at the cost of the adjoining Owners of any such party wall, roof, cricket, and eave if such Owners do not make necessary repairs within 60 days following written notice from the Association.

3.3 Insurance. Each Owner shall be responsible for obtaining at his or her own expense, homeowner's insurance covering the improvements on the Owner's Lot and liability resulting from use or ownership of the Lot, unless the Association agrees otherwise. The Association, through the Board of Directors, shall obtain and maintain at all times and shall pay for out of operating assessments the insurance covering the Common Areas, including fixtures, equipment, as described in the Bylaws of the Association.

3.4 Destruction of Living Unit. If one or more of the Living Units are damaged, destroyed, or partially condemned, it shall be the responsibility of the Owners to rebuild and restore the Building or Buildings so damaged, destroyed, or partially condemned to that the same will be returned to substantially the same condition in which the Building or Buildings existed prior to such damage, destructions, or partial condemnation. Each Living Unit shall have substantially the same vertical and horizontal boundaries as before. .

3.5 Structural Modification Restriction. Structural elements identified or necessary for lateral stability, including but not limited to horizontal and vertical strapping, foundation tie downs and plywood sheathing, shall not be altered without the analysis and approval of a structural engineer registered in the state of Oregon and by permit from the building official.

Article 4

PROPERTY RIGHTS IN COMMON AREAS

4.1 Owners Easements of Enjoyment. Subject to provisions of this Declaration, every Owner and such Owner's invitees shall have a right and easement of enjoyment in and to the Common areas including, without limitation, Private Ways.

4.2 Title to Common Areas. Fee title to the Common Areas shall be conveyed by Declarant to, and must be accepted by, the Association free and clear of liens and encumbrances other than those created pursuant to this Declaration. The deed conveying the Common areas shall be delivered before the first Lot is sold.

4.3 Extent of Owners' Rights. The rights and easements of enjoyment in the Common Areas created hereby shall be subject to the following and all other provisions of this Declaration:

(a) Association Easements. Declarant grants to the Association for the benefit of the Association and all Owners of Living Units within the Property the following easements over, under and upon the Common Areas, including the Common Easement Areas:

(i) An easement on all Common Areas for underground installation and maintenance of power, gas, electric, water, refuse enclosures for housing garbage and recycling stations and containers, and other utility and communication lines and services installed by Declarant or with the approval of the Board of Directors of the Association and any such easement shown on any plat of the Property.

(ii) An easement for construction, maintenance, repair and use of Common Areas, including common facilities thereon, including, but not limited to, walkways, bike paths, fences, landscaping, irrigation systems, entry way structures, decorative ornamentation, and signs, and for any purposes and uses adopted by the Association for the benefit of the Association and the Owners.

(iii) An easement for the purpose of making repairs to any existing structures on Common Areas.

(b) Declarant's Easements. So long as Declarant owns any Lot, and in addition to any other easements to which Declarant may be entitled, Declarant reserves an easement over, under, and across the Common Areas in order to carry out development, construction, and sales activities necessary or convenient for the development of Deschutes Landing, the sale of Living Units, discharging Declarant's obligations, exercising any of Declarant's right or discharging any of Declarant's obligations hereunder, or related uses.

(c) Utility Easements. Declarant or the Association may (and, to the extent required by law, shall) grant or assign easement to Declarant, municipalities, communication companies, or other utilities over Common Areas providing utility, garbage removal, and recycling services, and the Association may grant free access thereon to police, fire, and other public officials and to employees of utility companies and communications companies service Deschutes Landing.

(d) Use of the Common Areas Except as otherwise provided in this Declaration, including without limitation the provisions in Section 4.3 (F), the Common Areas shall be reserved for the use and enjoyment of all Owners and no private use may be made of the Common Areas. Nothing herein shall prevent the placing of a sign or signs upon the

Common Areas for the purpose of identifying Deschutes Landing, providing such signs are approved by Declarant or the Design Review Committee.

(e) Alienation of the Common Areas. The Association may not by act or omission seek to abandon, partition, subdivide, encumber, cause the Common Area to be subject to any security interest, sell or transfer the Common Areas owned directly or indirectly by the Association for the benefit of the Owners unless the holders of at least 75 percent of the Class A voting rights (as described in Section 8.3 (b) below) and the Class B member (as defined in Section 8.3(b) below), if any, have given their prior written approval. This provision shall not apply to the easements described in this Section 4.3. A sale, transfer, or encumbrance of the Common Area or any portion of the Common Area in accordance with this Section 4.3 (e) may provide that the Common Area so conveyed shall be released from any restriction imposed on such Common Area by this Declaration. No sale, transfer, or encumbrance, may, however, deprive any Owner of such Owner's right of access or support without the written consent of the Owner.

(f) Owner Easements. Declarant hereby reserves for each Owner an easement for driveway and underground utility purposes across any Common Area lying between such Owners' Lot and the Private Way providing access to such Lot.

(g) Private Ways. Each Owner shall have a nonexclusive easement for use of Private Ways for the purposes of walking thereon or traveling thereon by appropriate means. Each Owner may permit his guests and invitees to use the Private Ways for such purposes. The easement provided for herein shall be appurtenant to and assignable with the Living Unit with respect to which it is granted, but shall not be otherwise assignable. The use of Private Ways shall be subject to rules and regulations adopted by the Board of Directors of the Association. The Board of Directors shall have the right to erect gates across private Ways and to regulate access through such gates. The Board of Directors shall grant free access on Private Ways to police, fire, and other public officials, to employees of utility companies serving Deschutes Landing and to such others to whom the Board delivers access should be given for the benefits of Owners. Declarant may use Private Ways for its own purposes and for the purpose of location of utilities. There shall be no implied dedication of Private Ways.

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

Article 5

PROPERTY RIGHTS IN LIVING UNITS

5.1 Use and Occupancy. The Owner of a Lot in the Property shall be entitled to the exclusive use and benefit of such Lot, except as otherwise expressly provided in

this Declaration, contained in Article 6 below, and all other provisions of this Declaration and the Provisions of any supplement or amendment to this Declaration.

5.2 Easements Reserved. In addition to any easements shown on any recorded plat, Declarant hereby reserves the following easements for the benefit of Declarant, the Owners, and the Association.

(a) Adjacent Common Area. The Owner of any Lot which blends together visually with any Common Area shall, if the Association elects from time to time to so require, permit the Association to enter upon the Lot to perform the maintenance of such Common Area.

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

(c) Right of Entry. Declarant, the Design Review Committee and any representative of the Association authorized by it may at any reasonable time, and from time to time at reasonable intervals, following at least 24 hours notice (except when it is reasonably determined that an emergency exists, in which case no notice shall be required), enter upon any Lot for the purpose of determining whether or not the use of and/or Improvement on such Lot are then in compliance with this Declaration. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Lot.

(d) Sidewalks, Paths and Refuse Enclosures. Declarant, the Association, and the Owners, shall have an easement across that portion of each lot on which there is situated a portion of a sidewalk or path as shown on the plat of Deschutes Landing, or a Refuse Enclosure for the placement of garbage and recycling containers.

(e) Utility Easements. Easement for installation and maintenance of utilities and drainage facilities may be reserved over portions of certain Lots, as shown on any recorded plat. Within the easements, the Architectural Review Committee will not permit any structure, planting or other material to be placed or permitted to remain on the easement area which may damage or interfere with the installation or maintenance of utilities, or which may change the direction or flow of drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible, and Common Easement areas, which will be maintained by the Association.

5.3 Restriction on Transfer. Except for Living Units owned by Declarant or an affiliate of the Declarant, there shall be no inter vivos transfer, either directly or indirectly, of any interest in a Living Unit which would result in any person owning either directly or indirectly through a corporation or a partnership, less than a twenty percent (20%) interest in such Living Unit without the prior written consent of Declarant.

Article 6
GENERAL USE RESTRICTIONS

6.1 Structures Permitted. No structures shall be erected or permitted to remain on any Lot except structures containing Living Units. All new structures, which are not shown on the approved plans for the community by the city of Bend, shall be subject to the City of Bend rules and regulations, which shall include but not be limited to Site Plan review.

6.2 Prohibited Structures. Except for trailers related to construction activities within Deschutes Landing, no house trailer, mobile home, manufactured home assembled off site, tent, shack, barn or other similar outbuilding or structure, whether permanent or temporary, shall be erected or placed on any Lot.

6.3 Construction and Alteration. Nothing shall be altered or constructed in or removed from or placed on a Lot except with the prior written consent of Declarant or the Design Review Committee. If any construction or alteration is approved, it shall be completed in compliance with all applicable laws.

6.4 Residential Use. Lots shall only be used for residential purposes. Except with the consent of the board of Directors of the Association, no trade, craft, business, profession, commercial or similar activity of any kind shall be conducted on any Lot, nor shall any goods, equipment, vehicles, materials or supplies used in connection with any trade, service or business be kept or stored on any such Lot. The mere parking on a Lot of a vehicle bearing the name of a business shall not, in itself, constitute a violation of this provision. Nothing in this paragraph shall be deemed to prohibit (a) activities relating to the rental or sale of Living Units, or fractional, tenancy in common or timeshare interests in a Living Unit (b) the Right of Declarant or any contractor or homebuilder to construct Living Units on any Lot, to store construction materials and equipment on such Lots in the normal course of construction, and to use any Living Unit as a sales or rental office or model home for purposes of sales or rental in Deschutes Landing, and (c) the right of the Owner of a Lot to maintain his professional personal library, keep his personal business or professional records or accounts, handle his personal business or professional telephone calls or confer with business or professional associates, clients or customers, in his Living Unit. The Board of Directors shall not approve commercial activities otherwise prohibited by this paragraph unless the Board of Directors determines that only normal residential activities would be observable outside of the Living Unit and that the activities would not be in violation of applicable governmental ordinances.

6.5 Occupancy. No Owner shall occupy, use, or permit his Lot or Living Unit, or any part thereof, to be used for any purpose other than a private residence for the Owner, his family, or his guests, except that (a) each Owner shall be permitted to rent the Living Unit for periods of no shorter duration than 2 (two) consecutive nights when Owner is not in occupancy subject to compliance with rules established by the Board of Directors governing such rentals, including, without limitation, the number of occupants, length of stay and number of parking spaces utilized;(b) each Owner may operate from a Living Unit a home

business (as defined in applicable land use ordinances); and (c) as a retreat location used by the Owners and employees and their families and guests. Nothing in this section shall be deemed to prohibit (x) activities relating to the sale of Living Units or (y) the right of Declarant or any contractor or homebuilder to construct Living Units on any Lot, to store construction materials and equipment on Lots in the normal course of construction or (z) ownership and use of a Living Unit as part of a fractional, tenancy in common or timeshare program established by Declarant or an affiliate of Declarant. Declarant may use any Living Unit, whether owned or leased, as a sales office or model.

6.6 Leasing and Rental of Living Units. Short term vacation rentals, which are for a period of less than 30 days, and long term rentals, which are for a period of 31 days or longer, are permitted subject to compliance with rules established by the Board of Directors governing such rentals, including, without limitation, the number of occupants, length of stay and number of parking spaces utilized. Any Owner wishing to rent his or her unit for short term vacation rental must list the unit for rental with the same management company retained by the Association, or if such management company does not provide such services, with a management company approved by the Board of Directors for such purposes. Owners wishing to perform those services themselves may request a conditional exemption from the Board of Directors for such purposes.

All leases or rentals shall be by written lease agreement, which shall provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration and the Articles of Incorporation and Bylaws of the Association, and that any failure by the lessee or tenant to comply with the terms of such documents shall be a default under the lease. If the Board of Directors finds that a lessee or tenant has violated any provision of such documents or rules and regulations, the Board may require the Owner to terminate such lease or rental agreement. Other than the foregoing, there is no restriction on the right of any Owner to lease or rent his living unit.

6.7 Offensive or Unlawful Activities. No noxious or offensive activities shall be carried out upon the Property, nor shall anything be done or placed on the Property which interferes with or jeopardizes the enjoyment of the Property, or which is a source of annoyance to Owners or occupants. No unlawful use shall be made of the Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction over the Property shall be observed. Except for home offices or home businesses that do not generate traffic of the quantity or type that would constitute an annoyance or nuisance to the other Owners, no commercial activity may be carried out on any Lot.

6.8 Parking. No house trailer, travel trailer, boat trailer, camper, incapacitated motor vehicle, snowmobile, motor home, or off-road vehicle shall be parked or stored on any Lot or Common Area except as provided in the Association's rules and regulations or the architectural guidelines which may, among other things, permit temporary parking of recreations vehicles and boat trailers in designated areas. Vehicle parking in driveways that are not of adequate length and result in the parked vehicle extending over

sidewalks or into the Private Ways is prohibited. The requirements of the Bend Fire Department and Engineering Department prohibit street parking, which shall be enforced by the Association by the placement of NO Parking signs on both sides of the street and monitoring by the Association for violators. Violators may be fined by the Association or have their vehicles towed if the owners are unavailable for the vehicle's voluntary removal.

6.9 Vehicles in Disrepair. No Owner shall permit any vehicle, which is in an extreme state of disrepair to be abandoned or to remain parked on the Owner's Lot unless contained within the closed garage, on the Common Area or on any Private Way for a period in excess of forty-eight (48) hours. A vehicle shall be deemed in an "extreme state of disrepair" when the Board of Directors reasonably determines that its presence offends the occupants of the area due to its appearance or continued inoperability. Should any Owner fail to remove such vehicle within five (5) days following the date on which the Association mail notice to him, the Association may have the vehicle removed from the property and charge the expense of such removal to the Owner. Any vehicle parked in violation of this Section can be towed or impounded as provided in Section 11.3 (a) below.

6.10 Domestic Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept or permitted within any Lot other than a reasonable number of household pets which are not kept, bred or raised for commercial purposes and which are reasonably controlled so as not to be a nuisance. Any inconvenience, damage or unpleasantness caused by such pets shall be the responsibility of their respective owners. No animal shall be permitted to roam the Property unattended, and all dogs shall be kept on a leash while outside a Lot. An Owner or occupant may be required to remove a pet upon receipt of the third written notice from the Association Board of Directors of violations of any rule, regulation or restriction governing pets within the Property.

6.11 Maintenance of Structures and Ground. Each Lot shall be maintained in a clean and attractive condition, in good repair, and in such a fashion as not to create a fire hazard. All garbage, trash, cuttings, refuse, garbage and refuse containers, and other service facilities located on each Lot, shall be screened from view in a manner approved by Declarant. No Owner shall take any action which will unduly increase the Association's expense of exterior maintenance.

6.12 Grades, Slopes and Drainage. Each Owner of a Lot shall accept the burden of, and shall not in any manner alter, modify or interfere with, the established drainage pattern and grades, slopes and courses related thereto over any Lot or Common Area without the express written permission of the Architectural Review Committee, and then only to the extent and in the manner specifically approved. No structure, plantings or other materials shall be placed or permitted to remain on or within any grades, slopes, or courses, nor shall any other activities be undertaken which any damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow, or obstruct or retard the flow of water through drainage channels.

6.13 Signs. No sign shall be erected or maintained on any Lot except signs which were approved as to appearance and location by the Association's Architectural Review

Committee and conform to the requirements of the Old Mill District Master Association. Sign requirements shall be included within the Architectural Review Guidelines. Signage is limited to one sign per site. Signs must be installed on the subject property only and must not obstruct clear vision for traffic. Signs placed in the window of a residence, attached to fencing, trees or other structures are prohibited. Signage is to be used only during construction or sale of a living unit and must be removed upon occupancy or when the sale is complete. "For Rent" or "For Lease", subcontractor, vendor or push-in signs are prohibited. Any sign that is either prohibited or not maintained will be removed as needed by either the Association or the Old Mill District Master Association Board's maintenance crew and the owner will be billed accordingly. Removed signs will be held for a maximum of thirty (30) days at which time they will be destroyed. Signs that have been removed may require the payment of a redemption fee to either the Association or the Old Mill District Master Association. The restrictions contained in this paragraph shall not apply to the placement by the Declarant or Declarant's agent of one or more signs identifying the name of the Declarant and/or the location of a sales office or model home.

6.14 Antennas and Satellite Dishes. Exterior satellite receiver, transmission dishes, exterior antennas, or other sending or receiving devices shall not be permitted to be placed upon any Lot except as approved by Declarant or the Design Review Committee and except as permitted by law.

6.15 View. The height of vegetation and trees on a Lot shall not materially restrict the view of other Owners. The Board of Directors of the Association shall be the sole judge of the suitability of such heights. This section is not to be read as justification to create views not present when the Living Unit was originally purchased.

6.16 Outside Furniture and Hot Tubs. Furniture left outside a Living Unit shall be limited to items commonly accepted as outdoor or patio furniture. Hot tubs are allowed only with the prior written permission of the Board of Directors. The hot tub must be installed out of sight of the main traffic patterns. Locking covers are required and shall remain locked when not in use.

6.17 Exterior Lot Appearance. All portions of the Lot that are visible to surrounding lots or from the street, shall be kept in a neat and attractive appearance, which shall include but not be limited to patio or deck landscaping, furniture, exterior improvements, and personal belongings.

6.18 Window, Decks, Porches, Patios and Outside Walls. In order to preserve the attractive appearance of the Property, the Board of Directors of the Association may regulate the nature of items which may be placed in or on windows, decks, porches, patios and the outside walls so as to be visible from outside the Lot. Garments, rugs, laundry and other similar items may not be hung from windows, facades, porches, patios or decks.

6.19 Window Coverings. Window coverings visible from the outside of the Living Unit must be: (a) in good working order; (b) a neutral color compatible with the

home/trim color; and (c) of a design and materials standard in the window dressing industry such as drapes, mini-blinds, etc. Sheets, blankets, plastic paper, foil, etc. are not allowed.

6.20 Air Conditioning Units. Window or portable air conditioning units are prohibited.

6.21 Firearms and Fireworks. Firearms shall not be discharged within Deschutes Landing at any time. Firearms are to be unloaded at all times while in Deschutes Landing. Weapons including "BB" guns, pellet guns, dart guns, paint-ball guns and any other weapon capable of firing a projectile are considered firearms. Oregon statutory law prohibits the use of certain types of fireworks. Only fireworks considered legal and are both silent and hand held will be allowed. Discharge of firearms or fireworks of any type toward the Common Areas, Private Ways or Deschutes River is prohibited. Owners and their guests must clean up any fireworks discharged in Deschutes Landing.

6.22 Nonbiodegradable Substances. No motor oil, paint or other caustic or nonbiodegradable substance may be deposited in any street drain, sewer system or on the grounds within Deschutes Landing. Any fine and/or costs associated with the cleanup of any nonbiodegradable substance that is caused by any Owner or their guests shall be responsibility of the offending Owner.

6.23 Exterior Lighting or Noisemaking Devices. Except with the consent of the Design Review Committee, no exterior lighting or noise making devices may be installed or maintained on any Lot, other than as originally installed by the builder of the home and security and fire alarms. Outside lighting shall be designed to prevent unnecessary light spillage onto adjoining Lots, public streets, or into private residences, and no high output exterior lighting, including, but not limited to mercury vapor and halide lights, may be installed without the specific approval of the Design Review Committee. The size and design of light standards and fixtures shall be considered by the Design Review Committee in its review of plans. Seasonal holiday lighting and decorations are permissible if consistent with any applicable rules and regulations and if removed within thirty (30) days after the celebrated holiday.

6.24 Pest Control. No Owner shall permit any thing or condition to exist upon any portion of the Property, which shall induce, breed or harbor infectious plant or animal diseases or noxious insects or vermin.

6.25 Minimum Floor Area. Any Living Unit with a design other than one furnished by Declarant or the Architectural Review Committee shall have a minimum of 1900 square feet of floor area, plus one-car garage.

6.26 Building Materials. All building materials to be incorporated into and visible as a part of the external structure of any Living Unit or other structure may be regulated by the Architectural Review Committee as provided in Article 7.

6.27 Completion of Improvements. All structures (including flat work and landscaping) constructed within the Property shall be erected and completed within one year after the commencement of construction. All remodeling, reconstruction or enhancement of structures shall be completed within one year of the commencement of construction. Commencement of construction shall be deemed to be the date upon which a building permit was first issued for the construction, or, if no building permit was obtained, the date on which lot clearing, demolition or remodeling commenced.

6.28 Additional Restrictions. Each Owner of a Lot, and such Owner's family, tenants, employees, guests and invitees, shall also comply with any additional use restrictions contained in any supplemental declaration annexing such Lot to Deschutes Landing and in any Project Declaration applicable to such Lot

6.29 Association Rules and Regulations. In addition, the Association from time to time may adopt, modify or revoke such nondiscriminatory rules and regulations governing the conduct of persons and the operation and use of the Property (including, without limitation, use of playground and parking areas) as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Property. The Association Board of Directors thereof, shall deliver a copy of the Rules and Regulations, upon adoption, and a copy of each amendment, modification or revocation promptly to each Owner. The Board of Directors of the Association may adopt the rules and regulations, except as may be otherwise provided in the Bylaws of the Association.

Article 7

ARCHITECTURAL REVIEW

7.1 Architectural Review. All Lots shall be subject to Architectural Review, and the Architectural Review Guidelines that may be approved by the Board of Directors. No Improvement shall be commenced, erected, placed or altered on any Lot until the construction plans and specifications showing the nature, shape, heights, materials, colors and proposed location of the Improvement have been submitted to and approved in writing by the Architectural Review Committee. It is the intent and purpose of this Declaration to assure quality of workmanship and materials and to assure harmony of external design with the existing Improvements and as to location with respect to topography and finished grade elevations and compliance with the setback requirements contained in applicable governmental development code standards. The building plans to be submitted shall consist of one complete set of plans and specifications in the usual form showing insofar as appropriate, (i) the size and dimensions of the Improvements, (ii) the exterior design, (iii) approximate exterior color scheme, (iv) location of Improvements on the Lot, including setbacks, driveway and parking areas, and (v) location of existing trees to be removed. These plans and specifications shall be left with the Committee until sixty (60) days after the Committee has received notice of completion. This is for the purpose of determining whether, after inspection by the Committee, the Improvement complies substantially with the plans and specifications submitted and approved. The Architectural Review Committee is not responsible for determining compliance with structural and building codes, solar ordinances, zoning codes or any other

governmental regulations, all of which are the responsibility of the applicant. The procedure and specific requirements for review and approval of construction may be set forth in Design Guidelines adopted from time to time by the Architectural Review Committee. The Committee may charge a reasonable fee to cover the cost of processing the application. In all cases in which the Architectural Review Committee consent is required by this Declaration, or any Project Declaration, the provisions of this Section shall apply, except that this Section shall not apply to construction by Declarant.

7.2 Committee Decision. The Architectural Review Committee shall render its decision with respect to the construction proposal within thirty (30) working days after it has received all material required by it with respect to the application. In the event the Committee fails to render its approval or disapproval within forty-five (45) working days after the Committee has received all material required by it with respect to the proposal, or if no suit to enforce this Declaration has been commenced within one year after completion thereof, approval will not be required and the related provisions of this Declaration shall be deemed to have been fully complied with.

7.3 Committee Discretion. The Architectural Review Committee may, at its sole discretion, withhold consent to any proposed work if the Committee finds the proposed work would be inappropriate for the particular Lot or incompatible with the design standards that the Committee intends for Deschutes Landing. Considerations such as siting, shape, size, color, design, materials, height, solar access, screening, impairment of the view from other Lots, or other effect on the enjoyment of other Lots, disturbance of existing terrain and vegetation 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 consent to any proposed work. Regulations on siting of television antennas and satellite receiving dishes shall be in conformance with any applicable Federal Communications Commission rules.

7.4 Membership. Appointment and Removal The Architectural Review Committee shall consist of as many persons, but not less than two, as the Declarant may from time to time appoint. The Declarant may remove any member of the Committee from office at its discretion 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 to the Board of Directors of the Association the right to appoint or remove members of the Architectural Review Committee. In such event, or in the event Declarant fails to appoint an Architectural Review Committee, the Board of Directors shall assume responsibility for appointment and removal of members of the Architectural Review Committee, or if it fails to do so, the Board of Directors shall serve as the Architectural Review Committee.

7.5 Majority Action. Except as otherwise provided in this Declaration, a majority of the members of the Architectural Review Committee shall have the power to act on behalf of the Committee, without the necessity of a meeting and without the necessity of consulting the remaining members of the Committee. The Committee may render its decision only by written instrument setting forth the action taken by the consenting members.

7.6 Liability. Neither the Architectural Review Committee nor any member thereof shall be liable to any Owner, occupant, builder or developer for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the Committee or a member of the Committee, and the Association shall indemnify the Committee and its members therefrom, provided only that the member has, in accordance with the actual knowledge possessed by him, acted in good faith.

7.7 Nonwaiver. Consent by the Architectural Review 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.

7.8 Appeal. At any time after Declarant has delegated appointment of the members of the Architectural Review Committee to the Board of Directors of the Association pursuant to Section 7.4, any Owner adversely affected by action of the Architectural Review Committee may appeal such action to the Board of Directors of the Association. Appeals shall be made in writing within ten (10) days of the Committee's action and shall contain specific objections or mitigating circumstances justifying the appeal. A final, conclusive decision shall be made by the Board of Directors of the Association within fifteen (15) working days after receipt of such notification.

7.9 Effective Period of Consent. The Architectural Review Committee's consent to any proposed work shall automatically be revoked one year after issuance unless construction of the work has been substantially commenced in the judgment of the Architectural Review Committee and thereafter diligently pursued, unless the Owner has applied for and received an extension of time from the Committee.

7.10 Estoppel Certificate. Within fifteen (15) working days after written request is delivered to the Architectural Review Committee by any Owner, and upon payment to the Committee of a reasonable fee fixed by the Committee to cover 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 Lot owned by the Owner, that as of the date thereof, either: (a) all Improvements made or done upon or within such Lot by the Owner comply with this Declaration, or (b) such Improvements do not so comply, in which event the 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 or other encumbrancer, shall be entitled to rely on such certificate with respect to the matters set forth therein, such matters being conclusive as between Declarant, the Architectural Review Committee, the Association and all Owners, and such purchaser or mortgagee.

7.11 Enforcement. If during or after the construction, the Architectural Review Committee finds that construction does not comply with the approved plans, the Committee may require conforming changes to be made or that construction be stopped. The cost of any required changes shall be borne by the Owner. The Committee shall have the power and authority to order any manner of changes or complete removal of any Improvement, alteration or other activity for which prior written approval from the Committee is required

and has not been obtained or waived in writing. If an Owner fails to comply with an order of the Committee, then, subject to the Owner's right of appeal under Section 7.8, either the Architectural Review Committee or the Association may enforce compliance in accordance with the procedures set forth in Section 11 below.

7.12 Master Association. In addition to complying with the architectural standards and procedure of the Association, any owner wishing to make any changes to such Owner's Living Unit must comply with all the guidelines, standards and procedures of the Master Association.

Article 8

ASSOCIATION

Declarant shall organize an association of all of the Owners within Deschutes Landing. Such Association, its successors and assigns, shall be organized as an Oregon nonprofit corporation under the name "Deschutes Landing Owners Association" or such similar name as Declarant shall designate, and shall have such property, powers and obligations as are set forth in this Declaration for the benefit of the Property and all Owners of Lots located therein.

8.1 Organization. Declarant shall, before the first Living Unit is conveyed to an Owner, organize an association of all the Owners within Deschutes Landing as a nonprofit mutual benefit corporation under the general nonprofit corporation laws of the State of Oregon. The Articles of Incorporation of the Association shall provide for its perpetual existence, but in the event the Association is at any time dissolved, whether inadvertently or deliberately, an unincorporated association of the same name shall automatically succeed it. In that event the assets of the Association shall be dedicated to a public body, or all of the property, powers and obligations of the incorporated association existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated association, and such vesting shall hereafter be confirmed as evidenced by appropriate conveyances and assignments by the incorporated association. To the greatest extent possible, the Articles of Incorporation and Bylaws of the Association shall govern any successor-unincorporated association as if they had been made to constitute the governing documents of the unincorporated association.

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

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

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

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

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

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

(i) When Living Units on ninety percent (90%) of the Lots have been sold and conveyed to Owners other than Declarant; or

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

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

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

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

(b) The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Oregon.

(c) The powers, duties and obligations of a homeowners association pursuant to the Oregon Planned Community Act.

(d) Any additional or different powers, duties, and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to this Declaration or otherwise promoting the general benefit of the Owners within the Property.

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

8.5 Specific Powers and Duties. The powers and duties of the Association shall include, without limitation, the following:

(a) Maintenance and Services. The Association shall provide maintenance and services for the Property as provided in Article 9 and other provisions of this Declaration.

(b) Insurance. The Association shall obtain and maintain in force policies of insurance as provided in this Declaration or the Bylaws of the Association.

(c) Rulemaking. The Association shall make, establish, promulgate, amend and repeal rules and regulations as provided in Section 6.29 of this Declaration.

(d) Assessments. The Association shall adopt budgets and impose and collect Assessments as provided in Article 10 of this Declaration.

(e) Enforcement. The Association shall perform such acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce the provisions of this Declaration and the rules and regulations adopted by the Association, including without limitation, enforcement of the decisions of the Architectural Review Committee.

(f) Employment of Agents, Advisors and Contractors. The Association through its Board of Directors, may employ the services of any person or corporation as managers, hire employees to manage, conduct and perform the business, obligations and duties of the Association, employ professional counsel and obtain advice from such person or firms or corporations such as, but not limited to, landscape architects, architects, planners, lawyers and accountants, and contract for or otherwise provide for all services necessary or convenient for the managements, maintenance and operation of the Property; provided, however, the Association may not incur or commit to incur legal fees in excess of \$5,000 for any specific matter unless the Owners have enacted a resolution authorizing the incurring of such fees by a vote of seventy-five percent (75%) of the voting rights present in person or by absentee ballot or proxy at a meeting at which a quorum is constituted. This limitation shall not be applicable to legal fees incurred in defending the Association or the Board of Directors from claims or litigation brought against them. The limitation set forth in this paragraph shall increase by \$500 on each fifth anniversary of the recording of this Declaration.

(g) Borrow Money, Hold Title and Make Conveyances. The Association may borrow and repay moneys for the purpose of performing its duties under this Declaration, and subject to Section 4.3(d) above, encumber the Common Areas as security for the repayment of such borrowed money. The Association may acquire, hold title to and convey, with or without consideration, real and personal property and interest therein, including but not limited to easements across all or any portion of the Common Area, and shall accept any real or personal property, leasehold or other property interests within Deschutes Landing conveyed to the Association by Declarant.

(h) Transfer, Dedication and Encumbrance of Common Area. Except as otherwise provided in 4.3(d) above, the Association may sell, transfer or encumber all or any portion of the Common Area to a person, firm or entity, whether public or private, and dedicate or transfer all or any portion of the Common Area to any public agency, authority, or utility for public purposes.

(i) Create Classes of Service and Make Appropriate Charges. The Association may, in its sole discretion, create various classes of service and make appropriate Individual Assessments or charges therefore to the users of such services, including but not limited to reasonable admission and other fees for the use of any and all recreational facilities situated on the Common Areas, without being required to render such services to those of its members who do not assent to such charges and to such other rules and regulations as the Board of Directors deems proper. In addition, the Board of Directors shall have the right to discontinue any service upon nonpayment of Assessments or to eliminate such service for which there is no demand or adequate funds to maintain the same.

(j) Implied Rights and Obligations. The Association may exercise any other right or privilege reasonably to be implied from the existence of any right or privilege expressly given to the Association under this Declaration or reasonably necessary to effectuate any such right or privilege.

8.6 Liability. A member of the Board of Directors or an officer of the Association shall not be liable to the Association or any member thereof for any damage, loss or prejudice suffered or claimed on account of any action or failure to act in the performance of his duties, except for acts of gross negligence or intentional acts. In the event any member of the Board of Directors or any officer of the Association is made a party to any proceeding because the individual is or was a director or officer of the Association, the Association shall indemnify such individual against liability and expenses incurred to the maximum extent permitted by law. The managing agent of the Association, and its officers and employees, shall not be liable to the Owners or any third parties on account of any action or failure to act in the performance of its duties as managing agent, except for acts of gross negligence or intentional acts, and the Association shall indemnify the managing agent and its officers and employees from any such claims, other than for gross negligence or intentional misconduct.

8.7 Interim Board; Turnover Meeting. Declarant shall have the right to appoint an interim board of three directors or more, who shall serve as the Board of Directors of the Association until replaced by Declarant or until their successors have been elected by the Owners at the turnover meeting described in this Section. Not later than ninety (90) days after the expiration of the period of Declarant's Class B membership pursuant to Section 8.3, Declarant shall call a meeting for the purpose of turning over administrative responsibility for Deschutes Landing to the Association. Declarant shall give notice of the meeting to each Owner as provided for in the Bylaws of the Association. If Declarant does not call a meeting required by this Section within the required time, the Transitional Advisory Committee described in Section 8.8 below or any Owner may call a meeting and give notice as required in this Section. At the turnover meeting the interim directors shall resign and their successors

shall be elected by the Owners and Declarant as provided in this Declaration and the Bylaws of the Association.

8.8 Transitional Advisory Committee. Declarant or Owners shall form a transitional advisory committee (the "Transitional Advisory Committee") to provide for the transition from administrative responsibility by Declarant of Deschutes Landing to administrative responsibility by the Association. Not later than the sixtieth (60th) day after the later of (a) Declarant has conveyed to Owners, other than a successor Declarant, Living Units on seventy five percent (75%) of the Lots of Deschutes Landing, or (b) the date that Declarant has conveyed thirty three (33) Lots in Deschutes Landing to Owners, other than a successor Declarant. Declarant shall call a meeting of Owners for the purpose of selecting the Transitional Advisory Committee. The Transitional Advisory Committee shall consist of three or more members. The Owners, other than Declarant, shall select two or more members. Declarant may select no more than one member.

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

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

(c) Turnover Meeting. The requirement for formation of a Transitional Advisory Committee shall not apply once the turnover meeting specified in Section 8.7 above has been held.

8.9 Declarant Control After Turnover. After the turnover meeting described in Section 8.7 above, Declarant shall continue to have the voting rights described in Section 8.3(b) above. In addition, a majority of the Board of Directors of the Association shall be elected by Declarant, as Class B member, with the balance of the Board of Directors elected by the Class A member. After termination of the Class B membership, all directors shall be elected by the Class A members.

8.10 Contracts Entered into by Declarant or Prior to Turnover Meeting. Notwithstanding any other provision of this Declaration, any management contracts, service contracts or employment contracts entered into by the Declarant or the Board of Directors on behalf of the Association prior to the Turnover Meeting shall have a term not in excess of three (3) years. In addition, any such contract shall provide that it may be terminated without cause or penalty by the Association or Board of Directors upon not less than thirty (30) days notice to the other party given not later than sixty (60) days after the Turnover Meeting.

8.11 Bylaws. The Bylaws of the Association and any amendment or modification of the Bylaws shall be recorded in the Deed Records of Deschutes County,

Oregon. Declarant hereby adopts, on behalf of the Association, the initial Bylaws attached as Exhibit A to this Declaration.

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

Article 9

MAINTENANCE, UTILITIES AND SERVICES

9.1 Maintenance and Lighting of Common Areas. The Association shall perform all maintenance upon, and where the Association deems appropriate provide exterior lighting for, the Common Areas and all improvements situated thereon, including without limitation, gates and recreational facilities, provided that any such lighting (a) shall require prior written consent of Declarant while Declarant is an Owner and (b) shall conform to any applicable laws and ordinances and to the Master Declaration.

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

9.3 Maintenance of Living Unit Exteriors and Landscaping.

(a) Maintenance of the exterior of the Living Units, sidewalks located in Common Areas (including snow removal and salting), and landscaping on the Lots and Common Areas shall be the responsibility of the Association except as hereinafter provided. Exterior maintenance of Living Units shall include painting, re—roofing, and siding, as well as the routine maintenance required for those items. The maintenance agreements on structural elements and the easements in place to provide them may not be modified or suspended without building official approval.

(b) Failure of the Association to properly maintain the Living Unit exteriors and Common Areas may be subject to possible enforcement actions by building officials or affected parties to facilitate the repairs and maintenance required through application of a local housing or nuisance abatement ordinance, or an existing building or property maintenance code.

(c) Structural Modification Restriction. Structural elements identified or necessary for lateral stability, including but not limited to horizontal and vertical strapping, foundation tie downs and plywood sheathing, shall not be altered without the analysis and approval of a structural engineer registered in the state of Oregon and by permit from the governing jurisdiction.

(d) Owners shall be responsible for maintenance of all portions of the Living Units that are not the obligation of the Association as set forth in this Declaration. Without limitation, Owners shall be responsible for (i) landscaping and maintenance on patios and decks which shall include the care of hot tubs located therein, (ii) Party Walls as identified in Article 3.1 of the Declaration including this and all future amendments to the Declarations as may be appropriate, and (iii) the cost of any repairs necessitated by the negligence or intentional misconduct of such Owner or such Owner's guests or invitees.

(e) The Association shall hold harmless, defend, and indemnify the City of Bend, Oregon and its agents, and employees against all claims, demands, actions, and suits, including attorney's fees and costs brought against any of them arising out of the failure to properly design, locate, construct, repair or maintain the Party Wall.

9.4 Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to make the Property safer than it otherwise might be, including, without limitation, exterior lighting for Common Areas. Neither the Association, the Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Property, 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, Declarant, and any successor Declarant are not insurers and that each person using the Property assumes all risks for loss or damage to person, to property and to the contents of Lots resulting from acts of third parties and releases such parties from any liability therefor.

9.5 Services. The Association shall provide or contract for such services as the Board may reasonably deem to be of benefit to the Property, including, without limitation, landscape services, garbage and trash removal for Common Areas and Living Units, and security services.

9.6 Management. The Association Board of Directors may engage a Manager for the Association and may delegate to the Manager such duties of the officers of the Association as the Association Board of Directors deems appropriate.

9.7 Damage Liability. Any damage to any Common Area by Owners, their children, agents, visitors, friends, relatives, tenants, occupants or service personnel shall be

repaired by the Owner within fifteen (15) days following the date on which notice is mailed by the Association informing the Owner of such violation. If the damage has not been repaired within such time, then the Association shall perform such repair and the cost shall be assessed to the Owner as an Individual Assessment.

Article 10

ASSESSMENTS

10.1 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the Owners and occupants of Deschutes Landing and for the improvement, operation and maintenance of the Common Areas and exteriors of all Living Units.

10.2 Types of Assessments. The Association may levy Annual Assessments, Special Purpose Assessments, Emergency Assessments, Limited Common Area Assessments and Individual Assessments, all as more particularly described below.

10.3 Annual Operating Budgets. The Association Board of Directors shall on or before December 1 of each year prepare an operating budget for the Association for the ensuing year, taking into account the current costs of insurance premiums, maintenance, and services and future needs of the Association, any previous over assessment and any other common expenses or any common profits of the Association. The budget shall provide for such reserve or contingency funds as the Board deems necessary or desirable or as may be required by law.

10.4 Operating Assessments. All Living Units shall be assessed for operating costs. The amount of the assessment for each Living Unit will be a portion of the annual budget equal to one of the following amounts:

(a) The Common Area maintenance expenses and Association administrative operating expenses shall be divided equally among all Lots.

(b) The Living Unit exterior maintenance expenses, limited to those areas that are the Association's responsibility to maintain as identified within Article 9.3. The assessment for exterior maintenance for each Living Unit shall be determined by multiplying the annual budget by the ratio of (i) the square footage of such Living Unit divided by (ii) the square footage of each completed Living Units within the building.

10.5 Special Purpose Assessments. In the event that the Association Board of Directors deems it to be to the advantage of the Owners to impose a special purpose assessment to provide funds to pay for any underassessment or provide funds for a particular capital improvement, capital expenditure, or recreational facility; it may impose such a special assessment, provided that the amount of the assessment and the terms upon which it will be imposed have been approved by the vote or written consent of the Class B member, if any, and

by not less than seventy-five percent (75%) of the votes of the Class A members who are voting in person, by absentee ballot or by proxy at a meeting duly called for the purpose of approving the Special Purpose Assessment.

10.6 Reserve Fund.

(a) Establishment of Account. Declarant shall conduct a reserve study as described in paragraph (c) of this section and establish a bank account in the State of Oregon in the name of the Association (the "**Reserve Fund**") for replacement of common properties that will normally require replacement in whole or in part in more than three (3) and less than thirty (30) years, for exterior painting if the Common Areas, Living Units or other property to be maintained by the Association that includes exterior painted surfaces, for re-roofing and/or roof replacement of the Living Units, and for other items, whether or not involving Common Areas or Living Units, if the Association has responsibility to maintain the items. The Reserve Fund need not include those items that could reasonably be funded from operating Assessments or for those items for which one or more Owners are responsible for maintenance and replacement under the provisions of this Declaration or the Bylaws.

(b) Funding of Reserve Fund. The Reserve Fund shall be funded by Assessments against the individual Lot assessed for maintenance of the items for which the Reserve Fund is being established, which sums shall be included in the regular Annual Assessment for the Lot. Reserve Fund Assessments for each building by multiplying the reserve fund budget per building by the ratio of (i) the square footage of such Living Unit divided by (ii) the square reserve footage of all completed Living Units within the building. The Reserve Fund shall be established in the name of the Association. The Association is responsible for administering the Reserve Fund and making periodic payments into it.

(c) Reserve Studies. The reserve portion of the initial Assessment determined by Declarant shall be based on a reserve study described in paragraph (c) or other sources of information. The Board of Directors annually shall conduct a reserve study, or review and update an existing study, to determine the Reserve Fund requirements and may adjust the amount of payments as indicated by the study or update and provide other reserve items that the Board of Directors, in its discretion, may deem appropriate. The reserve study shall include:

- (i) Identification of all items for which reserves are to be established;
- (ii) The estimated remaining useful life of each item as of the date of the reserve study;
- (iii) An estimated cost of maintenance, repair or replacement of each item at the end of its useful life;
- (iv) A thirty (30) year plan with regular and adequate contributions, adjusted by estimated inflation and interest earned on reserves, to meet the maintenance, repair and replacement schedule.

(d) Use of Reserve Fund. The Reserve Fund shall be used only for the purposes for which the reserves have been established and shall be kept separate from other funds. After the Turnover Meeting, however, the Board of Directors may borrow funds from the Reserve Fund to meet high seasonal demands on the regular operating funds or to meet unexpected increases in expenses if the Board of Directors has adopted a resolution, which may be an annual continuing resolution, authorizing the borrowing of funds. Funds so borrowed from the Reserve Fund must be repaid from Assessments. Not later than the adoption of the budget for the following year, the Board of Directors shall adopt by resolution a written payment plan providing for repayment of the borrowed funds within a reasonable period. Nothing in this section shall prohibit prudent investment of the Reserve Fund. In addition to the authority of the Board of Directors under paragraph (c) of this section, following the second year after the Turnover Meeting, the Association may elect to reduce or increase future Assessments for the Reserve Fund by an affirmative vote of not less than seventy-five percent (75%) of the voting power of the Association and may, on an annual basis by a unanimous vote, elect not to fund the Reserve Fund. Assessments paid into the Reserve Fund are the property of the Association and are not refundable to sellers or Owners of Lots. Sellers of the Lots, however, may treat their outstanding share of the Reserve Fund as a separate item in any sales agreement.

10.7 Payment of Assessments. The Association shall not less than annually, provide notice to the Owner of each Living Unit of the amount of the assessments for such Living Unit. Assessments shall be due and payable on or before a date set forth in the notice which shall be not less than 15 days from the date the notice is mailed or at such other time or times set in accordance with this Declaration or the Bylaws as the Association may specify in the notice. The Board shall have the right to give discounts for advance payment of assessments.

10.8 Creation of Lien and Personal Obligation of Assessments. Declarant, for each Lot owned by it with the Property, does hereby covenant, and each Owner of any Lot by acceptance of a conveyance thereof, whether or not so expressed in any such conveyance, shall be deemed to covenant to pay to the Association all assessments or other charges as may be fixed, established, and collected from time to time in the manner provided in this Declaration or the Association Bylaws. Such assessments and charges, together with any interest, expenses or attorney fees imposed pursuant to Section 11.6 shall be a charge on the land and a continuing lien upon the Living Unit against which each such assessment or charge is made. Such assessments, charges, and other costs shall also be the personal obligation of the person who was the Owner of such Living Unit at the time when the assessment or charge fell due. Such liens and personal obligations shall be enforced in the manner set forth in Article 11 below.

10.9 Voluntary Conveyance. In a voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor of the Lot up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, upon request of a prospective purchaser, the Board of Directors of the Association shall make and

deliver a statement of the unpaid Assessments against the prospective grantor or the Lot, and the grantee in that case shall not be liable for, nor shall the Lot when conveyed be subject to, a lien filed thereafter for any unpaid Assessments against the grantor in excess of the amount set for in the statement.

10.10 Annual Accounting. Each calendar year the Association Board of Directors shall render to each Owner an accounting which shall set forth the amount and source of all income received in the maintenance fund and all disbursements from the fund during the previous calendar year, together with a statement of the assets of and liabilities of the maintenance fund at the close of the last calendar year. The Association Board of Directors shall maintain records of all amounts received into the maintenance fund and of all disbursements therefrom, which records shall be open to inspection by any Owner at any reasonable time during the normal business hours.

10.11 Annexation of Additional Property. When Additional Properties are annexed to Deschutes Landing, the Lots included therein shall become subject to Assessments from the date of such annexation to the extent provided in Section 10.3. The Board of Directors of the Association, however, at its option may elect to recompute the budget based upon the additional Lots subject to assessment and additional Common Areas and recomputed Annual Assessments for all Lots, including the new Lots, for the balance of the fiscal year. Notwithstanding any provision of this declaration apparently to the contrary, a declaration annexing Additional Property may provide that such additional property does not have the right to use a particular Common Area or facility located thereon, in which case such Additional Property shall not be assessed for the costs of operating, maintaining, repairing, replacing or improving such Common Area or facility.

Article 11

ENFORCEMENT

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

11.2 Nonqualifying Improvements and Violation of General Protective Covenants. In the event any Owner constructs or permits to be constructed on such Owner's Lot an Improvement contrary to the provisions of this Declaration, or causes or permits any

Improvement, activity, condition or nuisance contrary to the provisions of this Declaration to remain uncorrected or unabated on such Owner's Lot, then the Association acting through its Board of Directors may notify the Owner in writing of any such specific violations of this Declaration and may require the Owner to remedy or abate the same in order to bring the Owner's Lot, the Improvements thereon, and the Owner's use thereof, into conformance with this declaration. If the Owner is unable, unwilling, or refuses to comply with the Association's specific directives or remedy or abatement, or the Owner and the Association cannot agree to a mutually acceptable solution within the framework and intent of this Declaration, after notice and opportunity to be heard and within sixty (60) days of written notice to the Owner, then the Association acting through its Board of Directors, shall have, in addition to any other right or remedies provided in this Declaration, at law or in equity, the right to do any or all of the following:

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

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

(c) Fines. Impose one or more fines as provided in Section 11.7.

11.3 Default in Payment of Assessments; Enforcement of Lien. If an assessment, fine, or other charge levied under this Declaration is not paid within thirty (30) days of its due date, such assessment or charge shall become delinquent and shall bear interest from the due date until paid at the legal rate of interest and, in addition, the Association may exercise any of all of the following remedies:

(a) Suspension of Rights; Acceleration. The Association may suspend such Owner's voting rights and right to use the Common Areas until such amounts, plus other charges under this Declaration, are paid in full and may declare all remaining periodic installments of any annual assessment or any other amounts owed by such Owner to the Association immediately due and payable. In no event, however, shall the Association deprive any Owner of access to and from such Owner's Lot.

(b) Lien. The Association shall have a lien against each Lot and Living Unit for any assessment levied against the Lot and Living Unit and any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the living Unit from the date on which the assessment, fine or charge is due. The provisions regarding the attachment, notice, recordation, and duration of liens established on real property under ORS 87.352 to 87.386 shall apply to the Association's lien. The lien shall be foreclosed in accordance with the provisions regarding the foreclosure of liens under the ORS chapter 88. The Association, through its duly authorized agent, may bid on the Lot and Living Unit at such foreclosure sale, and may acquire and hold, lease, mortgage, and convey the Lot and Living Unit. If any

assessment is payable in installments, the full amount of the assessment is a lien from the date of the first installment of the assessment becomes due.

(c) **Suit or Action.** The Association may bring an action to recover a money judgment for unpaid assessments and charges under this Declaration without foreclosing or waiving the lien described in Section 11.3(b) above. Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.

(d) **Other Remedies.** The Association shall have any other remedy available to it by law or in equity.

11.4 **Notification of First Mortgagee.** The Board of directors may notify any first mortgagee of any Living Unit of any default in performance of this Declaration by the Living Unit Owner which is not cured within sixty (60) days.

11.5 **Subordination of Lien to First Mortgages.** The lien of the assessments or charges provided for in this Declaration shall be subordinate to the lien of any first mortgage on such Lot and Living Unit which was made in good faith and for value and which was recorded prior to the recordation of the notice of lien. Sale or transfer of any Lot and Living Unit shall not affect the assessment lien, provided however, that if a first mortgagee acquires a Lot or Living Unit by foreclosure or deed in lieu of foreclosure, such mortgagee and a subsequent purchaser (other than the Owner liable for payment of the assessment covered by the lien) shall not be liable for any of the common expenses chargeable to the Lot and Living Unit which became due before the mortgagee or purchaser acquired title to the Lot and Living Unit by foreclosure or deed in lieu of foreclosure. Such sale or transfer, however, shall not release the Lot and Living Unit from liability for any assessments or charges thereafter becoming due or from the lien of such assessments or charges.

11.6 **Late Charge, Expenses, and Attorney Fees.** A late charge may be charged for each delinquent assessment in an amount established from time to time by resolution of the Board of Directors of the Association not to exceed 10 percent of such assessment. In the event the Association shall file a notice of lien, the lien amount shall also include the recording fees associated with filing the notice, and a fee for preparing the notice of lien established from time to time by resolution of the Board of Directors of the Association. In the event the Association shall bring any suit or action to enforce this Declaration, or to collect any money due hereunder or to foreclose a lien, the Owner-defendant shall pay to the Association all costs and expenses incurred by it in connection with such suit or action, including a foreclosure title report, and the prevailing party in such suit or action shall recover such amount as the court may determine to be reasonable as attorney fees at trial and upon any appeal or petition for review thereof or in any bankruptcy proceeding..

11.7 **Fines.** The Board of Directors may establish a schedule of fines applicable to violations of this Declaration or rules and regulations established pursuant to this Declaration. Fines may be imposed by the Board of Directors after giving the alleged violator notice of the proposed fine and an opportunity to be heard. Fines shall be payable within ten

days after receipt of written notice of the imposition of the fine. All fines shall be deposited in the Association's operating account.

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

Article 12

MISCELLANEOUS PROVISIONS

12.1 Amendment and Repeal. This Declaration, or any provision hereof, may be amended or repealed at any time (including, without limitation, within the 30 year period following the date of this Declaration) by the vote or written consent of Owners holding not less than seventy-five percent (75%) of the Class A votes, together with the written consent of the Class B member, if such membership has not been terminated as provided herein. Any such amendment or repeal shall become effective only upon recordation in the Deed Records of Deschutes County, Oregon, of a certificate of the president and secretary of the Association setting forth in full the amendment, amendments or repeal so approved and certifying that such amendment, amendments or repeal have been approved in the manner required by this Declaration. In no event shall an amendment under this section create, limit or diminish special Declarant rights without Declarant's written consent, or change the boundaries of any Lot or any uses to which any Lot is restricted unless the Owners of the affected Lots unanimously consent to the amendment.

12.2 Regulatory Amendments. Notwithstanding the provisions of Section 12.1 above, until termination of the Class B membership, Declarant shall have the right to amend this Declaration or the Bylaws of the Association in order to comply with the requirements of any applicable statute, ordinance, regulation, or ruling the Federal Housing Administration, the Veterans Administration, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, any department, bureau, board, commission, or agency of the United State or the State of Oregon, or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon which insures, guarantees or provides financing for a planned community or lots in a planned community.

12.3 Duration. This Declaration shall run with the land and shall be and remain in full force and effect at all times with respect to all property included in Deschutes Landing and the Owners thereof for an initial period of thirty (30) years commencing with the date on which this document is recorded. Thereafter, this Declaration shall continue to run with the land and be and remain in full force and effect at all times with respect to all property in Deschutes Landing and the Owners thereof for successive additional periods of ten (10) years each. The continuation from the initial or any additional period into the next subsequent period shall be automatic and without the necessity of any notice, consent or other action

whatsoever; provided however that this Declaration may be terminated at the end of the initial or any additional period by resolution approved not less than six (6) months prior to the intended termination date by the vote or written consent of Owners owning not less than seventy-five percent (75%) of the Class A votes and the written consent of the Class B member, if any, and the written approval of the holders of mortgages on Living Units in the project to the extent required by Section 12.4. Any such termination shall become effective only if prior to the intended termination date a certificate of the president or secretary of the Association, certifying that termination as of a specified termination date has been approved in the manner required herein, is duly acknowledged and recorded in the Deed Records of Deschutes County, Oregon. Such termination shall not have the effect of denying any Owner access to such Owner's Lot unless such Owner and any mortgagee of such Lot have consented in writing to the termination.

12.4 Right of Mortgagees Relating to Maintenance. At any time that the Common Areas, including the Private Ways, the landscaping or the exterior of the Living Units are not maintained or repaired by the Association to the extent reasonably necessary to protect and preserve the value of the Property for security purposes, then the record mortgagee, upon giving written notice as hereinafter provided, shall be entitled to exercise the rights of the Owner of the Lot as a member of the Association to vote at all regular and special meetings of the members of the Association for a period of one year following the date of such notice. During this one-year period, the Association shall give notice of all regular and special meetings to both the Owner and the mortgagee, and the Owner may attend such meetings as an observer. Notice from the mortgagee under this section shall quote this Section 12.4 and shall be sent postage prepaid by certified United States mail, return receipt requested, to the Owner with a copy by regular mail to the Association at the last known address of each.

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

12.6 Lessees and Other Invitees. Lessees, invitees, contractors, family members, and other persons entering Deschutes Landing under rights derived from an Owner shall comply with all of the provisions of this Declaration restricting or regulating the Owner's use, improvement, or enjoyment of such Owner's Lot, Living Unit, and other areas within Deschutes Landing. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner.

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

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

12.9 Notices and Other Documents. All notices and other communications under this Declaration shall be in writing and shall be deemed to have been given on the day of delivery when delivered by personal service and to have been given three business days after delivery to the United States mails certified or registered mail, return receipt requested, addressed to the party to which such notice is directed at its address determined as provided in this Section 12.9.

(a) Addresses.

(i) If to an Owner, then to the last address for such Owner shown in the Association's records.

(ii) If to Declarant or to the Association, then to Declarant or the Association at:

Deschutes Landing Owners Association
c/o Crystal Lake Property Management LLC
63088 NE 18 Street Suite 101
Bend, OR 97701

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

12.10 Enforcement/Attorney Fees. The Association and the Owners within the Property or any mortgagee on any Lot shall have the right to enforce all of the covenants, conditions, restrictions, reservations, easements, liens and charges now or hereinafter imposed by any of the provisions of this Declaration as may appertain specifically to such parties or owners by any proceeding at law or in equity. Failure by either the Association or by any Owner or mortgagee to enforce any covenant, condition, or restriction herein contained shall in no event be deemed a waiver of their right to do so thereafter. In the event suit or action is commenced to enforce the terms and provisions of this Declaration, the prevailing party shall be entitled to its attorney fees and costs in such suit or action to be fixed by the trial court, and in the event of an appeal, the cost of the appeal, together with reasonable attorney fees, to be

set by the appellate court. In addition thereto, the Association shall be entitled to its reasonable attorney fees incurred in any enforcement activity taken to collect delinquent assessments, whether or not suit or action is filed.

Article 13
MASTER ASSOCIATION

Each Owner is a member of the Master Association and is subject to the Master Bylaws. Each Lot is subject to the Master Declaration. In the event of any inconsistency between the Master Declaration and this Declaration, such matter shall be governed by the Master Declaration. In the event of any inconsistency between the Master Bylaws and the bylaws of the Association, such matter shall be governed by the Master Bylaws.

IN WITNESS WHEREOF, Declarant has executed this Declaration on the date set forth above.

Deschutes Landing LLC,
an Oregon limited liability company

By *D. Pahlisch*
Dennis Pahlisch, authorized representative

STATE OF OREGON)
)ss.
County of Deschutes

The foregoing instrument was acknowledged before this 19 day of July 2007, by Dennis Pahlisch as authorized representative of Deschutes Landing LLC, an Oregon limited liability company, on its behalf.



Nancy E. Kowalski
Notary Public for *Oregon*
My commission expires: *October 18, 2007*

EXHIBIT A

**BYLAWS OF
DESCHUTES LANDING OWNERS ASSOCIATION**

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BYLAWS OF
DESCHUTES LANDING OWNERS ASSOCIATION

Article 1.
Definitions

1.1 **Association.** “**Association**” means **DESCHUTES LANDING OWNERS ASSOCIATION**, a nonprofit corporation organized and existing under the laws of the State of Oregon.

1.2 **Articles of Incorporation.** “**Articles of Incorporation**” means the Articles of Incorporation of the Association.

1.3 **Declaration.** The “**Declaration**” means the Declaration of Protective Covenants, Conditions, Restrictions and Easements for Deschutes Landing to which these Bylaws are attached, as the same may be subsequently amended or supplemented pursuant to the terms thereof.

1.4 **Incorporation by Reference.** Except as otherwise provided herein, the terms, which are defined in Article 1 of the Declaration, are used in these Bylaws as therein defined.

Article 2.
Membership

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

2.2 **Membership List.** The Secretary shall maintain at the principal office of the Association a membership list showing the name and address of the Owner of each Lot. The Secretary may accept as satisfactory proof of such ownership a duly executed and acknowledged conveyance, a title insurance policy, or other evidence reasonably acceptable to the Board of Directors.

Article 3.
Meetings And Voting

3.1 **Place of Meetings.** Meetings of the members of the Association shall be held at such reasonable place convenient to the members as may be designated in the notice of the meeting.

3.2 **Turnover Meeting.** Declarant shall call the first meeting of the Owners to organize the Association within ninety (90) days after termination of the Class B membership as provided in Section 3.7 below. Notice of such meeting shall be given to all Owners as provided in Section 3.5. If the Declarant fails to call the meeting, the meeting may be called and notice given by any Owner or mortgagee of a Lot. The expense of giving notice shall be paid or reimbursed by the Association. In the event of lack of quorum at such turnover meeting, it may be adjourned to the time of the first annual meeting. Nothing in this section shall be construed as preventing the Declarant from calling the turnover meeting prior to such date, or from calling informal, informational meetings of the Owners.

3.3 **Annual Meeting.** The annual meeting of the members for the election of directors and for the transaction of such other business as may properly come before the meeting shall be held at such reasonable hour and on such reasonable day during the month of November or December of each year as the President may designate, or if the President should fail to designate a date by the first day of December, then at 7:30 p.m. on the second Thursday in December. The first annual meeting shall be held within one year from the date of the turnover meeting.

3.4 **Special Meetings.** A special meeting of the Association may be called at any time by the President or by a majority of the Board of Directors. A special meeting shall be called upon receipt of a written request stating the purpose of the meeting from members having twenty-five percent (25%) of the voting rights entitled to be cast at such meeting.

3.5 **Notice of Meeting.**

(a) Written or printed notice stating the place, day and hour of the meeting, the items on the agenda, including the general nature of any proposed amendment to the Declaration or these Bylaws, any budget changes, any proposal to remove a director or officer and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) nor more than fifty (50) days before the date of the meeting. Such notice shall be given either personally or by mail, by or at the direction of the President, or the Secretary, or the persons calling the meeting, to each member entitled to vote at such meeting, and to all mortgagees who have requested such notice. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, with postage fully prepaid thereon, addressed to the member at his most recent address as it appears on the records of the Association or to the mailing address of his Lot.

(b) When a meeting is adjourned for thirty (30) days or more, or law requires when a redetermination of the persons entitled to receive notice of the adjourned meeting, notice of the adjourned meeting shall be given as for an original meeting. In all other cases no notice of the adjournment or of the business to be transacted at the adjourned meeting need be given other than by announcement at the meeting at which such adjournment is taken.

3.6 **Quorum.** At any meeting of the Association, members having twenty percent (20%) of the voting rights entitled to be cast at such meeting, present in person or by proxy, shall constitute a quorum, except when a larger quorum is required by the Declaration. When a quorum is once present to organize a meeting, it cannot be broken by the subsequent withdrawal

of a member or members. If any meeting of members cannot be organized because of a lack of quorum, the members who are present, either in person or by proxy, may adjourn the meeting from time to time not less than forty-eight (48) hours nor more than thirty (30) days from the time the original meeting was called until a quorum is present.

3.7 **Voting Rights.** The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Class B member and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member shall be the Declarant and shall be entitled to three votes for each Lot owned by Declarant. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(i) When ninety percent (90%) of the Lots of the last phase of Deschutes Landing have been sold and conveyed to Owners other than a successor Declarant; or

(ii) At such earlier time as Declarant may elect in writing to terminate Class B membership.

3.8 **Fiduciaries and Joint Owners.** An executor, administrator, guardian or trustee may vote, in person or by proxy, at any meeting of the Association with respect to any Lot owned or held in such capacity, whether or not the same shall have been transferred to his or her name; provided that such person shall satisfy the Secretary that he or she is the executor, administrator, guardian or trustee, holding such Lot in such capacity. Whenever any Lot is owned by two or more persons jointly, according to the records of the Association, the vote or proxy of such Lot may be exercised by any one of the Owners then present, in the absence of protest by a co-Owner. In the event of disagreement among the co-Owners, the vote of such Lot shall be disregarded completely in determining the proportion of votes given with respect to such matter, unless a valid order establishes the authority of a co-Owner to vote.

3.9 **Tenants and Contract Vendors.** Unless otherwise expressly stated in the rental agreement or lease, all voting rights allocated to a Lot shall be exercised by the Owner. Unless otherwise stated in the contract, all voting rights allocated to a Lot shall be exercised by the vendee of any recorded land sale contract on the Lot.

3.10 **Proxies.** Every member entitled to vote or to execute any waiver or consent may do so either in person, by absentee ballot or by written proxy duly executed and filed with the Secretary of the Association. An Owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over the meeting or by attending and voting at the meeting. A proxy shall not be valid if it is undated or purports to be revocable without notice. A proxy shall terminate one (1) year after its date unless the proxy specifies a

shorter term. Mortgagees may designate a representative to attend any meeting of the Association.

3.11 **Majority Vote.** The vote of a majority of the voting rights entitled to be cast by the members present or represented by absentee ballot or proxy, at a meeting at which a quorum is present, shall be necessary for the adoption of any matter voted upon by the members, unless a greater proportion is required by law, by the Declaration, by the Articles of Incorporation, or by these Bylaws.

3.12 **Rules of Order.** Unless other rules of order are adopted by resolution of the Association or the Board of Directors, all meetings of the Association shall be conducted according to the latest edition of *Robert's Rules of Order*, published by Robert's Rules Association.

3.13 **Ballot Meetings.**

(a) At the discretion of the Board of Directors, any action that may be taken at any annual, regular or special meeting of the Association may be taken without a meeting if the Association delivers a written ballot to every member who is entitled to vote on the matter. The written ballot shall set forth each proposed action and opportunity to vote for or against each proposed action.

(b) The Board of Directors shall provide Owners with at least ten (10) days' notice before written ballots are mailed or otherwise delivered. If, at least three (3) days before written ballots are scheduled to be mailed or otherwise distributed, at least ten percent (10%) of the Owners petition the Board of Directors requesting secrecy procedures, a written ballot must be accompanied by a secrecy envelope, a return identification envelope to be signed by the Owner, and instructions for marking and returning the ballot. Notwithstanding the applicable provisions of paragraph (c) of this section, written ballots that are returned in secrecy envelopes may not be examined or counted before the deadline for returning ballots has passed.

(c) If approval of a proposed action would otherwise require a meeting at which a certain quorum must be present and at which a certain percentage of total votes cast is required to authorize the action, the proposal will be deemed to be approved when the date for return of ballots has passed, a quorum of Lot Owners has voted, and the required percentage of approving votes has been received. Otherwise, the proposal shall be deemed to be rejected. If approval of a proposed action otherwise would require a meeting at which a specified percentage of Lot Owners must authorize the action, the proposal shall be deemed to be approved when the percentage of total votes cast in favor of the proposal equals or exceeds such required percentage. The proposal shall be deemed to be rejected when the number of votes cast in opposition renders approval impossible or when both the date for return of ballots has passed and such required percentage has not been met. Except as otherwise provided in paragraph (b) of this section, votes may be counted from time to time before the final return date to determine whether the proposal has passed or failed by the votes already cast on the date they are entered.

(d) All solicitations for votes by written ballot shall state the number of responses needed to meet any applicable quorum requirement and the total percentage of votes

needed for approval. All such solicitations for votes shall specify the period during which the Association will accept written ballots for counting, which period shall end on the earliest of (i) the date on which the Association has received a sufficient number of approving ballots to pass the proposal, (ii) the date on which the Association has received a sufficient number of disapproving ballots to render the proposal impossible of passage, or (iii) a date certain by which all ballots must be returned to be counted. A written ballot may not be revoked.

Article 4. **Directors: Management**

4.1 **Number and Qualification.** The affairs of the Association shall be governed by a Board of Directors of three (3) to five (5) persons. All directors, other than interim directors appointed by Declarant, shall be Owners or co-Owners of Lots. For purposes of this section, the officers of any corporate Owner and the partners of any partnership shall be considered co-Owners of any Lots owned by such corporation or partnership.

4.2 **Interim Directors.** Upon the recording of the Declaration, the Declarant shall appoint an interim board of three (3) directors, who shall serve until replaced by Declarant or their successors have been replaced by the Owners as provided below.

4.3 **Transitional Advisory Committee.** Unless the turnover meeting described in Section 3.2 above has already been held, Declarant shall call a meeting of the Owners for the purpose of forming a Transitional Advisory Committee. The meeting shall be called within sixty (60) days after the date Declarant conveys fifty percent (50%) or more of the Lots in the Initial Development to Owners other than a successor Declarant. The Committee shall consist of two (2) or more Owners other than a successor Declarant. The Committee shall consist of two (2) or more Owners elected by the Owners other than Declarant and not more than one representative of Declarant. The members shall serve until the turnover meeting. The Transitional Advisory Committee shall be advisory only and its purpose shall be to enable ease of transition from control of the administration of the Association by Declarant to control by the Owners. The committee shall have access to any information, documents and records, which Declarant must turn over to the Owners at the time of the turnover meeting. If Declarant fails to call the meeting to elect a Transitional Advisory Committee within the time specified, the meeting may be called and notice given by any Owner. If the Owners fail to elect a Transitional Advisory Committee at the meeting called for such purpose, Declarant shall have no further obligation to form the committee.

4.4 Election and Tenure of Office.

(a) At the turnover meeting described in Section 3.2, the interim directors shall resign and the members shall elect one (1) director to serve for one year and two (2) directors to serve for two years. The three nominees receiving the greatest number of votes shall serve for two years. In the event of a tie, term selection shall be by random means. Thereafter the successors to each director shall serve for terms of two years each.

(b) Upon a majority vote of the voting rights entitled to be cast by the members present or represented by absentee ballot or proxy at a meeting or ballot meeting at

which a quorum is present, the Board of Directors may be increased from three (3) directors to five (5) directors. At the next annual meeting or a special meeting called for such purpose, two (2) additional directors shall be elected, one to serve for a two-year term and one to serve for a one-year term. Term selection shall be in the same manner as provided in paragraph (a) above.

(c) All directors shall hold office until their respective successors shall have been elected by the members. Election shall be by plurality.

4.5 **Vacancies.**

(a) A vacancy in the Board of Directors shall exist upon the death, resignation or removal of any director, or if the authorized number of directors be increased, or if the members fail at any annual or special meeting of members at which any director or directors are to be elected to elect the full authorized number of directors to be voted for at that meeting. Vacancies in interim directors shall be filled by Declarant.

(b) Vacancies in the Board of Directors, other than interim directors, may be filled by a majority of the remaining directors even though less than a quorum, or by a sole remaining director. Each director so elected shall hold office for the balance of the unexpired term and until his successor is elected.

4.6 **Removal of Directors.** All or any number of the directors, other than interim directors, may be removed, with or without cause, at any meeting of members at which a quorum is present, by a vote of a majority of the number of votes entitled to be cast at an election of directors. No removal of a director shall be effective unless the matter of removal was an item on the agenda and stated in the notice of the meeting as provided in these Bylaws.

4.7 **Powers.** The Board of Directors shall have all of the powers and duties necessary for the administration of the affairs of the Association except such powers and duties as by law or by the Declaration or by these Bylaws may not be delegated to the Board of Directors by the Owners. The Board of Directors may delegate responsibilities to committees or a managing agent, but shall retain ultimate control and supervision. The powers and duties to be exercised by the Board of Directors shall include, but not be limited to those set forth in Section 8.4 of the Declaration and the following:

(a) Carry out the program for maintenance, upkeep, repair and replacement of the property to be maintained by the Association as described in the Declaration and these Bylaws.

(b) Determination of the amounts required for operation, maintenance and other affairs of the Association, and the making of such expenditures.

(c) Preparation of a budget for the Association, and assessment and collection of the Assessments.

(d) Employment and dismissal of such personnel as necessary for such maintenance, upkeep and repair.

(e) Employment of legal, accounting or other personnel for reasonable compensation to perform such services as may be required for the proper administration of the Association; provided, however, the Board may not incur or commit the Association to incur legal fees in excess of \$5,000 for any specific matter unless the Owners have enacted a resolution authorizing the incurring of such fees by a vote of seventy-five percent (75%) of the voting rights present in person or by absentee ballot or proxy at a meeting at which a quorum is constituted. This limitation shall not be applicable to legal fees incurred in defending the Association or the Board of Directors from claims or litigation brought against them. The limitation set forth in this paragraph shall increase by \$500 on each fifth anniversary of the recording of the Declaration. The Board shall notify the owners prior to instituting litigation or administrative proceedings. With regard to any pending litigation involving the Association, the Board shall periodically report to the unit owners as to the status (including settlement offers), progress, and method of funding such litigation. Nothing in this paragraph shall be construed as requiring the Board to disclose any privileged communication between the Association and its counsel.

(f) Opening of bank accounts on behalf of the Association and designating the signatories required therefor.

(g) Preparing or causing to be prepared and filed any required income tax returns or forms for the Association.

(h) Purchasing Lots at foreclosure or other judicial sales in the name of the Association, or its designee.

(i) Selling, leasing, mortgaging, voting the votes appurtenant to (other than for the election of directors), or otherwise dealing with Lots acquired by the Association or its designee.

(j) Obtaining such insurance or bonds pursuant to the provisions of these Bylaws, and reviewing such insurance coverage at least annually.

(k) Making additions and improvements to, or alterations of, the Common Areas, or modify, close, remove, eliminate or discontinue use of any common facility, including any improvement or landscaping, except that any such modification, closure, removal, elimination or discontinuance other than on a temporary basis of any swimming pool, spa or recreational or community building must be approved by a majority vote of the members at a meeting or ballot held in accordance with these Bylaws.

(l) From time to time adopt, modify, or revoke such rules and regulations governing the conduct of persons and the operation and use of the Lots as the Board of Directors may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Property. Such action may be overruled or modified by vote of not less than seventy-five percent (75%) of the voting rights of each class of members present, in person or by proxy, at any meeting, the notice of which shall have stated that such modification or revocation of rules and regulations will be under consideration.

(m) Enforcement by legal means of the provisions of the Declaration, these Bylaws and any rules and regulations adopted hereunder.

(n) In the name of the Association, maintain a current mailing address of the Association.

(o) Subject to Section 8.4 of the Declaration, enter into management agreements with professional management firms.

4.8 **Meetings.**

(a) Meetings of the Board of Directors shall be held at such place as may be designated from time to time by the Board of Directors or other persons calling the meeting.

(b) Annual meetings of the Board of Directors shall be held within thirty (30) days following the adjournment of the annual meetings of the members.

(c) Special meetings of the Board of Directors for any purpose or purposes may be called at any time by the President or by any two directors.

(d) Unless other rules of order are adopted by resolution of the Association or the Board of Directors, all meetings of the Board of Directors shall be conducted according to the latest edition of *Robert's Rules of Order*, published by Robert's Rules Association.

4.9 **Open Meetings.** All meetings of the Board of Directors shall be open to Owners except that, in the discretion of the Board, the following matters may be considered in executive session: (a) consultation with legal counsel concerning the rights and duties of the Association regarding existing or potential litigation, or criminal matters; (b) personnel matters, including salary negotiations and employee discipline; and (c) the negotiation of contracts with third parties. Except in the case of an emergency, the Board of Directors shall vote in an open meeting on whether to meet in executive session. If the Board of Directors votes to meet in executive session, the presiding officer shall state the general nature of the action to be considered and, as precisely as possible, when and under what circumstances the deliberations can be disclosed to Owners. Meetings of the Board of Directors may be conducted by telephonic communication, except that if a majority of the Lots are principal residences of the occupants, then: (a) for other than emergency meetings, notice of each Board of Directors' meeting shall be posted at a place or places on the property at least three (3) days before the meeting, or notice shall be provided by a method otherwise reasonably calculated to inform the Owners of such meeting; and (b) only emergency meetings of the Board of Directors may be conducted by telephonic communication. The meeting and notice requirements of this section may not be circumvented by chance, social meetings, or any other means.

4.10 **Notice of Special Meetings.**

(a) Notice of the time and place of special meetings shall be given to each director orally or delivered in writing personally or by mail or telecopy at least twenty-four (24) hours before the meeting. Notice shall be sufficient if actually received at the required time or if mailed or telecopied not less than seventy-two (72) hours before the meeting. Notice mailed or

telecopied shall be directed to the address shown on the Association's records or to the director's actual address ascertained by the person giving the notice. Such notice may need not be given for an adjourned meeting if such time and place is fixed at the meeting adjourned.

(b) Attendance of a director at a meeting shall constitute a waiver of notice of such meeting except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

4.11 **Quorum and Vote.**

(a) A majority of the directors shall constitute a quorum for the transaction of business. A minority of the directors, in the absence of a quorum, may adjourn from time to time but may not transact any business.

(b) The action of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors unless a greater number is required by law, the Declaration, the Articles of Incorporation or these Bylaws.

4.12 **Liability.** A member of the Board of Directors or an officer of the Association shall not be liable to the Association or any member thereof for any damage, loss or prejudice suffered or claimed on account of any action or failure to act in the performance of his or her duties, except for acts of gross negligence or intentional acts. In the event any member of the Board of Directors or any officer of the Association is made a party to any proceeding because the individual is or was a director or officer of the Association, the Association shall indemnify such individual against liability and expenses incurred to the maximum extent permitted by law. The managing agent of the Association, and its officers and employees, shall not be liable to the Owners or any third parties on account of any action or failure to act in the performance of its duties as managing agent, except for acts of gross negligence or intentional acts, and the Association shall indemnify the managing agent and its officers and employees from any such claims, other than for gross negligence or intentional misconduct.

4.13 **Compensation.** No director shall receive any compensation from the Association for acting as such.

Article 5. **Officers**

5.1 **Designation and Qualification.** The officers of the Association shall be the President, the Secretary and the Treasurer and such Vice Presidents and subordinate officers as the Board of Directors shall from time to time appoint. The President shall be a member of the Board of Directors, but the other officers need not be directors. Officers need not be members of the Association. Any two offices may be held by the same person except the offices of President and Secretary.

5.2 **Election and Vacancies.** The officers of the Association shall be elected annually by the Board of Directors at the organization meeting of each new Board to serve for one year and until their respective successors are elected. If any office shall become vacant by

reason of death, resignation, removal, disqualification or any other cause, the Board of Directors shall elect a successor to fill the unexpired term at any meeting of the Board of Directors.

5.3 Removal and Resignation.

(a) Any officer may be removed upon the affirmative vote of a majority of the directors whenever in their judgment the best interests of the Association will be served thereby. The removal of an officer shall be without prejudice to the contract rights, if any, of the officer so removed.

Any officer may resign at any time by giving written notice to the Board of Directors, the President or the Secretary of the Association. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective, provided that the Board of Directors may reject any post-dated resignation by notice in writing to the resigning officer. The effectiveness of such resignation shall not prejudice the contract rights, if any, of the Association against the officer so resigning.

5.4 President. The President shall be the chief executive officer of the Association and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and affairs of the Association. He shall preside at all meetings of the members and of the Board of Directors. He shall be ex officio a member of all the standing committees, including the executive committee, if any, shall have the general powers and duties of management usually vested in the office of president of a nonprofit corporation, and shall have such other powers and duties as may be prescribed by the Board of Directors or these Bylaws.

5.5 Vice Presidents. The Vice Presidents, if any, shall perform such duties, as the Board of Directors shall prescribe. In the absence or disability of the President, the President's duties and powers shall be performed and exercised by the Senior Vice President as designated by the Board of Directors.

5.6 Secretary.

(a) The Secretary shall keep or cause to be kept a Book of Minutes of all meetings of directors and members showing the time and place of the meeting, whether it was regular or special, and if special, how authorized, the notice given, the names of those present at directors' meetings, the number of memberships present or represented at members' meetings and the proceedings thereof.

(b) The Secretary shall give or cause to be given such notice of the meetings of the members and of the Board of Directors as is required by these Bylaws or by law. The Secretary shall keep the seal of the Association, if any, and affix it to all documents requiring a seal, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or these Bylaws.

(c) If there are no Vice Presidents, then in the absence or disability of the President, the President's duties and powers shall be performed and exercised by the Secretary.

5.7 **Treasurer.** The Treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Association, including accounts of its assets, liabilities, receipts and disbursements. The books of accounts shall at all reasonable times be open to inspection by any director. The Treasurer shall deposit all moneys and other valuables in the name and to the credit of the Association with such depositories as may be designated by the Board. The Treasurer shall disburse the funds of the Association as may be ordered by the Board, shall render to the President and directors, whenever they request it, an account of all of the Treasurer's transactions as Treasurer and of the financial condition of the Association, and shall have such other powers and perform such other duties as may be prescribed by the Board or these Bylaws.

5.8 **Compensation of Officers.** No officer who is a member of the Board of Directors shall receive any compensation from the Association for acting as an officer, unless such compensation is authorized by a resolution duly adopted by the members. The Board of Directors may fix any compensation to be paid to other officers.

Article 6.

Executive And Other Committees

Subject to law, the provisions of the Articles of Incorporation and these Bylaws, the Board of Directors, by a vote of a majority of the directors in office, may appoint an executive committee and such other standing or temporary committees as may be necessary from time to time, consisting of not less than two of the directors in office and having such powers as the Board of Directors may designate. Such committees shall hold office at the pleasure of the Board.

Article 7.

Assessments, Records And Reports

7.1 **Assessments.** As provided in the Declaration, the Association, through its Board of Directors, shall do the following:

(a) Assess and collect from every Owner Assessments in the manner described in the Declaration.

(b) Keep all funds received by the Association as Assessments, other than reserves described in Section 10.4 of the Declaration, in the Operations Fund and keep all reserves collected pursuant to Section 10.4 of the Declaration in the Reserve Fund and use such funds only for the purposes described in the Declaration.

(c) From time to time, and at least annually, prepare a budget for the Association, estimating the common expenses expected to be incurred with adequate allowance for reserves based upon the reserve study required by Section 10.4 of the Declaration, and determine whether the Annual Assessment should be increased or decreased. Within thirty (30) days after adopting a proposed annual budget, the Board of Directors shall provide a summary of the budget to all Owners. If the Board of Directors fails to adopt a budget, the last adopted annual budget shall continue in effect.

(d) Fix the amount of the Assessment against each Lot at least thirty (30) days in advance of each Assessment period. Written notice of any Assessment shall be sent to every Owner subject thereto and to any first mortgagee requesting such notice. The due dates shall be established by the Board of Directors, which may fix a regular flat Assessment payable on a monthly, quarterly, semi-annual or annual basis. The Board of Directors shall cause to be prepared a roster of the Lots showing Assessments applicable to each Lot. The roster shall be kept in the Association office and shall be subject to inspection by any Owner or mortgagee during regular business hours. Within ten (10) business days after receiving a written request, and for a reasonable charge, the Association shall furnish to any Owner or mortgagee a recordable certificate setting forth the unpaid Assessments against such Owner's Lot. Such certificate shall be binding upon the Association, the Board of Directors, and every Owner as to the amounts of unpaid Assessments

(e) Enforce the Assessments in the manner provided in the Declaration.

(f) Keep records of the receipts and expenditures and make the same available for examination by members and their mortgagees at convenient hours, maintain an Assessment roll showing the amount of each Assessment against each Owner, the amounts paid upon the account and the balance due on the Assessments, give each member written notice of each Assessment at least 30 days prior to the time when such Assessments shall become due and payable; and for a reasonable charge, promptly provide any Owner or mortgagee who makes a request in writing with a written certificate of such Owner's unpaid Assessments.

7.2 **Records.** The Association shall keep within the State of Oregon correct and complete financial records sufficiently detailed for proper accounting purposes, keep minutes of the proceedings of its members, Board of Directors and committees having any of the authority of the Board of Directors, and retain all documents, information and records turned over to the Association by Declarant. All documents, information and records delivered to the Association by Declarant pursuant to ORS 94.616 shall be kept within the State of Oregon.

7.3 **Statement of Assessments Due.** The Association shall provide, within ten (10) business days after receipt of a written request from an Owner, a written statement that provides: (a) the amount of assessments due from an Owner and unpaid at the time the request was received, including regular and special assessments, fines and other charges, accrued interest, and late payment charges; (b) the percentage rate at which interest accrues on assessments that are not paid when due; and (c) the percentage rate used to calculate the charges for late payment or the amount of a fixed rate charge for late payment. The Association is not required to comply with this section if the Association has commenced litigation by filing a complaint against the Owner and the litigation is pending when the statement would otherwise be due.

7.4 **Inspection of Books and Records.** During normal business hours or under other reasonable circumstances, the Association shall make available to Owners, prospective purchasers and lenders, and to holders of any mortgage of a Lot, current copies of the Declaration, Articles, Bylaws, Rules and Regulations, amendments or supplements to such documents and the books, records, financial statements and current operating budget of the Association. The Association shall maintain a copy, suitable for purposes of duplication, of the following: (a) the Declaration, these Bylaws, the Rules and Regulations and any amendments or

supplements to them, (b) the most recent financial statement of the Association, and (c) the current operating budget of the Association. Upon written request, the Association shall make such documents, information and records available to such persons for duplication during reasonable hours. The Association may charge a reasonable fee for furnishing copies of such documents, information or records. The fee may include reasonable personnel costs for furnishing the documents, information or records.

7.5 **Payment of Vouchers.** The Treasurer shall pay all vouchers for all budgeted items and for any nonbudgeted items up to \$1,000 signed by the President, managing agent, manager or other person authorized by the Board of Directors. Any voucher for nonbudgeted items in excess of \$1,000 shall require the authorization of the President or a resolution of the Board of Directors.

7.6 **Execution of Documents.** The Board of Directors may, except as otherwise provided in the Declaration, Articles of Incorporation or these Bylaws, authorize any officer or agent to enter into any contract or execute any instrument in the name of and on behalf of the Association. Such authority may be general or confined to specific instances. Unless so authorized by the Board of Directors, no officer, agent or employee shall have any power or authority to bind the Association by any contract or engagement, or to pledge its credit, or to render it liable for any purpose or for any amount.

7.7 **Reports and Audits.** An annual financial statement consisting of a balance sheet and income and expense statement for the preceding year shall be rendered by the Board of Directors to all Owners and to all mortgagees who have requested the same within ninety (90) days after the end of each fiscal year. From time to time, the Board of Directors, at the expense of the Association, may obtain an audit of the books and records pertaining to the Association and furnish copies thereof to the members. At any time any Owner or holder of a mortgage may, at their own expense, cause an audit or inspection to be made of the books and records of the Association.

Article 8.

Insurance

8.1 **Types of Insurance.** For the benefit of the Association and the Owners, the Board of Directors shall obtain and maintain at all times, and shall pay for out of the Operations Fund, the following insurance:

(a) **Property Damage Insurance.**

(i) The Association shall maintain a policy or policies of insurance covering loss or damage from fire, with standard extended coverage and "all risk" endorsements, and such other coverage as the Association may deem desirable.

(ii) The amount of the coverage shall be for not less than one hundred percent (100%) of the current replacement cost of the improvements on the Common Areas (exclusive of land, foundation, excavation and other items normally excluded from coverage), subject to a reasonable deductible.

(iii) The policy or policies shall include all fixtures and building service equipment to the extent that they are part of the Common Areas and all personal property and supplies belonging to the Association.

(b) **Liability Insurance.**

(i) The Association shall maintain comprehensive general liability insurance coverage insuring the Declarant, the Association, the Board of Directors, and the managing agent, against liability to the public or to Owners and their invitees or tenants, incident to the operation, maintenance, ownership or use of the Common Areas, including legal liability arising out of lawsuits related to employment contracts of the Association. There may be excluded from such policy or policies coverage of an Owner (other than as a member of the Association or Board of Directors) for liability arising out of acts or omission of such Owner and liability incident to the ownership and/or use of the part of the property as to which such Owner has the exclusive use or occupancy.

(ii) Limits of liability under such insurance shall not be less than One Million Dollars (\$1,000,000) on a combined single-limit basis.

(iii) Such policy or policies shall be issued on a comprehensive liability basis and shall provide a cross liability endorsement wherein the rights of named insured under the policy or policies shall not be prejudiced as respects his, her or their action against another named insured.

(c) **Worker's Compensation Insurance.** The Association shall maintain workers' compensation insurance to the extent necessary to comply with any applicable laws.

(d) **Fidelity Bonds.**

(i) The Board of Directors may cause the Association to maintain blanket fidelity bonds for all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of, or administered by, the Association. In the event the Association has retained a management agent, the Board of Directors may require such agent to maintain fidelity bonds for its officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association.

(ii) The total amount of fidelity bond coverage required shall be based upon the best business judgment of the Board of Directors.

(iii) Such fidelity bond shall name the Association as obligee and shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. The bonds shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least 10 days prior written notice to the Association.

8.2 **Insurance by Lot Owners.** Each Owner shall be responsible for obtaining, at his or her own expense, homeowner's insurance covering the improvements on the Owner's Lot and liability resulting from use or ownership of the Lot, unless the Association agrees otherwise. The insurance coverage maintained by the Association shall not be brought into contribution with the insurance obtained under this section by the Owners.

8.3 **Planned Community Act Requirements.** The insurance maintained by the Association shall comply with the requirements of the Oregon Planned Community Act, ORS94.550 to 94.780.

Article 9.

General Provisions

9.1 **Seal.** The Board of Directors may, by resolution, adopt a corporate seal.

9.2 **Notice.** All notices to the Association or to the Board of Directors shall be sent care of the managing agent, or if there is no managing agent, to the principal office of the Association or to such other address as the Board of Directors may hereafter designate from time to time. All notices to members shall be sent to the member's unit or to such other address as may have been designated by the member from time to time in writing to the Board of Directors.

9.3 **Waiver of Notice.** Whenever any notice to any member or director is required by law, the Declaration, the Articles of Incorporation, or these Bylaws, a waiver of notice in writing signed at any time by the person entitled to notice shall be equivalent to the giving of the notice.

9.4 **Action Without Meeting.** Any action, which the law, the Declaration, the Articles of Incorporation or the Bylaws require or permit the members or directors to take at any meeting may be taken without a meeting if a consent in writing setting forth the action so taken is signed by all of the members or directors entitled to vote on the matter. The consent, which shall have the same effect as a unanimous vote of the members or directors, shall be filed in the records of minutes of the Association.

9.5 **Conflicts.** These Bylaws are intended to comply with the Oregon Planned Community Act, the Oregon Nonprofit Corporation Law, the Declaration and the Articles of Incorporation. In case of any irreconcilable conflict, such statutes and documents shall control over these Bylaws.

Article 10.

Amendments To Bylaws

10.1 **How Proposed.** Amendments to these Bylaws shall be proposed by either a majority of the Board of Directors or by members holding at least thirty percent (30%) of the voting rights entitled to be cast for such amendment. The proposed amendment must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon or be attached to any request for consent to the amendment.

10.2 **Adoption.**

(a) A resolution adopting a proposed amendment may be proposed by either the Board of Directors or by the members and may be approved by the membership at a meeting called for such purpose or by ballot vote. Members not present at the meeting considering such amendment may express their approval in writing or by proxy. Any resolution must be approved by members holding a majority of the voting rights, together with the written consent of the Class B member, if any, and, as long as there is a Class B member, by the Federal Housing Administration or the Veterans Administration, if these Bylaws were previously approved by such agencies. Amendment or repeal of any provision of these Bylaws that is also contained in the Declaration must be approved by the same voting requirement for amendment or such provision of the Declaration.

(b) Notwithstanding the provisions of the preceding paragraph, until the Turnover Meeting has occurred, Declarant shall have the right to amend these Bylaws in order to comply with the requirements of the Federal Housing Administration, the United States Department of Veterans Affairs, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government Mortgage Association, the Federal Home Mortgage Loan 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 that insures, guarantees or provides financing for a planned community or lots in a planned community. After the Turnover Meeting, any such amendment shall require the approval of a majority of the voting rights of the Association, voting in person, by proxy, or by ballot, at a meeting or ballot meeting of the Association at which a quorum is represented.

10.3 **Execution and Recording.** An amendment shall not be effective until certified by the President and Secretary of the Association as being adopted in accordance with these Bylaws and ORS 94.625 and recorded in the Deed Records of Deschutes County Oregon.