

DESCHUTES COUNTY OFFICIAL RECORDS
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DESCHUTES COUNTY CLERK

CERTIFICATE PAGE



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AMERICAN STATES TITLE COMPANY

1245 SE 3RD ST. STE A-1

BEND, OREGON 97702

**COVENANTS, CONDITIONS AND RESTRICTIONS
for
ELKAI WOODS FRACTIONAL HOMEOWNERS' ASSOCIATION, INC.**

Pursuant to ORS 94.600 and Articles 6.1 and 13.6 of the Declaration of Covenants, Conditions and Restriction for Elkai Woods Homeowners' Association, Inc., Yamazoe International, Inc. ("Declarant") adopts the following Amended Declaration for Elkai Woods Fractional Homeowners' Association, Inc.:

RECITALS

Declarant is the owner of all the real property described in Exhibit "A" hereto attached, which includes Lots 1 through 44 and 78 through 82 depicted in the plat of Elkai Woods Townhomes, filed in the Plat Records of Deschutes County, Oregon (the "Property"). Declarant desires to create thereon a planned community to be known as Elkai Woods, with permanent roadways, utility installations and open spaces for the benefit of such community.

Declarant desires to provide for the preservation and enhancement of the property values, amenities and opportunities in Elkai Woods and for the maintenance of the Property and improvements thereon, and to this end desires to subject the Property to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of the Property and each owner of any Lot thereof.

Declarant has deemed it desirable for the efficient preservation of the values and amenities in such community to create a non-profit corporations, to which should be delegated and assigned the powers of owning, maintaining and administering the common property and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created, and promoting the recreation, health, safety and welfare of the residents. The corporation (Elkai Woods Fractional Homeowners' Association, Inc.) shall govern the fractional interest Units on lots 1-44 and 78-82. The common property shall not include the pool facilities or the conference building, facilities and parking lot adjacent to the pool.

NOW, THEREFORE, the Declarant declares that the Property shall be held, transferred, sold, conveyed and occupied subject to the provisions of the Oregon Planned community Act, ORS 94.550 et seq., and to the covenants, restrictions, easements, charges and liens hereinafter set forth in this Declaration.

ARTICLE 1 DEFINITIONS

1.1 "Articles" The Articles of Incorporation for the Fractional Interest Units non-profit corporation, Elkai Woods Fractional Homeowners' Association, Inc., as filed with the Oregon Corporation Commissioner.

1.2 "Association" shall mean and refer to Elkai Woods Fractional Homeowners' Association, Inc., its successors and assigns.

1.3 "Bylaws" shall mean and refer to the Bylaws of the Association.

1.4 "Common Property" shall mean and refer to that area of land shown on the recorded plat of the Property, including any improvements thereon, which are intended to be devoted to the common use and enjoyment of the members and which land has been conveyed to the Association. The common property shall not include the pool and its facilities or the conference building, facilities and parking lot adjacent to the conference building and facilities.

1.5 "Declaration" shall mean the covenants, restrictions, and all other provisions set forth in this Declaration of Covenants and Restrictions for Elkai Woods.

1.6 "Declarant" shall mean and refer to Yamazoe International, Inc., its successors or assigns, or any successor or assign to all remainder of its interest in the development of the Property.

1.7 "General Plan of Development" shall mean the Declarant's general plan of development of the Property as approved by appropriate governmental agencies and as set forth in this Declaration which shall represent the total general plan and general uses of land within the boundaries of the Property, as may be amended from time to time.

1.8 "Living Unit" or "Unit" shall mean and refer to any portion of a structure situated upon the Property designed and intended for use and occupancy as a residence.

1.9 "Lot" shall mean and refer to each and any of Lots 1 through 44 and 78 through 82 of Elkai Woods. Provided, however, that "Lot" shall not include any Lot depicted on any plat of the Property which is designated for use as Common Property on such plat or declaration of Elkai Woods.

1.10 "Occupant" shall mean and refer to the occupant of a Living Unit who shall be either the owner, lessee or any other person authorized by the owner to occupy the premises.

1.11 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot or a purchaser in possession under a

land sale contract. The foregoing does not include persons or entities who holds an interest in any Lot merely as security for the performance of an obligation.

1.12 "Property" shall mean and refer to all real property, including Lots 1 through 44 and 78 through 82, the Common Property and all improvements located on the real property subject to this Declaration, as more particularly set forth on Exhibit "A" hereto attached, together with such additional Lots and Common Property as may, from time to time, be annexed to the Association. The Property shall not include the pool facilities or the conference building, facilities and parking Lot adjacent to the pool

1.13 "Rules and Regulations" shall mean and refer to the documents containing rules and regulations and policies adopted by the Board of Directors of the Association or the Architectural Review Board, as may be from time to time amended.

1.14 "Widgi Creek" shall mean and refer to that certain development in Deschutes County, Oregon where Elkai Woods is located.

1.15 "Elkai Woods" shall mean Lots 1 through 86 and all Common Property included within the plat of Elkai Woods.

ARTICLE 2 PROPERTY SUBJECT TO THIS DECLARATION

The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located west of Bend, in Deschutes County, Oregon and consists of Lots 1 through 44 and 78 through 82 and the adjoining Common Property of Elkai Woods which is included within the legal description in Exhibit "A." The pool facilities or the conference building, facilities and parking Lot adjacent to the pool property shall not be so subjected.

ARTICLE 3 GENERAL PLAN OF DEVELOPMENT

3.1 General. The Declarant has developed the Property with not more than 49 One – Tenth Interests or Fractional Full Ownership buildable residential Lots on which each Lot one Living Unit is to be located. The Declarant intends to construct Living Units in groups on adjacent platted Lots of Elkai Woods as Living Units and those Lots are pre-sold. Each such Lot that is developed will be developed with a single Living Unit. Any party walls or walls of Living Units will be constructed on the Lot line. Lots 1-44 and 78-82 will be sold via deeded, one-tenth interests and / or sold as deeded, Fractional full-ownership.

Through one or more supplemental declarations, the Declarant intends to create a planned community of up to 49 - One-Tenth Interest or Fractional Full Ownership Lots. The Declarant reserves the right to re-plat any portion of Elkai Woods before it is annexed to the Association.

3 – Amended Declaration of Covenants, Conditions & Restrictions for Elkai Woods

3.2 Ownership of Common Property. The Declarant shall convey the Common Property which has been annexed to the Association within sixty (60) days after 75% of the Lots have been conveyed to purchasers. Additional Common Property adjacent to Lots in Elkai Woods which are subsequently annexed will be conveyed to the Association within ninety (90) days after such annexation. In the event the Common Property is ever assessed for property tax purposes separately from the Lots, the Association, by and through its Board of Directors, shall take such steps as may be necessary to assess all Owners equally for their share of such taxes and to pay such property taxes on a current basis.

3.3 Improvements in the Common Property. The Common Property will be improved with driveways and landscaping. There will be a maximum of 49 Lots/Units in the One-Tenth Interests and Fractional Full Ownership units at Elkai Woods when and if the proposed project is completed as contemplated.

ARTICLE 4 USE RESTRICTIONS; ARCHITECTURAL CONTROLS AND MAINTENANCE RESPONSIBILITIES

4.1 General.

4.1.1 Governmental Restrictions. All uses, occupancy, construction and other activities conducted on any Lot shall conform with and be subject to applicable zoning, use restrictions, setback requirements, construction and building codes of all local, state and federal public authorities.

4.1.2 Outdoor Storage. No outdoor storage of recreational vehicles, trailers or boats shall be allowed on the Common Property or outdoors on any Lot.

4.1.3 Garages. No garage shall be used for any purpose other than storage of automobiles, pick-ups, vans, sport utility vehicles and motorcycles, if such vehicles are intended and used for ordinary highway transportation of passengers, snowmobiles and golf carts. Additionally, fishing or pleasure boats may be stored in one parking space of a garage if it can be completely enclosed when the garage door is closed. A driveway shall not be used for regular parking by the occupants of a Living Unit.

4.1.4 Combination, Division. No Owner shall have the right to divide any Lot. Any Owner, upon compliance with the requirements of all applicable zoning, building and land use laws, regulations and ordinances, and the architectural requirements of the Declaration and any rules and regulations of the Association may construct (reconstruct or replace) one Living Unit on two or more Lots.

4.2 Use. All Lots and Living Units shall be used for residential, recreation and vacation purposes only. No commercial, retail or industrial use shall be allowed on any Lot or in any Living Unit. Provided however, subject to compliance with applicable laws

and any rules or regulations of the Association and Article 4.6 below, an owner may rent his or her Living Unit on a nightly, monthly or other basis, even though such rental activity is considered a commercial use.

4.3 Exterior Improvements.

4.3.1 Structures on Lots. Except as otherwise specifically provided in this Declaration, no fence, outbuilding, residential building, or other structure of any type shall be erected, altered, placed or permitted to remain on any Lot other than the original Living Units as originally constructed or replaced in a manner having a substantially similar appearance to the original Living Unit.

4.3.2 Common Property. No Owner shall construct or place any structure, material, planting, equipment or any object of any kind on any portion of the Common Property, unless granted written permission by the Board of Directors, and then only in strict compliance with such authorization.

4.3.3 Walls and Fences. The walls and/or fences in Elkai Woods shall not be altered without written consent of all Owners of Living Units in the building where the wall or fence is located and upon compliance with the provisions of Section 4.7.

4.4 Exterior Maintenance, Repair and Replacement.

4.4.1 Association Responsibilities. The Association shall perform all maintenance, repair and replacement of the exterior of Living Units on Lots, excluding doors and door frames, windows and window frames and skylights and skylight frames (if any), but including, without limitation, the following: painting or staining of siding, rain gutters, roofs and chimneys. The Association shall perform all maintenance, planting, pruning, mowing and cleaning of all lawns and landscaping on the Property, including, without limitation, all landscaping and lawns on Owners' Lots, excluding only so much of the same as is completely enclosed by a fence or courtyard on Owners' Lots. The Association shall be responsible for the maintenance, repair and replacement of sanitary sewer lines from the connection with the main service line owned and maintained by the service provider to a point within or under an Owner's Living Unit and within or under an Owner's courtyard and for water service lines up to the meter measuring water service to individual Living Units.

4.4.2 Owner Responsibilities. Each Owner shall perform all maintenance, repair and replacement of the interior of such Owner's Living Unit, and shall perform all maintenance, planting, pruning, mowing and cleaning of all lawns and landscaping on such Owner's Lot within areas enclosed by a fence or courtyard. Each Owner shall be responsible for the maintenance, repair and replacement of any improvements, or materials located within the area on such Owner's Lot enclosed by a courtyard or fence. Each Owner shall be responsible for the maintenance, repair and replacement of sanitary

sewer lines within and under an Owner's Living Unit and within or under an Owner's courtyard.

4.5 Underground Utilities. No outdoor overhead wire or service drop for the distribution of electric energy or for telecommunication purposes nor any pole, antennae, satellite receiving dish, tower or other structure for independent reception, transmission or support of any of the above shall be erected, placed or maintained within the Property.

4.6 Leases/Rentals. Owners of deeded, One-Tenth Interest Units and/or Fractional Full Ownership Units, which include 1 through 44 and 78 through 82 may authorize rental of their Units on a nightly basis. The right to lease or rent a Living Unit for any period of time is subject to full compliance with applicable laws, the Articles, Declaration, Bylaws and Rules and Regulations of the Association and applicable local, state and federal laws and regulations.

All aspects of leasing and renting of all Units (One-Tenth Interests and Fractional Full Ownership) shall be governed and managed by an individual owner or by a management company to be selected by the Owner.

All leases or rental agreements shall be in writing and shall be deemed to provide that their terms shall be subject in all respects to the provisions of this Declaration, the Articles, Bylaws and Rules and Regulations of the Association and that any failure by the lessee or renter to comply with the provisions of such documents shall constitute a default under said lease or rental agreement. The lessee's or renter's use and enjoyment of the Common property under such lease or rental agreement shall be subject to suspension by the Board of Directors for any of the causes set forth elsewhere in this Declaration, including, without limitation, the nonpayment of assessments with respect to the Lot occupied by the lessee or renter. Any such lessee or renter shall be entitled to the use and enjoyment of the Common Property; provided, that the right to the use and enjoyment of the Common Property may not be severed from the right to occupy a Lot, Unit and the improvements thereon, by means of a lease, rental agreement or otherwise.

4.7 Architectural Review Board.

4.7.1 Composition. The Board of Directors of the Association shall serve also as an Architectural Review Board. A quorum for the Architectural Review Board action shall be a majority of its members.

4.7.2 Duties. It shall be the duty of the Architectural Review Board to regulate the external design, appearance, location and maintenance of all the Property and of improvements thereon, whether on a Lot or Common Property, and to regulate use of such Property as described in this Declaration. Upon conveyance of the first Lot to an Owner, the Architectural Review Board may adopt general rules to implement the purposes and interpret the covenants of this Article, including, but not limited to, rules not less restrictive than those contained in this Declaration to regulate animals and tenants,

smoking within Units, storage and use of recreational vehicles, storage and use of machinery, use of outdoor drying lines, trash containers, planting, maintenance and removal of vegetation of the Property.

4.7.3 Approval Required. No outbuilding, fence, wall or other structure of any type shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to, change in, painting or staining of, or alteration to any Living Unit, outbuilding, fence, wall, or other structure on the Property of any type be made until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing by the Architectural Review Board as to the harmony of external design, materials, color and location in relation to surrounding structures and topography.

4.7.4 Procedure. An Owner wishing to take any action requiring approval under this Article shall give notice of such proposed action to the Architectural Review Board, together with complete plans and specifications therefore. The Architectural Review Board shall meet to review the Owner's request within thirty (30) days of receipt and shall render a decision by the vote of a majority of Board Members present within forty-five (45) days of receipt. Interested Owners shall have an opportunity to comment on the request at all such meetings, which shall be open to all Owners. If the Architectural Review Board fails to render a written decision within the time allowed, the request shall be deemed to be approved.

4.7.5 Appeal. The decision of the Architectural Review Board under this Article (including any failure to approve or disapprove within the time allowed) shall be subject to appeal by any Interested Owner as set forth in this Article. Upon the payment of a reasonable fee established by the Architectural Review Board to cover administrative costs not to exceed Two Hundred Fifty Dollars (\$250), any interested Owner may appeal the decision of the Architectural Review Board to the Association members. The appeal shall be made in writing and shall be filed with the Secretary of the Association within thirty (30) days of the decision of the Architectural Review Board. The Board of Directors shall call a special or ballot meeting to be held after ten (10) days notice and within thirty (30) days after the appeal has been filed with the Secretary of the Association. It shall require a vote of at least a majority of the votes to reverse or modify the decision of the Architectural Review Board.

4.7.6 Exemptions. The following actions by the following persons shall be exempt from the provisions of this Article:

(a) The planting of any shrubs, flowers or other plants (excepting trees) by any Owner within an enclosed courtyard or fenced area on such Owner's Lot; and

(b) Any act of the Declarant in implementing its General Plan of Development with respect to any Lot or any portion of the Common Property in the development, whether or not annexed to Elkai Woods or a part of the Association.

4.7.7 Delegation. The Board of Directors may delegate the duties of the Architectural Review Board to a committee appointed by the Board composed of not less than three Owners.

4.8 Party Walls.

4.8.1 General Rules of Law to Apply. Each wall built as a part of the original construction of the Living Units or as a part of reconstruction pursuant to Article 10 of this Declaration upon the Property which divides Living Units, and which is placed on the divided line between the Lots, shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls shall apply thereto.

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

4.8.3 Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, the provisions of Article 10 of this Declaration shall apply with regard to repair or reconstruction of such wall.

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

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

4.8.6 Arbitration. In the event of any dispute arising concerning a party wall, or concerning the obligations of the Owners or the Association pursuant to the provisions of this Article, each party shall choose an arbitrator, and the arbitrators so chosen shall choose one additional arbitrator, and the dispute shall be resolved by a majority of all the arbitrators. The parties shall equally share the costs of arbitration.

ARTICLE 5 ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

5.1 Members. Each Owner shall be a mandatory member of the Association. Membership in the Association shall be to appurtenant to, and may not be separated from, ownership of any Lot. Transfer of ownership of a Lot automatically transfers membership in the Association. Occupants and Owners shall be governed and controlled

by this Declaration, the Articles, Bylaws, and rules and regulations of the Association and any amendments thereof.

5.2 Proxy. Each Owner may cast his or her vote by absentee ballot or pursuant to a proxy executed by the Owner. An Owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the Association. A proxy shall not be valid if it is undated or purports to be revocable without notice. A proxy shall terminate one (1) year after its date, unless the proxy specifies a shorter term.

5.3 Voting Rights. The Association shall have one class of voting members. For full ownership Lots/Units, the Owners shall be entitled to one vote. For full ownership Lots/Units, when more than one person or entity owns a Lot, the vote for such Lot/Unit may be cast as they shall determine, but in no event will fractional voting be allowed.

For the deeded one-tenth interest Lots/Units, each owner shall be entitled to a one-tenth vote. Each such Lot/Unit shall be accorded one vote based upon a majority (6/10) of the total votes cast within such Lot/Unit.

The Declarant, its successors and assigns, shall have three votes for each Lot or Unit owned; regardless of whether the Lot is within the One-Tenth Interest section or the Fractional Full Ownership section. Provided, however, that these special Declarant's voting rights shall cease upon the earlier of a date seven years from the recording of this Declaration or the conveyance by the Declarant of Lots or Units representing 75% of the total number of votes. Thereafter, the Declarant, shall be entitled to one (1) vote for each Lot or Unit owned. The total number of votes shall be equal to the total number of Lots annexed to the Property and subjected to this Declaration.

5.4 Procedure. All meetings of the Association, the Board of Directors, the Architectural Review Board, and Association committees shall be conducted in accordance with such rules of order as may from time to time be adopted by the Board of Directors. A tie vote does not constitute a majority or approval of any motion or resolution.

ARTICLE 6 DECLARANT CONTROL

6.1 Interim Board and Officers. The Declarant hereby reserves administrative control of the Association. The Declarant, in its sole discretion, shall have the right to appoint and remove members of a three-member Interim Board of Directors to manage the affairs of the Association, and which shall be invested with all powers and rights of the Board of Directors. Notwithstanding the provisions of this Section, at the Turnover Meeting at least one (1) Director shall be elected by Owners other than the Declarant, even if the Declarant otherwise has voting power to elect all Directors.

6.2 Transitional Advisory Committee. The Declarant shall form a Transitional Advisory Committee to provide for the transition of administrative control of the Association from the Declarant. Not later than the sixtieth (60th) day after the Declarant has conveyed Lots representing fifty percent (50%) of all votes in Elkai Woods, the Declarant shall call a meeting of Owners for the propose of selecting a Transitional Advisory Committee. The committee shall consist of three (3) members. The members shall, by a majority vote, elect two (2) members, and the Declarant shall elect one (1) member. The committee shall have reasonable access to such information and documents as the Declarant is required by law to make available. If the Declarant fails to call the meeting required under this section, any Owner may do so.

6.3 Turnover Meeting. The Declarant shall call a meeting for the purpose of turning over administrative control of the Association from the Declarant to the members within one hundred twenty (120) days of the earlier of:

6.3.1 Date Certain. A date five (5) years from the date this Declaration is recorded; or

6.3.2 Based on Lots Sold. The date that Lots representing seventy-five percent (75%) of the total number of votes have been conveyed to persons other than the Declarant.

The Declarant shall give notice of the meeting to each Owner as provided in the Bylaws. If the Declarant does not call the meeting required under this section, any Owner may do so.

ARTICLE 7 COMMON PROPERTY

7.1 Obligations of the Association. Subject to the rights of Owners set forth in this Declaration, the Association shall be responsible for the exclusive management and control of the Common Property and any improvements thereon, and shall keep the same in good, clean, attractive and sanitary condition, order and repair, including, but not limited to, the removal of snow, trash and debris, the maintenance, cleaning and repair of the streets, parking areas, landscaped and unlandscaped land located on the Common Property. This obligation shall include, without limitation, the obligation for the maintenance, repair and replacement of sanitary sewer lines from the connection with the main service line owned and maintained by the service provider to a point within or under an Owner's Living Unit and within or under an Owner's courtyard and the obligation to maintain water service lines up to the meter measuring water service to individual Living Units.

7.2 Members' Easement of Enjoyment. Subject to the provisions of this Declaration, the Bylaws, and Rules and Regulations of the Association, every Owner

shall have a nonexclusive right and easement of enjoyment in and to the Common Property, which shall be appurtenant to and shall pass with the title to every Lot.

7.3 Extent of Members' Easements. The members' easements of enjoyment created hereby shall be subject to the following:

7.3.1 Subject to Rules and Fees. The right of the Association to establish reasonable rules and to charge reasonable assessments and fees for capital expenditures on the Common Property and the maintenance and upkeep of the Common Property and payment of all Association expenses.

7.3.2 Suspension of Member's Right. The right of the Association to suspend the right of an Owner or any occupant of a Lot to use the Common Property and facilities for any period during which any assessment against such Owner or occupant's Lot remains unpaid for more than thirty (30) days after notice of such nonpayment; the right of the Association to suspend the right of a member to use any Common Property for a period not to exceed sixty (60) days for any other infraction of the Declaration, Bylaws or the Rules and Regulations of the Association. Provided, however, that no such suspension pursuant to this subsection 3.2 shall deprive an Owner of access to his or her Lot.

7.3.3 Sale of Common Property. As provided by ORS 94.665, the right of the Association to sell, dedicate or transfer any portion of the Common Property or to create a security interest therein. Except as to the grant of easements for utilities and similar or related purposes, no such sale, dedication or transfer shall be effective unless approved by seventy-five percent (75%) of the votes of members and the Declarant. Provided further, if the Declarant's special voting rights have ceased, such sale, dedication or transfer (except for utility and similar easements) must be approved by seventy-five percent (75%) of the votes held by Owners other than the Declarant.

7.4 Declaration of Use. Any Owner may delegate his or her right of enjoyment to the Common Property and facilities to the members of the Owner's family and to a reasonable number of guests subject to general regulations as may be established from time to time by the Association and included within the Book of Resolutions.

7.5 Damage or Destruction of Common Property by Owner. In the event any Common Property is damaged or destroyed by an Owner or any of his or her guests, tenants, licensees, agents or members of his or her family in a manner that would subject such Owner to liability for such damage under Oregon law, such Owner does hereby authorize the Association to repair such damage; the Association shall repair damage in a good and workmanlike manner as originally constituted or as the area may be modified or altered subsequently by the Association in the discretion of the Association. The reasonable cost necessary for such repairs shall become a special assessment upon the Lot of the Owner who caused or is otherwise responsible for such damage.

ARTICLE 8
COVENANTS FOR MAINTENANCE ASSESSMENTS/SPECIAL
ASSESSMENTS; AND COMMON PROFITS

8.1 Creation of the Lien and Personal Obligation of Assessments. The Declarant hereby covenants, and each Owner of any Lot by acceptance of a deed thereof, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay the Association (1) regular assessments or charges for common expenses, and (2) special assessments as provided in Section 8.7. All such assessments, together with interest thereon at the rate established from time to time by resolution of the Board of Directors and together with all other costs, fees, charges and fines allowed by law, shall be a lien and charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Such lien shall exist and be executed, recorded and foreclosed in the manner provided by law.

8.2 General Assessments.

8.2.1 Purpose of Assessments. The assessments levied under this Article shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the Property, and for the improvement and maintenance of such Property, including payment of premiums for insurance required under this Declaration and to fund a replacement reserve for those items the Association has maintenance responsibility, and for payment of any common operating expenses such as landscaping, maintenance, Association water, sewer and garbage collection, management services, legal and accounting services and the like. Neither the Association, nor any assessments of the Owners shall be used to engage in lobbying or to exert political influence.

8.2.2 Basis for Assessment. There shall be two levels of assessments against Lots dependent upon whether such Lots have been improved with a substantially completed Living Unit.

(a) Unimproved Lots. Lots that have not been improved with a substantially completed Living Unit shall be assessed equally with other such Lots. The assessment against such unimproved Lots shall include only amounts attributable to the Common Property Reserve Account as set forth in Section 8.5, together with amounts attributable to the liability insurance premium covering the Common Property.

The Declarant, at the Declarant's option, may accrue the Common Property Reserve Account portion of the assessment for an unimproved Lot until such Lot is conveyed to an Owner other than the Declarant as set forth in Section 8.5, but may not accrue the liability insurance portion. The Declarant may require the Owner to whom such Lot is conveyed to reimburse the Declarant for these amounts. In the alternative, the Declarant may assess itself on the Lots it owns at one-half the rate assessed against other Lots not owned by the Declarant.

(b) **Improved Lots.** Lots that have been improved with a substantially completed Living Unit shall be assessed equally with other such Lots. The assessment of Lots improved with substantially complete Living Units shall include the following items:

- (1) Expenses of administration.
- (2) Expenses of maintenance, repair or replacement of all improvements and buildings on the Common Property.
- (3) Expenses of maintenance, repair and replacement of the exterior of the Living Units for which the Association has responsibility, as more particularly set forth in the Declaration.
- (4) Any deficit in common expenses for any prior period.
- (5) Utilities for the Common Property and other utilities with a common meter or commonly billed, such as water and sewer.
- (6) The cost of any professional management desired by the Board of Directors.
- (7) Any other items properly chargeable as an expense of the Association.
- (8) Reserve items as more particularly set forth in Sections 8.5 and 8.6.

All initial, general and special assessments shall be equally allocated among the Lots, except that improved and unimproved Lots shall be assessed in different manners as described herein.

8.2.3 Method of Assessment. The Board of Directors shall determine the annual assessment in accordance with the provisions hereof, provided, however, the annual assessment shall be sufficient to meet the obligations imposed by the Declaration. The budget shall be presented to Association and may be amended by a majority of the votes of each class of members. Both annual and special assessments must be fixed at a uniform rate for all Lots. The Board shall set the date(s) such assessment shall become due. The Board may provide for collection of assessments annually or in monthly, quarterly or semi-annual installments; provided, however, upon the default in the payment of any one or more installments, the entire balance of such assessment may be accelerated at the option of the Board and be declared due and payable in full, together with interest and attorneys fees and costs as hereinafter provided.

Notwithstanding any other provisions of this Section 8.2, the general assessments of the Association may not be increased by more than twenty percent (20%) in any one year without approval of a majority of the Owners at a meeting at which a quorum exists, or a majority of the votes of all Owners, if the vote is taken by written ballot.

8.3 Date of Commencement of Annual Assessments. The general assessments with respect to the Lots shall commence at the time the Directors declare, but in no event later than the first day of the month following the conveyance of a Lot to an Owner other than the Declarant. Following such declaration, the pro rata annual assessment shall commence with respect to an improved Lot within the Property upon the substantial completion of a Living Unit on such Lot.

8.4 Initial Assessment. Upon the closing of the sale of each Lot to an Owner other than the Declarant in Elkai Woods (regardless of whether such Lot has been improved with a Living Unit), each Owner shall contribute a sum equal to two (2) times the monthly assessment (as determined for Lots improved with Living Units) as a one-time contribution to the working capital of the Association, together with such other sums as may be called for by the sales agreement and Bylaws.

8.5 Common Property Reserve Account. The assessment against each Lot, regardless of whether it has been improved with a substantially complete Living Unit, shall include an amount allocated to a reserve account established for the purpose of funding replacements of those elements of the Common Property that will normally require replacement, in whole or in part, in more than three (3) and less than thirty (30) years. Amounts assessed with respect to reserves shall take into account the estimated remaining life of the items for which the reserve is created and the current replacement cost of such items. The assessments pursuant to this section shall accrue from the date of conveyance of the first Lot in the Property. The Declarant, at the Declarant's option, may defer payment of the accrued assessments for a Lot pursuant to this section until the date the Lot is conveyed to an Owner other than the Declarant, at which time such accrued assessments shall be paid to the Association. The Declarant may require the Owner to whom such Lot is conveyed to reimburse the Declarant for such portion of the assessment.

8.6 Living Unit Reserve Account/Operating Reserve. The assessment against each Lot that has been improved with a substantially completed Living Unit shall include an amount allocated to a reserve account established for the purpose of funding painting, staining and replacing those exterior portions of all Living Units on the Property which will require painting, staining, roofing or replacing in more than three (3) and less than thirty (30) years. Amounts assessed with respect to reserves shall take into account the estimated remaining life of the items for which the reserves are established and the current replacement cost of such items. The assessment under this section shall accrue from the date a Lot is improved with a substantially completed Living Unit. The Declarant, at the Declarant's option, may defer all accrued assessments until the Lot is sold, at which time such account assessment shall be paid to the Association. The Declarant may require the Owner to whom such Lot is conveyed to reimburse the Declarant for this portion of the assessment.

The Board of Directors shall also fund a general operating reserve account by allocation and payment thereto monthly of an amount determined by the Board of Directors and assessed against the owner of each Living Unit.

8.7 Special Assessments. The Board of Directors shall have the power to levy special assessments against an owner or all owners in the following manner for the following purposes:

(a) To correct a deficit in the operating budget by vote of a majority of the Board;

(b) To collect amounts due to the Association from an owner for breach of the owner's obligations under the Declaration, these Bylaws, or the Association's rules and regulations, by vote of a majority of the Board;

(c) Upon vote of a majority of the Board of Directors, to make repairs or renovations to the common property and/or to those portions of the Living Units for which the Association has the responsibility of maintenance and replacement if sufficient refunds are not available from the operating budget or replacement reserve accounts; or

(d) To make capital acquisitions, additions or improvements, by vote of at least seventy-five percent (75%) of all votes allocated to the Lots.

8.8 Effect of Non-Payment of Assessments: Remedies of the Association.

In addition to any other remedies provided by law, the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose a lien upon the Property. No such action or a judgment entered therein shall be a waiver of the lien of the Association. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Property or abandonment of his or her Lot.

8.9 Subordination of the Lien to Mortgages. The lien with respect to any assessment provided for herein shall be prior to any homestead exemption and all other liens and encumbrances on a Lot, except:

(a) A first mortgage of record; and

(b) A lien for real estate taxes and other governmental assessments or charges; and

(c) Liens and encumbrances recorded before the recordation of this Declaration.

Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments which became due prior to such sale or transfer.

8.10 Common Profits. Profits arising from any operation or from the sale of any Association asset shall be shared among the Owners in proportion to their liability for payment of assessments, i.e. equally, unless some Lots are unimproved.

ARTICLE 9 DECLARANT'S SPECIAL RIGHTS

Until the Living Units on all Lots on the Property have been constructed, fully completed and sold, with respect to the Common Property and each Lot on the Property, the Declarant shall have the following special rights:

9.1 Sales Office and Model. The Declarant shall have the right to maintain a sales office and model on one or more of the Lots which the Declarant owns. The

Declarant and prospective purchasers and their agents shall have the right to use and occupy the sales office and models during reasonable hours any day of the week.

9.2 "For Sale" Signs. The Declarant may maintain a reasonable number of "For Sale" signs and/or banners at reasonable locations on the Property, including, without limitation, the Common Property.

9.3 Declarant Easements. The Declarant has reserved easements over the Property as more fully described in Article 12 hereof.

ARTICLE 10 DAMAGE AND DESTRUCTION

10.1 Insurance Proceeds Sufficient to Cover Loss. In case of fire, casualty, or any other damage and destruction, the insurance proceeds of the master policy, if sufficient to reconstruct the damaged or destroyed building, shall be applied to such reconstruction which shall commence within one hundred twenty (120) days of such damage, or as soon thereafter as proceeds are available. Reconstruction of the damaged or destroyed building, as used in this paragraph, means restoring the building to substantially the same condition in which it existed prior to the fire, casualty or disaster, with each Living Unit and the Common Property having the same boundaries as before. Such reconstruction shall be accomplished under the direction of the Board of Directors.

10.2 Insurance Proceeds Insufficient to Cover Loss. If the insurance proceeds are insufficient to reconstruct the damaged or destroyed building, the damage to, or destruction of, such building shall be promptly repaired and restored under supervision of the Board of Directors, using the proceeds of insurance, if any, on the building for that purpose and all the Owners shall be liable for assessment for any deficiency for such reconstruction, such deficiency to take into consideration as the Owner's contribution any individual policy insurance proceeds provided by such Owner. Such reconstruction shall commence within one hundred twenty (120) days of such damage, or as soon thereafter as proceeds are available.

10.3 Architectural Changes After Damage or Destruction. Notwithstanding all other provisions hereof, the Owners may, by an affirmative vote of a majority of both classes of members cause an amendment to be made to the Declaration and Bylaws so as to facilitate architectural changes that the Owners affected thereby and the Association deem desirable if, and only if, the partial or total destruction of the Property by fire, casualty or other disaster is so great as to require the substantial reconstruction of the whole of the building. Any such amendment of the Declaration and Bylaws shall be valid only upon (1) the recording thereof with the appropriate officer or Deschutes County; and (ii) the recording with that recording officer of the approval thereof of each mortgagee and each other lienholder of record having a lien against any part of the project, or building, affected by such amendment.

10.4 Authority. The Board of Directors shall have sole authority to decide whether to repair or reconstruct a Living Unit that has suffered damage.

ARTICLE 11 CONDEMNATION OF COMMON PROPERTY

In the event that all or any portion of the Common Property is appropriated as the result of condemnation or threat or imminence thereof, the following rules and guidelines shall apply:

11.1 Representation by Association. The Board of Directors of the Association shall have the sole authority, right and duty to represent each of the Owners for the purpose of negotiating and contesting, if it deems so doing to be necessary or appropriate, any condemnation award offered by the condemning authority in question and may authorize expenditures and assessments to retain adequate counsel or other experts for such purposes.

11.2 Allocation of Condemnation Award. The Board of Directors of the Association shall allocate and distribute any condemnation award received by it with respect to the Common Property to the Owners in proportion to the diminution in fair market value incurred by them with respect to their respective Lots and improvements as a result of said condemnation.

11.3 Arbitration. In the event of any controversy by, among or between any Owner or Owners and the Board of Directors arising under this Section, each of the disputing parties shall choose one (1) arbitrator and such arbitrators shall choose one (1) additional arbitrator. The three (3) arbitrators shall resolve the controversy by majority vote and said decision shall be final, binding and unappealable upon the disputing parties. Any action or decision of the Board of Directors pursuant to this Section shall carry a rebuttable presumption of correctness for purposes of arbitration pursuant to this Section. The disputing parties each shall pay all the fees and expenses of the arbitrator designated by each of them and shall pay equally all fees and expenses of the third arbitrator. The disputing parties each shall pay their own expenses in connection with the arbitration.

11.4 Retention of Rights. No provision of this Section shall be construed as negating the right of the individual Owners to such incidental relief as the law may provide as a result of the condemnation of the Common Property.

ARTICLE 12 EASEMENTS

12.1 Association's Easements. The Declarant hereby grants to the Association a blanket easement with respect to all Lots on the Property for the purpose of maintaining, repairing and replacing sewer and water lines located on the Lots and

carrying out the Association's responsibility to maintain the exterior of the Living Units. It shall be the obligation of the Association to maintain, repair and replace sewer and water lines from the main services lines to the building line of each Living Unit. The easement granted in this Section shall be perpetual and shall run with the land.

12.2 Declarant's Easements. The Declarant hereby reserves to itself a blanket easement over, upon, through and under the Property, including, without limitation, all Lots and Common Property, for all purposes reasonably required in carrying out the General Plan of Development or otherwise developing the real property within Widgi Creek owned by Declarant, including, without limitation, ingress and egress, the construction, alteration, completion and decoration of Living Units or other homes or improvements developed on the Property or on the real property within Widgi Creek owned by Declarant, the installation, maintenance, repair and replacement of all utility and service lines and systems serving Living Units or other homes or improvements developed on the Property or on the real property within Widgi Creek owned by Declarant," and the development and sale of additional property within Widgi Creek owned by Declarant, regardless of whether such additional property is subjected to this Declaration, and the sale of Lots and Living Units. The easement herein reserved shall include the right to store materials on the Common Property at such places and for such periods as may be reasonably required to effect the purposes for which this easement is reserved. The easement shall be perpetual and shall run with the land and shall be freely assignable by the Declarant.

12.3 Owners Easements. Declarant hereby grants to each Owner an easement over the Common Property and over other Lots for roof overhangs and other minor encroachments into the Common Property or other Lots arising from the Living Unit having not been constructed or having been reconstructed precisely on the Lot line. This easement shall be perpetual and shall run with the land.

ARTICLE 13 GENERAL PROVISIONS

13.1 Records. The Board of Directors shall preserve and maintain minutes of the meetings of the Association, the Board and any committees. The Board of Directors shall also keep detailed and accurate financial records including individual assessment accounts of owners, the balance sheet and income and expense statements. Individual assessment account shall designate the name and address of the Owner or Owners of the Lot, the amount of each assessment becomes due, the amounts paid upon the account, and the balance due on the assessments. The minutes of the Association, the Board and committees, and the Association's financial records shall be reasonably available for review and copying by the Owners. A reasonable charge may be imposed by the Association for providing copies.

13.2 Indemnification of Directors, Officers, Employees and Agents. The Association shall indemnify any Director, officer, employee or agent who was or is a party

or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by the Association) by reason of the fact that he or she is or was a Director, officer, employee or agent of the Association or is or was serving at the request of the Association as a Director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorney fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by said person in connection with such suit, action or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interest of the Association, and, with respect to any criminal action or proceedings, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or with a plea of no contest or its equivalent, shall not of itself create a presumption that a person did not act in good faith and in a manner which he or she reasonably believed to be in, or not opposed to, the best interest of the Association, and, with respect to any criminal action or proceedings, had reasonable cause to believe his or her conduct was unlawful. Payment under this clause may be made during the pendency of such claim, action, suit or proceeding as and when incurred, subject only to the right of the Association, should it be proven at a later time that said person had no right to such payments. All persons who are ultimately held liable for their actions on behalf of the Association as a Director, officer, employee or agent shall have a right of contribution over and against all other Directors, officers, employees or agents and members of the Association who participated with or benefited from the acts which created said liability.

13.3 Enforcement. The Association and the Owners within the Property or any mortgagee on any Lot shall have the right to enforce all of the covenants, conditions, restrictions, reservations, easements, liens and charges now or hereinafter imposed by any of the provisions of this Declaration as may appertain specifically to such parties or Owners by any proceeding at law or in equity. Failure by either the Association or by any Owner or mortgagee to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of their right to do so thereafter. In the event suit or action is commenced to enforce the terms and provisions of this Declaration, the prevailing party shall be entitled to its attorney fees and costs in such suit or action to be fixed by the trial court, and in the event of an appeal, the cost of the appeal, together with reasonable attorney fees, to be set by the appellate court. In addition thereto, the Association shall be entitled to its reasonable attorney fees incurred in any enforcement activity taken to collect delinquent assessments, whether or not suit or action is filed.

13.4 Severability. Invalidity of any one of these covenants or restrictions by judgment or court order shall not affect the other provisions hereof and the same shall remain in full force and effect.

13.5 Duration. The covenants and restrictions of this Declaration shall run with and bind the land for a term of thirty-five (35) years from the date of this Declaration being recorded, after which time they shall be automatically extended for successive periods of

ten (10) years, unless rescinded by a vote of at least ninety percent (90%) of the Owners and ninety percent (90%) of the first mortgagees. Provided however, amendments which do not constitute rescission of the planned community may be adopted as provided in Section 13.6. Additionally, any such rescission which affects the Common Property shall require the prior written consent of Deschutes County. Provided, however, that if any of the provisions of this Declaration would violate the rule against perpetuities or any other limitation on the duration of the provisions herein contained imposed by law, then such provision shall be deemed to remain in effect only for the maximum period permitted by law or, in the event the rule against perpetuities applies, until twenty-one (21) years after the death of the last survivor of the now living descendants of President Bill Clinton.

13.6 Amendment. As provided by ORS 94.590 and except as otherwise provided in Sections 13.5 and 13.11, and the restrictions set forth elsewhere herein, this Declaration may be amended at any time by an instrument approved by not less than seventy-five percent (75%) of the total votes of each class of members that are eligible to vote. Any amendment must be executed, recorded and certified as provided by law. Provided, however, that no amendment of this Declaration shall effect an amendment of the Bylaws, the Articles of Incorporation without compliance with the provisions of such documents, and the Oregon Non-Profit Corporation Act. Provided further, no amendment affecting the general plan of development or any other right of the Declarant herein contained may be effected without the express written consent of the Declarant or its successors and assigns.

13.7 Rights of Mortgagees. Any holder of a first mortgage or equivalent lien on any Lot and/or the improvements located thereon, upon written request to the Board of Directors of the Association, shall have the right to:

- (a) Receive timely written notice of meetings of the Association;
- (b) Receive timely written notice of any proposed abandonment, termination or contraction of this planned Unit development;
- (c) Receive timely written notice of any material amendment of the Declaration or the Articles of Incorporation or Bylaws of the Association;
- (d) Receive timely written notice of any decision by the Association to terminate professional management and to assume self-management of the Property, if the Association previously has retained professional management services;
- (e) Inspect the financial records and similar documents of the Association at reasonable intervals during normal business hours;
- (f) Receive written notice of substantial damage to or destruction of any Lot and/or the improvements thereon or the Common Property and/or any improvements thereon; and
- (g) Receive timely written notice of any condemnation or eminent domain proceeding affecting the Common Property or any portion thereof.

13.8 Notice of Default by Mortgagor. The Association shall give each mortgagee written notification of any default by the mortgagor of such Lot in the

performance of such mortgagor's obligations under the Declaration and Bylaws which is not cured within thirty (30) days.

13.9 Prior Consent of Mortgagees. The termination of the status of the Property as a planned community, or any material amendment to this Declaration or the Bylaws of the Association shall require the prior written consent of all first mortgagees or equivalent liens on Lots and/or the improvements located thereon.

13.10 Release of Right of Control. The Declarant may give up its right of control in writing at any time by notice to the Association.

13.11 Unilateral Amendment by Declarant. The Declarant may amend this Declaration in order to comply with the requirements of the Federal Housing Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Mortgage Loan Corporation, any department, bureau, board, commission or agency of the United States or the State of Oregon, or any other state in which the Lots are marketed and sold, or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon, or such other state, the approval of which entity is required in order for it to insure, guarantee or provide financing in connection with development of the Property and sale of Lots. Prior to the turnover meeting, no such amendment shall require notice to or approval by any Class A member.

13.12 Resolution of Document Conflicts. In the event of a conflict among any of the provisions in the documents governing Elkai Woods, such conflict shall be resolved by looking to the following documents in the order shown below:

- (1) Declaration of Covenants, Conditions and Restrictions;
- (2) Articles of Incorporation;
- (3) Bylaws;
- (4) Rules and Regulations.

It is hereby certified that the foregoing Amendment to the Declaration of Covenants, Conditions and Restriction for Elkai Woods Homeowners' Association, Inc., has been adopted by Yamazoe International, Inc., Declarant of Elkai Woods, and will be recorded in the Deed Records of Deschutes County for said Planned Community.

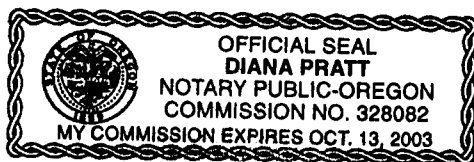
Dated this 21st day of November, 2002.

Yamazoe International, Inc.

By [Signature]
Dale W. Bernards, vice-president

State of Oregon)
County of Multnomah) ss.

Personally appeared before me this 21 day of November, 2002, Dale W. Bernards and acknowledged that he is the vice-president of Yamazoe International, Inc. and that he is authorized to execute the foregoing instrument on behalf of the corporation.



[Signature: Diana Pratt]
Notary Public for Oregon
My Commission Expires: 10-13-03