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DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
(EAGLE CREST ESTATE HOMESITES)

0098-0718

THIS DECLARATION made this 24th day of June, 1985, by EAGLE CREST PARTNERS LTD., an Oregon limited partnership, ("Declarant"), is as follows:

RECITALS:

A. Declarant is the owner of certain real property (the "First Subdivision") located in the County of Deschutes, State of Oregon, more particularly described on Exhibit A-1, attached hereto and made a part hereof, which shall be the First Subdivision encumbered pursuant to the provisions of this Declaration. A portion ("Estate Homesite Association Property") of the First Subdivision shall be conveyed by Declarant to the association of owners authorized by this Declaration, which property is more particularly described on Exhibit A-2, attached hereto. The First Subdivision shall be part of the Eagle Crest Planned Community, the development plan for which is more fully described in the "Master Declaration" (as defined herein).

B. Declarant is the owner of certain additional real property ("Annexable Property") located in the County of Deschutes, State of Oregon, described in Exhibit B attached hereto and made a part hereof. The Annexable Property, or any portion thereof, may be annexed to the regime of this Declaration and thereby become a part of the Eagle Crest Planned Community pursuant to the provisions as set forth in Article VIII and, only in the event of such annexation, shall thereafter be governed by the provisions herein contained. The fully-annexed property is intended to include in addition to the First Subdivision up to, but not more than, 126 Estate Homesites upon which single family residential dwelling units may be constructed.

C. Declarant is obligated to construct roadways, one mini-park, and 2 tennis courts upon a portion of the Estate Homesite Association Property, does not choose to limit its right to add additional improvements. In the event all of the Annexable Property is annexed hereto, and in the further event that development of the First Subdivision and such annexed property proceeds in accordance with the present intention of Declarant, the resulting planned community would be as shown on the graphic ("Conceptual Plan of Development") attached hereto as Exhibit C. Declarant intends, but shall not be obligated, to annex the Annexable Property so as to be included within the regime of the Declaration, and intends, but shall not be obligated to develop that Property in accordance with the Conceptual Plan of Development.

D. Declarant intends to and does hereby establish for its own benefit and for the mutual benefit of all future owners or occupants of the First Subdivision and any subsequently annexed lands, as and when annexed (collectively, the "Property"), and each part thereof, certain easements and rights in, over and upon the Property, and certain mutually beneficial covenants, conditions, restrictions and obligations with respect to the proper use, conduct and maintenance thereof.

E. Declarant intends that the owners, mortgagees, occupants and all other persons hereafter acquiring any interest in the Property, or any part thereof, shall at all times enjoy the benefits of, and shall hold, sell and convey their interests subject to the rights, easements, covenants, conditions, restrictions and obligations hereinafter set forth, all of which are hereby declared to be in furtherance of a general plan to promote and protect the cooperative aspect of such development and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property.

DECLARATIONS

NOW, THEREFORE, Declarant as owner of the First Subdivision, and any subsequently annexed lands, as and when annexed, and each part thereof, shall be held, sold and conveyed subject to the following easements, covenants, conditions and restrictions, which are for the purpose of protecting the value and desirability of, and which shall constitute equitable servitudes on the Property, and which shall run with said Property and be binding on and inure to the benefit of all parties having any right, title or interest therein, or in any part thereof, their heirs, successors and assigns.

0098-0719

ARTICLE I DEFINITIONS

As used herein, unless otherwise specified or unless the context otherwise requires:

- 1.1 **"Annexable Property"** means all of the property described in Recital B, together with all improvements thereon.
- 1.2 **"Articles"** means the Articles of Incorporation of Eagle Crest Estate Homesite Association, as such Articles may be amended from time to time.
- 1.3 **"Assessable Estate Homesite"** means, an Estate Homesite approved or to be approved as a building site for a single family detached unit which is subject to assessments by the Estate Homesite Association and to which the right to vote has attached.
- 1.4 **"Assessment"** means collectively, the Annual Assessments, Special Assessments, Emergency Assessments, Remedial Assessments, and Property Tax Assessments, as each such term is defined in Article III of this Declaration.
- 1.5 **"Board"** means the Board of Directors of the Estate Homesite Association.
- 1.6 **"Budget"** means a proforma operating statement of the Estate Homesite Association which sets forth its estimated annual income and expenses.
- 1.7 **"Building"** means any structure having a roof supported by columns or walls for the housing or enclosure of persons, animals or chattels and located on a Lot and forming a part of such Lot.
- 1.8 **"Bylaws"** means the Bylaws of the Estate Homesite Association as such Bylaws may be amended from time to time.
- 1.9 **"Conceptual Plan of Development"** means that conceptual plan identified in Recital C.
- 1.10 **"Condominium"** means a single family residential dwelling unit consisting of an undivided interest in one or more Condominium Lots coupled with an exclusive interest in a dwelling unit in a Building situated thereon, and which is declared to be such in a Supplemental Declaration.
- 1.11 **"Condominium Lot"** means each lot or parcel of real property in the Property as shown with a distinct number or letter on a map or plat of the Property or any portion thereof and which is designated as a site for construction of a Building or Buildings containing one or more Condominiums.
- 1.12 **"Conversion Date"** means the date on which Class B Membership of the Association is converted to Class A Membership as provided in Article II.
- 1.13 **"County"** means the County of Deschutes, State of Oregon.
- 1.14 **"Declarant"** means Eagle Crest Partners Ltd., an Oregon limited partnership, together with its successors and assigns, if any successors and assigns should acquire any portion of the Property from Declarant for the purpose of development and are designated by Declarant as an assignee for the purpose hereof by a duly recorded instrument.
- 1.15 **"Declarant Property"** means certain unannexed real property adjacent to the Property, as shown on the Conceptual Plan of Development over which the Estate Homesite Association or the Master Association has been granted certain easements or licenses for use.
- 1.16 **"Declaration"** means this instrument by which the Property is established to be a planned community, as amended from time to time.
- 1.17 **"Director"** means a member of the Board of Directors of the Estate Homesite Association.
- 1.18 **"Dwelling"** means any Building or portion thereof which is used as a private residence or sleeping place of one or more human beings, but not including clubhouses or recreational buildings intended and designed primarily for recreational use.
- 1.19 **"Estate Lot"** means each lot or parcel of real property as shown with a distinct number or letter on a map or plat of the Property, and which is designated as a site for construction of a single family detached Dwelling Unit.
- 1.20 **"Estate Homesite Association"** means Eagle Crest Estate Homesite Association, an Oregon non-profit corporation.
- 1.21 **"Estate Homesite Association Property"** means the property described in Recital A, and includes any lot, parcel or easement conveyed to or reserved for the benefit of the Estate Homesite Association and which is thereafter operated and/or maintained for the benefit of the Members, and all improvements thereon, and personal property related to the use and enjoyment thereof.
- 1.22 **"Estate Homesite Association Policies and Procedures"** means those policies, procedures, rules and regulations adopted by the Estate Homesite Association pursuant to the authority of Section 2.7 herein, as such Policies and Procedures may be amended from time to time.
- 1.23 **"Estate Homesite Project"** means the First Subdivision as well as any subsequently annexed

0098-0720

addition, as and when annexed to this Declaration, including all Improvements erected or to be erected thereon.

1.24 **"First Mortgage"** means (i) with respect to each Condominium or Lot owned by Non-Declarant Owners, any first Mortgage made in good faith and for value, and created in connection with the acquisition of such Condominium or Lot, or (ii) with respect to any portion of the Property owned by Declarant, any Mortgage encumbering the Property or any portion thereof and securing an obligation of Declarant with respect to any land acquisition or the development or construction of any Improvements on the Property, including, without limiting the generality of the foregoing, that instrument recorded in the office of the recording officer of Deschutes County, entitled "Master Trust Deed and Security Agreement" of Security Pacific Finance Corp., a Delaware Corporation.

1.25 **"First Subdivision"** means all of the real property described as such in Recital A together with all Improvements thereon.

1.26 **"Fiscal Year"** means the one-year period commencing on the first day of January of each year which shall be the fiscal year of the Master Association; provided, however, that the first Fiscal Year shall be the partial one-year period commencing on the Starting Date and ending on December 31, 1985; provided further, that the Fiscal year shall be subject to change by amendment to the Bylaws.

1.27 **"Golf Course"** means one or more Lots designated as such on Exhibit C of the Master Declaration, initially consisting of nine golf holes, a driving range, pro shop and maintenance area, and which is expandable to eighteen golf holes in the discretion of Declarant or the Association.

1.28 **"Improvements"** means buildings, garages, carports, streets, roads, driveways, walkways, parking areas, fences, wells, reservoirs, porches, elevated porches, hedges, plantings, planted trees and shrubs, pools, tennis courts, recreational amenities, and all other structures or landscaping of every kind, nature or description.

1.29 **"Initial Commencement Date"** means the first day of the first month following recordation of the deed for the sale of the first Estate Homesite to a Non-Declarant Owner.

1.30 **"Lien"** means either a voluntary or involuntary lien.

1.31 **"Lot"** means each lot or parcel of real property as shown with a distinct number or letter on a map or plat of the Property or any portion thereof which may be legally conveyed, including all parcels owned by the Estate Homesite Association, whether designated as roadways, wells, Restricted Use Areas, or otherwise.

1.32 **"Master Association"** means that Association of Owners established pursuant to the Master Declaration.

1.33 **"Master Declaration"** means that Declaration of Covenants, Conditions and Restrictions for the Eagle Crest Planned Community dated June 24, 1985, in the office of the recording officer of Deschutes County, State of Oregon, in which the First Subdivision was included within the definition of Initial Property.

1.34 **"Majority of Owners"** means (a) prior to the Conversion Date, (i) the vote or written assent of a Majority of Non-Declarant Owners and (ii) the consent of the Declarant; and (b) from and after the Conversion Date, (i) the vote or written assent of Owners entitled to vote or so assent, and who collectively are entitled to exercise more than 50% of all votes which may be exercised by such Owners, and (ii) the vote or written assent of a Majority of Non-Declarant Owners.

1.35 **"Majority of Non-Declarant Owners"** means the vote or written assent of Non-Declarant Owners entitled to vote or so assent and who collectively are entitled to exercise more than 50% of all votes which may be exercised by such Non-Declarant Owners.

1.36 **"Manager"** means that person or entity employed from time to time by the Board to manage the affairs of the Estate Homesite Association.

1.37 **"Member"** means every person or entity who holds membership in the Estate Homesite Association.

1.38 **"Mortgage"** means a mortgage or deed of trust.

1.39 **"Mortgagee"** means the beneficiary of a recorded deed of trust or the holder of a recorded mortgage.

1.40 **"Non-Declarant Owners"** means all Owners other than Declarant.

1.41 **"Organization Meeting"** means that organization meeting of the Estate Homesite Association pursuant to Article V, Section 2 of the By-Laws.

1.42 **"Owner"** means the person or persons, including Declarant, whose estates or interests, individually or collectively, aggregate fee simple ownership of an Assessable Estate Homesite, but excluding those having an interest merely as security for the performance of an obligation. Owner includes contract

0098-0721

purchaser and lessees of a term in excess of five years, but excludes the holders of title subject to such contracts or leases.

1.43 **"Pass-Through"** means an expense item of the Budget (to be offset, however, by a corresponding revenue) reflecting the obligation of the Estate Homesite Association pursuant to Section 3.1(b) to collect and disburse Master Association assessments.

1.44 **"Planned Community"** means the real property included within, or which may be annexed to, the Eagle Crest Planned Community as more fully defined in the Master Declaration.

1.45 **"Public Report"** means, unless more particularly specified, a Public Report issued by the Real Estate Commissioner of the State of Oregon or the State of Washington or a Final Subdivision Public Report issued by the California Department of Real Estate with respect to all or any portion of the Property, or a comparable public disclosure document issued by any regulatory agency of a State in which real property interests in the Estate Homesite Project are intended to be offered.

1.46 **"Property"** means all of the First Subdivision and such portion of the Annexable Property as may, at any time, have been annexed hereto as provided in Article VIII.

1.47 **"Reserve Expenses"** means the specific capital expenditures required to be made at any time and from time to time to provide for the repair, replacement or restoration of the Estate Homesite Association Property, and for such other purposes as prudent business practice requires.

1.48 **"Restricted Use Area"** means a portion of the Master Association Property designated as such on Exhibit C of the Master Declaration, as amended from time to time, the use and enjoyment of which is reserved to the Master Association and/or the Estate Lot Association for their purposes, and not generally available for use by the Members.

1.49 **"Shall"** is mandatory and not merely directory.

1.50 **"Special Upkeep Area"** means any area or areas of improved or unimproved land within the Estate Homesite Project designated as such herein or in a Supplemental Declaration, and for which: (i) the responsibility for maintenance and repair is herein assigned to the Master Association, (ii) the management, operation, and control is retained by the Estate Homesite Association for the benefit of the owners and, (iii) the cost of maintenance and repair shall be allocated to those Owners and included in the levies Annual Assessments of the Estate Homesite Association, and shall initially include those areas designated as such on the Conceptual Plan of Development.

1.51 **"State"** means the State of Oregon.

1.52 **"Statement of Status"** means an estoppel statement issued by the Estate Homesite Association with regard to the existence of unpaid assessments, as provided in Section 2.4(n).

1.53 **"Starting Date"** means the date on which the first deed conveying any Estate Homesite to a Non-Declarant Owner is recorded.

1.54 **"Supplemental Declaration"** means any declaration or similar document which may have been recorded with respect to any portion of the Annexable Property annexing such property to the regime of this Declaration as permitted by Article VIII, or to the regime of the Eagle Crest Master Declaration, or to both.

1.55 **"Super-Majority of Owners"** means (a) prior to the Conversion Date, (i) the vote or written assent of Non-Declarant Owners entitled to vote or so assent and who collectively are entitled to exercise more than 75% of votes which may be exercised by such Non-Declarant Owners and (ii) the consent of the Declarant; and (b) from and after the Conversion Date (i) the vote or written assent of Owners entitled to vote or so assent, and who collectively are entitled to exercise more than 75% of votes which may be exercised all by such Owners, and (ii) the vote or written assent of Non-Declarant Owners entitled to vote or so assent, and who collectively are entitled to exercise more than 75% of votes which may be exercised by such Non-Declarant Owners.

1.56 **"Unit"** means a residential dwelling unit, and without limiting the generality thereof, includes a Condominium.

ARTICLE II

EAGLE CREST ESTATE HOMESITE ASSOCIATION

2.1 ORGANIZATION.

The Eagle Crest Estate Homesite Association is an Oregon non-profit corporation, which corporation shall be the governing body for all of the Owners for the maintenance, repair, replacement, administration and operation of the Estate Homesite Association Property and all other property it is required or permitted to maintain pursuant to this Declaration, and shall have the duties and powers prescribed by law and set

forth in the Articles, Bylaws and this Declaration. Neither the Articles nor Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. In the event of any such inconsistency, the provisions of this Declaration shall prevail.

2.2 MEMBERSHIP:

(a) **Qualifications:**

Each Owner of an Assessable Estate Homesite, including Declarant, but excluding persons or entities who hold an interest merely as security for the performance of an obligation, shall automatically, upon becoming an Owner, and in addition to becoming a member of the Master Association and subject to the assessments, rules and regulations promulgated pursuant to the Master Declaration, shall become a Member of the Estate Homesite Association and shall remain a Member until such Owner ceases to own such Assessable Estate Homesite; provided, however, that if a Condominium project or any other such common interest subdivision is formed within the Project, the association of owners within such project shall not be a Member whether or not such association is conveyed ownership interest in one or more Assessable Estate Homesites or portions thereof.

(b) **Membership Rights and Duties:**

Each Member shall have the rights, duties and obligations set forth in this Declaration, the Articles, the Bylaws and the Estate Homesite Association Policies and Procedures, as said documents may be amended from time to time.

(c) **Transfer of Membership:**

The Estate Homesite Association membership of each Member (including Declarant) shall be appurtenant to the Assessable Estate Homesite giving rise to such membership, and shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon the transfer of title to said Assessable Estate Homesite, and then only to the transferee of title. Any attempt to make a prohibited transfer shall be void. Any such transfer of title shall operate automatically to transfer the membership in the Estate Homesite Association appurtenant thereto to the new Owner thereof.

2.3 VOTING:

(a) **Number of Votes:**

The Estate Homesite Association shall have two classes of voting membership:

Class A. Until the conversion of the Class B membership to Class A, as provided herein, Class A Members shall be all Owners of Assessable Estate Homesite other than Declarant, and shall be entitled to one vote for each Assessable Estate Homesite owned. Subsequent to the conversion of Class B membership, Class A Members shall be all Owners of Assessable Estate Homesites. When more than one person is the Owner of an Assessable Estate Homesite, all such persons shall be Members. The vote for such Assessable Estate Homesite shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one such Assessable Estate Homesite.

Class B. The Class B Member shall be Declarant who shall be entitled to three (3) votes for each Assessable Estate Homesite owned. Class B Membership shall cease and be converted to Class A Membership on the happening of the earlier of the following events:

- (i) When the total votes outstanding in the Class A Membership equals the total votes outstanding in the Class B Membership; or
- (ii) Three years from the date of issuance of the most recent Public Report with respect to any part of the Property; or
- (iii) Ten (10) years from the date of the original issuance of the first Public Report with respect to any portion of the Property.

(b) **Joint Owner Disputes:**

The vote for each Assessable Estate Homesite must be cast as a unit, and fractional votes shall not be allowed. In the event that the joint Owners are unable to agree among themselves as to how their one vote shall be cast, they shall lose their right to vote on the matter in question. If any Owner or Owners cast a vote representing an Assessable Estate Homesite, it will thereafter be conclusively presumed for all purposes that he or they were acting with the authority and consent of all other Owners of the same Assessable Estate Homesite. In the event more than one vote is cast with respect thereto, none of said votes shall be counted and said votes shall be deemed void.

(c) **Approval of Actions of the Estate Homesite Association:**

Unless specifically provided herein, any action by the Estate Homesite Association which, pursuant to this Declaration, requires the approval of the Estate Homesite Association membership before being undertaken shall require the vote or written consent of the Members as is set forth in the Bylaws.

0098-0723

(d) Special Procedure for Directors:

Prior to the organization meeting as required pursuant to Article V, Section 1 of the Bylaws, and thereafter until their successors are elected, the incorporator of the Estate Homesite Association or the first directors appointed by the incorporator shall serve as Directors of the Estate Homesite Association. To assure Non-Declarant Owners representation on the Board, beginning at the organization meeting of the Estate Homesite Association at least one of the Directors on the Board shall be elected solely by the vote of a simple majority of the voting Non-Declarant Members as provided in the Bylaws. Notwithstanding any other provisions of this Declaration, a Director who has been elected to office solely by the vote of Non-Declarant Owners may be removed from office prior to the expiration of his term of office only by the vote of at least a simple majority of the voting power residing in Class A Members other than Declarant.

(e) Commencement of Voting Rights.

Except for Declarant, voting rights attributable to any Assessable Estate Homesites shall not commence until assessments pursuant to this Declaration and the Master Declaration have been levied with respect thereto.

2.4 DUTIES OF THE ESTATE LOT ASSOCIATION:

In addition to the powers delegated to it by its Articles, and without limiting the generality thereof, the Estate Homesite Association shall have the obligation to perform each of the following duties:

(a) Accept Conveyances:

To accept conveyances from Declarant or its designated assignee, of real property designated by the grantor to be owned and maintained by the Estate Homesite Association for the benefit of all the Members. Estate Homesite Association Property within the boundaries of the First Subdivision shall be conveyed by Declarant to the Estate Homesite Association no later than the time of recordation of the deed to the first Estate Homesite conveyed to a Non-Declarant grantee.

(b) Maintenance and Management of Estate Homesite Association Property:

(i) To maintain in a safe condition, manage, operate and preserve the Estate Homesite Association Property and all improvements presently or hereafter located thereon and thereunder, and any other property as the Members by a vote of at least a Majority of Owners elect to maintain; provided, however, that the Estate Homesite Association shall offer to assign its duties of maintenance (but not control) with respect to Special Upkeep Areas to the Master Association, and, provided the Master Association agrees to such assignment, the Estate Homesite Association shall be relieved of said duties for the period of said assumption; and

(ii) To enter into such agreements with the Master Association, and grant such rights of ingress, egress, and reasonable use as may be required to effectuate the purposes of this Declaration.

(c) Insurance:

To obtain and maintain in force the following policies of insurance:

(i) Property insurance on a coverage form commonly called "All Risk" to a limit of liability equal to the full replacement cost of the Estate Homesite Association Property at time and place of loss. Such coverage may, but is not required to, include the perils of earthquake and land movement.

(ii) Broad Form Comprehensive Legal Liability coverage to an amount not less than \$1,000,000.00 per occurrence for all loss including bodily injury, property damage and personal injury. The named insureds shall include the Estate Homesite Association, the Board and its representatives, members and employees, the Architectural Committee members, and the Declarant. Such a policy must provide that any action or inaction by one named insured will neither destroy nor impinge the right of any other named insured.

(iii) Such other insurance, including worker's compensation liability insurance to the extent necessary to comply with any applicable law, and, if required by a governmental authority, faithful performance and fidelity bonds to insure the Estate Homesite Association against any loss from malfeasance or dishonesty of any employee or other person charged with the management or possession of any Association funds or other property, and such indemnity and other bonds as the Board shall deem necessary or expedient to carry out the Association's functions.

(d) Rule Making:

To make, establish, promulgate, amend and repeal the Estate Homesite Association Policies and Procedures.

(e) Architectural Committee: To appoint and remove members of the Architectural Committee, all subject to the provisions of this Declaration.

0098-0724

(f) Taxes and Assessments:

To pay all taxes and assessments which are or could become a lien on the Estate Homesite Association Property.

(g) Enforcement by Association:

To perform such other acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce the Oregon Planned Community Act, any of the provisions of this Declaration, and the Estate Homesite Association Policies and Procedures.

(h) Budgets and Financial Statements:

To receive financial statements for the Master Association, to cause financial statements for the Estate Homesite Association to be regularly prepared, and to furnish copies of both of the foregoing to each Member as follows:

(i) A pro forma operating statement (budget) for each Fiscal Year shall be distributed not less than 45 days before the beginning of the Fiscal Year of the Estate Homesite Association to which such budget applies. The budget shall contain at least the following information:

(A) Estimated revenue and expenses on an accrual basis;

(B) The amount of the total cash reserves of the Estate Homesite Association currently available for replacement or major repair of common facilities and for contingencies;

(C) An itemized estimate of the remaining life of and the methods of funding to defray the costs of repair, replacement or additions to major components of the Estate Homesite Association Property and Improvements thereon for which the Estate Homesite Association is responsible; and

(D) A general statement setting forth the procedures used by the Board in the calculation and establishment of reserves for capital improvements to the Estate Homesite Association Property for which the Estate Homesite Association is responsible.

(ii) An annual report for the Association consisting of the following shall be distributed within 90 days after the close of the Fiscal Year.

(A) A balance sheet as of the end of the Fiscal Year.

(B) An operating (income) statement for the Fiscal Year.

(C) A statement of the net changes in financial position for the Fiscal Year;

(D) For any Fiscal Year in which the gross income to the Estate Homesite Association exceeds \$75,000, a copy of the review of the annual report, prepared in accordance with generally accepted accounting principles by a public accountant licensed by the State of Oregon;

(E) A list of the names, mailing addresses and telephone numbers of the members of the Board.

If the annual report is not prepared by an independent accountant, it shall be prepared by the managing agent for the Estate Homesite Association or by an authorized officer of the Estate Homesite Association and shall be accompanied by a certificate of the person preparing the annual report that the annual report was prepared from the books and records of the Estate Homesite Association without audit or review.

(iii) A true copy of the Master Association pro forma operating statement and annual report shall be distributed at the same time as the comparable documents of the Estate Homesite Association.

(i) Rubbish Collection:

In cooperation with the Master Association, to provide refuse pick-up and garbage disposal for the Estate Homesite Association Property, and, at the cost of individual Owners thereof, for the Estate Homesites and other Assessable Estate Homesites.

(j) Water and Other Utilities:

To the extent not provided by the Master Association, to acquire and provide water, sewer, electrical, telephone and other necessary utility services for the Estate Homesite Association Property and the Assessable Estate Homesites, and to pay for such utility services to the extent the same are not chargeable to individual Owners or to the Master Association.

(k) Dissemination of Other Information.

To distribute to all Owners the following additional information:

(i) Within 60 days after the date of any meeting of the Board, minutes of such meeting;

(ii) Not less than 30 days prior to the date of the annual meeting of the Members of the Estate

Homesite Association a list of the orders of business to be considered at such meeting, including the name, address and a brief biographical sketch, if available, of each member of the Estate Homesite Association who has announced his intention to stand for election to the Board; and

(iii) Within 60 days prior to the beginning of the Fiscal Year, a statement of the Estate Homesite Association's policies and practices in enforcing its remedies against Members for defaults in the payment of any amounts due to the Estate Homesite Association, including without limitation the recording and foreclosing of liens against Members' interest in the Property.

(1) Transitional and Turnover Duties.

To form a transitional advisory committee in order to provide for the transition from administrative responsibility by the Declarant to administrative responsibility by the Estate Homesite Association. Such transitional advisory committee shall be formed within 60 days after Declarant has conveyed the Assessable Estate Homesites representing 50% of the votes of the Members but not later than 30 days before the Organization Meeting. At a time which is the earlier of the date of the Organization Meeting or 120 days after Assessable Estate Homesites representing 75% of the votes of the Members have been conveyed by Declarant, the Estate Homesite Association shall accept administrative responsibility for the Property.

(m) Cooperation with Master Association.

Without limiting the generality of any of the duties set forth in this Section 2.4, to cooperate and contract with the Master Association for the performance of any of the Estate Homesite Association's duties hereunder or exercise of the Estate Homesite Association's powers hereunder and to perform the duties and exercise any powers delegated by the Master Association, to the extent permitted pursuant to the Master Declaration.

(n) Statements of Status; Project Documents.

(i) Within 10 days of the mailing or delivery of a request by any Owner, Mortgagee, prospective Mortgagee, purchaser or other prospective transferee of an Estate Homesite, to issue a Statement of Status, executed and acknowledged by an officer of the Association, stating whether any indebtedness secured by any lien created hereby upon any such Estate Homesite has been paid. The Statement of Status shall be binding upon the Association in favor of any person who may rely thereon in good faith.

(ii) Within 10 days of the mailing or delivery of a request by any Owner, to provide such Owner with a copy of the Declaration, the Articles and the Bylaws.

(iii) The Association may charge a fee for providing the Statement of Status or the requested documents, which fee shall not exceed the reasonable cost of preparation and/or reproduction thereof.

2.5 POWERS AND AUTHORITY OF THE ESTATE HOMESITE ASSOCIATION:

The Estate Homesite Association shall have all the powers of a nonprofit corporation organized under the laws of the State of Oregon, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, the Bylaws or this Declaration. The Estate Homesite Association shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Estate Homesite Association by this Declaration, the Articles and the Bylaws, and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association, including without limitation:

(a) Assessments:

To levy assessments against Assessable Estate Homesites and to enforce payment of such assessments, all in accordance with the provisions of Article III hereof.

(b) Right of Entry and Enforcement:

To enter onto any Lot for the purpose of ascertaining whether the provisions of this Declaration have been or are being complied with, for the purpose of enforcing by peaceful means any of the provisions of this Declaration and the Estate Homesite Association Policies and Procedures or for the purpose of maintaining or repairing any such area as required by this Declaration. Such entrance shall be after 24 hours prior written notice to the Owner, or such greater notice as may be required by any provision hereof; provided, however, that such entrance shall be permitted without any prior notice whatsoever in the event of an emergency. The Estate Homesite Association shall also have the power and authority from time to time in its own name, on its own behalf or on behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any

breach or threatened breach of this Declaration and the Estate Homesite Association Policies and Procedures and to enforce, by mandatory injunction or otherwise, all of the provisions hereof. In addition, or as an alternative method of enforcing this Declaration and the Estate Homesite Association Policies and Procedures, the Board may impose monetary penalties, temporary suspensions of Members or other appropriate discipline for failure to comply with the provisions of this Declaration or the Association Policies and Procedures, provided that the procedures for notice and hearing satisfying the minimum requirements of law are given to the Member before a decision to impose discipline is reached.

(c) Employment of Agents:

To employ the services of any person or corporation as managers of the Estate Homesite Association, or to hire employees of the Estate Homesite Association to manage, conduct, and perform the business, obligations and duties of the Estate Homesite Association, and enter into contracts for such purpose. Such agents shall have the right to ingress and egress over such portions of the Property as is necessary for the performance of such business, duties and obligations.

(d) Employment of Professional Advisors:

To employ professional counsel and obtain advice from such persons or firms or corporations such as, but not limited to, landscape architects, recreation experts, architects, planners, lawyers and accountants.

(e) Borrowing of Money:

To borrow and repay monies for the purpose of maintaining and improving the Estate Homesite Association Property and to encumber the Estate Homesite Association Property as security for the repayment of such borrowed money.

(f) Hold Title and Make Conveyances:

To acquire, hold title to and convey, with or without consideration, real and personal property and interests therein, including but not limited to easements across all or any portion of the Estate Homesite Association Property.

(g) Services:

To contract for or otherwise provide for all services necessary or convenient to the management, maintenance and operation of the Estate Homesite Association Property.

(h) Easements and Rights-of-Way:

To grant and convey to any third party or public or quasi-public agency or body easements and rights-of-way in, on, over or under any Estate Homesite Association Property for the purpose of constructing, erecting, operating or maintaining thereon, therein or thereunder (i) overhead or underground lines, cables, wires, conduits, or other devices for the transmission of electricity for lighting or communication, heating, power, security system, telephone, cable television and other purposes, (ii) public or private sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and (iii) any similar public or quasi-public improvements or facilities.

(i) Create Classes of Service and Make Appropriate Charges:

To create, in its sole discretion, various classes of service and to make appropriate charges therefor to the users thereof, including but not limited to reasonable admission and other fees for the use of any and all recreational facilities situated on the Estate Homesite Association Property, and to avail itself of any rights granted by law, without being required to render such services to those of its Members who do not assent to the said charges and to such other Policies and Procedures as the Board deems proper. In addition, the Board shall have the right to discontinue any service upon non-payment or to eliminate such service for which there is no demand therefor or adequate funds to maintain the same.

(j) Transfer, Dedication and Encumbrance of the Common Area:

To sell, transfer or encumber all or any portion of the Estate Homesite Association Property to a person, firm or entity, whether public or private, and to dedicate to transfer all or any portion of the Estate Homesite Association Property to any public agency, authority, or utility for public purposes. Except with respect to the granting of easements for public utilities or other public purposes, which shall not require a vote of the Members, no such sale, transfer, encumbrance or dedication shall be effective unless an instrument signed by the Secretary of the Association and approved by a Super-Majority of Owners or such greater percentage as may be required by law has been recorded, agreeing

0098-0727

to such sale, transfer, encumbrance or dedication, and unless written notice of the proposed action is sent to every Member not less than thirty (30) days nor more than sixty (60) days in advance; provided, however, no such approval shall be required for any exchange of property with any state or federal government, board, or agency so long as the acreage received by the Estate Homesite Association in said exchange is consistent with the development of the Planned Community and the land received is comparable (but not necessarily equal) to the acreage deeded away.

2.6 LIMITATIONS ON POWERS OF THE BOARD:

Notwithstanding the powers of the Estate Homesite Association as set forth in Section 2.5, the Board shall not take any of the following actions without the prior vote or written consent of a Majority of Owners:

(a) Contracts for Goods and Services.

Enter into a contract with a third person or entity wherein such person or entity will furnish goods or services for the Estate Homesite Association Property or the Estate Homesite Association for a term longer than one year with the following exceptions:

(i) A contract with a public utility company if the rates charged for the materials or services are regulated by law or regulation of a public or quasi-public agency or body; provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate.

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

(iii) A lease of furniture or equipment for the benefit of the Members.

(iv) A Management Agreement with respect to the operation of Estate Homesite Association Properties for a term not to exceed three years; provided, however, that such agreement may be extended for additional one year periods by approval by the Board. Any agreements of the type specified in subparagraphs (i) through (iv) may be terminated without penalty if the board gives not less than 30 days written notice to the other party not later than 60 days after the turnover of administrative responsibilities by Declarant pursuant to Section 2.4 (1).

(b) Expenditures for Improvements.

Incur aggregate expenditures for capital improvements to the Estate Homesite Association Property in any Fiscal Year in excess of 5% of the budgeted gross expenses of the Estate Homesite Association for that Fiscal Year.

(c) Compensation to Directors or Officers.

Pay compensation to Directors or to officers of the Estate Homesite Association for services performed in the conduct of the Estate Homesite Association's business; provided, however, that the Board may cause a Director or an officer to be reimbursed for expenses incurred in carrying on the business of the Estate Homesite Association.

(d) Sale of Estate Homesite Association Property.

Sell during any Fiscal Year property of the Estate Homesite Association having an aggregate fair market value greater than 5% of the budgeted gross expenses of the Estate Homesite Association for that Fiscal Year.

(e) Vacancy on the Board.

Fill any vacancy on the Board created by the removal or resignation of a Director, except as provided in the Bylaws.

2.7 THE ESTATE HOMESITE ASSOCIATION POLICIES AND PROCEDURES:

By a majority vote of the Board the Estate Homesite Association may, from time to time, adopt, amend, and repeal such rules and regulations as it may deem reasonable (the "Estate Homesite Association Policies and Procedures"). The Estate Homesite Association Policies and Procedures shall supplement the Master Association Policies and Procedures to the extent deemed necessary by the Board, and shall govern the use of the Estate Homesite Association Property, Restricted Use Areas, and Special Upkeep Areas by the Members, or by any invitee, licensee or lessee of a Member or the family of such Members; provided, however, that the Estate Homesite Association Policies and Procedures may not discriminate among Members and shall not be inconsistent with the Master Association Policies and Procedures, the Master Declaration, this Declaration, the Articles or the Bylaws. A copy of the Estate Homesite Association Policies and Procedures as they may from time to time be amended, adopted or repealed, shall be mailed or otherwise delivered to each Member. Upon such mailing or delivery, said Estate Homesite Association Policies and Procedures shall have the same force and effect as if they were set forth in and were a part of

0098-0728

this Declaration. In the event of any conflict between any such Estate Homesite Association Policies and Procedures and any of the other provisions of this Declaration, or the Articles or Bylaws, the provisions of such Estate Lot Association Policies and Procedures shall be deemed to be superseded by the provisions of such conflicting instrument to the extent of such inconsistency.

2.8 PERSONAL LIABILITY:

No member of the Board, officer or agent of the Estate Homesite Association, or member of the Architectural Committee, or Declarant, shall be personally liable to any Owner, or to any other party, including the Estate Homesite Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Estate Homesite Association, the Board, the Architectural Committee, the Manager or any other representative or employee of the Estate Homesite Association or of Declarant, provided that such person has, upon the basis of such information as may be possessed by him, acted in good faith, and without willful or intentional misconduct.

**ARTICLE III
ASSESSMENTS**

3.1 CREATION OF THE LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS:

Only those 126 Estate Homesites shown on the Conceptual Plan of Development shall be subjected to the Assessments set forth in this Article III. Notwithstanding the foregoing, in the event that more than 126 Estate Homesites are ultimately approved as sites for residential construction, all such approved Lots shall be included as Assessable Estate Homesites, and Declarant, for each such Assessable Estate Homesite owned hereby covenants, and each subsequent Owner of any Assessable Estate Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, for each such Assessable Estate Lot owned, to pay to the Estate Association Annual Assessments, Special Assessments, Emergency Assessments, Remedial Assessments, and Property Tax Assessments, all of which shall be established and collected as hereinafter provided. The Annual, Special, and Emergency Assessments, as well as the Property Tax Assessment as set forth in Section 3.13, together with interest, costs and reasonable attorneys' fees, shall, when perfected by the recordation of a notice of assessment in accordance with the provisions of Section 3.10 be a charge on the land and shall be a continuing lien upon the Assessable Estate Homesite against which such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be a personal obligation of the Owner of such Assessable Estate Homesite at the time when the assessment becomes due and payable. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them; however, all perfected liens shall be liens on the interests of successive Owners of the Assessable Estate Homesites subject thereto. No Owner may waive or otherwise escape liability for the assessments provided for in this Declaration by nonuse of the Estate Homesite Association Property, or any part thereof, or abandonment of his Assessable Estate Homesite.

(a) Covenant to Pay Master Association Assessments.

Declarant, for each Assessable Estate Homesite owned, hereby covenants, and each Owner of any Assessable Estate Homesite by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, does and is deemed to covenant and agree to pay to the Master Association the assessments provided for in the Master Declaration. Such Master Association assessments shall be established and collected as provided in the Master Declaration and shall be a charge on the land and a continuing lien upon the Property as provided therein.

(b) Collection of Master Association Assessments by this Association.

The Estate Homesite Association shall act as the agent of the Master Association to bill and collect from the Owners of the Assessable Estate Homesites until such time as the Master Association Board of Directors shall by resolution permanently or temporarily terminate this obligation; provided, however, that the exercise of remedies with respect to any unpaid and delinquent Master Association Assessments shall be the responsibility of the Master Association. Any such funds collected by the Estate Homesite Association shall be held in trust by the Estate Homesite Association for the Master Association and shall be disbursed to the Master Association within 10 days after receipt thereof, as provided by the Master Declaration.

0098-0729

(c) Preemption of Collection of the Estate Homesite Association Assessments by the Master Association.

If the Master Association so elects, pursuant to the provisions of the Master Declaration, the collection of assessments of the Estate Homesite Association may be preempted by the Master Association so long as the Master Association assumes full administrative and maintenance responsibilities therefor. If the Master Association so elects to preempt the Estate Homesite Association assessments, or any portion of them, the funds so collected shall be utilized by the Master Association in the manner and for the purposes specified in the annual budget of the Estate Homesite Association providing the authorization for such assessment or for such proper purposes as may be permitted by this Declaration.

3.2 PURPOSES OF ASSESSMENTS:

Assessments levied shall be used exclusively to promote the recreation, health, safety and welfare of the Owners, the improvement, operation and maintenance of the Estate Homesite Association Property including the Special Upkeep Areas, and the performance of the duties of the Estate Homesite Association as set forth in this Declaration.

3.3 OPERATING FUND:

There shall be an operating fund, into which the Estate Homesite Association shall deposit all monies paid to it as:

- (a) Annual Assessments (except the portion designated as Reserves);
- (b) Special Assessments;
- (c) Emergency Assessments;
- (d) Remedial Assessments;
- (e) Use fees paid by users of recreational facilities;
- (f) miscellaneous fees;
- (g) income attributable to the operating fund;

and from which the Estate Lot Association shall make disbursements in performing the functions for which the foregoing assessments are levied.

3.4 ASSESSMENT ROLL AND ASSESSMENT ALLOCATION:

(a) Record Keeping.

An assessment roll shall be accurately maintained and available in the office of the Estate Homesite Association for inspection at all reasonable times by any Owner or his duly authorized representative. Said assessment roll shall indicate for each Assessable Estate Homesite the name and address of the Owner thereof, all assessments levied against each Owner and his property, and the amount of said assessments paid and unpaid.

(b) Apportionment of Assessments.

The total Annual Assessment and any Special or Emergency Assessment shall be apportioned equally against the Assessable Estate Homesites. In the event a Condominium Project or any other common interest subdivision shall be annexed to the regime of this Declaration, the apportionment of the Annual Assessment among the Assessable Estate Homesites and such Condominium Project shall be as set forth in the Annexing Supplemental Declaration.

3.5 ANNUAL ASSESSMENTS:

(a) Levy and Enforcement of Annual Assessments:

Annual Assessments shall be made, and enforced, by the Board in the manner provided in this Declaration against the Owners of all Assessable Estate Homesites, including Declarant.

(b) Amount of Assessments

(i) Beginning with the Fiscal Year of the Estate Homesite Association in which the Initial Commencement Date occurs, the amount of the total Annual Assessment for all the Assessable Estate Homesites shall be determined by the Board at least 30 days prior to the commencement of each Fiscal Year and shall be in the amount of (x) total expenses minus (y) the Pass-Through expense, as shown on the Budget approved by the Board applicable to that Fiscal Year.

(ii) The Annual Assessment for a Fiscal Year shall be levied based on the apportionment among the Assessable Estate Homesites as set forth in Section 3.4(b).

(iii) Distribution of any net income from operations of the Estate Homesite Association shall be equally apportioned among the Assessable Estate Homesites; provided, however, that any such net income not distributed shall be applied to budget expenses so as to reduce the Annual Assessment during the next succeeding Fiscal Year.

(c) Commencement Date For Annual Assessments:

Subject to any assessment, maintenance, or subsidy program established by Declarant, the Annual Assessment hereunder shall commence to accrue: (i) on all Assessable Estate Homesites then annexed to the regime of this Declaration on the Initial Commencement Date; (ii) as to all Assessable Estate Homesites subsequently annexed hereto, then on the first day of the month following recordation of a deed to a Non-Declarant Owner for the sale of the first property interest within the scope of the Supplemental Declaration accomplishing such annexation.

(d) Increase of Annual Assessments:

The Annual Assessments for each succeeding fiscal year may be increased by the Board for the next year without a vote of the Members by an amount which shall not exceed 20% of the Annual Assessments for the fiscal year in which such budget is required to be prepared. Any increase in the Annual Assessments which exceeds 20% of the preceding year's Annual Assessments shall be made only upon the affirmative vote or written consent of a Majority of Owners.

(e) Provision for Reserve Expenses:

For purposes of creating reserves to ensure payment when due of the cost of capital expenditures relating to the repair and replacement of the Estate Homesite Association Property a portion of the Annual Assessments shall constitute a capital contribution for such reserves to the Estate Homesite Association. The specific items for which such capital contribution shall be made and the amount of such contribution in respect of each such item shall be determined by the Board, acting in its sole discretion, at the time it adopts the budget for the Annual Assessments. All such capital contributions shall be collected monthly in equal installments, shall be accounted for separately, and shall be held in trust and used to pay for each specific capital expenditure in such manner and at such times as the Board, acting in its sole discretion, shall determine. Immediately upon receipt, all such capital contributions shall (1) be deposited in a separate interest-bearing account or accounts, denominated Trustee Capital Account in any savings and loan association, bank or trust company, as may be determined by the Board by resolution or (2) invested in certificates of deposit issued by a bank or financial institution having assets in excess of Five Hundred Million Dollars (\$500,000,000.00).

3.6 SPECIAL ASSESSMENT:

In addition to the Annual Assessment authorized above, the Board may levy during any fiscal year a special assessment ("Special Assessment") applicable to that fiscal year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction or unexpected repair or replacement of a capital improvement upon the Estate Homesite Association Property, including the necessary fixtures and personal property related thereto. Special Assessments which in the aggregate in any fiscal year exceed an amount equal to 5% of the budgeted gross expenses of the Estate Homesite Association for the fiscal year may be levied only upon affirmative vote or written consent of a Majority of Owners.

3.7 EMERGENCY ASSESSMENT:

If the assessments levied at any time are, or will become, inadequate to meet all expenses incurred hereunder for any reason, including nonpayment of any Owner's assessments on a current basis, the Board shall immediately determine the approximate amount of such inadequacy and issue a supplemental budget, noted as to the reason therefor, and levy an emergency assessment for the amount required to meet all such expenses on a current basis ("Emergency Assessment") against the Owners of each Assessable Estate Homesite. Emergency Assessments which in the aggregate in any fiscal year exceed an amount equal to 5% of the budgeted gross expenses of the Estate Homesite Association for the fiscal year may be levied only upon affirmative vote or written consent of a Majority of Owners.

3.8 REMEDIAL ASSESSMENTS:

Pursuant to this Declaration, the Board may levy an assessment against any portion of the Property to reimburse the Estate Homesite Association for costs incurred in bringing such portion and its Owner into compliance with provisions of this Declaration or the Estate Homesite Association Policies and Procedures. Remedial Assessments shall be due 10 days after the Board gives written notice thereof to the Owner subject thereto.

3.9 DUE DATES OF ASSESSMENTS:

The first Annual Assessment and all Special Assessments shall be adjusted according to the number of months remaining in the fiscal year. The Board shall fix the amount of the Annual

0098-0731

Assessment against each Assessable Estate Homesite at least 30 days in advance of each Annual Assessment period. Written notice of all assessments shall be sent to each Owner subject thereto. The Annual Assessments and Special Assessments shall be collected monthly in advance on the first day of each month, (hereinafter referred to as "Assessment Payment Date"). The Annual Assessments and Special Assessments shall be due and payable on each Assessment Payment Date commencing on the first Assessment Payment Date following the Initial Commencement Date. The Emergency Assessments shall be due and payable at the time and in the manner specified by the Board.

3.10 EFFECT OF NONPAYMENT OF ASSESSMENTS; REMEDIES OF THE ESTATE HOMESITE ASSOCIATION:

In the event of a default in payment of any assessment when due, such assessment shall be deemed to be delinquent. Each Owner vests in the Estate Homesite Association or its assigns the right and power to bring all actions at law in equity, to establish and foreclose the liens or enforce any other remedy provided herein against the Owner for the collection of delinquent assessments. In the event an attorney or attorneys are employed for collection of any assessment, whether by suit or otherwise, each Owner agrees to pay reasonable attorneys' fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy obtained against said Owner. In addition to any other remedies herein provided, the Estate Homesite Association may enforce the obligations of the Owners to pay the assessments provided for herein, and each of them, in any manner provided by law or in equity, and without any limitation of the foregoing, by any or all of the following procedures:

(a) Suspension of Rights:

After a hearing by the Board (whether or not the delinquent Owner appears) conducted in accordance with the procedures set forth in the Bylaws, the Board may suspend the voting rights of any Owner and/or such Owner's right to use the Estate Homesite Association Property for any period during which any assessment against such Owner's Assessable Estate Homesite remains unpaid; provided that this provision shall not operate or be construed to deny or restrict ingress or egress of any Owner to his Estate Homesite.

(b) Enforcement by Suit:

By commencement and maintenance of a suit at law against an Owner or prior Owner to enforce said assessment obligation, such suit to be maintained in the name of the Estate Homesite Association. Any judgment rendered in any such action shall include the amount of the delinquency, interest thereon at the maximum legal rate per annum from the date of the delinquency, and court costs and reasonable attorneys' fees in such amount as the court may adjudge against the delinquent Owner.

(c) Enforcement by Lien:

Subject to the provisions of Section 3.12, provision is hereby made for a claim of lien as may be provided by law, on each and every Assessable Estate Homesite to secure payment to the Estate Homesite Association of any and all assessments (other than Remedial Assessments) levied under this Declaration, together with interest thereon at the maximum legal rate per annum from the date of delinquency, and all costs of collection which may be paid or incurred by the Estate Homesite Association in connection therewith, including reasonable attorneys' fees. Each default shall constitute a separate basis for claim of lien, but any number of defaults may be included within a single claim of lien. At any time after the occurrence of any default in the payment of any assessment, the Estate Homesite Association or any authorized representative may, but shall not be required to make a written demand for payment to the delinquent Owner. Said demand shall state the date and amount of the delinquency. If such delinquency is not paid within 10 days after delivery of such demand, or at any time after the date of delinquency if no written demand is made, the Estate Homesite Association may elect to file and record a notice of assessment and claim of lien (with a copy to the Mortgagee of such delinquent Owner, if previously requested) on behalf of the Estate Homesite Association against the Assessable Estate Homesite of the defaulting Owner in the office of the recording officer of Deschutes County. Such a notice of assessment shall be executed and acknowledged by any officer of the Estate Homesite Association, and shall contain substantially the following information:

- (1) the name of the delinquent Owner;
- (2) the legal description of the property against which the claim of lien is made;
- (3) the total amount of the delinquency, interest thereon, collection costs and reasonable attorneys' fees (with any proper offset allowed);

0098-0732

(4) that the notice of assessment is made by the Estate Homesite Association pursuant to this Declaration;

(5) that a lien is claimed against said property in an amount equal to the amount stated; and

(6) any other information required by law.

Upon such recordation of a duly executed original or copy of such a notice of assessment and the mailing thereof of a copy to said Owner at the address of the Assessable Estate Homesite, the lien claimed therein shall immediately attach and become effective. Unless sooner satisfied and released, or the enforcement thereof initiated as hereafter provided, such lien shall expire and be of no further force or effect three years from the date of recordation of said notice of assessment or such other time as may be provided by law. The lien(s) created pursuant to the preceding provisions may be foreclosed by appropriate action in court or in any other manner provided by law as the laws of the State of Oregon may from time to time be changed or amended. The Estate Homesite Association shall have the power to bid in at any foreclosure sale, trustee's sale or judgment sale and to purchase, acquire, lease, hold, mortgage and convey any Assessable Estate Homesite. Reasonable attorneys' fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law.

Subject to the rights and priorities of any Mortgagee, the proceeds of any foreclosure, trustee's or judgment sale provided for in this Declaration shall first be paid to discharge court costs, court reporter charges, reasonable attorneys' fees, title costs and costs of the sale, and all other expenses of the proceedings and sale, and the balance of the proceeds, after satisfaction of such charges and unpaid assessments hereunder or any liens, shall be paid to the defaulting Owner. Subject to any statutory rights of redemption, any purchaser at such sale shall thereupon be entitled to conveyance of title to the property purchased and immediate possession thereof, and shall have the right to apply to a court of competent jurisdiction for such orders as may be reasonable for the purpose of acquiring and possessing the same. It shall be a condition of such sale, and the deed so made shall provide, that the purchaser shall take title to the Assessable Estate Homesite sold subject to this Declaration.

Upon the timely curing of any default for which a notice of assessment was filed by the Estate Homesite Association, the officers of the Estate Homesite Association are hereby authorized to record an appropriate release of such lien in the office of the recording officer of Deschutes County.

3.11 ASSIGNMENT OF RENTS:

As security for the payment of all liens arising pursuant to this Article III, each Owner hereby gives to and confers upon the Estate Homesite Association the right, power and authority, during the continuance of such ownership, to collect the rents, issues and profits of said Owner's Assessable Estate Homesite, reserving unto the Owner the right, prior to any default by such owner in performance of that Owner's obligation under this Declaration, or the Bylaws or the Articles to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, the Estate Homesite Association may, at any time, after 10 days written notice to such Owner, then either in person, by agent or by a receiver to be appointed by a court of competent jurisdiction, and without regard to the adequacy of any security for such indebtedness, enter upon and take possession of such Owner's Assessable Estate Homesite or any part thereof, in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, in payment of any indebtedness to the Estate Homesite Association or in performance of any agreement hereunder, and in such order as the Estate Homesite Association may determine. The entering upon and taking possession thereof, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure nor waive any default hereunder or invalidate any act done pursuant to this Declaration. The assignment of rents and powers described in the foregoing paragraph shall not affect, and shall in all respects be subordinate to, the rights and powers of the holder of any first or second mortgage on any Assessable Estate Homesite, or any part thereof, to do the same or similar acts.

3.12 SUBORDINATION TO CERTAIN TRUST DEEDS:

The lien of the assessments shall be prior to all encumbrances made by the Owner or imposed by legal process upon any Assessable Estate Homesite except taxes, bonds, assessments and other levies, which, by law, are prior thereto, whether the notice of assessment is recorded prior or subsequent to any such encumbrances, except that the lien of the assessments shall be subordinate (i) to the lien of any First Mortgage or (ii) to any other lien securing purchase money financing by Non-Declarant Owner in favor of

0098-0733

any Mortgagee, provided such purchase money lien is made in good faith and for value and that the First Mortgage or other purchase money lien is recorded in the office of the recording officer of Deschutes County, prior to the recordation of the notice of assessment for said assessments. Sale or transfer of any Assessable Estate Homesite shall not defeat or affect the assessment lien; however, the sale or transfer of any Assessable Estate Homesite which is subject to any First Mortgage or other purchase money lien pursuant to a foreclosure under such First Mortgage or purchase money lien shall extinguish the lien of such assessments as to payments thereof which become due prior to such sale or transfer, except for the amount of unpaid assessments specified in a notice of assessment recorded prior to the recordation of such First Mortgage. No such sale or transfer shall relieve such Assessable Estate Homesite or the purchaser thereof from liability for any assessments thereafter becoming due or from the lien thereof.

3.13 PROPERTY TAX ASSESSMENTS:

Until such time as the property taxes on the Property have been segregated into separate assessments for each Assessable Estate Homesite, the Estate Homesite Association shall, upon written request of Declarant, make and enforce a property tax assessment ("Property Tax Assessment") against each Owner whose Assessable Estate Homesite is taxed to Declarant pursuant to an unsegregated property tax bill on the Property or any portion thereof. The Property Tax Assessment shall constitute a lien on such Owner's Assessable Estate Homesite which shall be deemed perfected hereunder as of the date such taxes became a lien and shall be enforceable as herein provided. Notwithstanding the foregoing, the Estate Homesite Association shall, prior to undertaking enforcement of delinquent Property Tax Assessments, record a notice of assessment against such delinquent Owners' Assessable Estate Homesite in the manner provided herein. The amount of the Property Tax Assessment against each Owner shall be that portion of the unsegregated property tax which bears the same relationship to the total tax as the original selling price of such Owner's Assessable Estate Homesite bears to the sum of the original selling prices of all of the Assessable Estate Homesites in the Property; provided, however, that if not all of the Assessable Estate Homesites have been sold at the time of such computation the then current offering price shall be deemed to be the selling price for purposes of such computation.

3.14 ESTATE HOMESITE ASSOCIATION PROPERTY:

Notwithstanding anything to the contrary contained or implied in this Declaration, the Estate Homesite Association Property, shall not be charged with payment of any Assessments hereunder, all costs and charges attributable thereto being the collective responsibility of all Owners other than the Estate Homesite Association itself and payable by such Owners through their payment of Assessments.

3.15 INCOME TAX ELECTIONS:

The Board shall have the right, exercisable in its sole discretion, to elect to report the receipts, expenses, deductions and credits, if any, of the Estate Homesite Association for income tax purposes pursuant to Section 528 of the Internal Revenue Code of 1954, as amended, or any comparable State or Federal statute or amendment thereto presently in effect or hereinafter enacted.

ARTICLE IV

COVENANTS AND USE RESTRICTIONS

In addition to all other covenants contained herein, but subject to the exemptions of Section 12.12, the following covenants and restrictions shall govern the use and occupancy of the Property:

4.1 MASTER DECLARATION CONTROLS:

The provisions of this Article IV shall not be construed to be in derogation of, or a limitation of the use restrictions contained in, Article IV of the Master Declaration, which instrument shall supersede this Declaration in the case of conflicts.

4.2 RESIDENTIAL USE LIMITATIONS:

(a) **Dwelling Purposes Only.** No part of any Estate Homesite shall be used for other than private dwelling purposes and reasonably related uses. The foregoing restrictions as to use shall not, however, be construed in such manner as to prohibit an Owner from (a) maintaining his personal professional library therein, (b) keeping his personal business or professional records or accounts therein, (c) handling his personal business or professional calls or correspondence therefrom, or (d) undertaking any other activity thereon not otherwise prohibited by this Declaration when such activity has been expressly approved in advance by the Estate Homesite Association.

0098-0734

(b) **Time-sharing or Interest Ownership Prohibited.** No purchaser of an Estate Homesite, or interest therein, or use thereof, shall receive a right in perpetuity, for life, or for a term of years, to the recurrent, exclusive use or occupancy of such property annually or on some other periodic basis if four or more such use or occupancy periods over a period of three years or more have been created with respect to such Property, and any such attempted conveyance shall be void; provided, however, this restriction shall not be interpreted to prevent joint ownership of Estate Homesites not including such exclusive use periods.

(c) **126 Lot Limitation.** No Non-Declarant Owner of a Lot which was not designated as one of the 126 approved (or approvable) Assessable Estate Homesites when acquired by such Owner may construct a residential Dwelling Unit on such Lot unless all of the following are satisfied:

(i) written approval of any local government exercising jurisdiction over the Property has been obtained;

(ii) written approval of the Board has been obtained, which approval may be subject to any conditions reasonably imposed by the Board;

(iii) if Declarant is then the Owner of any "Real Property Interests" in the Planned Community (as the quoted term is defined in the Master Declaration) Declarant has given its consent in writing.

4.3 ASSOCIATION PROPERTY:

(a) **No Partition.** The Estate Homesite Association Property shall remain undivided and no Owner shall bring any action for partition, except as otherwise hereinafter provided.

(b) **Special Upkeep Area.** Use and enjoyment of the Special Upkeep Area as designated in the Conceptual Plan of Development is hereby restricted to the owners, the Estate Homesite Association, the respective licensees, invitees, guests and/or tenants; provided, however:

(i) the Master Association is hereby granted a license for access for maintenance purposes, but any maintenance, repair, rehabilitation and other care of the Special Upkeep Area shall be solely at the cost and expense of the Owners; and

(ii) Declarant, for the benefit of itself and any future Owners of all or a portion of the Annexable Property who reasonably require rights of ingress and egress across said Special Upkeep Areas for access, construction, maintenance and related proper purposes hereby reserves a non-exclusive easement in gross for such purposes; provided, however, future users of said reserved easement who exercise such rights to gain access to the grantee's place of residence shall annually contribute a reasonable amount of the cost and expense of maintenance and repair of such Special Upkeep Area, as well as a proportionate amount of the reserves established therefor, in relation to the relative use of such users.

(c) **Alterations.** Any proposals for alterations, additions or other improvements of Estate Homesite Association Property shall be submitted in writing by the Member proposing such alteration, addition or improvement to the Board, which shall review such proposals to determine whether (i) such proposals would be compatible with the design, construction and standards of quality of the Property, and (ii) such proposed improvements would interfere with or disturb any other Owner's use or enjoyment of his property. Unless otherwise agreed at a meeting of the Members called for such purposes, the cost of an alteration or addition to Estate Homesite Association Property approved by the Board shall be paid by the Members in accordance with the formula established herein for Special Assessments.

(d) **Prohibition.** No Member shall remove, alter or injure in any way any portion of the Estate Homesite Association Property, including, without limitation, the Improvements thereon.

(e) **Cost of Correction.** Any Member who violates this Section shall reimburse the Estate Homesite Association for all expenses incurred by it in remedying the damage caused by said Members' violation. Such expense shall be assessed to the Member as a Remedial Assessment, enforceable in the manner provided in Article III hereof.

4.4 MAINTENANCE BY OWNER:

(a) Each Owner shall be responsible for the maintenance of his Lot, in a clean, sanitary and attractive condition, and shall keep the same free from rubbish and litter and maintain in good condition and repair and adequately stain or otherwise finish all improvements located thereupon.

4.5 SIGNS.

(a) **General Prohibiting; Exemptions.** Unless permitted by the Master Association, no sign or billboard of any kind shall be made visible to the public from any Estate Homesite or from the Estate Homesite Association Property except that: (i) the Estate Homesite Association may erect such signs

0098-0735

within the interior Estate Homesite Association Property as may reasonably be required by the Board in connection with its operation thereof; and (iii) Declarant and any assignee of Declarant may display from the Estate Homesites owned by them and from the Estate Homesite Association Property any lawful sign which advertises the sale of Estate Homesites and/or completed dwelling units.

(b) **Compliance with Master Association.** All signs permitted by the Estate Homesite Association must comply with any restrictions of the Master Declaration, and shall be installed, maintained and, if necessary, removed at the sole expense of the party or parties installing such signs. Such signs shall be maintained at all times in a safe and sanitary condition and in a good state of repair.

4.6 NO OBNOXIOUS AND OFFENSIVE ACTIVITIES:

No obnoxious or offensive activity shall be carried on in or upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood or which may in any way interfere with the quiet enjoyment of each of the Owners of his respective Lot or which shall in any way increase the premium rate of insurance.

4.7 LIMITATION ON ANIMALS:

No animals of any kind shall be raised, bred or kept in or upon any Lot, except dogs, cats or such other household pets as may be approved by the Estate Homesite Association, and then only provided they are not kept, bred or maintained for any commercial purposes or in unreasonable numbers. Household pets shall be leashed, caged, or under other positive control of the Owner at all times, and shall be confined within the boundaries of the Owner's Estate Homesite. Notwithstanding the foregoing, no pets or other animals may be kept in or upon any Lot which result in any annoyance or are obnoxious to residents in the vicinity. Each owner of an animal shall be liable to each and all other Owners, their families, guests, and invitees, and to the Estate Homesite Association, for any and all damage to person or property caused by such animal. Each Owner shall comply with such Estate Homesite Association Policies and Procedures governing the keeping of pets which may be adopted by the Estate Homesite Association from time to time.

4.8 TEMPORARY STRUCTURES PROHIBITED:

Unless approved in writing by the Master Association Environmental Control Committee, no structure of a temporary character, trailer, tent, shack, garage, barn, or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently.

4.9 VEHICLES AND PARKING:

(a) **Type Restriction.** No mobile home, recreational vehicle (including campers) exceeding 1,500 pounds in gross weight, trailer of any kind, truck with a rated load capacity greater than $\frac{1}{4}$ ton, or boat shall be kept, placed, maintained or parked for more than 6 hours or such other period as may be permitted pursuant to the Estate Homesite Association Policies and Procedures on any portion of the Property except in enclosed garages, areas designated by the Board, or screened from view in a manner approved by the Architectural Committee. No motor vehicle of any type may be constructed, reconstructed or repaired in such a manner as will be visible from neighboring property. No stripped down, partially wrecked, inoperative or junk motor vehicle, or sizeable part thereof, shall be permitted to be parked on any portion of the Property.

(b) **Parking and Street Obstructions.** Parking of vehicles of any type whatsoever on any portion of the streets within the Property, including such streets as may be designated Special Upkeep Areas, shall be permitted only as set forth in the Estate Homesite Association Policies and Procedures. No Owner shall do anything which will in any manner prevent the streets within the Property from at all times being free and clear of all obstructions and in a safe condition for vehicular use.

4.10 OUTSIDE STORAGE:

Woodpiles, storage areas, machinery and equipment shall be prohibited upon any Lot, unless obscured from view of neighboring property and streets by a fence or appropriate screen approved by the Committee; trash cans and other movable rubbish containers shall be allowed to be visible from any street or adjacent lot within the Property only during the days on which rubbish is collected and after nine (9) p.m. of the preceeding evening.

4.11 LIMITATIONS ON OPEN FIRES: No incinerators or other open fires (except outdoor cooking facilities such as propane grills or portable barbecue units) shall be kept or maintained on any Lot.

4.12 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 diseases or noxious insects or vermin.

4.13 ANTENNAE AND EXTERIOR APPLIANCES:

0098-0736

(a) **Radio, Television.** No towers, antennae, aerials, dishes, reflectors or other facilities for the reception or transmission of radio or television broadcasts or other means of communication shall be erected and maintained or permitted to be erected and maintained on the Property except as permitted by the Board.

(b) **Exterior Wiring.** No wiring for electrical or telephone installations, television antennae, security systems, machines or air conditioning units, or appliances shall be permitted on the exterior of any building or that protrude through the walls or roof of any building except as permitted by the Board.

4.14 COMPLIANCE WITH LAWS:

Each Owner shall promptly comply with all laws, statutes, ordinances, Master Association and Estate Homesite Association Policies and Procedures, and regulations of Federal, State or municipal governments or authorities applicable to the Property.

4.15 USE OF IMPROVEMENTS DURING CONSTRUCTION; DILIGENCE IN CONSTRUCTION:

No Improvement upon any Lot shall be occupied until the same is completed and made to comply with the restrictions, covenants and conditions contained in this Declaration. Any Improvement which is partially or totally destroyed, or damaged, by fire, earthquake or otherwise, shall be removed, repaired or replaced within a reasonable time after such destruction or damage occurs and subject to the requirements of this Declaration, by the then Owner or Owners of that portion of the Lot or Lots upon which the destroyed or damaged Improvement was or is located. All work of construction, removal or repair of any Improvement upon any Lot shall be prosecuted diligently and continuously from the time of commencement thereof until the same shall be fully completed, which completion shall occur not later than nine months after commencement of such work, except to the extent prevented by strikes, lockouts, boycotts, the elements, war, inability to obtain materials, acts of God or similar causes.

4.16 LANDSCAPING, APPROVAL AND INSTALLATION:

Landscaping plans shall be submitted to the Architectural Committee by the owner of each Lot improved with a dwelling at the same time structural improvement plans are submitted with respect to such Lot. All plans shall be in compliance with sod and planting limitations, and tree preservation guidelines, as established by said Committee or the Estate Homesite Association from time to time. Landscaping pursuant to and conforming with such approved landscaping plans shall be installed on such Lot within one year after the issuance of a certificate of occupancy, or other permission as may be required for use of such Improvement for human habitation.

4.17 MINIMUM DWELLING SIZE:

No dwelling intended or used as the primary dwelling on an Estate Homesite may be constructed or maintained unless the interior floor area of such dwelling (excluding garage) contains at least 1,800 square feet. The maximum permissible interior floor area shall be limited only by constraints of the building site area and other reasonable limitations as may be established by the Architectural Committee.

4.18 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 on the Master Association Property without the express written permission of the Environmental Control Committee and then only to the extent and in the manner specifically approved. No structure, plantings, or other material shall be placed or permitted to remain on or within any grades, slopes, or courses, nor shall any other activities be undertaken which may 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.

4.19 EXTERIOR LIGHTING. All exterior lighting of an Estate Homesite shall be subject to approval of the Architectural Committee.

4.20 ENFORCEMENT; RIGHT TO NOTICE; HEARING:

In the event an Owner shall fail to comply with the provisions of this Article IV, the Estate Homesite Association shall notify such Owner in writing of such specific lack of compliance, which notice shall state that such Owner has a right to a hearing before the Board with regard to the matters of noncompliance set forth in such notice and, which notice may state that from and after a specified date (which date shall be subsequent to the date of the hearing provided for herein) the Board or its authorized agents may enter upon the owner's Lot for the purpose of remedying such lack of compliance. If such Owner fails to remedy such lack of compliance within 5 days after receipt of such notice (or within such greater time period as may be specified in such notice), or, in the alternative, fails to deliver written notice to the Board within 5 days

from receipt of such notice requesting a hearing before the Board with regard to the matters of noncompliance set forth in such notice, the Estate Homesite Association or its authorized agents shall have the right to enter upon such Owner's Lot for the purpose of remedying the matters set forth in the notice, and shall not be liable for trespass in connection with such entry. If the Owner timely requests a hearing before the Board, the Board shall schedule a hearing and shall provide the Owner with at least 7 days written notice as to the date, time and place thereof. At the hearing the Owner will have an opportunity to discuss with the Board the merits of the claims set forth in the Estate Homesite Association's original notice of noncompliance, and the Board will determine what action, if any, need be taken by the owner and the time within which it must be accomplished. The decision of a majority of the members of the Board present at the hearing will be binding upon the Estate Homesite Association and the Owner. In the event it is determined the owner has not complied, the Board shall establish a time period within which the Owner shall so comply. If the Owner fails so to comply within the designated time period, the Estate Homesite Association or its authorized agents shall then have the right to enter into the Owner's Unit to perform the required acts and shall not be liable for trespass in connection therewith. The cost to the Estate Homesite Association of remedying such Owner's failure to comply with the provisions of this Section shall be assessed to the Owner as a Remedial Assessment, enforceable in the manner provided in Article III of this Declaration.

ARTICLE V

ARCHITECTURAL CONTROL AND APPROVAL OF PLANS

5.1 ARCHITECTURAL COMMITTEE:

(a) **Priority.** The scope and authority of the Architectural Committee ("Committee") shall be subject to the exemption of Section 12.12 and to the superior jurisdiction of the Master Association Environmental Control Committee, but otherwise said Architectural Committee shall govern the Estate Homesite Project with respect to the matters of this Article V.

(b) **Establishment of Committee.** Architectural control and approval of plans shall be vested in the Declarant, its successors in interest, or its assigns until the creation of an Architectural Committee, which shall be established by the Estate Homesite Association within twelve (12) months following the issuance of the original Public Report for the Estate Homesite Project, and shall be comprised of no less than three (3) nor more than five (5) members some or all of whom may be members of the Board concurrently; provided, however, that Declarant reserves the power to appoint a majority of the members of the Committee, the remaining members to be appointed by the Board, until ninety percent (90%) of the Estate Homesites in the fully-annexed Estate Homesite Project shall have been sold or until the fifth (5th) anniversary of the original issuance of the Public Report for the First Subdivision, whichever first occurs. Thereafter, all members of the Committee shall be appointed by the Board. Members appointed to the Committee by Declarant need not be Members of the Estate Homesite Association, but members appointed by the Board shall be from the membership of the Estate Homesite Association.

5.2 COMMITTEE APPROVAL:

(a) **Scope.** Before commencing any building, remodeling, or renovation operations or activities, or installation of landscaping or trimming or removal of trees, or further subdivision of any Lot, written approval must be obtained from the Committee covering all aspects of such proposed activity, including building and plot plans for all structures erected, altered, renovated, remodeled, placed, assembled, or permitted to remain on any Lot, including garages and fences; except, however, that approval of the Committee shall not be required for building operations conducted by Declarant or its designated successors or assigns. The approval of said Committee shall include style, design, appearance, harmony of external design (including color scheme) with Declarant's general scheme, location of the proposed structure with respect to Declarant's designated building site location on said Estate Homesite, topography and finish grade elevation, and as to the corner Lots, the street frontage thereof.

(b) **Limitation on Authority.** Approval by the Committee shall not be construed as modifying, altering, or waiving any of the provisions herein set out or established by law. Any decision or approval by the Committee shall not relieve an applicant or Owner from complying with any requirement of a public authority having jurisdiction, and shall not constitute any representation or guaranty by the

Committee or a member thereof of compliance of the submitted matter with any statute, ordinance, or regulation pertaining thereto.

5.3 NO LIABILITY OF COMMITTEE:

Neither Declarant, the Estate Homesite Association, nor the Committee, nor any member thereof, shall be held responsible, or liable in any manner whatsoever, to any Owner of an Estate Homesite for any loss or damage due to design concepts, aesthetics, errors or defects, patent or latent, shown or omitted, on any plans or specifications upon which it may pass, or any buildings or structures erected therefrom.

5.4 COMMITTEE ACTION FINAL:

The decision of a majority of the Committee, or of a representative appointed by the majority thereof, acting in good faith in its sole discretion, upon any matters submitted or referred to it, shall be final; provided, however, that such decision may not violate any of the provisions set out in this Declaration. It is further provided that if no rejection shall have been sent by the Committee to an applicant within thirty (30) days ("Decision Period") from the date of receipt of a submittal such inaction shall be deemed approval.

5.5 VARIANCE MAY BE ALLOWED:

The Committee may allow reasonable variances and adjustments of the provisions of this Declaration in order to overcome practical difficulties and prevent unnecessary hardships in the application of the regulations contained herein; provided, however, that this must be done in conformity with the intent and purposes hereof, and also provided that such variance or adjustment may not be materially detrimental or injurious to other property or improvements in the neighborhood.

5.6 CONFLICTING GOVERNMENTAL ACTION:

In the event there shall be any law or governmental action of any kind or nature which conflicts with or prevents works of construction or improvement in the manner described by these provisions, such circumstances shall be deemed to constitute practical difficulties within the meaning of the preceding paragraph.

5.7 PRECEDENCE OF EAGLE CREST MASTER ASSOCIATION ENVIRONMENTAL CONTROL COMMITTEE:

The Committee shall act in coordination with the Eagle Crest Master Association Environmental Control Committee, the rulings and decisions of which shall have precedence over, and supersede, any decisions or rulings of the Committee. To facilitate such coordination, the Committee, with majority approval of the Board, may assign all or any portion of its responsibilities pursuant to this Article to said Environmental Control Committee. In the event such assignment is not effected, then any applicant may make any required submittals concurrently to the Architectural Committee and the Environmental Control Committee, and the Decision Period set forth in Section 5.4 shall run concurrently with the similar decision period as set forth in the Master Declaration.

ARTICLE VI

DESTRUCTION

6.1 RECONSTRUCTION REQUIRED; INSURANCE INSUFFICIENCY:

In the event of a total or partial destruction of any portion of the Estate Homesite Association Property the same shall be promptly repaired and rebuilt by the Association; provided, however, if the damage is not covered by insurance proceeds, or if the available insurance proceeds are insufficient, the Estate Homesite Association shall, subject to the provisions of Section 6.2 and the next succeeding sentence, levy against all Owners a Special Assessment apportioned using the method for calculating the Annual Assessment, and in the total amount required to meet the cost of such repair or restoration. In the event the damage or destruction was caused by the intentional or negligent act or omission of an Owner, the cost of such repair or the amount of such deficiency shall be levied as a Remedial Assessment. If reconstruction is to take place, the Board shall cause to be executed, acknowledged and recorded in the office of the recording office of Deschutes County a certificate declaring the intention of the owners to rebuild, such certificate to be executed by any officer or agent of the Estate Homesite Association duly authorized to execute the same by the Board.

6.2 APPROVAL BY OWNERS; WHEN REQUIRED:

In the event the amount of the Special Assessment which is required to be levied pursuant to Section 6.1, shall exceed 5 percent of the budgeted gross expenses of the Estate Homesite Association for such Fiscal Year, such Special Assessment shall be levied only if approved by affirmative vote or written consent

0098-0739

of a Majority of Owners. If such Special Assessment is not so approved or if no action is taken with respect thereto within 180 days following the date of such damage or destruction, such disapproval or inaction shall be deemed to be an election to terminate the operation by the Estate Homesite Association of the destroyed or damaged property.

6.3 OBLIGATION OF BOARD:

It shall be the obligation of the Board to take all steps necessary to assure the commencement and completion of such reconstruction at the earliest possible date.

6.4 DAMAGE TO PRIVATE PROPERTY:

Any restoration and repair of any damage to an Owner's Lot or the Improvements thereon shall be made by and at the individual expense of the Owner of such Lot or Improvement. If an Owner fails to make such restoration or repair of his Property, the Board in accordance with this Declaration may take appropriate remedial action.

6.5 DETERMINATION NOT TO REBUILD:

If a certificate of intention to rebuild has not been executed, acknowledged and recorded within three (3) months from the date of any partial or total destruction of the Estate Homesite Association Property, or if reconstruction and rebuilding has not actually commenced within such three (3) month period, or if excess insurance proceeds are available over the cost of repair or restoration, then any available insurance proceeds shall be distributed by the Estate Homesite Association, as trustee, among the Owners subject first to (i) the right of the First Mortgagees and then to (ii) all unpaid assessments of each Owner together with any interest or fees attributable thereto. The proportionate interest of each Owner in said proceeds for each Assessable Estate Homesite owned shall be equal to a fraction, the numerator of which is the fair market value of such Assessable Estate Homesite immediately prior to such damage or destruction and the denominator of which is the fair market value of all the Assessable Estate Homesites in the Property just prior to such damage or destruction, as determined by an independent real estate appraiser appointed by the Board; provided, said real estate appraiser shall be a member of the American Institute of Real Estate Appraisers, or any successor organization.

**ARTICLE VII
CONDEMNATION**

7.1 TOTAL OR PARTIAL TAKING:

In the event of a total or partial taking of the Estate Homesite Association Property, the Estate Homesite Association shall, subject to the provisions of Section 7.4, use all amounts awarded to it on account of such taking to acquire and improve other real or personal property to replace the property which was taken; provided, however, if the available condemnation proceeds are insufficient, the Estate Homesite Association shall, subject to the provisions of Section 7.2, levy against all Owners a Special Assessment apportioned using the method for calculating the Annual Assessment, and in the total amount of such shortfall.

7.2 APPROVAL BY OWNERS; WHEN REQUIRED:

In the event the amount of the Special Assessment which is required to be levied pursuant to Section 7.1 above, shall exceed 5 percent of the budgeted gross expenses of the Estate Homesite Association for such Fiscal Year, such Special Assessment shall be levied only if approved by affirmative vote or written consent of a Majority of Owners. If such Special Assessment is not so approved or if no action is taken with respect thereto within 180 days following the date of such taking, such disapproval or inaction shall be deemed to be an election to terminate the obligation of the Association to replace the taken property.

7.3 TAKING OF PRIVATE PROPERTY

In the event of a taking of Estate Homesites or any portion thereof, those Owners whose Estate Homesites are completely or partially taken, or any Sub-Association authorized to represent such Owners, shall be entitled to retain the award made to them. Nothing contained in this Article VII shall be deemed to limit the right of an Owner to pursue all available legal remedies and obtain all compensation to which he may be entitled by reason of the taking of his property.

7.4 DETERMINATION NOT TO REPLACE.

If in the judgment of the Board the property taken by eminent domain cannot or should not be replaced, or in the event such replacement has not actually commenced within three months after the date proceeds resulting from the condemnation have been paid to the Estate Homesite Association, or if any excess condemnation proceeds are available after such replacement has been accomplished, then any

0098-0740

available proceeds of condemnation shall be distributed by the Estate Homesite Association, as trustee, among the Owners subject first to (i) the right of the First Mortgagees and then to (ii) all unpaid assessments of each Owner together with any interest or fees attributable thereto. The proportionate interest of each Owner in such proceeds shall be determined in the same manner as for available insurance proceeds according to the provisions of Section 6.5.

ARTICLE VIII ANNEXATION

The Annexable Property, or any portion thereof, may be annexed to and become subject to this Declaration, but only if such property is also annexed to the regime of the Master Declaration, by either of the following methods set forth in this Article. The effect of annexation shall be to subject such annexed portion of the Annexable Property to the provisions of this Declaration and the Master Declaration without the necessity of amending individual sections hereof.

8.1 ANNEXATION WITHOUT APPROVAL.

The Annexable Property, or a portion thereof, may be annexed by Declarant to and become a part of the Estate Homesite Project, subject to this Declaration, the Master Declaration and subject to the jurisdiction of the Estate Homesite Association and the Master Association, without the consent of the Owners, (i) within three years after the date of issuance of the Public Report issued by the State of California Department of Real Estate for the immediately preceding annexation, or (ii) December 31, 1995, whichever is later.

8.2 ANNEXATION BY APPROVAL.

Upon affirmative vote or written approval of a Super-Majority of Owners, the owner of any property who desires to add it to the regime of this Declaration and to subject it to the jurisdiction of the Estate Homesite Association may file of record a Notice of Annexation with respect to the real property to be annexed; provided, however, that no such annexation may take place more than seven (7) years from the date of recordation of this Declaration.

8.3 EFFECT OF ANNEXATION.

Membership in the Estate Homesite Association shall be expanded at the effective date of annexation to include Owners within annexed properties and all Members shall thereafter have all rights and obligations herein established. Upon compliance with Section 8.1 or 8.2, as applicable, and recordation of a Notice of Annexation in the form prescribed below, the annexed land shall become part of the Estate Homesite Project and these Covenants shall, from the date of Recordation of the Notice of Annexation, apply to the annexed land in the same manner as if such annexed land had originally been subject to this Declaration and had originally constituted a portion of the Property; and thereafter the rights, privileges, duties and liabilities of the Members and the burdens and benefits to the land shall be the same as though the annexed land had originally been subject to this Declaration.

8.4 NOTICE OF ANNEXATION.

The Notice of Annexation, which may be included in any Supplemental Declaration, shall contain at least the following provisions:

- (i) A reference to this Declaration, which shall include the date of recordation hereof and the book and page numbers where this Declaration is recorded;
- (ii) A statement that the provisions hereof shall apply to the annexed portion of the Annexable Property as set forth herein;
- (iii) An exact description of the annexed portion of the Annexable Property; and
- (iv) A description of the Estate Homesite Association Properties, if any, located in the annexed portion of the Annexable Property.

8.5 DELETION OF ANNEXATION PROPERTY:

Declarant may delete all or any portion of the Annexable Property from the coverage of this Declaration and rescind the applicable Notice of Annexation provided (i) Declarant is the sole Owner of all of the property described in said Notice of Annexation, (ii) no vote has been exercised with respect to the property described in said Notice of Annexation and, (iii) Assessments to the Owners have not commenced and no Association expenditures have accrued with respect to the described property in said Notice of Annexation. Such deletion shall be effected by Declarant's Recording a Notice of Deletion of Territory in the same manner as the Notice of Annexation to be rescinded was Recorded.

**ARTICLE IX
EASEMENTS**

0098-0741

9.1 COVENANTS RUNNING WITH THE LAND:

Each of the easements provided for in this Declaration shall be deemed to be established upon the recordation of this Declaration, and shall thenceforth be deemed to be covenants running with the land for the use and benefit of all the property encumbered thereby, and superior to all other encumbrances applied against or in favor of any portion of the Property. In furtherance of the easements provided for in this Declaration the individual grant deeds to the Estate Homesites may, but shall not be required to, set forth said easements.

9.2 USE OF THE ESTATE HOMESITE ASSOCIATION PROPERTY:

(a) **Reservations in Favor of Owners.** Declarant hereby reserves for itself, and for the benefit of each Owner a non-exclusive easement for ingress, egress, use and enjoyment over and through all of the Estate Homesite Association Property except any portions thereof designated as Restricted Use Areas. Said easements are appurtenant to and shall pass with the title to every Estate Homesite, and are for the benefit of said grantees, their respective families, guests, invitees, tenants, contract vendees, and such other classes of persons as to whom the Board may, from time to time and subject to the Estate Homesite Association Policies and Procedures, extend such privileges of use and enjoyment.

(b) **Rights Subject to Restrictions.** The right of Declarant and each Owner, and of the respective families, guests, invitees, tenants and contract vendees, to use and enjoy the Estate Homesite Association Property as set forth herein, shall be subject to and governed by the provisions of this Declaration, the Articles, By-Laws, the Estate Homesite Association Policies and Procedures and the restrictions imposed thereby and fees established pursuant thereto. The Estate Homesite Association shall have the authority to lease or to grant licenses or concessions with respect to all or any part of the Estate Homesite Association Property subject only to the provisions of this Declaration, the Articles, By-Laws, and Estate Homesite Association Policies and Procedures; provided, however, that any charges levied against the general public for the use of any particular facilities shall not be more favorable than charges levied against Owners for the same use of the same facilities.

9.3 ENCROACHMENTS:

If any portion of Improvements constructed upon the Estate Homesite Association Property encroaches upon any Estate Homesite, an easement for the encroachments and for the maintenance of same, so long as such stand, shall exist in favor of the Estate Homesite Association. In the event any such Improvement is partially or totally destroyed, and then rebuilt, the Owner of Estate Homesites agree that encroachments due to such construction which are no more burdensome than the original such encroachments shall be permitted and that valid easement for said encroachment and the maintenance thereof shall continue to exist.

9.4 EASEMENT FOR PERFORMANCE OF OBLIGATIONS:

There is hereby reserved by Declarant in favor of the Estate Homesite Association such easements over all or any portion of the Estate Homesite Project as are necessary to perform the duties and obligations of the Estate Homesite Association and Architectural Committee as are set forth in this Declaration, the By-Laws, the Articles, or the Estate Homesite Association Policies and Procedures, including, but not limited to, the right of access at all reasonable hours to any part of the Estate Homesite Project (excluding the interior of any Dwelling), and to any Improvements being built thereon.

9.5 UTILITY EASEMENTS:

The Master Association, and any public utility company (collectively, the "Supplier") providing utility services to the Property including, without limitation, sanitary sewers, water, electricity, telephone, and cable television shall be governed by the following:

(a) **In Favor of Supplier.** Whenever sanitary sewer house connections, electricity, water, telephone, cable television or other utility lines are installed within the Estate Homesite Project, which connections or any portion thereof lie in or upon Lots owned by others than the Owners of the Lot served by the connections described in the preceding subsection, the Supplier shall have the right, and is hereby granted an easement to the full extent necessary therefor, to enter upon Lots in or upon which said connections, or any portion thereof, lie, to repair, replace and generally maintain said connections as and when the same may be necessary.

(b) **In Favor of Owner.** Whenever sanitary sewer house connections, electricity, water, telephone, cable television or other utility lines are installed within the Estate Homesite Project, which connections serve more than one Lot, the Owner of each Lot served by said connections shall be

0098-0742

entitled to full use and enjoyment of such portions of said connections as serve his Lot.

(c) **Repair of Common Connections; Expenses.** In the event of a dispute between Owners with respect to the repair or rebuilding of the connections described in the preceding subsection, or with respect to the sharing of the cost thereof, then upon written request of one of such Owners addressed to the Estate Homesite Association, the matter shall be submitted to the Board who shall decide the dispute and make a Remedial Assessment or, in appropriate circumstances, a Special Assessment, against any or all of the Owners involved.

9.6 USE BY DECLARANT:

Declarant is undertaking the work of construction of residential dwellings, community amenities, and incidental improvements upon portions of the Property, the Estate Homesite Association Property as well as upon neighboring lands of the Planned Community. The completion of that work, and the sale, rental and other disposal of said property and improvements is essential to the establishment and welfare of the Estate Homesite Project as a residential community. In order that said work may be completed and the Estate Homesite Project be established as a fully occupied residential community as rapidly as possible, Declarant reserves non-exclusive easements in gross as may be necessary to complete said work and offer for sale, and to sell, the Estate Homesites and any improvements constructed thereon, and/or any lot parcel, or improvement included or to be included in the Planned Community. In amplifications of the foregoing, nothing in this Declaration shall be understood or construed to:

(a) **Reasonable Activity.** Prevent Declarant, its contractors, or subcontractors from doing on the Estate Homesite Project, including the Estate Homesite Association Property, or any Estate Homesite, whatever is reasonably necessary or advisable in connection with the foregoing; or

(b) **Conduct of Business.** Prevent Declarant or its representatives from erecting, constructing, and maintaining on any part or parts of the Estate Homesite Project, such structures as may be reasonable and necessary for the conduct of its business of completing the Planned Community and disposing of all or a portion of the Planned Community, in lots, parcels, Estate Homesites, or complete (or partially completed) residential or commercial structures by sale, lease, or otherwise; or

(c) **Signs.** Prevent Declarant from maintaining such sign or signs on any of the Estate Homesite Project as may be necessary for the sale, lease, or disposition of all or a portion of the Planned Community; provided, however, that the maintenance of any such sign shall not unreasonably interfere with the use by any Owner of his Estate Homesite or the Estate Homesite Association Property.

(d) **Construction; Sales.** Subject to a concomitant obligation to restore, Declarant and its sales agents, until completion of original sale in the last phase to be annexed to the Estate Homesite Project, shall have:

(i) Non-exclusive easements over the Estate Homesite Association Property and the Estate Homesites for construction and common driveway purposes including access, ingress, and egress, as well as for drainage, encroachment, and reasonable use related to construction activities on any portion of the Planned Community, and for construction and/or repairs to the Estate Homesite Association Property, or the improvements constructed thereon;

(ii) The right to the non-exclusive use of the Estate Homesite Association Property for the purpose of maintaining model homes, sales offices, and signs reasonably necessary to market the Estate Homesites; or any other portion of the Planned Community; provided, however, the use of the Estate Homesite Association Property by Declarant and its agents shall not unreasonably interfere with the use thereof by the Owners.

(iii) Easements over the Property together with the right to grant and transfer the same for the installation and maintenance of electric, telephone, water and sanitary sewer lines and facilities as may hereafter be required or needed to service the Planned Community, and for the construction of all improvements to the Property and the Planned Community.

This Section 9.6 may not be modified, terminated, or otherwise amended or altered without written approval by Declarant. Any act attempting or purporting to effect such change, or to adversely affect the rights granted to or reserved by Declarant hereunder, shall be void and of no force or effect.

9.7 EASEMENTS RESERVED ON BEHALF OF THE MASTER ASSOCIATION:

(a) **Entry for Upkeep.** Declarant hereby reserves, in favor of the Master Association, its assignees, and licensees, including officers, agents, employees and independent contractors, a non-exclusive easement in gross to enter upon the Property, including Special Upkeep Areas, or any portion thereof, for the purpose of performing or satisfying the duties and obligations of the Master Association, including the obligations to maintain, repair and restore, from time to time, the Master Association Property, the Estate Homesite Association Property and Special Upkeep Areas, all as set

0098-0743

forth in this Declaration, the Master Declaration, and the Policies and Procedures promulgated pursuant thereto.

(b) **Golf Course Uses.** Declarant, hereby reserves for itself and for the benefit of the Master Association, its lessee or operator of the Golf Course, and all licensees, invitees, patrons and miscellaneous users of the Golf Course, for as long as the Golf Course is being operated as such by the Master Association, its lessee or operator:

(i) a non-exclusive easement for maintenance, construction, and recreational uses on, over, and across a wide portion of each Estate Homesite. The portion of each Estate Homesite so encumbered shall be designated as Golf Course fairway and rough and shall be fixed in location upon recordation of a map or plat designating such area. Within such easement area such grantees may conduct any and all activities (including, but not limited to, construction or maintenance of the Golf Course and/or retrieval or striking of golf balls, and similar related activities) as are usual and proper for the construction, maintenance, operation and use of the Golf Course; and

(ii) a non-exclusive easement across the Special Upkeep Areas and any other areas of the Estate Homesite Association Property as may be reasonably required to move along the normal path-of-play of said Golf Course.

9.8 EASEMENTS OVER DECLARANT PROPERTY:

The Owners of Estate Homesites shall have and are hereby granted a non-exclusive license in, over and upon the Annexable Property as such license may be located or relocated by Declarant from time to time, for access to and from the River Bluff Areas and the use and enjoyment of the Recreational Pathways as both terms are identified in the Master Declaration. Such license shall terminate only upon establishment of alternate licenses or easements serving the same purpose as herein above set forth on or across a portion of the Annexable Property by the annexing Supplemental Declaration.

**ARTICLE X
ENFORCEMENT**

In the event of any default by any Owner under the Provisions of this Declaration, the Articles, Bylaws, or the Estate Homesite Association Policies and Procedures, and upon any failure of any Owner to comply with any provision set forth in this Declaration, the Estate Homesite Association and its successors and assigns, and the Board and its agents, or any of them, shall have all the rights and remedies which may be provided for in this Declaration, the Bylaws, the Articles, the Estate Homesite Association Policies and Procedures, or which may be available at law or in equity, and may prosecute any action or other proceeding against such defaulting Owner and/or other persons for enforcement of any lien and the appointment of a receiver for the Estate Homesite and ownership interest of such Owner, or for damages or injunction or specific performance, or for judgment of payment of money and collection thereof, or the right to take possession of the Estate Homesite and to sell the same as herein above provided, or for any combination of remedies, or for any other relief. The Estate Homesite Association and the Board, and the agents of each, shall have the authority to correct such default and to do whatever may be necessary for such purpose. All expenses of the Estate Homesite Association in connection with such actions or proceedings, including court costs and attorneys' fees, and all damages, together with interest thereon at the maximum legal rate until paid, shall be charged to such defaulting or non-complying Owner, and shall be a lien on such Owner's Estate Homesite, and upon all of such Owner's additions and improvements to his Estate Homesite, which lien shall be enforceable in the manner set forth in Article III hereof. Any and all such remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Estate Homesite Association. Should any Member institute suit against the Estate Homesite Association, and should the Estate Homesite Association be successful or sustained in its position in such suit, then such Member shall be required to reimburse the Estate Homesite Association for its legal expenses incurred, including but not limited to attorneys' fees, fees of experts, court costs and other expenses reasonably incurred by the Estate Homesite Association and the amount to which the Estate Homesite Association is entitled shall be a lien against his Estate Homesite and enforceable pursuant to the provisions of Article III hereof.

ARTICLE XI

0098-0744

ENFORCEMENT OF BONDED OBLIGATIONS

If Declarant obtains a completion bond or other arrangements (hereinafter referred to as the "Bond") in favor of the Estate Homesites Association to secure the commitment of Declarant to complete Estate Homesite Association Property Improvements, including a bond issue pursuant to California Business and Professions Code Section 11018.5 (a)(2), then:

(1) The Board of Directors is directed to consider and vote upon the question of action by the Estate Homesite Association to enforce the obligations under the bond with respect to any Improvement for which a Notice of Completion has not been filed within sixty (60) days after the completion date for that Improvement in the Planned Construction Statement appended to the Bond. If the Estate Homesite Association has given an extension in writing for the completion of any Association Property Improvement, the Board of Directors is directed to consider and vote on the aforesaid question of a Notice of Completion has not been filed within thirty (30) days after the expiration of the extension period.

(2) A special meeting of the Members for the purpose of voting to override a decision by the Board of Directors not to initiate action to enforce the obligations under the Bond or on the failure of the Board of Directors to consider and vote on the question shall be held not less than thirty-five (35) days, nor more than forty-five (45) days after receipt by the Board of Directors of a petition for such a meeting signed by Members representing not less than five percent (5%) nor more than ten percent (10%) or more of the total voting power of the Estate Homesite Association.

(3) A vote of a Majority of Non-Declarant Owners at the special meeting called pursuant to subparagraph (2) above to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Estate Homesite Association, and the Board shall thereafter implement such decision by initiating and pursuing appropriate action in the name of the Estate Homesites Association.

ARTICLE XII

GENERAL PROVISIONS

12.1 AMENDMENTS:

(a) **Voting Power.** This Declaration may be amended from time to time by vote or written approval of a Super-Majority of Owners; provided, however, (i) the percentage of the voting power necessary to amend a specific clause or provision shall not be less than the percentage of affirmative votes required for action to be taken under such clause or provision; and (ii) no amendment which would defeat the obligations of the Estate Homesite Association Property (including Special Upkeep Areas) and Special Upkeep Areas in a safe and attractive condition and good state of repair, or which would defeat the assessment procedures which assure the collection of funds for such maintenance shall be made unless approved by Declarant, by seventy-five percent (75%) of the Non-Declarant Owners, and by seventy-five percent (75%) of the Mortgagees of record.

(b) **Declarant's Right to Amend.** Notwithstanding any other provision herein, Declarant reserves the right, for a period of three (3) years after initial recordation of this Declaration, and without the vote or approval of the Members of the Estate Homesite Association, to amend this Declaration in any manner required to conform with the requirements of the Oregon Real Estate Commissioner, the California Department of Real Estate, or of the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Veteran's Administration, Federal Housing Administration, or any similar governmental or quasi-governmental state or federal body or agency having jurisdiction, so as to meet the requirements of such body or agency for their approval of this Declaration and the Planned Community, whether or not the Property or any portion thereof has then been conveyed by Declarant to a Non-Declarant grantee.

(c) **Provisions of Law Shall Control**

Notwithstanding the provisions of the foregoing subsection (a) and (b), if, by law, any different consent or agreement is required in order to effect the amendment of this Declaration, then any instrument changing, modifying or rescinding any provision of this Declaration shall be effective only if authorized and executed as required by law. No provision in this Declaration may be changed, modified or rescinded so as to conflict with the provisions of any law.

0098-0745

forth in this Declaration, the Master Declaration, and the Policies and Procedures promulgated pursuant thereto.

(b) **Golf Course Uses.** Declarant, hereby reserves for itself and for the benefit of the Master Association, its lessee or operator of the Golf Course, and all licensees, invitees, patrons and miscellaneous users of the Golf Course, for as long as the Golf Course is being operated as such by the Master Association, its lessee or operator:

(i) a non-exclusive easement for maintenance, construction, and recreational uses on, over, and across a wide portion of each Estate Homesite. The portion of each Estate Homesite so encumbered shall be designated as Golf Course fairway and rough and shall be fixed in location upon: recordation of a map or plat designating such area. Within such easement area such grantees may conduct any and all activities (including, but not limited to, construction or maintenance of the Golf Course and/or retrieval or striking of golf balls, and similar related activities) as are usual and proper for the construction, maintenance, operation and use of the Golf Course; and

(ii) a non-exclusive easement across the Special Upkeep Areas and any other areas of the Estate Homesite Association Property as may be reasonably required to move along the normal path-of-play of said Golf Course.

9.8 EASEMENTS OVER DECLARANT PROPERTY:

The Owners of Estate Homesites shall have and are hereby granted a non-exclusive license in, over and upon the Annexable Property as such license may be located or relocated by Declarant from time to time, for access to and from the River Bluff Areas and the use and enjoyment of the Recreational Pathways as both terms are identified in the Master Declaration. Such license shall terminate only upon establishment of alternate licenses or easements serving the same purpose as herein above set forth on or across a portion of the Annexable Property by the annexing Supplemental Declaration.

**ARTICLE X
ENFORCEMENT**

In the event of any default by any Owner under the Provisions of this Declaration, the Articles, Bylaws, or the Estate Homesite Association Policies and Procedures, and upon any failure of any Owner to comply with any provision set forth in this Declaration, the Estate Homesite Association and its successors and assigns, and the Board and its agents, or any of them, shall have all the rights and remedies which may be provided for in this Declaration, the Bylaws, the Articles, the Estate Homesite Association Policies and Procedures, or which may be available at law or in equity, and may prosecute any action or other proceeding against such defaulting Owner and/or other persons for enforcement of any lien and the appointment of a receiver for the Estate Homesite and ownership interest of such Owner, or for damages or injunction or specific performance, or for judgment of payment of money and collection thereof, or the right to take possession of the Estate Homesite and to sell the same as herein above provided, or for any combination of remedies, or for any other relief. The Estate Homesite Association and the Board, and the agents of each, shall have the authority to correct such default and to do whatever may be necessary for such purpose. All expenses of the Estate Homesite Association in connection with such actions or proceedings, including court costs and attorneys' fees, and all damages, together with interest thereon at the maximum legal rate until paid, shall be charged to such defaulting or non-complying Owner, and shall be a lien on such Owner's Estate Homesite, and upon all of such Owner's additions and improvements to his Estate Homesite, which lien shall be enforceable in the manner set forth in Article III hereof. Any and all such remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Estate Homesite Association. Should any Member institute suit against the Estate Homesite Association, and should the Estate Homesite Association be successful or sustained in its position in such suit, then such Member shall be required to reimburse the Estate Homesite Association for its legal expenses incurred, including but not limited to attorneys' fees, fees of experts, court costs and other expenses reasonably incurred by the Estate Homesite Association and the amount to which the Estate Homesite Association is entitled shall be a lien against his Estate Homesite and enforceable pursuant to the provisions of Article III hereof.

0098-0746

(d) **Recordation.**

The recordation of a certificate of the Secretary of the Estate Homesite Association setting forth in full the amendment so approved and certifying that said amendment has been approved by the Members as required by this Section shall be conclusive as to the validity thereof.

12.2 NOTICES:

Notices provided for in this Declaration shall be in writing and shall be addressed to the person intended to receive the same, at the following address:

Association:

Eagle Crest Estate Homesite Association
P.O. Box 964
Redmond, Oregon 97756

Declarant:

Eagle Crest Partners Ltd.
P.O. Box 1215
Redmond, Oregon 97756

Owner:

At the address of the Estate Homesite owned.

Notice so mailed shall be deemed to have been given 48 hours after the deposit of same in any United States mail box in the state the Notice is addressed, or 72 hours after deposit in any such mailbox other than in the state to which the notice is addressed, postage prepaid, addressed as set forth above. Declarant and the Estate Homesite Association may designate a different address or addresses for notices by giving written notice of such change of address to all Members of the Estate Homesite Association. Any Owner may designate a different address or addresses for notices to him by giving written notice of such change of address to the Estate Homesite Association. Upon written request, any Mortgagee shall be given a copy of all notices permitted or required by this Declaration to be given to the Owner or Owners whose property is subject to such recorded mortgage or deed of trust.

12.3 SEVERABILITY:

If any provision of this Declaration, the Articles, the Bylaws, or any Section, sentence, clause, phrase or word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of the Declaration, the Articles and Bylaws, and of the application of any such Section, sentence, clause, phrase, or word in any other circumstances shall not be affected thereby.

12.4 SUCCESSORS OF DECLARANT:

Each and every right and obligation of Declarant under this Declaration shall inure to the benefit of and be binding as the successors of Declarant which are designated as a Successor Declarant by an instrument duly recorded in the office of the recording officer of Deschutes County.

12.5 INAPPLICABILITY TO PROPERTY OF PUBLIC ENTITY:

The provisions hereof shall be inapplicable to any property now owned or hereafter acquired by the State of Oregon or a political subdivision thereof.

12.6 VIOLATION AND NUISANCE:

Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by Declarant, the Master Association, the Estate Homesite Association or any Owner or Owners.

12.7 VIOLATION OF LAW:

Any violation of any state, municipal or local law, ordinance or regulations, pertaining to the ownership, occupancy or use of any of the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

12.8 NOTIFICATION OF SALE OF PROPERTY:

(a) **Content.**

Concurrently with the execution of any escrow instructions, deposit receipt, or other agreement for the sale or transfer of an Estate Homesite, under circumstances whereby the transferee will become the Owner thereof, the transferor shall notify the Estate Homesite Association in writing of such sale. Such notification shall set forth:

- (1) the name of the transferee and his transferor;
- (2) the legal designation of the Estate Homesite purchased by the transferee;
- (3) the transferee's mailing address;
- (4) the name and address of the escrow holder, if any, for such sale and the escrow number;

0098-0747

(5) the scheduled date of sale or transfer.

Concurrently with the consummation of such sale of any Estate Homesite, or within 5 business days thereafter, the transferor shall notify, in writing, the Estate Homesite Association of consummation of such sale. Such notification shall set forth the information called for in clauses (1), (2), (3), and (4) above, and the date such sale was consummated.

Sanctions.

Unless and until such notice is given and any unpaid Assessments have been paid on behalf of the transferor, the Estate Homesite Association shall not be required to recognize the transferee for any purpose. Prior to receipt of any such notification, any and all communications required or permitted to be given by the Estate Homesite Association or the Board shall be deemed to be duly given and made to the transferee if duly and timely made and given to said transferee's transferor.

12.9 BREACH:

No breach of the covenants, conditions or restrictions herein contained, nor the enforcement of any lien provisions herein, shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise.

12.10 APPLICABLE LAW:

This Declaration shall be construed in accordance with the laws of the State of Oregon.

12.11 SPECIAL MORTGAGEE REQUIREMENTS:

(a) Notice Upon Request.

A First Mortgagee at its request is entitled to written notification from the Estate Homesite Association of any default by the Owner of an Estate Homesite which is subject to a mortgage or deed of trust in favor of said Mortgagee of such Owner's obligations under this Declaration which is not cured within sixty (60) days.

(b) Limitation on Liability for Prior Breach.

Any First Mortgagee who obtains title to an Estate Homesite pursuant to the remedies provided in the mortgage or deed of trust or foreclosure of the mortgage or deed of trust:

(i) shall not be liable for such property's unpaid assessments which accrue prior to the acquisition of title to such interest by such First Mortgagee, and

(ii) shall not be obligated to cure any breach of this Declaration which is noncurable or of a type which is not feasible to cure or which is not practical to cure and does not materially affect the Estate Homesite Association or any other Owners.

(c) Examination of Books and Records.

First Mortgagees shall have the right to examine the books and records of the Estate Homesite Association.

(d) Provision for Regular Collection of Reserves.

An adequate reserve fund for replacement of the Estate Homesite Association Property Improvements must be established and must be funded by regular monthly payments rather than by Special Assessments.

(e) Special Approval Provisions.

Notwithstanding anything to the contrary which may be set forth in this Declaration, the Articles or the Bylaws, unless at least seventy-five percent (75%) of the First Mortgagees (based upon one (1) vote for each First Mortgage owned) have given their prior written approval, the Estate Homesite Association shall not:

(i) by act or omission, change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Improvements constructed in the Planned Community, the exterior maintenance of Units, or the maintenance of landscaping and Association Property;

(ii) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner.

(iii) fail to maintain fire and extended coverage on the Estate Homesite Association Property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost).

(iv) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Estate Homesite Association Property. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Estate Homesite Association Property by the Owners shall not be deemed a transfer within the meaning of this clause;

(v) use hazard insurance proceeds for losses to any Association Property for other than the repair, replacement or reconstruction of such Estate Homesite Association Property;

0098-0748

(vi) amend any part of this Section 12.11.

(f) Notice of Loss.

The Association shall give the Federal National Mortgage Association ("FNMA") or the Federal Home Loan Mortgage Corporation ("FHLMC") notice in writing of any loss to, or taking of, the Estate Homesite Association Property if such loss or taking exceeds Ten Thousand Dollars (\$10,000.00).

(g) Right to Advance Payments.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a lien or charge against all or any portion of the Estate Homesite Association Property and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Estate Homesite Association Property and First Mortgagees making such payments shall be owed immediate reimbursement therefore from the Master Association.

(h) Appearance at Meetings.

Because of its financial interest in an Estate Homesite, a Mortgagee may appear (but may not vote) at meetings of the Owners and the Board to draw attention to violations of this Declaration which have not been corrected or made the subject of remedial proceedings or assessments.

(i) Authorization to Disclose.

A Mortgagee is authorized to furnish information to the Board concerning the status of any loan encumbering an Estate Homesite.

(j) Resolution of Conflicts.

In the event of any conflict between any provision of this and any other provision in this Declaration, the language contained herein shall control.

12.12 EXEMPTIONS TO ARTICLES IV AND V:

The restrictions set forth in Article IV and Article V shall not and do not apply to any of the following:

(a) Public Land.

Any part of the Property which is owned by any public or quasi-public agency, district, or other body.

(b) Acts by Government Body.

Any act done or proposed to be done upon the Property, or any condition created thereon, by any governmental agency or entity, or the agents or employees of any governmental entity acting in the scope of their authority as such agents or employees;

(c) Acts by Utility Supplier.

Any act done or proposed to be done upon the Property, or any condition created thereon, by any utility supplier (including, but not limited to, the Master Association or other companies furnishing electric, water, telephone, cable television and/or sewer service to all or parts of the Property), or the agents or employees of any such supplier, which act could be done by such supplier were this Declaration not made;

(d) Acts by Declarant.

Any act done or proposed to be done upon the Property, or any condition created thereon, by Declarant, or its successors, assigns, agents, employees or contractors, in connection with the exercise of any easement, license or other right reserved to Declarant in this Declaration; provided, however, that any such acts, proposed acts or conditions created upon the Property shall not unreasonably restrict the Owners in their use and enjoyment of the Estate Homesite Association Property or the facilities thereon;

(e) Acts by Estate Homesite Association or its Agents.

Any act done or proposed to be done upon the Property, or any condition created thereon by the Estate Homesite Association acting through (i) its Board, (ii) its Officers, or (iii) its agents; and

(f) Court Order.

Any act done or proposed to be done upon the Property, or any condition created thereon, by any person pursuant to court order, or the order of any public officer or public agency; provided, however, that the orders contemplated in this subparagraph are only those which are the result of action initiated by public officers or agencies and which embody mandatory requirements with penalties for non-performance, and are not those orders which result from the application of private parties or are merely permissive.

12.13 TERMS:

This Declaration and the covenants, conditions and restrictions contained herein, as amended from time to time, shall be and remain in full force and effect for a term of 50 years from the date this Declaration is recorded, after which time said Declaration shall be automatically extended for successive periods of 10

0098-0749

years, unless a certificate of the Secretary of the Estate Homesite Association has been recorded in the office of the recording officer of Deschutes County, certifying that a Super Majority of Owners has, by vote or written consent, agreed to terminate said Declaration.

12.14 PLURALS; GENDER:

Whenever the context so requires, the use of the singular shall include and be construed as including the plural, and the masculine shall include the feminine.

12.15 HEADINGS:

Section headings are inserted for convenience only and are not intended to be a part of this document or, in any way, to define, limit, or describe the scope or intent of the particular section to which they refer.

12.16 LEASES OF UNITS:

Any Owner who shall lease or rent his Estate Homesite to any person or entity shall be responsible for assuring compliance by any such person or entity with all of the covenants, conditions, restrictions, easements, reservations, liens and charges of this Declaration, as amended and supplemented. Any lease between an Owner and lessee shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Articles, the Bylaws, and the Estate Homesite Association Policies and Procedures and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All such leases shall be in writing.

12.17 RIGHT OF FIRST REFUSAL:

Except for conveyances effected by gift, devise or descent, by inter vivos trust for the benefit of such Owner or member of the family of such Owner, or by transfer of partial interest to bona-fide co-owners, no Owner may, during the twenty year period next following Declarant's conveyance of that Estate Homesite to the first purchaser, convey all or part of the fee interest in an Estate Homesite, or any equitable interest therein or undertake any other transfer or conveyance (except a lease of no more than 5 years) without first giving Declarant written notice (the "Sale Notice") of such intent together with the proposed sale price ("Sale Price") and other terms upon which the Owner intends to offer the Estate Homesite for such transfer or conveyance. Declarant shall have the right to purchase such Estate Homesite at a price equal to the Sale Price on the terms set forth in the Sale Notice by notifying such Owner in writing within 15 days of the date of receipt of the Sale Notice. If Declarant does not notify Owner within such time period, such failure to notify shall be deemed to constitute Declarant's election not to purchase the Estate Homesite. If Declarant notifies Owner of its desire to so purchase, Owner shall be bound to sell and Declarant shall be bound to purchase the Estate Homesite in accordance with the terms of the Sale Notice, and the closing of the purchase shall take place the later of (a) the date for closing set forth in such Sale notice; or (b) sixty (60) days after Declarant has notified Owner of the exercise of its election to so purchase. The other terms of the closing and payment of costs in connection therewith shall be in accordance with the terms of the Sale Notice, as applicable, except that no brokerage fee or commission shall be payable by Declarant, and Declarant may elect to purchase the Estate Homesite for all cash despite any provision in such Sale Notice for financing of such purchase to be provided by Owner, or for the structuring of the Sale as an exchange of the Estate Homesite with other real property.

If Declarant shall elect not to exercise its right to purchase the Estate Homesite, Owner may proceed to offer the Estate Homesite for sale for a period of up to one year, provided that no sale shall be made at a price less than 90% of the Sale Price or otherwise on terms less favorable to Owner than were offered to Declarant without first sending to Declarant a new Sale Notice setting forth such new Sale Price and/or terms, in which event Declarant shall have a further period of 15 days in which to elect to purchase the Estate Homesite upon the new price and/or terms. If a sale pursuant to the Sale Notice is not consummated within the lesser of: (a) the period described in the Sale Notice; or (b) expiration of the one year period, or (c) such longer period of time as Declarant shall approve in writing, any sale thereafter shall be subject to all the above provisions relating to Declarant's first right to purchase the Estate Homesite.

Notwithstanding any other provision hereof to the contrary, any Mortgagee of such Estate Homesite who shall acquire title to such Estate Homesite pursuant to the exercise of its rights under Mortgage shall, upon resale of the Estate Homesite not be bound to comply with the provisions of this Section 12.17, but all persons who shall acquire title to such Estate Homesite from such Mortgagee or pursuant to any sale conducted by such Mortgagee shall be bound hereby.

IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first hereinabove written.

"DECLARANT"

EAGLE CREST PARTNERS, LTD.,
an Oregon limited partnership

0098-0750

By Barry G. Evans, Trustee
Atlantic National Trust,
a California inter vivos trust,
General Partner

By *Barry G. Evans*
Barry G. Evans, Trustee

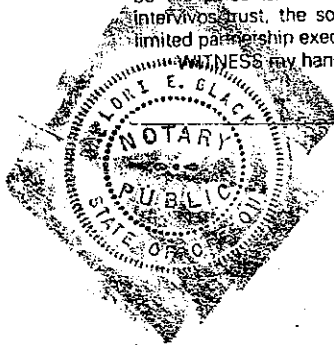
STATE OF OREGON

) ss.

COUNTY OF DESCHUTES

On June 24, 1985, before me, the undersigned, a Notary Public in and for said State, personally appeared Barry G. Evans, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) who executed this instrument as the trustee for Atlantic National Trust, a California inter vivos trust, the sole general partner of the limited partnership and acknowledged to me that such limited partnership executed the same.

WITNESS my hand and official seal.



Lori E. Black
Notary Public

My Commission Expires:
5-11-87

0098-0751

**EXHIBIT A-1
LEGAL DESCRIPTION**

"First Subdivision"

All of the following described lots as shown on the Eagle Crest Plat filed June 24, 1985 in the office of the county recorder in Deschutes County, Oregon:

Estate Homesites:

- Lots 3-12, Block 6
- Lots 2-12, Block 9
- Lots 14-24, Block 9
- Lots 3-10, Block 7
- Lots 13-22, Block 7

Recreational Lots:

- Lot 11, Block 7
- Lot 1, Block 8

Recreational Pathways:

- Lot 12, Block 7
- Lot 13, Block 9

Road Lots:

- Lot 10, Block 11
- Lot 11, Block 11

Open Space:

- Lot 13, Block 6
- Lot 2, Block 7

EXHIBIT A-2

"Estate Lot Association Property"

All of the following described lots as shown on the Eagle Crest Plat filed June 24, 1985 in the office of the county recorder in Deschutes County, Oregon:

Recreational Lots:

- Lot 11, Block 7
- Lot 1, Block 8

Road Lots:

- Lot 10, Block 11
- Lot 11, Block 11

Recreational Pathways:

- Lot 12, Block 7
- Lot 13, Block 9

Open Space:

- Lot 13, Block 6
- Lot 2, Block 7

EXHIBIT B

LEGAL DESCRIPTION

"Annexable Property"

All of the following described lots as shown on the Eagle Crest Plat filed June 24, 1985 in the office of the county recorder in Deschutes County, Oregon:

- Lots 3, 4 & 5, Block 2
- Lots 8, 9 & 12, Block 11
- Lot 1, Block 10

0098-0752

N
UTS

CENTURY
WEST ENGINEERING
CORPORATION

0098-0752

CLINE FALLS HWY

CHASE LOT

DRIVING RANGE

RECREATION BUILDING LOT

TENNIS LOT

126 RESIDENTIAL LOTS

TENNIS LOT

DESCHUTES RIVER



EAGLE CREST - ON THE RIVER DESCHUTES - PO BOX 1215 - REDMOND OR 97754

ESTATE HOMESITE DECLARATION
CONCEPTUAL PLAN OF DEVELOPMENT

EXHIBIT C

0098-0753

0098-0753

STATE OF OREGON)
COUNTY OF DESCHUTES) SS.

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

1985 JUN 24 PM 4:42

MARY SUE PENHOLLOW
COUNTY CLERK

BY *M. Gardner* DEPUTY
85-13063 FEE 141 -
NO. _____
DESCHUTES COUNTY OFFICIAL RECORDS