



126 171766TH/0211191MR  
AFTER RECORDING RETURN TO:  
BRYANT, EMERSON & FITCH  
PO BOX 457  
REDMOND OR 97756

FIRST AMERICAN TITLE  
INSURANCE COMPANY OF OREGON  
P.O. BOX 323  
BEND, OR 97709

PLANNED COMMUNITY SUBDIVISION

DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR

FAIRHAVEN VISTA

*THIS DECLARATION* is made this 23<sup>rd</sup> day of July, 2002, by NICHOLS GROUP, LLC ("Declarant").

RECITALS:

August 21, Fairhaven Vista, Phases 1 & 2  
A. On ~~July~~ July, 2002, Declarant recorded ~~Phase IV of the plat of Fairhaven PUD~~ in the plat records of Deschutes County, Oregon.

B. Declarant desires to record covenants, conditions and restrictions for the development within ~~Phase IV of the Fairhaven PUD~~. Fairhaven Vista, Phases 1 & 2.

*NOW, THEREFORE*, Declarant, the owner of the lots in Fairhaven Vista, Phases 1 & 2 ~~Phase IV of the Fairhaven PUD~~ hereby declares that the property described in ~~Phase IV of the plat of Fairhaven Vista~~ shall be subject to the covenants, conditions and restrictions in their entirety, as follows:

ARTICLE 1.  
DEFINITIONS

1.1 "Additional Property" means any land which is made subject to this Declaration as provided in Section 2.2, below.

1.2 "Association" means the nonprofit corporation to be formed to serve as an Owners' association as provided in Article 6 of this Declaration, and its successors and assigns.

1.3 "Declarant" means NICHOLS GROUP, LLC. and its successors and assigns.

1.4 "Initial development" means the property described in Section 2.1, below.

Page 1. Declaration of Covenants, Conditions  
and Restrictions for Fairhaven Vista

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1.5 "Lot" means a numerically designated and platted lot with the Property (including the unit located on such Lot), with the exception of any tract or lot marked on the plat as being common, a private drive or dedicated to the City of Redmond.

1.6 "Mortgage" means a mortgage or a deed of trust; "mortgagee" means a mortgagee or a beneficiary of a deed of trust; "mortgagor" means a mortgagor or a grantor a deed of trust.

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

1.8 The "Property" or "Fairhaven Vista" means the Development described in Section 2.1, and any Additional Property annexed pursuant to Section 2.2, below.

1.9 "Sold" means that legal title has been conveyed or that a contract of sale has been executed under which the purchase has obtained the right to possession.

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

1.11 "Unit" means a building or a portion of a building located upon a Lot within the Property and designated for separate occupancy as a dwelling, together with any attached deck.

## ARTICLE 2. PROPERTY SUBJECT TO THESE COVENANTS

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

All that certain property located in Deschutes County, Oregon, contained in that certain plat entitled "Fairhaven Vista, Phases 1 & 2" filed as Plat No. \_\_\_\_\_ Deschutes County, Oregon, on the 16th day of August, 2002.

Fairhaven Vista, Phases 1 & 2

The Development of ~~Phase IV~~ contains twenty-one (21) Lots and will contain eighty-one (81) units, more or less.

**2.2 Annexation of Additional Property.** Declarant may from time to time and in its sole discretion annex to Fairhaven Vista 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 Fairhaven Vista. The annexation of such real property shall be accomplished as follows:

(a) The owner or owners of such real property shall record a declaration which shall be executed by or bear the approval of Declarant and shall, among other things, describe the real property to be annexed, establish land classifications for the Additional Property, establish any additional limitations, uses, restrictions, covenants and conditions which are intended to be applicable to such 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 property included in any such annexation shall thereby become a part of Fairhaven Vista and this Declaration, and the Declarant and the Association shall have and shall accept and exercise administration of this Declaration with respect to such property.

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

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

(ii) with respect to existing land classifications, establish additional or different limitations, uses, restrictions, covenants and conditions with respect thereto 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 Units which Declarant may create or annex to Fairhaven Vista, except as may be established by applicable ordinances of the City of Redmond. Similarly, there is no limitation on the right of Declarant to annex common property, except as may be established by the City of Redmond.

(e) Upon annexation, additional Lots so annexed shall be entitled to voting rights as set forth in Section 6.3, below.

(f) The formula to be used to 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 8.8, below.

### **ARTICLE 3. ROADS, SIDEWALKS AND UTILITIES**

**3.1 Owner's Easements of Access.** Subject to the provisions of this Article, every Owner of a Lot shall have a right of easement and enjoyment in and to the roads and sidewalks, and such easement shall be appurtenant to and shall pass with the title to any Lot.

**3.2 Extent of Owner's Rights.** The rights and easements for use of the roads and sidewalks shall be subject to the following and all other provisions of this Declaration:

(a) **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 lots as shown in the PUD Master Plan.

(i) An easement on all lots for roads, sidewalks, trash receptacles, for underground installation and maintenance of electric, sewer, water, irrigation and other utility and other utility and communication lines and services installed by Declarant or with the approval of the Board of Directors of the Association and any such easement shown on any plat of the Property.

(ii) An easement for construction, maintenance, repair, grounds keeping and use of the roads, sidewalks and utilities.

(iii) A utility easement on each lot as shown on the official plat.

Declarant or the Association may (and to the extent required by law, shall) grant or assign easements on all Common Areas to governmental entities or other utilities performing utility services and to communications companies, and may grant free access over the Common Areas to police, fire and other public officials and to employees of utility companies, trash removal and communication companies serving the Property.

(b) **Limitation on Use.** Use of the roads and sidewalks by the Owners shall be subject to the provisions of this Declaration and to the right of the Association to adopt, amend and to repeal rules and regulations in accordance with this Declaration. The rights and easements of enjoyment created hereby shall be subject to the following:

(i) Except for vehicles used for maintenance, no motorcycles, motor bikes or off-road vehicles of any type are allowed on the walkways.

(ii) No parking is allowed on the walkways or on the roads, unless specifically designated as a parking area.

**3.3 Easements Reserved by Declarant.** So long as Declarant owns any Lot, Declarant reserves an easement over, under and across the road and sidewalk areas in order to carry out construction, sales and rental activities necessary or convenient for the development, sale or rental of Lots.

#### **ARTICLE 4. PROPERTY RIGHTS IN LOTS**

**4.1 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 the Owner shall comply with the restrictions contained in Article 6, below, and all other provisions of this Declaration for the mutual benefit of all Owners.

**4.2 Right of Entry.** The Association and any person authorized by the Association may at any reasonable time, and from time to time at reasonable intervals, enter upon any Lot for the purpose of performing the maintenance referred to in Article 7, below, and determining whether or not the Lot is 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.

#### **ARTICLE 5. USE RESTRICTIONS**

**5.1 Land Use and Building Type.**

- (a) Lots shall be used only for residential purposes.
- (b) No structures of a temporary or permanent character such as a trailer, recreational vehicle, tent, shack, garage, barn or other outbuildings shall be used on any Lot at any time as an additional or only residence.
- (c) Exterior buildings except for enclosures for trash receptacles are not allowed. The design of the trash receptacles shall be first approved by the Board of Directors prior to placement.

**5.2 Exterior Appearance.** Each Owner shall maintain the exterior appearance of each Building in a neat and attractive condition.

**5.3 Business and Commercial Uses.**

(a) No commercial signage shall be allowed on the premises other than those allowed for the leasing and sale of a building within the development. No commercial activity inviting retail visitors shall be permitted. No daycare facilities shall be allowed within the development.

(b) Parking shall be permitted on the roads only in an area designated as a parking area of in a Unit's individual driveway. All other non-designated areas shall be kept free of parked vehicles for purposes of fire access.

**5.5 Parking.**

(a) All Units shall include a private, fully enclosed garage with one parking space.

(b) Parking shall be permitted on the roads only in an area designated as a parking area of in a Unit's individual driveway. All other non-designated areas shall be kept free of parked vehicles for purposes of fire access.

(c) Parking of boats, trailers, motor homes, recreational cars, motorcycles, trucks, truck-campers and like equipment shall be within the confines of an enclosed garage. No Owner shall permit any vehicle of any kind, including automobiles, boats, trailers, motor homes, motorcycles, trucks, campers, etc., to be abandoned or to remain parked on the road for a period in excess of 36 hours. Trucks larger than one ton shall not be parked in the Property except for the purpose of delivery, loading or unloading.

**5.6 Fences.** No fences are allowed within the development.

**5.7 Miscellaneous Outdoor Equipment.**

(a) No exterior antenna or satellite dish shall be permitted within the development. Air conditioners, heat pumps and other service equipment are permitted outdoors, but may only be located to the rear of a Unit.

(b) All exterior equipment such as, but not limited to, air conditioning or heating systems shall be sheltered, insulated or otherwise baffled as necessary to conform to City of Redmond noise standards.

(c) No outdoor overhead electric or telecommunications wire, service drop, pole, tower, or other structure supporting such an overhead wire shall be erected, placed or maintained. All connections to TV cable, telephone, and electric service shall be underground.

(d) All play equipment and outdoor furniture shall be stored each evening.

**5.8 Animals.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, excepting only domestic dogs or cats and excepting caged pet birds kept within the dwelling Unit, provided such dogs, cats and pet birds are not permitted to run at large, are restrained by a leash and are not kept, bred, or raised for commercial purposes or in unreasonable numbers.

**5.9 Signs.** No signs shall be placed on any Lot, except that not more than two signs, each up to six square feet (6 sq. ft.) in size, may be temporarily displayed on any Lot by the Owner, Declarant or by a licensed real estate agent for the sale or lease of buildings and/or units within the Property.

**5.10 Rubbish and Trash.** No Lot, open space, street, sidewalk or other tract of land shall be used to dump trash, rubbish, yard debris, or dirt resulting from landscaping work. All garbage and other waste shall be kept in appropriate sanitary containers for proper disposal. Such containers shall be kept out of public view except on scheduled trash collection days.

**5.11 Offensive or Unlawful Activities.** No noxious or offensive activities shall be carried on in any Unit, Lot or road or sidewalk areas nor shall anything be done or placed upon any Unit, Lot or Common area which interferes with or jeopardizes the enjoyment of other Units, or which is a source of annoyance to residents. Unit occupants shall exercise extreme care not to make noises which may disturb other Unit occupants. No garage shall at anytime be used as a residence either temporarily or permanently or as a place for any commercial enterprise. No unlawful use shall be made of the Lot nor any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. No firearms shall be discharged.

**5.12 Exterior Lighting or Noise making Devices.** Except with the consent of the Association, and except for exterior lighting originally installed by the Declarant, no exterior lighting or noise making devices shall be installed or maintained on any Lot.

**5.13 Yards, Windows, Decks, Porches and Outside Walls.** In order to preserve the attractive appearance of the Property, the Association may regulate the nature of items which maybe placed in or on yards, windows, decks, entry porches, and the outside walls so as to be visible from public streets. Garments, rugs, laundry and other similar items may not be hung from windows, facades, porches or decks. Yards may not be used for the storage of excess furniture, play equipment or other objects which are, in the sole opinion of the Board of Directors of the Association, an eyesore.

**5.14 Alterations.** Owners are expressly prohibited from changing the exterior construction of a unit without Board approval for form, function and appearance.

**5.15 Landscape.** All maintenance of all landscaping on all Lots shall be performed by the Association. The cost of said maintenance shall be assessed to each Lot Owner pursuant to the Bylaws and rules and regulations adopted by the Association.

**5.16 Association Rules and Regulations.** In addition, the Association from time to time may adopt, modify or revoke such rules and regulations governing the conduct of persons and the operation and use of the Lots, Units and Common Areas as it may deem necessary or appropriate in order to assure 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 Association Board of Directors promptly to each Owner and shall binding upon all Owners and occupants of all Lots from the date of delivery. The method of adoption of such rules shall be as provided in the Bylaws of the Association.

## **ARTICLE 6 ASSOCIATION**

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

**6.1 Organization.** Declarant shall, 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, the assets of the Association shall be dedicated to a public body, or all of the Property, powers and obligations of the incorporated association existing thereupon shall automatically vest in a successor unincorporated nonprofit association. Such vesting shall thereafter be confirmed and 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. The Association may not be dissolved unless such dissolution has been approved by Deschutes County following a public hearing.

**6.2 Membership.** Every Owner of a Lot 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 of acceptance of membership. The Owner of each Lot shall be entitled to one vote for said Lot.

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

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

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

- (a) **Maintenance and Services.** The Association shall provide maintenance and services for the Property as provided in Article 7 and other provisions of this Declaration.
- (b) **Insurance.** The Association shall obtain and maintain in force policies of insurance as provided in this Declaration or the Bylaws of the Association.
- (c) **Rulemaking.** The Association shall make, establish, promulgate, amend and repeal Rules and Regulations as provided in Section 5.20 of this Declaration.
- (d) **Assessments.** The Association shall adopt budgets and impose and collect assessments as provided in Article 8 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.

(f) **Employment of Agents, Advisers and Contractors.** The Association, through its Board of Directors, may employ the services of any person or corporation as manager, 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, recreational experts, architects, planners, property managers, lawyers and accountants, and contract for or otherwise provide for all services necessary or convenient for the management, maintenance and operation of the Property.

(g) **Borrow Money, Hold Title and Make Conveyances.** The Association may borrow and repay moneys for the purpose of maintaining and improving the roads, sidewalks, utilities and landscaped areas.

(h) **Create Classes of Service and Make Appropriate Charges.** The Association may, in its sole discretion, create various classes of service and make appropriate Individual Assessments or charges therefor to the users of such services without being required to render such services to those of its members who do not assent to such charges. In addition, the Board of Directors shall have the right to discontinue any service upon nonpayment or to eliminate such service for which there is no demand or adequate funds to maintain the same.

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

**6.5 Liability.** A member of the Board of Directors or an officer of the Association shall not be liable to the Association or any member thereof for any damage, loss or prejudice suffered or claimed on account of any action or failure to act in the performance of his or her duties, except for acts of gross negligence or intentional acts. In the event any member of the Board of Directors or any officer of the association is made a party to any proceeding because the individual is or was a director or officer of the Association, the Association shall indemnify such individual against liability and expenses incurred to the maximum extent permitted by law.

**6.6 Interim Board: Turnover Meeting.** Declarant shall have the right to appoint an interim board of one to three directors, who shall serve as the Board of Directors of the Association

until replaced by Declarant or their successors have been elected by the Owners at the turnover meeting described in this section. Declarant shall call a meeting of the Association for the purpose of turning over administration responsibility for the Property to the Association not later than one year after the Articles of Incorporation of the Association have been filed with the State of Oregon. At the turnover meeting, the interim directors shall resign and their successors shall be elected by the Owners as provided in the Bylaws of the Association. If the Declarant fails to call the turnover meeting as required by this section, any Owner or mortgagee of a Lot may call the meeting by giving notice as provided in the Bylaws.

## **ARTICLE 7**

### **MAINTENANCE, SERVICES, CONDEMNATION, DAMAGE**

**7.1 Building Exterior Maintenance.** Each Owner shall maintain the exterior of all the buildings on said lot. The exterior of the building shall be painted periodically so that the appearance is not to detract from the overall appearance of the development. All doors and windows shall be repaired within 24 hours of the time they are broken.

**7.2 Grounds keeping and Maintenance of Roads, Sidewalks, Utilities and Landscaping Areas.** The association shall perform all maintenance upon the roads, sidewalks, utilities and all landscaped areas in the development.

**7.3 Utilities and Services.** The Association shall provide or contract for sewer, water and garbage service and such other utilities and services as the Board of Directors may reasonably deem to be of benefit to the Property. The Association shall have the right to separately meter services and to terminate water service in the event of nonpayment for utilities services (water, sewer and garbage). The Association shall adopt reasonable rules regarding said termination including a requirement for notice to the affected owner.

**7.4 Access at Reasonable Hours.** For the purpose solely of performing the maintenance and services provided for in this Article 7, the Association, through its duly authorized agents or employees, shall have the right, after reasonable (12 hour) notice to the Owner or Tenant, to enter upon any Lot or exterior of the dwelling thereof at reasonable hours.

**7.5 Damage or Destruction by Casualty.** If, due to act or neglect of an Owner or a member of his or her family or his or her household pet or of a guest or other unauthorized occupant or visitor of such Owner, damage shall be caused to the roads, sidewalks, utilities and landscaped areas or maintenance, repairs or replacements shall be required which would otherwise be a common expense, then such Owner shall pay for such damage and such maintenance, repairs or replacements as may be determined by the Association, to the extent not covered by the Association's insurance, as an Individual Assessment.

## **ARTICLE 8. ASSESSMENTS**

**8.1 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 Fairhaven Vista and for the improvement, operation and maintenance of the roads, sidewalks, utilities and landscaped areas and other areas to be maintained by the association.

**8.2 Types of Assessments.** The Association may levy Assessments, Special Assessments, Emergency Assessments and Individual Assessments, all as more particularly described below.

**8.3 Apportionment of Assessments.** Lots owned by Declarant shall not be subject to Assessments until such time as the Unit located on the Lot is occupied for residential use. All other Lots shall pay an equal pro rata share of the Assessments, Special Assessments and Emergency Assessments commencing upon the date such Lots are made subject to this Declaration.

**8.4 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 over assessment and any common profits of the Association. The budget shall provide for such reserve or contingency funds as the board deems necessary or as may be required by law. Monthly Assessments for such operating expenses and reserves ("Assessments") shall then be apportioned among the Lots as provided in Section 8.3, above. The method of adoption of the budget and the manner of billing and collection of Assessments shall be as provided in the Bylaws.

**8.5 Special Assessments.** In addition to the Assessments 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 or Monthly Assessments. Special Assessments 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. Special Assessments shall be apportioned as provided in Section 8.3, above, and may be payable in lump sum or in installments, with or without interest or discount, as determined by the board of Directors.

**8.6 Utilities and Landscaped Areas.** The cost of providing utilities and maintaining the landscaping shall be paid pursuant to monthly assessments from the Association. The utility and landscape maintenance assessment shall include an administrative fee to cover management and billing services.

**8.7 Emergency Assessments.** If the 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 of the Association shall immediately determine the approximate amount of such inadequacy and issue a supplemental budget noted as to the reason therefor, and levy an Emergency Assessment for the amount required to meet all such expenses on a current basis ("Emergency Assessment"). Any Emergency Assessment which in the aggregate in any fiscal year would exceed an amount equal to five percent (5%) of the budgeted gross expenses of the Association for the fiscal year may be levied only if approved by not less than a majority of the voting rights voting on such matter. Emergency Assessments shall be apportioned as set forth in Section 8.3, above, and payable as determined by the Board of Directors.

**8.8 Individual Assessments.** Any common expense or any part of a common expense benefitting fewer than all of the Lots may be assessed exclusively against the Lots benefitted ("Individual Assessment"). Individual Assessments include without limitation charges for services provided under Section 6.5(i). 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 thirty (30) days after the Board of Directors has given written notice thereof to the Owners subject to the Individual Assessments.

**8.9 Annexation of Additional Property.** When Additional Properties are annexed to the Property, the Lots included therein shall become subject to assessments from the date of such annexation. Lots owned by Declarant shall not be subject to assessments until the Unit located on such Lot is occupied for residential use. All other Lots shall pay such assessments in the amount then being paid by other Lots. The Board of Directors of the Association, however, at its option, may elect to recompute the budget based upon the additional Lots subject to assessment and additional Common Areas and recompute Assessments for all Lots, including the new Lots, for the balance of the fiscal year.

**8.10 Operations Fund.** The Association shall keep all funds received by it as Assessments, other than reserves described in Section 8.10, separate and apart from its other funds, in an account to be known as the "Operations Fund." The Association shall use such funds 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 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 7.

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

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

**8.11 Reserve Fund.** The Declarant shall establish a reserve fund for replacement of those items to be maintained by the Association, all or a part of which will normally require replacement for more than three (3) and less than thirty (30) years ("Reserve Fund"). Such Reserve Fund shall be funded by that portion of Assessments representing the budgeted reserves. The amount assessed shall take into account the estimated remaining life of the items for which the reserve is created and the current replacement cost of such items. The Reserve Fund shall be established in the name of the Association and shall be adjusted at regular intervals to recognize changes in current replacement costs over time. The Reserve Fund shall be used only for replacement of common property as determined by the Board of Directors and shall be kept separate from the Operations Fund. After the turnover meeting described in Section 6.7, 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 other temporary expenses which will later be paid from Assessments, Special Assessments, or Emergency Assessments. Nothing in this section shall prohibit prudent investment of the reserve account. Following the second year after the turnover meeting, future Assessments for the Reserve Fund may be reduced, eliminated or decreased by an affirmative vote of not less than seventy-five percent (75%) of the voting power of the Association. Assessments paid in 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.

**8.12 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, expenses or attorneys' fees imposed pursuant to Section 9.6, 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 obligation shall be enforced in the manner set forth in Article 9, below.

## **ARTICLE 9 ENFORCEMENT**

**9.1 Violations.** In the event any Owner shall violate any provision of this Declaration, the Bylaws of the Association, or other rules adopted by the Association governing the use of Common Areas then the Association, acting through its Board of Directors, shall notify the Owner in writing that the violations or nuisances exist, and that he is responsible for them and may, after reasonable notice and opportunity to be heard, do any or all of the following: (a) suspend his voting rights for the period of that the violations or nuisances remain unabated, or for any period not to exceed sixty (60) days for any infraction of its rules and regulations, (b) impose reasonable fines upon the Owner, in the manner and amount the Board deems appropriate in relation to the violation, which fines shall be paid into the Operations Fund, or (c) bring suit or action against such Owner to enforce this Declaration. Nothing in this section, however, shall give the Association the right to deprive any Owner of access to and from his Unit.

**9.2 Violation of General Protective Covenants.** In the event any Owner constructs or permits to be constructed on his Lot or Unit an improvement contrary to the provisions of this Declaration, or causes or permits any improvement, activity, condition or nuisance contrary to the provisions of this Declaration to remain uncorrected or unabated on his Lot or Unit, then the Association acting through its Board of Directors shall notify the Owner in writing of any such specific violations of this Declaration and shall require the Owner to remedy or abate the same in order to bring his Lot and Unit, the improvements thereon and his use thereof, into conformance with this Declaration. If the Owner is unable, unwilling or refuses to comply with the Association's specific directive 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 and within sixty (60) days of 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) Impose reasonable fines against such Owner in the manner and amount the Board deems appropriate in relation to the violation;

(b) Enter the offending Lot and remove the cause of such violation, or alter, repair or change the item which 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, provided that no items of construction shall be altered or demolished in the absence of judicial proceedings; or

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

**9.3 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 of its due date, such

assessment or charge shall become delinquent and shall bear interest from the due date of 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 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 against each Lot any assessment levied against the Lot and any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Lot from the date on which the assessment, fine or charge is due. The provisions regarding the attachment, notice, recordation and duration of liens established on real property under ORS 94.704 to 94.716, as the same may be amended, shall apply to the Association's lien. The lien shall be foreclosed in accordance with the provisions regarding the foreclosure of liens under ORS Chapter 88. The Association, through its duly authorized agents, may bid on the Lot at such foreclosure sale, and may acquire and hold, lease, mortgage and convey the Lot.

(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.

**9.4 Notification of First Mortgagee.** The Board of Directors shall notify any first mortgagee of any individual Lot of any default in performance of this Declaration by the Lot Owner which is not cured within sixty (60) days.

**9.5 Subordination of Lien to Mortgage.** The lien or 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 which was recorded prior to 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 which 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. Such sale or transfer, however, shall not release the Lot from liability for any assessments or charges thereafter becoming due or from the lien of such assessments or charges.



**9.6 Interest, Expenses and Attorney's Fees.** 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 of one-and-one-half percent (1-1/2%) per month (18% per annum), 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 of the Association not to exceed thirty percent (30%) of such assessment. In the event the Association shall file a notice of lien, the lien amount shall also include the recording fees associated with filing the notice and a fee for preparing the notice of lien established from time to time by resolution of the Board of Directors of the Association. In the event the Association shall bring any suit or action to enforce this Declaration, or to collect any money due hereunder or to foreclose a lien, the Owner-defendant shall pay to the Association all cost 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 attorney's fees at trial and upon any appeal or petition for review thereof.

**9.7 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 hereunder. 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 10 MORTGAGEES**

**10.1 Reimbursement of First Mortgagees.** First mortgagees of buildings may, jointly or singly, pay taxes or other charges which are in default and which 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 Areas or any Unit. First mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

**10.2 Right of First Mortgagees Relating to Maintenance.** At any time that the roads, sidewalks, utilities and landscaped areas are not maintained or repaired by the association pursuant to Article 7 to the extent reasonably necessary to protect and preserve the value of the Property for security purposes, then the record mortgagee, upon giving written notice as hereinafter provided, shall be entitled to exercise the rights of the Owner of the Unit 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 (1) year following the date of such notice. During this one (1) 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 10.2, and shall be sent postage prepaid by certified United States mail, return receipt requested, to the Owner with a copy by regular mail to the Association at the last known address of each.

## **ARTICLE 11 MISCELLANEOUS PROVISIONS**

**11.1 Amendment and Repeal.** 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 owning not less than seventy-five percent (75%) of the Lots in the Property, if such membership has not been terminated as provided herein. Any such amendment or repeal shall become effective only upon recordation in the Deed Records of Deschutes County, Oregon, of a certificate of the president or secretary of the Association setting forth in full the amendment, amendments or repeal so approved and certifying that said amendment, amendments or repeal have been approved in the manner required by this Declaration. In no event shall an amendment under this section create, limit or diminish special Declarant rights, increase the number of Lots or Units or change the boundaries of any Lot or any uses to which any Lot or Unit is restricted unless the Owners of the affected Lots unanimously consent to the amendment. Such amendment or repeal shall not have the effect of denying any Owner access to his Lot unless such Owner and any mortgagee of such Lot have consented thereto. Any provisions must meet applicable planning and zoning requirements and ORS Chapter 92 requirements.

**11.2 Regulatory Amendments.** Notwithstanding the provisions of Section 11.1, above, Declarant shall have the right to amend this Declaration or the Bylaws of the Association in order to comply with the requirements of the Federal Housing Administration, the U.S. Department of Housing and Urban Development, the Veterans Administration, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, any department, bureau, board, commission or agency of the United States or the State of Oregon, or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon which insures, guarantees or provides financing for a planned community or lots in a planned community.

**11.3 Duration.** This Declaration shall run with the land and shall be and remain in full force and effect at all times with respect to all property included within the Property and the Owners thereof for an initial period of thirty (30) years commencing with the date on which this document is recorded. Thereafter, this Declaration shall continue to run with the land and be and remain in full force and effect at all times with respect to all property within the Property and the Owners thereof for successive additional periods of ten (10) years each. The continuation from the initial or any additional period into the next subsequent period shall be automatic and without the necessity of any notice, consent or other action whatsoever; provided, however, that this Declaration may be terminated at the end of the initial or any additional period by resolution approved not less than six (6) months prior to the intended termination date by the vote or written consent of Owners owning

not less than seventy-five percent (75%) of the Lots within the Property. Any such termination shall become effective only if a certificate of the President or Secretary of the Association, certifying that termination as of a specified termination date has been approved in the manner required herein, is duly acknowledged and recorded in the Deed Records of Deschutes County, Oregon, not less than six (6) months prior to the intended termination date. Such termination shall not have the effect of denying any Owner access to his Lot unless such Owner and any mortgagee of such Lot have consent to such termination.

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

**11.5 Lessees and Other Invitees.** Lessees, 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 unit 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. All leases must be on not less than a month-to-month tenancy basis.

**11.6 Enforcement.** The Association, or any Owner or the owner of any recorded mortgage on any part of said Property shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**11.7 Construction; Severability; Number; Caption.** This Declaration shall be liberally construed as an entire document to accomplish the purposes thereof 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 herein, the singular shall include the plural and the plural the singular, and the masculine, feminine 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.

**11.8 Notices and Other Documents.** Any notice of 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, with postage prepaid, addressed as follows:

If to Declarant, Nichols Group, LLC., 1955 Mountain Quail Drive, Redmond, OR 97756; if to an Owner, at the address given by the Owner at the time of his or her purchase of a Lot, or at the Unit; if to the Association, to the mailing address of the Association as filed with the Oregon Secretary of State. The address of a party may be changed at any time by notice in writing delivered to the Association as provided herein.

**IN WITNESS WHEREOF**, Declarant has executed this First Amendment of the Declaration as of the date first above written.

**DECLARANT:**

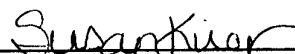
**FAIRHAVEN VISTA**

By   
NICHOLS GROUP, LLC.

STATE OF OREGON           )  
  : ss.  
County of Deschutes       )

On this 23 day of July, <sup>2002</sup>~~2001~~, before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named John M. Nichols known to me to be the identical individuals described in and who executed the within instrument and acknowledged to me that they executed the same freely and voluntarily on behalf of the corporation.



  
Notary Public for Oregon  
My Commission Expires 1/30/06

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