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DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS AND RESTRICTIONS and BYLAWS
FOR EMPIRE CROSSING

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**DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR EMPIRE CROSSING**

THIS DECLARATION is made this 19th day of October, 2004 by Golden Crest Development, LLC, ("**Declarant**").

RECITALS

Declarant is the developer of the real property located within the City of Bend in Deschutes County, Oregon as more particularly described in Exhibit A attached hereto. Declarant plans to develop the property initially as a single-family residential community with the potential for future mixed use development upon annexation of additional properties to this Declaration under the procedures set forth herein. Declarant has recorded a plat of Phases 1 and 2 of Empire Crossing in the plat records of Deschutes County, Oregon. In cooperation with the owner of such real property, Declarant desires to subject the property described in such plat to the covenants, conditions and restrictions contained herein for the benefit of such property and its present and subsequent owners and to establish such property as Phases 1 and 2 of Empire Crossing. Therefore, this Declaration imposes upon all property described in Exhibit A mutually beneficial restrictions under a general plan for improvement for the benefit of the owners of the property and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the property.

NOW, THEREFORE, Declarant hereby declares that the property described in Exhibit A and any additional property subjected to this Declaration shall be held, sold and conveyed subject to the following easements, covenants, restrictions and charges, which shall run with such property and shall be binding upon all parties having or acquiring any right, title or interest in such property or any part thereof and shall inure to the benefit of each Owner thereof and their heirs, successors and assigns.

Article 1

Definitions

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

1.1 "Additional Property"

Any land, whether or not owned by Declarant, that is made subject to this Declaration as provided in herein.

1.2 "Architectural Review Committee" or "the Committee"

The committee appointed pursuant to Article 7 below.

1.3 **"Articles of Incorporation" or "Articles"**

The Articles of Incorporation of Empire Crossing Homeowners Association, Inc., as filed with the Secretary of State, Corporation Division of the Business Registry for the State of Oregon.

1.4 **"Assessments"**

All assessments and other charges, fines and fees imposed by the Association on an Owner in accordance with this Declaration, the Bylaws of the Association or the provisions of the Oregon Planned Community Act, including, without limitation, Annual Assessments, Special Assessments, Emergency Assessments, and Individual Assessments as described in herein.

1.5 **"Association"**

The nonprofit corporation to be formed to serve as the Owners association as provided herein, and its successors and assigns.

1.6 **"Board of Directors" or "the Board"**

The duly appointed or elected Board of Directors of the Association, which is invested with the authority to operate the Association and to appoint the officers of the Association. Prior to the Turnover Meeting, Declarant will appoint the Board of Directors. After the Turnover Meeting, the Board of Directors will be elected by the Owners.

1.7 **"Bylaws"**

The duly adopted Bylaws of the Association set forth in the attached Exhibit B as the same may hereafter be amended or replaced.

1.8 **"Common Areas"**

Those Lots or tracts designated as Common Area or Open Space on any plat of the Property, or in this Declaration or any declaration annexing Additional Property to Empire Crossing, including any Improvements thereon, and shall also include the Common Easement Areas as defined herein, and any Lots converted to Common Areas as provided in Section 3.2 below.

1.9 **"Common Easement Areas"**

Any private streets and easement areas established for the benefit of all property within Empire Crossing pursuant to this Declaration or any plat or declaration annexing Additional Property to Empire Crossing.

1.10 **"Common Maintenance Areas"**

The Common Areas, Common Easement Areas, and any other areas designated in this Declaration or any declaration annexing Additional Property to Empire Crossing as being maintained by the Association.

1.11 **"Declarant"**

Golden Crest Development, LLC, and its successors and assigns if such successor or assignee should acquire Declarant's interest in all of the property described on Exhibit A, or less than all of such property if a recorded instrument executed by Declarant assigns to the transferee all of Declarant's rights under this Declaration.

1.12 **"Design Guidelines"**

The guidelines or rules adopted from time to time by the Architectural Review Committee as provided herein.

1.13 **"Development Plan"**

The initial development plan for Empire Crossing as approved by the City of Bend as File No. PZ 03-396, as it may be amended, which plan includes Phases 1 and 2 of Empire Crossing described on Exhibit A. The development plan and the property described on Exhibit A also includes the common area identified as "open space (park)" on the Tentative Plan for Boyd Acres Village approved by the City of Bend as File Nos. PZ 03-478 and PZ 03-480. Declarant anticipates subjecting the remaining RM, RH and CC-zoned property within Boyd Acres Village to this Declaration as additional phases, with the entire development to be known as Empire Crossing. The development plan may also include subsequent plans approved by the City of Bend for additional property which Declarant may from time to time anticipate subjecting to this Declaration. Inclusion of property on the development plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration.

1.14 **"Empire Crossing"**

The Initial Property and any Additional Property annexed to this Declaration.

1.15 **"Improvement"**

Every structure or improvement of any kind, including, but not limited to, a fence, wall, driveway, swimming pool, storage shelter, mailbox and newspaper receptacles, landscaping or other product of construction efforts on or in respect to the Property.

1.16 **"Initial Property"**

The real property referred to in Section 2.1 below.

1.17 **"Living Unit"**

A building or a portion of a building located upon a Lot within the Property and approved for separate residential occupancy.

1.18 **"Lot"**

A portion of the Property, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Lot as well as any improvements thereon. The terms shall include, by way of illustration but not limitation, condominium units, townhouse units, cluster homes, patio or zero lot line homes, duplex units and single-family detached houses on separately platted lots, as well as vacant land intended for development as such, but shall not include Common Areas, Common Maintenance Areas, Common Easement Areas or property dedicated to the public.

1.19 **"Mortgage"**

A mortgage or a trust deed, "mortgagee" means a mortgagee or a beneficiary of a trust deed, and "mortgagor" means a mortgagor or a grantor of a trust deed.

1.20 **"Owner"**

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

1.21 **"Public Areas"**

Areas dedicated to the public or established for public use in any plat of the Property, or so designated in this Declaration or the declaration annexing such property to Empire Crossing.

1.22 **"Retail Owner"**

An Owner other than the Declarant or Builder.

1.23 **"Rules and Regulations"**

Those policies, procedures, rules and regulations adopted by the Association pursuant to the authority granted in this Declaration, as the same may be amended from time to time.

1.24 **"Special Assessment"**

Assessments levied in accordance with the provisions set forth herein.

1.25 **"Specific Assessment"**

Assessments levied in accordance with the provisions set forth herein.

1.26 **"Sold"**

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

1.27 **"Supplemental Declaration"**

An amendment or supplement to this Declaration filed pursuant to the provisions contained herein which subjects additional property to this Declaration, and identifies the Common Area within the additional property, if any, and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein.

1.28 **"The Property or Properties"**

All real property included within Empire Crossing subdivision and subjected to this Declaration.

1.29 **"This Declaration"**

All of the easements, covenants, restrictions and charges set forth in this instrument, together with any rules or regulations promulgated hereunder, as the same may be amended or supplemented from time to time in accordance with the provisions hereof, including the provisions of any supplemental declaration annexing property to Empire Crossing.

1.30 **"Turnover Meeting"**

The meeting called by Declarant pursuant to Section 8.7 below, at which Declarant will turnover administrative responsibility for the Property to the Association.

Article 2

Property Subject to this Declaration

2.1 **Initial Property.**

Declarant hereby declares that all of the real property described in Exhibit A is owned and shall be owned, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration.

2.2 **Annexation of Additional Property.**

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

(a) The Owner or Owners of such real property shall record a declaration that shall be executed by or bear the approval of Declarant and shall, among other things, describe the real property to be annexed; establish land classifications for the Additional Property; establish

any additional limitations, uses, restrictions, covenants and conditions that are intended to be applicable to such Additional Property; and declare that such property is held and shall be held, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration.

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

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

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

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

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

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

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

(g) The formula to be used for reallocating the common expenses if additional Lots are annexed and the manner of reapportioning the common expenses if additional Lots are annexed during a fiscal year are set forth in Section 10.8 below.

2.3 Improvements.

Declarant does not agree to build any Improvements on the Property other than as required by the City of Bend, but may elect, at Declarant's option, to build additional Improvements.

2.4 Withdrawal of Property.

Property may be withdrawn from Empire Crossing only by duly adopted amendment to this Declaration, except that Declarant may withdraw all or a portion of the Initial Property or any Additional Property annexed pursuant to a declaration described in Section 2.2 above at any time prior to the sale of the first Lot in the plat of the Initial Property or, in the case of Additional Property, prior to the sale of the first Lot in the property annexed by the supplemental declaration, subject to the prior approval of the City of Bend. Such withdrawal

shall be by a declaration executed by Declarant and recorded in the deed records of Deschutes County, Oregon. If a portion of the Property is withdrawn, all voting rights otherwise allocated to Lots being withdrawn shall be eliminated, and the common expenses shall be reallocated as provided in Section 10.8 below. Such right of withdrawal shall not expire except upon sale of the first Lot within the applicable phase of the Property as described above.

Article 3

Land Classifications

3.1 Land Classifications Within Initial Property.

All land within the Initial Property is included in one or another of the following classifications:

(a) Lots, which shall consist of Lots RS 1 through RS 51, Phases 1 and 2 of the Tentative Subdivision Plan for Empire Crossing (City file no. PZ 03-396).

(b) Common Area, which shall be the area marked as "Open Space (Park)" on the Tentative Plan for Boyd Acres Village (City file nos. PZ 03-478 and PZ 03-480).

3.2 Conversion of Lots to Common Areas.

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

Article 4

Property Rights in Common Areas

4.1 Common Area.

Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

(a) This Declaration, the Bylaws and any other applicable covenants;

(b) Any restrictions or limitations contained in any deed conveying such property to the Association;

(c) The right of the Board to adopt rules regulating the use and enjoyment of the Common Area, including rules restricting use of a recreational facilities within the Common Area to occupants of Lots and their guests and rules limiting the number of guests who may use the Common Area;

(d) The right of the Board to suspend the right of an Owner to use any recreational facilities within the Common Area as provided herein, or in the Bylaws or duly adopted Rules and Regulations.

(e) The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area as described herein;

(f) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the approval requirements set forth herein; and,

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, permitted lessees, and social invitees, subject to reasonable Board regulation. An Owner who has the right to and does lease his or her Lot shall be deemed to have assigned all such rights to the lessee of such Lot.

4.2 Common Easement Areas.

Common Easement Areas are to be maintained by the Association, and no changes in landscaping will be permitted within such areas without written authorization by the Board of Directors. No building, wall, fence, paving, landscaping or construction of any type shall be erected or maintained by any Owner so as to trespass or encroach upon the Common Easement Areas, nor may any such areas be used by the Owner for stormwater treatment purposes.

4.3 Title to Common Areas.

Title to the Common Areas shall be conveyed to the Association by Declarant, free and clear of monetary liens, on or before the Turnover Meeting.

4.4 Extent of Owners' Rights.

The rights and easements of enjoyment in the Common Areas created hereby shall be subject to the following and to all other provisions of this Declaration:

(a) **The Association Easements.** Declarant grants to the Association for the benefit of the Association and all Owners of Lots within the Property the following easements over, under and upon the Common Maintenance Areas:

(ii) An easement for underground installation and maintenance of power, gas, electric, water and other utility and communication lines and services installed by Declarant or with the approval of the Board of Directors of the Association and any such easement shown on any plat of the Property.

(iii) An easement for construction, maintenance, repair and use of such areas, including any common facilities thereon.

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

(b) **Public and Utility Easements.** The Common Areas shall be subject to such public and utility easements as may be established in any plat of the Property. In addition, Declarant or the Association may (and, to the extent required by law, shall) grant or assign such easements to municipalities or other utilities performing utility services and to communication companies, and the Association may grant free access thereon to police, fire and other public

officials and to employees of utility companies and communications companies serving the Property.

(c) Use of the Common Areas. The Common Areas shall not be partitioned or otherwise divided into parcels for residential use, and no private structure of any type shall be constructed on the Common Areas. Except as otherwise provided in this Declaration, the Common Areas shall be reserved for the use and enjoyment of all Owners and no private use may be made of the Common Areas, including Common Easement Areas. Nothing herein shall prevent the placing of a sign or signs upon the Common Areas identifying the Property or identifying pathways or items of interest, signs restricting certain uses or warning signs, provided that such signs are approved by the Architectural Review Committee. The Board of Directors shall have authority to abate any trespass or encroachment upon the Common Areas at any time, by any reasonable means and with or without having to bring legal proceedings. A declaration annexing Additional Property may provide that the Owners of such Additional Property do not have the right to use a particular Common Area or facility located on such Common Area. In such case, those Owners will not be required to share in the costs of maintaining the facility, as is more particularly described herein.

(d) Alienation of the Common Areas. The Association may not by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas owned directly or indirectly by the Association for the benefit of the Lots unless the holders of at least eighty percent (80%) of the Class A the Association voting rights and the Class B member (as defined in Section 8.3 below), if any, have given their prior written approval. This provision shall not apply to any public dedication to the City of Bend or the parks district.

4.5 Easements Reserved by Declarant.

So long as Declarant owns any Lot, Declarant reserves an easement over, under and across the Common Areas to carry out sales and rental activities necessary or convenient for the sale or rental of Lots. In addition, Declarant hereby reserves to itself and for the Owners of Lots in all future phases of the Property a perpetual easement and right-of-way for access over, upon and across the Common Areas for construction, utilities, communication lines, drainage, and ingress and egress for the benefit of other property owned by Declarant and future phases of the Property. Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under and across the Common Areas and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the Improvements on the Property or other real property owned by Declarant; provided, however, that no such rights shall be exercised by Declarant in such a way as to unreasonably interfere with the occupancy of, use of, enjoyment of or access to an Owner's Lot by that Owner or his or her family, tenants, employees, guests or invitees.

Article 5

Property Rights In Lots

5.1 Use and Occupancy.

The Owner of a Lot in the Property shall be entitled to the exclusive use and benefit of such Lot, except as otherwise expressly provided in this Declaration, but the Lot shall be bound by and each Owner and Declarant shall comply with the restrictions contained in Article 6 below, all other provisions of this Declaration and the provisions of any supplement or amendment to this Declaration.

5.2 Easements Reserved.

In addition to any utility and drainage easements shown on any recorded plat, Declarant hereby reserves the following easements for the benefit of Declarant and the Association:

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

(b) **Right of Entry.** Declarant, the Architectural Review Committee and any representative of the Association authorized by it may at any reasonable time, and from time to time at reasonable intervals, enter upon any Lot for the purpose of determining whether or not the use and/or Improvements of such Lot are then in compliance with this Declaration. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Lot.

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

Article 6

Use Guidelines and Restrictions

6.1 Plan of Development; Applicability; Effect.

Declarant has created Empire Crossing initially as a residential development with the opportunity for future mixed use development upon future annexation of

RM, RH and CC zoned properties pursuant to the provisions set forth herein and in furtherance of its and every other Owner's interests, has established a general Development Plan for Empire Crossing. To further the Development Plan, the Properties are subject to the design guidelines and the land development, architectural, and design provisions described herein, as well as the rules and restrictions governing land use, individual conduct, and uses of or actions upon the Properties as described in this Article ("Use Guidelines and Restrictions"). This Declaration and resolutions of the Board or the Voting Members adopted pursuant to this Article establish affirmative and negative covenants, easements, and restrictions on the Properties.

All provisions of this Declaration and of any Association rules shall also apply to all occupants, tenants, guests and invitees of any Lot. Any lease on any Lot shall provide that the lessee and all occupants of the leased Lot shall be bound by the terms of this Declaration, the Bylaws, and the rules of the Association.

Declarant promulgates Empire Crossing's plan of development in order to protect all owners' quality of life and collective interests, the aesthetics and environment within the Properties, and the vitality of and sense of community within Empire Crossing all subject to the Board's and the Voting Members' ability to respond to changes in circumstances, conditions, needs, and desires within the planned community.

6.2 Owners' Acknowledgement.

All owners are subject to the Use Guidelines and Restrictions and are given notice that (a) their ability to use their privately owned property is limited thereby, and (b) the Board and/or the Voting Members may add, delete, modify, create exceptions to, or amend the Use Guidelines and Restrictions in accordance with the provision set forth herein.

Each Owner by an acceptance of a deed acknowledges and agrees that the use and enjoyment and marketability of his or her property can be affected by this provision and that the Use Guidelines and Restrictions and rule may change from time to time.

6.3 Rights of Owners.

Except as may be specifically set forth herein, neither the Board nor the Voting Members may adopt any rule in violation of the following provisions:

(a) **Equal Treatment.** Similarly situated Owners and occupants shall be treated similarly.

(b) **Household Compositions.** No rule shall interfere with the freedom of occupants of Lots to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted on each Lot on the basis of the size and facilities of the Lot and its fair share use of the Common Area, including parking.

(c) **Allocation of Burdens and Benefits.** Except as provided herein, the initial allocation of financial burdens and rights to use Common Areas among the various Lots shall not be changed to the detriment of any Owner over that Owner's objection expressed in writing to

the Association. Nothing in this provision shall prevent the Association from adopting generally applicable rules for the use of Common Areas, or from denying use privileges to those who abuse the Common Area, violate rules of this Declaration, or fail to pay assessments. This provisions does not affect the right to increase the amount of assessments as provided herein.

(d) **Alienation.** No rule shall prohibit transfer of any Lot, or require consent of the Association or Board for transfer of any Lot. The Association shall not impose any fee on transfer of any Lot greater than an amount reasonable based on the costs of the Association of the transfer.

(e) **Reasonable Rights to Develop.** No rule or action by the Association or Board shall unreasonably impede Declarant's right to develop in accordance with the development plan for Empire Crossing.

6.4 Initial Use Guidelines and Restrictions.

(a) **General.** Except as otherwise provided herein or in a Supplemental Declaration, the residentially zoned Properties subject to this Declaration shall be used only for residential, recreational, and related purposes (which may include, without limitation, offices for any property manager retained by the Association or business offices for the Declarant or the Association consistent with this Declaration and any Supplemental Declaration). Any Supplemental Declaration containing additional covenants imposed on the property covered by that Declaration may impose stricter or different standards than those contained in this Article and the Association shall have standing and the power to enforce such standards.

(b) **Restricted Activities.** The following activities are prohibited within the Properties unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board.:

(ii) Posting of signs of any kind except those required by law, including posters, circulars and billboards; provided, the Declarant shall be entitled to post signs without Board approval;

(iii) Parking of commercial vehicles, recreational vehicles, mobile homes, boats or other watercraft, or other oversized vehicles, stored vehicles or inoperable vehicles in places other than enclosed garages;

(iv) Subdivision of a Lot into two or more Lots after a subdivision plat including such Lot has been approved and filed with the appropriate governmental authority, or changing the boundary lines of any Lot, except that the Declarant and Builders, with Declarant's consent, shall be permitted to subdivide or change the boundary lines of Lots which they own;

(v) Operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Lot rotates among participants in the program on a fixed or floating time schedule over a period of years;

(vi) Capturing, trapping or killing wildlife within the Properties, except in circumstances posing an imminent threat to the safety of persons using the Properties,

(vii) Raising, breeding or keeping of animals, livestock, or poultry of any kind, except that a reasonable number of dogs, cats, or other usual and common household pets may be permitted on a Lot. However, those pets which are permitted to roam free, or, in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Lots shall be removed upon request of the Board. If the pet owner fails to honor such request, the Board may remove the pet;

(viii) Activities which materially disturb or destroy the vegetation, wildlife, or air quality within the Properties or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution;

(ix) Any construction, or placement of ornamentation or other objects or equipment, permanently or temporarily, on the outside portions of the Lot, whether such portion is improved or unimproved without approval of the ARC pursuant to the provisions herein;

(x) The discharge of firearms within the Properties is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size; and

(xi) Any business, trade, or similar activity, except that an Owner or occupant residing on a Lot may conduct business activities within the Lot so long as: (A) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Lot; (B) the business activity conforms to all zoning requirements for the Properties; (C) the business activity does not involve regular visitation of the Lot by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Properties; and (D) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

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

The leasing of a Lot shall not be considered a business or trade within the meaning of this subsection. "Leasing," for purposes of this Declaration, is defined as regular, exclusive occupancy of a Lot by any person other than the Owner, for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. Lots may be leased only in their entirety. No fraction or portion may be leased. No structure on a Lot other than the primary residential dwelling shall be leased or otherwise occupied for residential purposes.

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

(i) Exterior antennas, aerials, satellite dishes, or other apparatus for the transmission of television, radio, satellite, or other signals of any kind unless completely contained within the dwelling on the Lot so as not to be visible from outside the dwelling;

(ii) Noxious, offensive or Unlawful Activities or any activity that interferes with or jeopardizes the enjoyment of the Property or that is a source of nuisance or annoyance to other Owners or occupants;

(d) Use Restrictions. The following restrictions apply to activities conducted within the Properties:

(i) No Structure shall be placed, erected, or installed upon any Lot, and no improvements (including staking, clearing, excavation, grading and other site work, exterior alteration of existing improvements, planting or removal of landscaping materials, and installation or removal of an irrigation system) shall take place except in compliance with the provisions set forth herein and with written approval by the ARC in accordance with the procedures set forth herein.

Any Owner may remodel, paint or redecorate the interior of structures on his or her Lot without approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

The obligation to seek ARC review and approval shall not apply to the activities of the Declarant, nor to improvements to the Common Area by or on behalf of the Association.

(ii) Size of Residence. No residence shall be constructed of less than 1400 square feet of living area, exclusive of garages, porches and outbuildings.

(iii) Maintenance of Structures. Each Owner shall maintain the Owner's Lot and Improvements thereon in a clean and attractive condition, in good repair and in such fashion as not to create a fire or other hazard. Such maintenance shall include, without limitation, exterior painting, repair, replacement and care for roofs, gutters, downspouts, exterior building surfaces, walks, lights and perimeter fences and other exterior Improvements and glass surfaces. All repainting or restaining, any change in type of roof or roof color and any exterior remodeling or changes shall be subject to prior review and approval by the Architectural Review Committee. Damage caused by fire, flood, storm, earthquake, riot, vandalism, or other causes shall likewise be the responsibility of each Owner and shall be restored within a reasonable period of time.

(iv) Exterior Walls and Trim. Exterior siding shall be of double wall construction with the exception of simulated board and bat. T-1-11 siding is prohibited. Colors shall be earth tone.

(v) Maintenance of Landscape. Each Owner shall keep all sidewalks, shrubs, trees, grass and plantings of every kind on the Owner's Lot neatly trimmed, properly cultivated and free of trash, weeds and other unsightly material.

(vi) Landscape. All landscaping shall be completed within six (6) months from the date of occupancy of the Living Unit constructed thereon. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon approval of the Architectural Review Committee. Landscape plans shall be submitted to the Architectural Review Committee for approval.

(vii) Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuildings shall be used on any Lot at any time as a residence either temporarily or permanently.

(viii) Fences, Hedges and Walls. No fence, hedge, structure, wall, or retaining wall shall be constructed or exist anywhere on any Lot without prior approval of the Architectural Review Committee. All fences shall be designed with 3 rails, including a cap rail, and be constructed of cedar at a height not to exceed 72 inches unless the ARC gives written approval for a different design. No planting or structure obstructing vision at driveways or intersections shall be permissible or maintained. Installation and maintenance of retaining walls that are required and approved by the ARC due to topographic conditions of individual Lots are the sole and absolute responsibility of the individual Lot Owner and are to be aesthetically incorporated into the landscaping of the Lot and are not the responsibility of the Association.

(ix) Roof. All structures shall be required to have a roof at a minimum grade equal to a 30 year Owens Corning Dimensional Composition with a minimum 6/12 pitch, and be fire resistant or fire proof in accordance with the Oregon state fire codes Class "B" rating. An exception to the 6/12 pitch may be granted by the ARC for dormers, porches, outbuildings or other roof areas which do not detract from the overall appearance of the structure and will not adversely affect neighboring properties.

(x) Service Facilities. Service facilities (garbage containers, HVAC units, heat pumps, fuel tanks, clotheslines, etc.) shall be screened such that the elements screened are not visible at any time from the street or a neighboring property. All telephone, power, natural gas, cable television and other communication lines shall be placed underground, except as otherwise mandated by local jurisdictions or public utility companies.

(xi) Exterior Lighting or Noisemaking Devices. Except with the consent of the Architectural Review Committee, no exterior lighting or noisemaking devices shall be installed or maintained on any Lot, other than as originally installed by the builder of the home and security and fire alarms. Seasonal holiday lighting and decorations are permissible if consistent with any applicable rules and regulations and if removed within thirty (30) days after the celebrated holiday.

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

(xiii) Setback, Maximum Height and Minimum Yard Requirements. Each Lot shall be subject to the setback, maximum height and minimum yard requirements set by the City of Bend, which may be modified by an approved variance by the City of Bend, and by the prior approval of the Architectural Review Committee. No Lot may be subdivided or partitioned, nor may its Lot lines be adjusted, without the approval of the City of Bend and the Architectural Review Committee.

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

(xv) Garages. All garage doors shall remain closed except to permit entrance and exit and in connection with outside activities. Garages shall be used primarily for parking of vehicles, and only secondarily for storage.

(xvi) Rules and Regulations. In addition, the Association from time to time may adopt, modify or revoke such nondiscriminatory Rules and Regulations governing the conduct of persons and the operation and use of the Property as it may deem necessary or appropriate to ensure the peaceful and orderly use and enjoyment of the Property. A copy of the Rules and Regulations, upon adoption, and a copy of each amendment, modification or revocation thereof, shall be delivered by the Board of Directors promptly to each Owner. The Rules and Regulations may be adopted by the Board of Directors, except as may be otherwise provided in the Bylaws of the Association.

Article 7

Architectural Review Committee

7.1 Architectural Review.

Responsibility for administration of the architectural standards contained herein or in any rules promulgated by the ARC, and review of all applications for construction and modifications under this Article shall be handled by the Architectural Review Committee as described herein. The Board may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review.

7.2 Membership: Appointment and Removal.

The Architectural Review Committee shall consist of five members who shall be appointed by Declarant. Declarant shall be a member of the ARC so long as there is a Class B member and Declarant may, at its discretion, remove any member of the ARC from office at any time and may appoint new or additional members at any time. The Association shall keep on file at its principal office a list of the names and addresses of the members of the Committee. Declarant may at any time delegate to the Board of Directors of the Association the right to appoint or remove members of the Architectural Review Committee. In such event, or in the event Declarant fails to appoint an Architectural Review Committee, the Board of Directors shall assume responsibility for appointment and removal of members of the Architectural Review Committee, or, if it fails to do so, the Board of Directors shall serve as the Architectural Review Committee.

7.3 Majority Action.

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

7.4 Design Guidelines, Rules and Procedures.

The ARC may but is not required to promulgate development guidelines and application and review procedures ("Design Guidelines") applying to all construction activities within the Properties which are consistent with the provisions set forth herein. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary from one portion of the Properties to another depending upon the location, unique characteristics, and intended use. The Design Guidelines may contain procedures for review of applications and for enforcement of the provisions herein.

The ARC shall have sole and full authority to amend the Design Guidelines. Any amendments to the Design Guidelines provided that any amendments thereto shall apply to construction and modifications commenced after the date of such amendment only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced.

The ARC shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Properties and all such Persons shall conduct their activities in accordance with such Design Guidelines.

7.5 Submission of Plans and Specifications.

(a) No construction or improvements shall be commenced, erected, place or maintained on any Lot, nor shall any exterior addition, change or alteration be made thereto, until the plans and specifications ("Plans") showing site layout, structural design, exterior elevations, exterior materials and colors, signs, landscaping, drainage, lighting, irrigation, utility facilities layout, and screening there for shall have been submitted to and approved in writing by the ARC. Specifically, the building plans to be submitted shall consist of one complete set of plans and

specifications in the usual form showing insofar as appropriate, (i) the size and dimensions of the Improvements, (ii) the exterior design; (iii) approximate exterior color scheme; (iv) location of Improvements on the Lot, including setbacks, driveway and parking areas; and (v) location of existing trees to be removed. These plans and specifications shall be left with the ARC until sixty (60) days after notice of completion has been received by the ARC. This is for the purpose of determining whether, after inspection by the ARC, the Improvement complies substantially with the plans and specifications that were submitted and approved. The Architectural Review ARC is not responsible for determining compliance with structural and building codes, solar ordinances, zoning codes or any other governmental regulations, all of which are the responsibility of the applicant. The procedure and specific requirements for review and approval of construction may be set forth in Design Guidelines adopted from time to time by the Architectural Review ARC. The ARC may charge a reasonable fee to cover the cost of processing an application. In all cases in which the Architectural Review ARC's consent is required by this Declaration, the provisions of this Article shall apply.

(b) In reviewing each submission, the ARC may consider visual and environmental impact, ecological compatibility, topography and finish grade elevation, harmony of external design with surrounding structures and environment, and location in relation to surrounding structures and plant life. .

(c) If construction does not commence on a project for which Plans have been approved within 12 months of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the Plans for reconsideration.

7.6 ARC Decision.

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

The ARC shall, within 45 days of receipt of each submission of the Plans, advise the party submitting the same, in writing, at an address specified by such party at the time of submission, of (i) the approval of Plans, or (ii) the segments or features of the Plans which are deemed by the ARC to be inconsistent or not in conformity with this Declaration and/or the Design Guidelines, the reasons for such finding, and suggestions for the curing of such objections. In the event the ARC fails to advise the submitting party by written notice within the time set forth above of either the approval or disapproval of the plans, approval shall be deemed to have been given. Notice shall be deemed to have been given at the time the envelope containing such notice, properly addressed, and postage prepared, is deposited with the U.S. Postal Service, registered or certified mail, return receipt requested. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery.

7.7 Construction.

The construction of any building on any Lot, including painting and all exterior finish, shall be completed within eight (8) months from the beginning of construction so as to present a finished appearance when viewed from any angle. In the event of undue hardship due to strikes, fires, national emergency or natural calamities, this provision may be extended for a reasonable length of time upon approval from the Architectural Review Committee. The building area shall be kept reasonably clean and in workmanlike order, free of litter, during the construction period with a garbage can or other garbage disposal facility on the site during such period. Debris may not be deposited on any other Lot. All construction debris, stumps, trees, etc. must be periodically removed from each Lot by the builder or Owner, and such debris shall not be dumped in any area within the Property unless approved by the Architectural Review Committee. All unimproved or unoccupied Lots shall be kept in a neat and orderly condition, free of brush, vines, weeds and other debris, and grass thereon shall be cut or mowed at sufficient intervals to prevent creation of a nuisance or fire hazard.

7.8 No Waiver of Future Approvals.

Each Owner acknowledges that the members of the ARC will change from time to time and that interpretation, application and enforcement of the Design Guidelines may vary accordingly. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

7.9 Variance.

The ARC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with the provisions contained herein and in any ARC guidelines. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the ARC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, the cost of compliance, or the terms of any financing shall not be considered a hardship warranting a variance.

7.10 Limitation of Liability.

Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and the ARC shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board, any committee, or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner of quality of approved construction on or modifications to any lot. Neither the Architectural Review Committee nor any member thereof shall be liable to any Owner, occupant, builder or developer for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the Committee or a member of the Committee, and the Association shall indemnify the Committee and its members therefrom, provided only that the member has, in accordance with the actual knowledge possessed by him or her, acted in good faith.

7.11 Committee Discretion.

The Architectural Review Committee may, at its sole discretion, withhold consent to any proposed work if the Committee finds the proposed work would be inappropriate for the particular Lot or incompatible with the provisions set forth herein or in any ARC design guidelines for Empire Crossing. It is the intent and purpose of this Declaration to ensure quality of workmanship and materials, to ensure harmony of external design with the existing Improvements and with respect to topography and finished grade elevations and to ensure compliance with the setback requirements contained in the conditions of approval of the City of Bend. Considerations such as siting, shape, size, color, design, materials, height, solar access, screening, impairment of the view from other Lots, or other effect on the enjoyment of other Lots or the Common Area, disturbance of existing terrain and vegetation, and any other factors that the Committee reasonably believes to be relevant may be taken into account by the Committee in determining whether or not to consent to any proposed work. Regulations on siting of television antennas and satellite receiving dishes shall be in conformance with any applicable Federal Communications Commission rules.

7.12 Nonwaiver.

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

7.13 Appeal.

At any time after Declarant has delegated appointment of the members of the Architectural Review Committee to the Board of Directors pursuant to Section 7.2, any Owner adversely affected by action of the Architectural Review Committee may appeal such action to the Board of Directors. Appeals shall be made in writing within ten (10) days of the Committee's action and shall contain specific objections or mitigating circumstances justifying the appeal. A final, conclusive decision shall be made by the Board of Directors within fifteen (15) working days after receipt of such notification.

7.14 Effective Period of Consent.

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

7.15 Estoppel Certificate.

Within fifteen (15) working days after written request is delivered to the Architectural Review Committee by any Owner, and upon payment to the Committee of a reasonable fee fixed by the Committee to cover costs, the Committee shall provide such Owner with an estoppel certificate executed by a member of the Committee and acknowledged, certifying with respect to any Lot owned by the Owner, that as of the date thereof, either (a) all Improvements made or done upon or within such Lot by the Owner comply with this Declaration or (b) such Improvements do not so comply, in which event the certificate shall also identify the noncomplying Improvements and set forth with particularity the nature of such noncompliance.

Any purchaser from the Owner, and any mortgagee or other encumbrancer, shall be entitled to rely on such certificate with respect to the matters set forth therein, such matters being conclusive as between Declarant, the Architectural Review Committee, the Association and all Owners, and such purchaser or mortgagee.

7.16 **Enforcement.**

If during or after the construction the Architectural Review Committee finds that construction does not comply with the approved plans, the Committee may require conforming changes to be made or that construction be stopped. The cost of any required changes shall be borne by the Owner. The Committee shall have the power and authority to order any manner of changes or complete removal of any Improvement, alteration or other activity for which prior written approval from the Committee is required and has not been obtained or waived in writing. If an Owner fails to comply with an order of the Committee, then, subject to the Owner's right of appeal, either the Architectural Review Committee or the Association may enforce compliance in accordance with the procedures set forth herein.

Article 8

Association

Before conveyance of the first Lot, Declarant shall organize an association of all of the Owners within Empire Crossing. Such Association, and its successors and assigns, shall be organized as an Oregon nonprofit corporation under the name "**Empire Crossing Homeowners' Association, Inc.,**" and shall have such property, powers and obligations as are set forth in this Declaration for the benefit of the Property and all Owners of Lots located therein.

8.1 **Organization.**

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

8.2 **Membership.**

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

8.3 Voting Rights.

The Association shall have two classes of voting membership:

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

Class B. The Class B member shall be Declarant and shall be entitled to three (3) votes for each Lot owned by Declarant. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(ii) When seventy-five percent (75%) of the Lots in all phases of development of Empire Crossing have been sold and conveyed to Owners other than a successor Declarant; or

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

8.4 General Powers and Obligations.

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

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

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

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

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

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

8.5 Specific Powers and Duties.

The powers and duties of the Association shall include, without limitation, all of the following:

(a) Maintenance and Services.

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

(b) Insurance.

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

(c) Rulemaking.

The Association may make, establish, promulgate, amend and repeal Rules and Regulations as provided herein.

(d) Assessments.

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

(e) Enforcement.

The Association shall perform such acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce the provisions of this Declaration and the Rules and Regulations adopted by the Association, including, without limitation, enforcement of the decisions of the Architectural Review Committee. Nothing in this Declaration shall be construed as requiring the Association to take any specific action to enforce violations.

(f) Employment of Agents, Advisers and Contractors.

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

(g) Borrow Money, Hold Title and Make Conveyances.

The Association may borrow and repay moneys for the purpose of performing its duties under this Declaration, and subject to Section ____ above, encumber the Common Areas as security for the repayment of such borrowed money. The Association may acquire, hold title to and convey, with or without consideration, real and personal property and interests therein, including, but not limited to, easements across all or any portion of the Common Area, and shall accept any real or personal property, leasehold or other property interests within Empire Crossing conveyed to the Association by Declarant.

(h) Transfer, Dedication and Encumbrance of Common Area.

In accordance with the provisions set forth herein, the Association may sell, transfer or encumber all or any portion of the Common Area to a person, firm or entity, whether public or private, and dedicate or transfer all or any portion of the Common Area to any public agency, authority, or utility for public purposes.

(i) Implied Rights and Obligations.

The Association may exercise any other right or privilege reasonably to be inferred from the existence of any right or privilege expressly given to the Association under this Declaration or reasonably necessary to effectuate any such right or privilege.

8.6 Liability.

Neither a member of the Board of Directors nor an officer of the Association shall be liable to the Association, any Owner or any third party for any damage, loss or prejudice suffered or claimed on account of any action or failure to act in the performance of his duties, so long as the individual acted in good faith, believed that the conduct was in the best interests of the Association, or at least was not opposed to its best interests, and in the case of criminal proceedings, had no reason to believe the conduct was unlawful. In the event any member of the Board of Directors or any officer of the Association is threatened with or made a party to any proceeding because the individual was or is a director or officer of the Association, the Association shall defend such individual against such claims and indemnify such individual against liability and expenses incurred to the maximum extent permitted by law. The managing agent of the Association, and its officers and employees, shall not be liable to the Association, the Owners or any third party on account of any action or failure to act in the performance of its duties as managing agent, except for acts of gross negligence or intentional acts, and the Association shall indemnify the managing agent and its officers and employees from any such claims, other than for gross negligence or intentional misconduct.

8.7 Interim Board: Turnover Meeting.

Declarant shall have the right to appoint an interim board of five (5) directors, who shall serve as the Board of Directors of the Association until replaced by Declarant or until their successors take office at the Turnover Meeting following termination of Class B membership. Declarant shall call a meeting of the Association for the purpose of turning over administrative responsibility for the Property to the Association not later than ninety (90) days after termination of the Class B membership in accordance with Section 8.3 above. At the

Turnover Meeting the interim directors shall resign and their successors shall be elected by the Owners, as provided in this Declaration and in the Bylaws of the Association. If Declarant fails to call the Turnover Meeting required by this section, any Owner or mortgagee of a Lot may call the meeting by giving notice as provided in the Bylaws.

8.8 Contracts Entered into by Declarant or Before Turnover Meeting.

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

8.9 Bylaws.

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

Article 9

Maintenance, Utilities and Services

9.1 Maintenance and Lighting of Common Maintenance Areas.

The Association may provide exterior lighting for and shall perform all maintenance upon the Common Maintenance Areas, including, but not limited to, landscaping, irrigation, walks, private roads, entrance monuments, gates, fences, walls, signs, parking areas, walkways and trails, unless the maintenance thereof is assumed by a public body. Such areas shall be maintained in attractive condition and in a good and workmanlike manner to render them fit for the purposes for which they are intended.

9.2 Maintenance of Utilities.

The Association shall perform or contract to perform maintenance of any private utilities located within Common Maintenance Areas, except to the extent such maintenance is performed by the utilities furnishing such services. The Association shall not be liable for any interruption or failure of such services. Each Owner shall be responsible for maintaining utility lines within his Lot other than serving the Common Maintenance Areas.

9.3 Security.

The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to make the Property safer than it otherwise might be. **Neither the Association, any managing agent retained by the Association, Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Property, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or of ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system or other security system cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each**

Owner acknowledges, understands and covenants to inform its tenants that the Association, its Board of Directors and committees, any managing agent retained by the Association, Declarant, and any successor Declarant are not insurers and that each person using the Property assumes all risks for loss or damage to persons, to property and to the contents of Lots resulting from acts of third parties and releases such parties from any liability therefore.

9.4 Services.

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

9.5 Owner's Responsibility.

Except as otherwise provided in this Declaration or by written agreement with the Association, all maintenance of the Lots and Improvements thereon as provided herein shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in a neat and attractive condition in accordance with the community-wide standard of Empire Crossing. The Association shall, in the discretion of the Board of Directors, assume the maintenance responsibilities of such Owner if, in the opinion of the Board of Directors, the level and quality of maintenance being provided by such Owner does not satisfy such standard. Before assuming such maintenance responsibilities, the Board of Directors shall notify the Owner in writing of its intention to do so, and if such Owner has not commenced and diligently pursued remedial action within fifteen (15) days after mailing of such written notice, then the Association shall proceed. The expenses of such maintenance by the Association shall be reimbursed to the Association by the Owner, together with interest as provided herein. Such charges shall be an Individual Assessment and lien on the Lot as provided herein.

9.6 Damage Liability.

Any damage to any Common Maintenance Area by Owners, their children, agents, visitors, friends, relatives, tenants, occupants or service personnel shall be repaired by the Owner within fifteen (15) days following the date on which notice is mailed by the Association informing the Owner of such violation. If the damage has not been repaired within such time, then the Association shall perform such repair and the cost shall be assessed to the Owner as an Individual Assessment.

Article 10

Assessments

10.1 Purpose of Assessments.

The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners and occupants of the Property and for the improvement, operation and maintenance of the Common Maintenance Areas.

10.2 Types of Assessments.

The Association may levy Annual Assessments, Special Assessments, Emergency Assessments, and Individual Assessments, all as more particularly described below.

10.3 Apportionment of Assessment.

Lots shall become subject to Annual Assessments (including assessments for reserves), Special Assessments, or Emergency Assessments at such time as the Lots have been platted, streets within the plat have been paved and the Lots have been subjected to this Declaration, whichever is later. At that time, each Lot, including Lots owned by Declarant, shall become subject to assessment. All Lots subject to assessment shall pay an equal share of the Annual Assessments, Special Assessments and Emergency Assessments. Declarant may elect to delay collection of Annual Assessments against all Lots, but in such case shall pay all common expenses of the Association until such Assessments commence. No Owner by the Owner's own action may claim exemption from liability for contribution towards common expenses by waiver by the Owner of use or enjoyment of the Common Area or by abandonment by the Owner of the Owner's Lot. An Owner may not claim an offset against an Assessment for failure of the Association to perform its obligations, and no Owner may offset amounts owing or claimed to be owing by the Association or Declarant to the Owner.

10.4 Annual Assessments.

The Board of Directors of the Association shall from time to time and at least annually prepare an operating budget for the Association, taking into account the current costs of maintenance and services and future needs of the Association, any previous overassessment and any common profits of the Association. The budget shall take into account the number of Lots subject to assessment as of the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to assessment during the fiscal year. The budget may be based upon a greater number of Lots than those reasonably anticipated to be subject to assessment during the fiscal year if the Declarant agrees to subsidize the Association for any shortfall in the Operations Fund until assumed number of Lots is subject to assessment. The budget shall provide for such reserve or contingency funds as the Board deems necessary or as may be required by law, but not less than the reserves required by Section 10.10 below. Annual Assessments for such operating expenses and reserves ("Annual Assessments") shall then be apportioned among the Lots as provided in Section 10.3 above. Within thirty (30) days after adopting the annual budget, the Board of Directors shall provide a summary of the budget to all Owners. If the Board of Directors fails to adopt an annual budget, the last adopted budget shall continue in effect. The manner of billing and collection of Assessments shall be as provided in the Bylaws.

10.5 Special Assessments.

In addition to the Annual Assessment authorized above, the Board of Directors may levy during any fiscal year a Special Assessment ("Special Assessment"), applicable to that year only, for the purpose of deferring all or any part of the cost of any construction or reconstruction, unexpected repair, or acquisition or replacement of a described capital improvement, or for any other one-time expenditure not to be paid for out of Annual Assessments. Special Assessments for acquisition or construction of new capital improvements or additions which in the aggregate in any fiscal year exceed an amount equal to fifteen percent (15%) of the budgeted gross expenses of the Association for the fiscal year may be levied only if approved by a majority of the voting rights voting on such matter, together with the written consent of the Class B member, if any. Prior to the Turnover Meeting, any Special Assessment for acquisition or construction of new capital improvements or additions must be approved by not less than fifty percent (50%) of the Class A voting rights, together with the written consent of

the Class B member. Special Assessments shall be apportioned as provided in Section 10.3 above and may be payable in lump sum or in installments, with or without interest or discount, as determined by the Board of Directors.

10.6 Emergency Assessments.

If the Annual Assessments levied at any time are or will become inadequate to meet all expenses incurred under this Declaration for any reason, including nonpayment of any Owner's Assessments on a current basis, the Board of Directors shall immediately determine the approximate amount of such inadequacy and issue a supplemental budget, noting the reason therefore, and levy an Emergency Assessment for the amount required to meet all such expenses on a current basis ("**Emergency Assessment**"). Emergency Assessments shall be apportioned as set forth in Section 10.3 above and payable as determined by the Board of Directors.

10.7 Individual Assessments.

Individual Assessments include, without limitation, charges for services provided under Section 9.5 and any common expense that the Board of Directors determines is the fault of the Owner and not paid by insurance. Individual Assessments shall also include default Assessments levied against any Lot to reimburse the Association for costs incurred in bringing such Lot or its Owner into compliance with the provisions of this Declaration or the Rules and Regulations of the Association and for fines or other charges imposed pursuant to this Declaration for violation thereof. Unless otherwise provided by the Board of Directors, Individual Assessments shall be due 30 days after the Board of Directors has given written notice thereof to the Owners subject to the Individual Assessments.

10.8 Annexation of Additional Property.

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

10.9 Operations Fund.

The Association shall keep all funds received by it as Assessments, other than reserves described in Section 10.10, separate and apart from its other funds, in a bank account in the State of Oregon in the name of the Association to be known as the "**Operations Fund.**" All expenses of the Association shall be paid from the Operations Fund or from the Reserve Fund referred to in Section 10.10. The Association shall use such fund exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents within the Property and in particular for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Maintenance Areas and of the Lots situated upon the Property, including but not limited to:

(a) Payment of the cost of maintenance, utilities and services as described in Article 9.

(b) Payment of the cost of insurance as described in the Bylaws of the Association.

(c) Payment of taxes assessed against the Common Areas and any improvements thereon.

(d) Payment of the cost of other services that the Association deems to be of general benefit to the Owners, including, but not limited to, accounting, legal and secretarial services.

10.10 **Reserve Fund.**

(a) **Establishment of Account.**

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

(b) **Funding of Reserve Fund.**

The Reserve Fund shall be funded by Assessments against the individual Lot assessed for maintenance of the items for which the Reserve Fund is being established, which sums shall be included in the regular Annual Assessment for the Lot. The Reserve Fund shall be established in the name of the Association. The Association is responsible for administering the Reserve Fund and making periodic payments into it.

(c) **Reserve Studies.**

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

(ii) Identification of all items for which reserves are to be established;

(iii) The estimated remaining useful life of each item as of the date of the reserve study;

(iv) The estimated cost of maintenance, repair or replacement of each item at the end of its useful life;

(v) A thirty (30) year plan with regular and adequate contributions, adjusted by estimated inflation and interest earned on reserves, to meet the maintenance, repair and replacement schedule.

(d) Use of Reserve Fund.

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

10.11 Creation of Lien and Personal Obligation of Assessments.

Declarant, for each Lot owned by it within the Property, does hereby covenant, and each Owner of any Lot by acceptance of a conveyance thereof, whether or not so expressed in any such conveyance, shall be deemed to covenant to pay to the Association all Assessments or other charges as may be fixed, established and collected from time to time in the manner provided in this Declaration or the Association Bylaws. Such Assessments and charges, together with any interest, late charges, expenses or attorneys' fees imposed pursuant to Section 11.5, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment or charge is made. Such Assessments, charges and other costs shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment or charge fell due. Such liens and personal obligations shall be enforced in the manner set forth in Article 11 below.

10.12 Voluntary Conveyance.

In a voluntary conveyance of a Lot the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments against the grantor of the Lot up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, upon request of an Owner or

Owner's agent for the benefit of a prospective purchaser, the Board of Directors shall make and deliver a written statement of the unpaid Assessments against the prospective grantor of the Lot effective through a date specified in the statement, and the grantee in that case shall not be liable for any unpaid Assessments against the grantor not included in the written statement.

Article 11

Enforcement

11.1 Violation of General Protective Covenants.

In the event that any Owner constructs or permits to be constructed on his Lot an Improvement contrary to the provisions of this Declaration, or violates any provisions of this Declaration, the Bylaws, ARC guidelines or the Rules and Regulations, then the Association acting through its Board of Directors shall notify the Owner in writing of any such specific violations. If the Owner is unable, is unwilling, or refuses to comply with the Association's specific directives for remedy or abatement, or the Owner and the Association cannot agree to a mutually acceptable solution within the framework and intent of this Declaration, after notice and opportunity to be heard as provided in the Bylaws and within fourteen (14) days after issuing written notice to the Owner, then the Association acting through its Board of Directors shall have the right to do any or all of the following:

(a) Assess reasonable fines against such Owner, based upon a resolution adopted by the Board of Directors that is delivered to each Lot, mailed to the mailing address of each Lot or mailed to the mailing address designated by the Owner of each Lot in writing, which fines shall constitute Individual Assessments for purposes of this Declaration;

(b) Enter the offending Lot and remove the cause of such violation, or alter, repair or change the item that is in violation of this Declaration in such a manner as to make it conform thereto, in which case the Association may assess such Owner for the entire cost of the work done, which amount shall be payable to the Operations Fund as an Individual Assessment, provided that no items of construction shall be altered or demolished in the absence of judicial proceedings;

(c) Cause any vehicle parked in violation of this Declaration or of the Rules and Regulations to be towed and impounded at the Owner's expense;

(d) Suspend the voting rights, any utility services paid for out of Assessments and the right to use the Common Areas for the period that the violations remain unabated, provided that the Association shall not deprive any Owner of access to and from his Living Unit; and

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

11.2 Default in Payment of Assessments: Enforcement of Lien.

If an Assessment or other charge levied under this Declaration is not paid within thirty (30) days after its due date, such Assessment or charge shall become delinquent and

shall bear interest from the due date at the rate set forth below. In such event the Association may exercise any or all of the following remedies:

(a) The Association may suspend such Owner's voting rights, any utility services paid for out of Assessments and right to use the Common Areas until such amounts, plus other charges under this Declaration, are paid in full and may declare all remaining periodic installments of any Annual Assessment immediately due and payable. In no event, however, shall the Association deprive any Owner of access to and from his Lot.

(b) The Association shall have a lien in accordance with ORS 94.709 against each Lot for any Assessment levied against the Lot, including any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Lot and may foreclose such lien in the manner provided in ORS 94.709.

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

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

11.3 Reports to First Mortgagees.

In response to a written request of any first mortgagee of a Lot, the Association shall report to such mortgagee whether such Lot is current or past-due with respect to Assessments.

11.4 Subordination of Lien to Mortgages.

The lien of the Assessments or charges provided for in this Declaration shall be subordinate to the lien of any mortgage or deed of trust on such Lot, which was made in good faith and for value and that was recorded before the recordation of the notice of lien. Sale or transfer of any Lot shall not affect the Assessment lien, but the sale or transfer of any Lot that is subject to any mortgage or deed of trust pursuant to a decree of foreclosure thereunder or any deed or proceeding, deed or assignment in lieu of foreclosure shall extinguish any lien of an Assessment, notice of which was recorded after the recording of the mortgage or trust deed. The unpaid Assessments as a result of such foreclosure or sale shall become a common expense of all Owners, including the mortgagee or purchaser, and such sale or transfer shall not release the Lot from liability for any Assessments or charges thereafter becoming due or from the lien of such Assessments or charges.

11.5 Interest, Late Charges and Expenses.

Any amount not paid to the Association when due in accordance with this Declaration shall bear interest from the due date until paid at a rate that is the greater of eighteen percent (18%) per annum or three percentage points per annum above the prevailing Portland, Oregon prime rate as of the due date, or such other rate as may be established by the Board of Directors, but not to exceed the lawful rate of interest under the laws of the State of Oregon. A late charge may be charged for each delinquent Assessment in an amount established from time

to time by resolution of the Board of Directors, which resolution is delivered to each Lot, mailed to the mailing address of each Lot or mailed to the mailing address designated by the Owner in writing, together with all expenses incurred by the Association in collecting such unpaid assessments, including attorneys' fees (whether or not suit is instituted). In the event the Association shall file a notice of lien, the lien amount shall also include the recording fees associated with filing the notice, and a fee for preparing the notice of lien, established from time to time by resolution of the Board of Directors.

11.6 Costs and Attorneys' Fees.

In the event the Association shall bring any suit or action to enforce this Declaration, the Bylaws of the Association or the Rules and Regulations, or to collect any money due hereunder or to foreclose a lien, the Owner-defendant shall pay to the Association all costs and expenses incurred by it in connection with such suit or action, including a foreclosure title report, and the prevailing party in such suit or action shall recover such amount as the court may determine to be reasonable as attorneys' fees at trial and upon any appeal or petition for review thereof or in connection with any bankruptcy proceedings or special bankruptcy remedies.

11.7 Nonexclusiveness and Accumulation of Remedies.

An election by the Association to pursue any remedy provided for violation of this Declaration shall not prevent concurrent or subsequent exercise of another remedy permitted under this Declaration. The remedies provided in this Declaration are not exclusive but shall be in addition to all other remedies, including actions for damages and suits for injunctions and specific performance, available under applicable law to the Association. In addition, any aggrieved Owner may bring an action against another Owner or the Association to recover damages or to enjoin, abate or remedy any violation of this Declaration by appropriate legal proceedings.

Article 12

Dispute Resolution

12.1 Arbitration.

Any claim, controversy, or dispute by or among Declarant (including members, officers, directors, shareholders and affiliates of Declarant), the Association, the Architectural Control Committee, or one or more Owners, or any of them, arising out of or related to this Declaration, the Bylaws of the Association, the ARC design guidelines or Rules and Regulations, shall be resolved by arbitration in accordance with this Article 12. The decisions and award of the arbitrator shall be final, binding and nonappealable. The arbitration shall be conducted in Bend, Oregon, or at such other location as may be agreed upon by the parties, pursuant to the arbitration statutes of the State of Oregon and any arbitration award may be enforced by any court with jurisdiction. Filing for arbitration shall be treated the same as filing in court for purposes of meeting any applicable statute of limitations or for purposes of filing a notice of pending action ("lis pendens").

12.2 Selection of Arbitrator.

The arbitration shall be conducted by a single arbitrator who shall be an attorney and a member in good standing of the Oregon State Bar. The arbitrator shall be selected

by mutual agreement of the parties. The arbitrator selected shall be neutral and unbiased, except to the extent the arbitrator's prior relationship with any party is fully disclosed and consented to by the other party or parties. If the parties are unable to agree upon the arbitrator within ten (10) days after a party's demand for arbitration, upon application of any party, the presiding judge of the Circuit Court of Deschutes County, Oregon shall designate the arbitrator.

12.3 Consolidated Arbitration.

Upon demand by any party, claims between or among the parties and third parties shall be submitted in a single, consolidated arbitration.

12.4 Discovery.

The parties to the arbitration shall be entitled to such discovery as would be available to them in an action in Deschutes County Circuit Court. The arbitrator shall have all of the authority of the court incidental to such discovery, including, without limitation, authority to issue orders to produce documents or other materials, to issue orders to appear and submit to deposition, and to impose appropriate sanctions including, without limitation, award against a party for failure to comply with any order.

12.5 Evidence.

The parties to the arbitration may offer such evidence as they desire and shall produce such additional evidence as the arbitrator may deem necessary for an understanding and determination of the dispute. The arbitrator shall determine the admissibility of the evidence offered. All evidence shall be taken in the presence of the arbitrator and all of the parties, except when any of the parties is absent in default or has waived its right to be present.

12.6 Excluded Matters.

Notwithstanding the foregoing, the following matters shall not be subject to arbitration under this Article 12 (but shall be subject to the applicable provisions of Section 12.7 below): (a) actions relating to the collection of fees, Assessments, fines and other charges imposed or levied by the Association; and (b) actions to enforce any order, decision or award rendered by arbitration pursuant to this Article 12. The filing of a lis pendens or the application to any court for the issuance of any provisional process or similar remedy described in the Oregon or Federal Rules of Civil Procedure shall not constitute a waiver of the right or duty to utilize the procedures specified in this Article 12.

12.7 Costs and Attorneys' Fees.

The fees of any arbitrator and the costs of arbitration shall be paid by the nonprevailing party or parties; if none, such fees and costs shall be divided and paid equally by the parties. Should any suit, action or arbitration be commenced in connection with any dispute related to or arising out of this Declaration, the Bylaws, the ARC design guidelines or the Rules and Regulations; to obtain a judicial construction of any provision of this Declaration, the Bylaws, the ARC design guidelines or the Rules and Regulations; to rescind this Declaration; or to enforce or collect any judgment or decree of any court or any award obtained during arbitration, the prevailing party shall be entitled to recover its costs and disbursements, together with such investigation, expert witness and attorneys' fees incurred in connection with such dispute as the court or arbitrator may adjudge reasonable, at trial, in the arbitration, upon any

motion for reconsideration, upon petition for review, and on any appeal of such suit, action or arbitration proceeding. The determination of who is the prevailing party and the amount of reasonable attorneys' fees to be paid to the prevailing party shall be decided by the arbitrator (with respect to attorneys' fees incurred before and during the arbitration proceeding) and by the court or courts, including any appellate or review court, in which such matter is tried, heard or decided, including a court that hears a request to compel or enjoin arbitration or that hears exceptions made to an arbitration award submitted to it for confirmation as a judgment (with respect to attorneys' fees incurred in such proceedings).

12.8 Survival.

The arbitration agreement set forth in this Article 12 shall survive the transfer by any party of its interest or involvement in the Property and any Lot therein and shall survive the termination of this Declaration.

Article 13

Mortgagees

13.1 Reimbursement of First Mortgagees.

First mortgagees of Lots may, jointly or singly, pay taxes or other charges that are in default and that may or have become a charge against any Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for such Common Area. First mortgagees making such payments shall be owed immediate reimbursement therefore from the Association, to the extent the same was the responsibility of the Association.

13.2 Right of First Mortgagees Relating to Maintenance.

At any time that the Common Areas are not maintained or repaired by the Association to the extent reasonably necessary to protect and preserve the value of the Property for security purposes, then the record mortgagee, upon giving written notice as provided in this paragraph, shall be entitled to exercise the rights of the Owner of the Lot as a member of the Association to vote at all regular and special meetings of the members of the Association for a period of one year following the date of such notice. During this one-year period, the Association shall give notice of all regular and special meetings to both the Owner and the mortgagee, and the Owner may attend such meetings as an observer. Notice from the mortgagee under this section shall quote this Section 13.2 and shall be sent postage prepaid by certified United States mail, return receipt requested, to the Owner with a copy sent by regular mail to the Association at the last-known address of each.

Article 14

Amendment And Repeal

14.1 How Proposed.

Amendments to or repeal of this Declaration shall be proposed by either a majority of the Board of Directors or by Owners holding thirty percent (30%) or more of the Association's voting rights. The proposed amendment or repeal must be reduced to writing and

shall be included in the notice of any meeting at which action is to be taken thereon or attached to any request for consent to the amendment or repeal.

14.2 Approval Required.

This Declaration, or any provision thereof, as from time to time in effect with respect to all or any part of the Property, may be amended or repealed by the vote or written consent of Owners representing not less than seventy-five percent (75%) of the Lots, together with the written consent of the Class B member, if such Class B membership has not been terminated as provided in this Declaration. In no event shall an amendment under this section create, limit or diminish special Declarant rights without Declarant's written consent, or change the boundaries of any Lot or any uses to which any Lot is restricted under this Declaration or change the method of determining liability for common expenses, the method of determining the right to common profits or the method of determining voting rights of any Lot unless the Owners of the affected Lots unanimously consent to the amendment. Declarant may not amend this Declaration to increase the scope of special Declarant rights reserved in this Declaration after the sale of the first Lot unless Owners representing seventy-five percent (75%) of the total vote, other than Declarant, agree to the amendment.

14.3 Recordation.

Any such amendment or repeal shall become effective only upon recordation in the Deed Records of Deschutes County, Oregon of a certificate of the president and secretary of the Association setting forth in full the amendment, amendments or repeal so approved and certifying that such amendment, amendments or repeal have been approved in the manner required by this Declaration and ORS 94.590, and acknowledged in the manner provided for acknowledgment of deeds.

14.4 Regulatory Amendments.

Notwithstanding the provisions of Section 14.2 above, until the Turnover Meeting has occurred, Declarant shall have the right to amend this Declaration or the Bylaws of the Association in order to comply with the requirements of any applicable statute, ordinance or regulation or of the Federal Housing Administration; the United States Department of Veterans Affairs; the Farmers Home Administration of the United States; the Federal National Mortgage the Association; the Government National Mortgage the Association; the Federal Home Mortgage Loan Corporation, any department, bureau, board, commission or agency of the United States or the State of Oregon; or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon that insures, guarantees or provides financing for a planned community or lots in a planned community. After the Turnover Meeting, any such amendment shall require the approval of a majority of the voting rights of the Association voting in person, by proxy or by ballot at a meeting or ballot meeting of the Association at which a quorum is represented.

Article 15

Miscellaneous Provisions

15.1 Lessees and Other Invitees.

Lessees, employees, invitees, contractors, family members and other

persons entering the Property under rights derived from an Owner shall comply with all of the provisions of this Declaration restricting or regulating the Owner's use, improvement or enjoyment of his Lot and other areas within the Property. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner himself or herself.

15.2 Nonwaiver.

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

15.3 Construction; Severability; Number; Captions.

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

As used in this Declaration, the singular shall include the plural and the plural the singular, and the masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration.

15.4 Notices and Other Documents.

Any notice or other document permitted or required by this Declaration may be delivered either personally or by mail. Delivery by mail shall be deemed made twenty-four (24) hours after having been deposited in the United States mail as certified or registered mail, with postage prepaid, addressed as follows: If to Declarant or the Association, 2622 SW Glacier Place, Suite 101, Redmond, Oregon 97756; if to an Owner, at the address given at the time of the Owner's purchase of a Lot, or at the Lot. The address of a party may be changed at any time by notice in writing delivered as provided herein.

15.5 Private Agreement.

This Declaration and the covenants and agreements contained herein constitute a private agreement among the Owners of Lots in Empire Crossing. This Declaration does not restrict the City of Bend's authority to adopt or amend its development regulations. There may be conflicting requirements between this Declaration and regulations of the City of Bend. The City of Bend will limit its review of a development application to the requirements of its regulations. It is the duty of every person engaged in development or remodeling of a Lot and/or Improvement in Empire Crossing to know the requirements of this Declaration and the covenants and agreements contained herein. In the event there is a conflict between a regulation of the City of Bend and this Declaration, any question regarding which provision controls shall be directed to the Architectural Review Committee. The City of Bend will not be liable for any approvals or permits that are granted in compliance with the regulations of the City of Bend, the State of Oregon or any other jurisdiction, but that are not in compliance with this Declaration. Declarant, the Architectural Review Committee and/or the Association will not be liable for any

approvals that are granted in compliance with this Declaration, but that are not in compliance with the regulations of the City of Bend, the State of Oregon or any other jurisdiction.

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

DECLARANT: GOLDEN CREST DEVELOPMENT, LLC, an Oregon limited liability company

By William J. Walton III, Member
(print name)

OWNER: PARKHURST, LLC., an Oregon limited liability company

By William J. Walton III, Member
(print name)

STATE OF OREGON)
County of Deschutes)ss.

The foregoing instrument was acknowledged before me this 19 day of October, 2004 by William J. Walton III, Member of Golden Crest Development, LLC, an Oregon limited liability company, on its behalf.



Cheryl J. Scott
Notary Public for Oregon

STATE OF OREGON)
County of Deschutes)ss.

The foregoing instrument was acknowledged before me this 19 day of October, 2004, by William J. Walton III, Parkhurst, LLC, an Oregon limited liability company, on its behalf.



Cheryl J. Scott
Notary Public for Oregon

Exhibit "A"

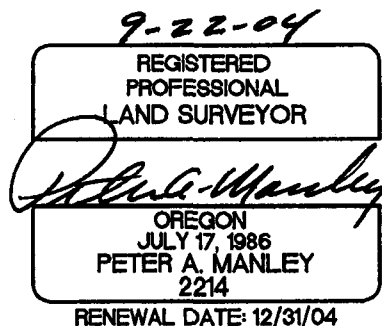
A parcel of land containing 10.56 acres, more or less, located in a portion of the Northwest One-Quarter (NW1/4) of Section 21, Township 17 South, Range 12 East, Willamette Meridian, City of Bend, Deschutes County, Oregon, being more particularly described as follows:

Beginning at the intersection of the north boundary of said NW1/4 and the westerly right-of-way line of Boyd Acres Road; thence along said westerly right-of-way, South 01°01'28" East a distance of 635.54 feet; thence leaving said westerly right-of-way, South 88°58'32" West a distance of 200.08 feet; thence South 01°01'28" East a distance of 89.86 feet; thence South 88°58'32" West a distance of 60.00 feet; thence North 78°21'30" West a distance of 291.16 feet; thence South 64°41'06" West a distance of 60.00 feet; thence 35.38 feet along a non-tangent curve to the left with a radius of 270.00 feet, the chord of which bears North 29°04'08" West a distance of 35.35 feet; thence 39.70 feet along the arc of a reverse curve to the right with a radius of 210.00 feet, the chord of which bears North 27°24'24" West for a distance of 39.64 feet; thence North 76°11'25" West a distance of 129.30 feet to the easterly right-of-way of the Burlington Northern Railroad; thence along said easterly right-of-way, North 13°48'35" East a distance of 618.47 feet to the north boundary of said NW1/4; thence leaving said easterly right-of-way, along said north boundary, South 89°55'55" East a distance of 599.84 feet to the point of beginning, the terminus of this description.

Together with: A parcel of land containing 1.25 acres, more or less, located in a portion of said Northwest One-Quarter, being more particularly described as follows:

Commencing at the intersection of the north boundary of said NW1/4 and the westerly right-of-way line of Boyd Acres Road; thence along said westerly right-of-way, South 01°01'28" East a distance of 635.54 feet; thence leaving said westerly right-of-way, South 88°58'32" West a distance of 200.08 feet; thence South 01°01'28" East a distance of 89.86 feet; thence South 88°58'32" West a distance of 60.00 feet to the true Point of Beginning; thence South 01°01'28" East a distance of 203.33 feet; thence North 80°18'04" West a distance of 269.73 feet; thence 221.98 feet along a non-tangent curve to the left with a radius of 330.00 feet, the chord of which bears North 06°02'41" West a distance of 217.82 feet; thence South 78°21'30" East a distance of 291.16 feet to the point of beginning, the terminus of this description.

Subject to: All easements, restrictions and right-of-ways of record and those common and apparent on the land.



BYLAWS OF
EMPIRE CROSSING HOMEOWNERS' ASSOCIATION, INC.

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BYLAWS
OF
EMPIRE CROSSING HOMEOWNERS' ASSOCIATION, INC.

ARTICLE 1.

DEFINITIONS

1.1 **Association.** "Association" means **EMPIRE CROSSING HOMEOWNERS' ASSOCIATION, INC.**, a nonprofit corporation organized and existing under the laws of the State of Oregon.

1.2 **Articles of Incorporation.** "Articles of Incorporation" means the Articles of Incorporation of the Association.

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

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

ARTICLE 2.

MEMBERSHIP

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

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

ARTICLE 3.

MEETINGS AND VOTING

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

3.2 **Turnover Meeting.** Declarant shall call the first meeting of the Owners to organize the Association within ninety (90) days after termination of the Class B membership as provided in Section 3.7 below. Notice of such meeting shall be given to all Owners as provided in Section 3.5. If the Declarant fails to call the meeting, the meeting may be called and notice given by any Owner or mortgagee of a Lot. The expense of giving notice shall be paid or reimbursed by the Association. In the event of a lack of quorum at such Turnover Meeting, it may be adjourned as provided in Section 3.6. Nothing in this section shall be construed as preventing Declarant from calling the Turnover Meeting before such date or from calling informal, informational meetings of the Owners.

3.3 **Annual Meeting.** The annual meeting of the members for the election of directors and for the transaction of such other business as may properly come before the meeting shall be held at such reasonable hour and on such reasonable day as may be established by the Board of Directors or, if the Board should fail to designate a date by the first day of September, then at 7:30 p.m. on the second Thursday in October. The first annual meeting shall be held within one year after the date of the Turnover Meeting.

3.4 **Special Meetings.** A special meeting of the Association may be called at any time by the President or by a majority of the Board of Directors. A special meeting shall be called upon receipt of a written request stating the purpose of the meeting from members having at least thirty percent (30%) of the voting rights entitled to be cast at such meeting. Business transacted at a special meeting shall be confined to the purposes stated in the notice of meeting.

3.5 **Notice of Meeting.**

(a) Written or printed notice stating the place, day and hour of the meeting, the items on the agenda, including the general nature of any proposed amendment to the Declaration or these Bylaws, any budget changes, any proposal to remove a director or officer and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) or more than fifty (50) days before the date of the meeting. Such notice shall be given either personally or by mail, by or at the direction of the President, the Secretary, or the persons calling the meeting, to each member entitled to vote at such meeting and to all mortgagees who have requested such notice. Notices to Declarant shall be mailed. If mailed, such notices shall be deemed to be delivered when deposited in the United States mail, with postage fully prepaid thereon, addressed to the member at his or her most recent address as it appears on the records of the Association or to the mailing address of his or her Lot.

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

3.6 **Quorum.** At any meeting of the Association, members having at least twenty percent (20%) of the voting rights entitled to be cast at such meeting, present in person or by proxy, shall constitute a quorum, except when a larger quorum is required by the Declaration. When a quorum is once present to organize a meeting, it cannot be broken by the subsequent withdrawal of a member or members. If any meeting of members cannot be organized because of a lack of quorum, the members who are present, either in person or by proxy, may adjourn the meeting from time to time not less than forty-eight (48) hours or more than thirty (30) days from the time the original meeting was called until a quorum is present. The quorum for the adjourned meeting shall be reduced to ten percent (10%) of the voting rights entitled to be cast at the meeting, present in person or by proxy.

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

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

Class B. The Class B member shall be the Declarant and shall be entitled to three (3) votes for each Lot owned by Declarant. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(i) When seventy-five percent (75%) of the Lots in all phases of development of Empire Crossing have been sold and conveyed to Owners other than a successor Declarant; or

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

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

shall be disregarded completely in determining the proportion of votes given with respect to such matter, unless a valid court order establishes the authority of a co-Owner to vote.

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

3.10 **Absentee Ballots and Proxies.** A vote may be cast in person, by absentee ballot or by proxy. A proxy given by an Owner to any person who represents such Owner at meetings of the Association shall be in writing and signed by such Owner, and shall be filed with the secretary, at any time prior to or at the start of the meeting. 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 or to the Board of Directors if a vote is being conducted by written ballot in lieu of a meeting. A proxy shall not be valid if it is undated or purports to be revocable without notice. A proxy shall terminate one year after its date unless the proxy specifies a shorter term. Every proxy shall automatically cease upon sale of the Lot by its Owner. An Owner may pledge or assign such Owner's voting rights to a mortgagee. In such a case, the mortgagee or its designated representative shall be entitled to receive all notices to which the Owner is entitled under these Bylaws and to exercise the Owner's voting rights from and after the time that the mortgagee shall give written notice of such pledge or assignment to the Board of Directors. Any first mortgagee may designate a representative to attend all or any meetings of the Association.

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

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

3.13 **Ballot Meetings.**

(a) At the discretion of the Board of Directors, any action that may be taken at any annual, regular or special meeting of the Association may be taken without a meeting if the Association delivers a written ballot to every member who is entitled to vote on the matter; provided, however, that a ballot meeting may not substitute for the Turnover Meeting or, if a majority of the Lots are the principal residences of the occupants, for the annual meetings of the Association. The written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action.

(b) The Board of Directors shall provide Owners with at least ten (10) days' notice before written ballots are mailed or otherwise delivered. If, at least three (3) days before

written ballots are scheduled to be mailed or otherwise distributed, at least ten percent (10%) of the Owners petition the Board of Directors requesting secrecy procedures, a written ballot must be accompanied by a secrecy envelope, a return identification envelope to be signed by the Owner, and instructions for marking and returning the ballot. The notice shall state the general subject matter of the vote, the right of the Owners to request secrecy procedures, the date after which ballots may be distributed, the date and time by which any petition must be received by the Board requesting secrecy procedures and the address where any petition must be received. Notwithstanding the applicable provisions of paragraph (c) of this section, written ballots that are returned in secrecy envelopes may not be examined or counted before the deadline for returning ballots has passed.

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

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

ARTICLE 4.

DIRECTORS: MANAGEMENT

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

4.2 **Interim Directors.** Upon the recording of the Declaration, Declarant shall appoint an interim board of five (5) directors, who shall serve until replaced by Declarant or until their successors have been replaced by the Owners as provided below.

4.3 **Transitional Advisory Committee.** Unless the Turnover Meeting has already been held, Declarant shall call a meeting of the Owners for the purpose of forming a Transitional Advisory Committee. The meeting shall be called within sixty (60) days after the date Declarant conveys fifty percent (50%) or more of the Lots then existing in Empire Crossing to Owners other than a successor Declarant. The committee shall consist of two (2) or more Owners elected by the Owners other than Declarant and not more than one (1) representative of Declarant. The members shall serve until the Turnover Meeting. The Transitional Advisory Committee shall be advisory only, and its purpose shall be to enable ease of transition from administrative control of the Association by Declarant to control by the Owners. The committee shall have access to any information, documents and records that Declarant must turn over to the Owners at the time of the Turnover Meeting. If Declarant fails to call the meeting to elect a Transitional Advisory Committee within the time specified, the meeting may be called and notice given by any Owner. If the Owners fail to elect a Transitional Advisory Committee at the meeting called for such purpose, Declarant shall have no further obligation to form the committee.

4.4 **Election and Tenure of Office.**

(a) At the Turnover Meeting, the interim directors shall resign and the members shall elect two (2) directors to serve for one (1) year and three (3) directors to serve for two (2) years. The three nominees receiving the greatest number of votes shall serve for two (2) years. In the event of a tie, term selection shall be by random means. Thereafter, the successors to each director shall serve for terms of two (2) years each.

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

4.5 **Vacancies.**

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

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

4.6 **Removal of Directors.** All or any number of the directors, other than interim directors, may be removed, with or without cause, at any meeting of members at which a quorum is present, by a vote of a majority of the number of votes entitled to be cast at an election of

directors. No removal of a director shall be effective unless the matter of removal was an item on the agenda and stated in the notice of the meeting as provided in these Bylaws.

4.7 **Powers.** The Board of Directors shall have all the powers and duties necessary for the administration of the affairs of the Association, except such powers and duties as by law or by the Declaration or by these Bylaws may not be delegated to the Board of Directors by the Owners. The Board of Directors may delegate responsibilities to committees or a managing agent, but shall retain ultimate control and supervision. The powers and duties to be exercised by the Board of Directors shall include, but not be limited to, those set forth in Section [8.5] of the Declaration and the following:

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

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

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

(d) Employ and dismiss such personnel as may be necessary for such maintenance, upkeep and repair.

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

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

(g) Prepare and file, or cause to be prepared and filed, any required income tax returns or forms for the Association.

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

(i) Sell, lease, mortgage, vote the votes appurtenant to (other than for the election of directors), or otherwise deal with Lots acquired by the Association or its designee.

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

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

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

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

(n) In the name of the Association, maintain a current mailing address of the Association, file annual reports with the Oregon Secretary of State, and maintain and keep current the information required to enable the Association to comply with ORS 94.670(7).

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

4.8 Meetings.

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

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

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

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

4.9 Open Meetings.

(a) All meetings of the Board of Directors shall be open to Owners except that, in the discretion of the Board, the following matters may be considered in executive session: (i) consultation with legal counsel concerning the rights and duties of the Association regarding existing or potential litigation, or criminal matters; (ii) personnel matters, including salary negotiations and employee discipline; (iii) negotiation of contracts with third parties; and (iv) collection of unpaid assessments. Except in the case of an emergency, the Board of Directors shall vote in an open meeting whether to meet in executive session. If the Board of Directors votes to meet in executive session, the presiding officer shall state the general nature of the action to be considered, as precisely as possible, when and under what circumstances the deliberations can be disclosed to Owners. The statement, motion or decision to meet in the executive session shall be included in the minutes of the meeting, and any contract or action considered in executive session shall not become effective unless the Board, following the executive session, reconvenes in open meeting and votes on the contract or action, which shall be reasonably identified in the open meeting and included in the minutes.

(b) Meetings of the Board of Directors may be conducted by telephonic communication or by other means of communication that allows all members of the Board participating to hear each other simultaneously or otherwise to be able to communicate during the meeting, except that if a majority of the Lots are principal residences of the occupants, then: (i) for other than emergency meetings, notice of each Board of Directors' meeting shall be posted at a place or places on the property at least three (3) days prior to the meeting, or notice shall be provided by a method otherwise reasonably calculated to inform the Owners of such meeting; and (ii) only emergency meetings of the Board of Directors may be conducted by telephonic communication or such other means. The meeting and notice requirements of this Section may not be circumvented by chance or social meetings or by any other means.

4.10 Notice of Meetings.

(a) Notice of the time and place of meetings shall be given to each director orally, or delivered in writing personally or by mail or telecopy, at least twenty-four (24) hours before the meeting. Notice shall be sufficient if actually received at the required time or if mailed or telecopied not less than seventy-two (72) hours before the meeting. Notice mailed or telecopied shall be directed to the address shown on the Association's records or to the director's actual address ascertained by the person giving the notice. Such notice need not be given for an adjourned meeting if such time and place is fixed at the meeting adjourned.

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

4.11 Quorum and Vote.

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

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

4.12 Liability. Neither a member of the Board of Directors nor an officer of the Association shall be liable to the Association, any Owner or any third party for any damage, loss or prejudice suffered or claimed on account of any action or failure to act in the performance of his or her duties so long as the individual acted in good faith, believed that the conduct was in the best interests of the Association, or at least was not opposed to its best interests, and in the case of criminal proceedings, had no reason to believe the conduct was unlawful. In the event any member of the Board of Directors or any officer of the Association is made a party to any proceeding because the individual is or was a director or officer of the Association, the Association shall defend such individual against such claims and indemnify such individual against liability and expenses incurred to the maximum extent permitted by law. The managing agent of the Association, and its officers and employees, shall not be liable to the Association, the Owners or any third party on account of any action or failure to act in the performance of its duties as managing agent, except for acts of gross negligence or intentional acts, and the Association shall indemnify the managing agent and its officers and employees from any such claims, other than for gross negligence or intentional misconduct.

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

4.14 Executive, Covenants and Other Committees. Subject to law, the provisions of the Declaration and these Bylaws, the Board of Directors, may appoint an Executive Committee, a Covenants Committee to be responsible for covenant enforcement as provided in Section 4.15 and such other standing or temporary committees as may be necessary from time to time consisting of Owners and at least one member of the Board of Directors and having such powers as the Board of Directors may designate. Such committees shall hold office at the pleasure of the Board.

4.15 Enforcement Procedures. The Association shall have the power, as provided in the Declaration, to impose sanctions for any violation of the Declaration, these Bylaws, the ARC design guidelines or the Rules and Regulations. To the extent specifically required by the Declaration, the Board of Directors shall comply with the following procedures prior to the imposition of sanctions:

(a) **Notice.** The Board of Directors or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a statement that the alleged violator shall have fourteen (14) days to

present a written request for a hearing before the Board of Directors or a Covenants Committee appointed by the Board of Directors, if any; and (iv) a statement that the proposed sanction may be imposed as contained in the notice unless a hearing is requested within fourteen (14) days of the notice.

(b) **Response.** The alleged violator shall respond to the notice of the alleged violation in writing within such fourteen (14) day period, regardless of whether the alleged violator is challenging the imposition of the proposed sanction. If the alleged violator cures the alleged violation and notifies the Board of Directors in writing within such fourteen (14) day period the Board of Directors may, but shall not be obligated to, waive the sanction. Such waiver shall not constitute a waiver of the right to sanction future violations of the same or other provisions by any person. If a timely request for a hearing is not made, the sanction stated in the notice shall be imposed; provided, however, that the Board of Directors or Covenants Committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the fourteen (14) day period. Any response or request for a hearing shall be delivered to the Association's manager, President or Secretary, or as otherwise specified in the notice of violation.

(c) **Proof of Notice.** Prior to the effectiveness of sanctions imposed pursuant to this section, proof of proper notice shall be placed in the minutes of the Board of Directors or Covenants Committee, as applicable. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative requests and appears at the hearing.

(d) **Hearing.** If a hearing is requested within the allotted fourteen (14) day period, the hearing shall be held before the Board of Directors or the Covenants Committee, as applicable. The alleged violator shall be afforded a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing (i.e., the decision) and the sanction, if any, to be imposed.

(e) **Appeal.** Following a hearing before the Covenants Committee, if applicable, the violator shall have the right to appeal the decision to the Board of Directors. To exercise this right, the violator must deliver a written notice of appeal to the Association's manager, President or Secretary within ten (10) days after the hearing date.

(f) **Enforcement Policies.** The Board of Directors, by Resolution, may adopt additional policies and procedures governing enforcement of the Declaration, these Bylaws or the Rules and Regulations.

ARTICLE 5.

OFFICERS

5.1 **Designation and Qualification.** The officers of the Association shall be the President, the Secretary, the Treasurer, and such Vice Presidents and subordinate officers as the

Board of Directors shall from time to time appoint. Each officer shall be a member of the Board of Directors. Any two offices, except the offices of President and Secretary, may be held by the same person.

5.2 **Election and Vacancies.** The officers of the Association shall be elected annually by the Board of Directors at the organization meeting of each new Board to serve for one (1) year and until their respective successors are elected. If any office shall become vacant by reason of death, resignation, removal, disqualification or any other cause, the Board of Directors shall elect a successor to fill the unexpired term at any meeting of the Board of Directors.

5.3 **Removal and Resignation.**

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

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

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

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

5.6 **Secretary.**

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

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

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

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

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

ARTICLE 6.

ASSESSMENTS, RECORDS AND REPORTS

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

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

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

(c) From time to time, and at least annually, prepare a budget for the Association, estimating the common expenses expected to be incurred with adequate allowance for reserves based upon the reserve study required by the Declaration, and determine whether the Annual Assessment should be increased or decreased. Within thirty (30) days after adopting a

proposed annual budget, the Board of Directors shall provide a summary of the budget to all Owners. If the Board of Directors fails to adopt a budget, the last adopted annual budget shall continue in effect.

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

(e) When Additional Properties are annexed, the Board of Directors shall assess any Lots included therein in accordance with the Declaration.

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

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

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

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

with this section if the Association has commenced litigation by filing a complaint against the Owner and the litigation is pending when the statement would otherwise be due.

6.4 Inspection of Books and Records. Except as otherwise provided in ORS 94.670(5), during normal business hours or under other reasonable circumstances, the Association shall make reasonably available for examination and, upon written request, available for duplication, by Owners, lenders, and holders of any mortgage of a Lot that make the request in good faith for a proper purpose, current copies of the Declaration, Articles, Bylaws, Rules and Regulations, amendments or supplements to such documents and the books, records, financial statements and current operating budget of the Association. The Association shall maintain a copy, suitable for purposes of duplication, of each of the following: (a) the Declaration, these Bylaws, the Rules and Regulations and any amendments or supplements to them, (b) the most recent financial statement of the Association, and (c) the current operating budget of the Association. The Association, within ten (10) business days after receipt of a written request by an Owner, shall furnish copies of such documents to the requesting Owner. Upon written request, the Association shall make such documents, information and records available to such persons for duplication during reasonable hours. The Board of Directors, by resolution, may adopt reasonable rules governing the frequency, time, location, notice and manner of examination and duplication of Association records and the imposition of a reasonable fee for furnishing copies of such documents, information or records. The fee may include reasonable personnel costs for furnishing the documents, information or records.

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

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

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

ARTICLE 7.

INSURANCE

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

(a) **Property Damage Insurance.**

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

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

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

(a) **Liability Insurance.**

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

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

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

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

(c) **Fidelity Bonds.**

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

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

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

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

7.3 **Planned Community Act Requirements.** The insurance maintained by the Association shall comply with the requirements of the Oregon Planned Community Act, ORS 94.550 to 94.780.

ARTICLE 8.

GENERAL PROVISIONS

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

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

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

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

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

ARTICLE 9.

AMENDMENTS TO BYLAWS

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

9.2 **Adoption.**

(a) A resolution adopting a proposed amendment may be proposed by either the Board of Directors or by the members and may be approved by the membership at a meeting called for such purpose, by a ballot meeting pursuant to Section 3.13 hereof, or by written consent of the members. Members not present at the meeting considering such amendment may express their approval in writing or by proxy. Any resolution must be approved by members holding a majority of the voting rights, together with the written consent of the Class B member, if any. Amendment or repeal of any provision of these Bylaws that is also contained in the Declaration must be approved by the same voting requirement for amendment of such provision of the Declaration.

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

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