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AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
HAYDEN SQUARE PUD

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**AMENDED AND RESTATED DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR HAYDEN SQUARE PUD**

The undersigned Declarant hereby adopts this AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HAYDEN SQUARE PUD ("Declaration"), made this 20th day of February, 2004, which amends and replaces in its entirety the Declaration of Covenants, Conditions and Restrictions for Hayden Square PUD, recorded in the Deed Records of Deschutes County, Oregon on August 7, 2002, as Document No. 2002-42610 by HLM, Inc., a Washington Corporation ("Declarant").

WHEREAS, the Declarant is the owner, or controls, all that certain real property and improvements thereon located in the City of Redmond, County of Deschutes, State of Oregon, described and also referred to as the Plat of "Hayden Square", recorded August 7, 2002, and more particularly described as follows:

Lots 1 through 25 and Tracts A, B, C & D, Hayden Square

NOW, THEREFORE, the undersigned hereby declare that Hayden Square PUD ("Hayden Square") is and shall be held, sold and conveyed upon and subject to the conditions, covenants, restrictions, reservations and easements hereinafter set forth, all of which are for the purpose of enhancing and protecting the value, livability and aesthetic quality of said property. These conditions, covenants, restrictions, reservations, and easements constitute covenants to run with the land and shall be binding upon all present and future owners of the property of and interest therein:

ARTICLE 1

DEFINITIONS

The following words when used in the Declaration shall have the following meanings:

- 1.1 "Association" shall mean and refer to Hayden Square Owners Association, it successors and assigns.
- 0.1 "Building Site" shall mean and refer to a lot intended for single-family development as originally approved within City File No. PUD 02-02.
- 0.1 "Common Area" shall mean and refer to Tracts A, B, C and D as shown on the Plat of the Property, including any improvements thereon, which are intended to be devoted to the common use and enjoyment of the Owners of the Association who have alley access to their Lots.

- 0.1 “Declarant” shall mean HLM, Inc., a Washington Corporation, and its successors and assigns if such successor or assign should acquire all of Declarant’s rights under this Declaration pursuant to a recorded instrument executed by Declarant.
- 0.1 “Dwelling Unit” shall mean and refer to a single family Dwelling Unit within a triplex as approved within City File No. PUD 02-02, located upon a lot and designated for residential use.
- 0.1 “Home” or “Living Unit” shall mean and refer to any portion of a structure situated on a Lot designed and intended for use and occupancy as a residence by a single family or household.
- 0.1 “Lot” shall mean and refer to any plot of land shown upon any recorded subdivision map of said property and to any parcel of said property and to any parcel of said property under one ownership consisting of a portion of one or more of such lots and/or contiguous portions of two or more contiguous lots and upon which a dwelling has been constructed or occupied.
- 0.1 “Owner” shall mean and refer to the record owner (including contract sellers) whether one or more persons or entities, of all or any part of said property, excluding those having such interest merely as security for the performance of an obligation.
- 0.1 “Private Streets” shall mean and refer to those roadways described on the Plat as Tracts B and D. Said maintenance will be the responsibility of the Association as an “assign” of the Owner/Developer and paid for on an equal basis by all Lots, including street light maintenance and electrical charges.
- 0.1 “Property” shall mean and refer to all real property described on the Plat, and any annexations of additional property, including any Common Area Tracts, and all improvements located on the real property, as may be brought within the jurisdiction of the Association and be made subject to this Declaration.
- 0.1 “Purchaser” shall mean individual or company who initially purchases the individual lots from Declarant.
- 0.1 “Set Back” means the minimum distance between the dwelling unit and other structure referred to and given street or road or lot line. These are established by the City of Redmond.
- 0.1 “Rules and Regulations” shall mean and refer to the documents containing rules and regulations and policies adopted by the Board of the Association or the Architectural Review Committee (“ARC”), and as may be from time to time amended by the Board and/or ARC.

ARTICLE 2

PROPERTY SUBJECT TO THIS DECLARATION

- 2.0. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the City of Redmond, Deschutes County, Oregon, in that certain plat map entitled "Hayden Square" filed in the plat records of Deschutes County, Oregon, more particularly described as Lots 1 through 25.
- 2.0. At any time during the initial term of this Declaration, the Declarant may, at its sole option, annex additional property into the Association to be subject to the terms hereof to the same extent as if originally included herein and subject to such other terms, covenants, conditions, easements and restrictions as may be imposed thereon by Declarant. Declarant currently anticipates that there will be a total of approximately 25 Lots in the subdivision, but this number may be adjusted at the sole discretion of Declarant. Declarant shall have no obligation of any kind to annex any additional land to the Property.
- (a). Eligible Property. There is no limitation on the number of Lots that Declarant may annex to the Property, or the right of Declarant to annex common property, except as may be established by applicable ordinances, agreements, or land use approvals.
- (b). Consent or Joinder Not Required. No consent or joinder of any Class A member or other party except the record owner of the land being annexed shall be necessary to effect any annexation made pursuant to this Section.
- (c). Declaration of Annexation. Annexation shall be evidenced by a written Declaration of Annexation executed by the Declarant, or (in the case of an annexation by action of members) by the Board and the Owners of the property being annexed, setting forth the legal description of the property being annexed and any additional covenants, conditions and restrictions to be applied to such annexed property. Notwithstanding any provision apparently to the contrary, a declaration with respect to any annexed 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 annexed 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 annexed property; and/or

- (iii). contain provisions necessary or appropriate to comply with any condition, requirement, or imposition of any governmental or regulatory authority.
- (d). Voting Rights; Allocation of Assessments. Upon annexation, additional lots so annexed shall be entitled to voting rights and shall be responsible for prorata payments or assessments as required for that fiscal year. At the beginning of the next fiscal year, assessments shall be reallocated and reapportioned equally based on the total number of lots following such annexations.
- (e). No Duty to Annex. Nothing herein contained shall establish any duty or obligation on the part of the Declarant or any member to annex any property into the Association and no owner of property excluded from the Association shall have any right to have such property annexed thereto.

ARTICLE 3

LOTS AND HOMES

- 2.0 Land Use. No building or structure shall be created, constructed, maintained or permitted upon said Property except upon a Building Site as herein above defined, and no building or structure shall be erected, constructed, maintained or permitted on a building site other than a triplex as approved within City File No. PUD 02-02, unless approved by the Owners Association and a Modification of Approval is applied for and approved by the City of Redmond. Type 1 or Type 2 buildings as approved within City File No. PUD 02-02 are interchangeable and can be built on any Lot while conforming to the required setbacks.
- () Architectural Review. Any construction will be deemed to be approved if not challenged by the Board of Directors of the Association or the Architectural Review Committee ("ARC") within 60-days after it is noted by the Board or ARC.
 - () ARC Decision. If an architectural application is required, the ARC shall render its approval or denial decision with respect to said construction within twenty (20) working days after it has received all material required by it with respect to the application. All decisions shall be in writing. In the event the ARC fails to render its decision of approval or denial in writing within sixty (60) days of receiving all requested material, the application shall be deemed approved. Approval by the ARC does not imply government approval, which is solely the responsibility of the Owner.
- 2.0 Easements. The Common Area and Lots are subject to easements and rights of way shown on, or noted, on the Plat of Hayden Square.

- (a) Additional Easements. While Declarant owns any Lot, Declarant reserves an easement over, under and across the Common Areas. Declarant also reserves for itself, and for its successors and assigns, a perpetual easement and right-of-way over, upon and across the Common Areas for construction, utilities, communication lines, drainage, and ingress and egress for the benefit of the Lots or other property owned by Declarant.
- 2.0 Fences. No fences are to be installed unless in the original construction by Declarant.
- 3.4 Existing Trees. Every attempt shall be made to preserve existing trees.
- 3.5 Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any part of said property, except dogs, cats or other household pets provided that such household pets are not kept, bred or maintained for any commercial purpose or do not become a nuisance.
- 3.6 Rubbish and Trash. No part of said property shall be used or maintained as a dumping ground for rubbish, trash, garbage, or any other waste. No garbage, trash or other waste shall be kept or maintained on any part of said property except in a sanitary container. All incinerators or other equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition and shall be screened from public view.
- 2.6 Offensive or Unlawful Activities. No noxious or offensive activities shall be carried upon any lot, nor shall anything be done or placed on any lot which interferes with or jeopardizes the enjoyment of other lots, or which is a source of annoyance to residents of the Property. Without limitation of the foregoing, no noxious or offensive odors or noises shall be permitted to emanate from a lot to other lots. No unlawful use shall be made of a lot or any part thereof, and all laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction over the Property shall be observed.
- 2.6 Parking. No boats, trailers, trucks (except pickups or SUV's), campers or truck-campers and like equipment, or junk cars or other unsightly vehicles shall be allowed on any part of said property nor on public ways adjacent thereto, excepting only within the confines of an enclosed garage or other screened enclosure, and no portion of same may project beyond the enclosed area except under such circumstances, if any, as may be prescribed by written approval by the ARC. All other parking of equipment or vehicles shall be prohibited except as approved by the ARC.
- 2.6 Antennas, Aerials, and Satellite Dish. No exterior antennas or aerials shall be permitted, unless required for reception. A satellite dish may be allowed, if it can be situated in the lot so as not to be visible from any other lot or roadway in or around the subject lot. The authority of the Association and the ARC in this matter shall be subject to any regulations issued by the Federal Communications Commission ("FCC") or any other applicable governmental authority.

- 3.10 Underground Facilities, Poles and Towers. No outdoor overhead wire or service drop for the distribution of electric energy or for telecommunication purposes nor any pole, tower or other structure, supporting said outdoor overhead wires, shall be erected, placed or maintained within said property. All purchasers of building sites, their heirs, successors and assigns shall use underground service wires to connect their dwelling units to the underground electric or telephone utility facilities.
- 3.11 Temporary Structures. Declarant and original builders of Homes in Hayden Square are permitted to erect temporary or portable sheds as tool houses and for other uses common to residential construction, and to maintain them until such Home is finished.
- 2.11 Signs. No signs shall be erected or maintained on any Lot except that not more than one "For Sale" or "For Rent" sign placed by the Owner, Declarant or by a licensed real estate agent, not exceeding twenty-four (24) inches high and thirty-six (36) inches long, may be temporarily displayed on any Lot, subject to the provisions of Section 8.2 below. The restrictions contained in this paragraph shall not prohibit the temporary placement of "political" signs on any Lot by the Owner or Occupant, or construction and marketing related signage by the Declarant or his/her/their contractors.
- 2.11 Fire Hydrants. Association must annually test the private fire hydrants and the results of such tests shall be provided to the Redmond Fire Marshal.
- 2.11 Water Meters. The Association budget includes water expense for the common area irrigation and fees associated with the water supply system. Each Lot has three (3) sub-water meters, which the Association will maintain. Each Owner will be responsible for the payment of the water costs billed in accordance with the sub-meters for their Lot.
- 2.11 Exterior Colors & Roofing Material. All exterior paint colors and roofing materials must be approved by the Architectural Review Committee and the City of Redmond. No maintenance of the homes is provided by the Association and is the sole responsibility of the Lot Owner.
- 2.11 Landscaping. Upon receiving final occupancy for a living unit, the entire yard landscaping must be completed. A variance of two (2) months is available if unsuitable weather delays installation. Said variance is at the sole discretion of the Association Board of Directors and/or the Association's ARC.
- 2.11 Owner's Maintenance Obligations. All improvements upon any Lot shall at all times be maintained by the Owner in a clean and attractive condition, painted and in good repair, and in such a fashion as not to create a hazard of any kind. Owners are responsible for maintenance, replacement, painting, repair and general upkeep of all building exteriors. All work on such items is subject to ARC review and approval prior to commencement of work.

ARTICLE 4

COMMON AREA

- 4.0. Use of Common Areas. Use of Common Areas is subject to the provisions of the Declaration, Bylaws, Articles and Rules and Regulations promulgated by the Board of Directors. There shall be no use of the Common Area except by Owners and their invitees. There shall be no obstruction of any part of the Common Area. Nothing shall be stored or kept in the Common Area without the prior written consent of the Board of Directors. No alterations or additions to the Common Area shall be permitted without the prior written approval by the Board of Directors. Nothing shall be stored or kept in the Homes or Common Area, which will increase the rate of insurance on the Common Area without the prior written consent of the Board.
- 4.0. Maintenance of Common Area. The Association shall be responsible for maintenance, repair, replacement, and upkeep of the Common Area, not maintained by a public agency, fencing, and any other Improvements that may be included in Common Area. The Association shall keep the Common Area and improvements thereon in good condition and repair, provide for all necessary services and cause all acts to be done which may be necessary or proper to assure the maintenance of the Common Area in first class condition.
- 4.0. Alterations to Common Area. Only the Association shall construct, reconstruct, or alter any improvement situated upon the Common Area. A proposal for any construction of or alteration, maintenance or repair to an improvement may be made at any meeting. A proposal may be adopted by the Board, subject to the limitations contained in the Bylaws and the Declaration.
- 4.0. Funding. Expenditures for alterations, maintenance or repairs to an existing capital improvement for which a reserve has been collected shall be made from the reserve account. As provided in Section 9.8, the Board may levy a special assessment to fund any construction, alteration, repair or maintenance of an improvement (or any other portions of the Common Area) for which no reserve has been collected or for which the reserve account is insufficient to cover the cost of the proposed improvement.
- 4.0. Landscaping. All landscaping shall be maintained and cared for in a manner consistent with the standard of design and quality as originally established by Declarant or the ARC. The Association shall be responsible for all landscaping located in the Property.
- 4.0. Play Structure. A play structure will be provided in Tract A and maintained by the Association.

- 4.7. Condemnation of Common Area. If all or any portion of the Common Area is taken for any public or quasi-public use under any statute, by right of eminent domain or by purchase in lieu of eminent domain, the entire award shall be received by and expended by the Board of Directors in a manner which in their discretion is in the best interest of the Association. The Association shall represent the interest of all Owners in any negotiations, suit or action or settlement in connection with such matters.
- 4.0. Damage or Destruction of Common Area. In the event any Common Area is damaged or destroyed by an Owner or any of his/her Occupants, guests, tenants, licensees, agents or members of his/her family in a manner that would subject such Owner to liability for such damage under Oregon law, such Owner does hereby authorize the Association to repair such damage. The Association shall repair the damage and restore the area in workmanlike manner as originally constituted or as may be modified or altered subsequently by the Association in the discretion of the Board of Directors. The reasonable cost necessary for such repairs shall become a special assessment upon the Lot of the Owner who caused or is responsible for such damage.

ARTICLE 5

ARCHITECTURAL REVIEW COMMITTEE

- 5.0. Architectural Review. No improvement shall be commenced, erected, placed or altered on any Lot until the construction plans and specifications showing the nature, shape, heights, materials, colors, and proposed location of the improvement have been submitted to and approved in writing by the ARC. It is the intent and purpose of this Declaration to assure quality of workmanship and materials and to assure harmony of exterior design with the existing improvements and landscaping. The ARC is not responsible for determining compliance with structural and building codes, solar ordinances, zoning codes or other governmental regulations, all of which are the responsibility of the Lot Owners. 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 ARC. Construction by the Declarant is presumed to have been approved and is thereby exempt from this review. In all cases, which the ARC consent is required by this Declaration, the provision of this Article shall apply.
- (a). PLANS AND SPECIFICATIONS ARE NOT APPROVED FOR ENGINEERING, STRUCTURAL DESIGN OR QUALITY OF MATERIALS, AND BY APPROVING SUCH PLANS AND SPECIFICATIONS NEITHER THE ARC, THE BOARD OF DIRECTORS, THE MEMBERS, THE MANAGING AGENT NOR THE ASSOCIATION ASSUMES LIABILITY OR RESPONSIBILITY FOR THESE MATTERS, NOR FOR ANY DEFECT IN ANY STRUCTURE CONSTRUCTED FROM SUCH PLANS AND SPECIFICATIONS. OWNER IS SOLELY RESPONSIBLE FOR ALL IMPROVEMENTS, PERMITS AND COSTS OF SAID WORK.

- 5.2. Architectural Review Committee, Appointment and Removal. The ARC shall consist of no fewer than two (2) members and no more than three (3) members, as the Board may appoint from time to time. The Declarant reserves the right to appoint all members of the ARC and all replacements thereto until turnover. The Declarant may appoint a single person to serve as the ARC. After build out, Declarant shall delegate the right to appoint and remove members of the ARC to the Board of Directors. The terms of office for each member of the ARC shall be for one (1) year unless lengthened by the Board at the time of appointment or unless the Board serves as the ARC in which event the terms of the ARC members shall be the same as their terms as Board members. The Board may appoint any or all of its members for the ARC and there should be no requirement for non-Board members on the ARC. The Board may appoint one or more members to the ARC who are not Owners, but who have special expertise regarding the matters, which come before the ARC. In the sole discretion of the Board, such non-Owner members of the ARC may be paid and that cost paid by applicants or the Association.
- 5.0. Majority Action. Except as otherwise provided in this Declaration, a majority of the members of the ARC shall have the power to act on behalf of the ARC, without the necessity of a meeting and without the necessity of consulting the remaining member of the ARC. The ARC may render its decision only by written instrument setting forth the action taken by the members consenting thereto.
- 5.0. Duties. The ARC shall consider and act upon the proposals and/or plans submitted pursuant to this Article. The ARC, from time to time and at its sole discretion, may adopt architectural rules, regulations and guidelines ("Architectural Standards"). The Architectural Standards shall interpret and implement the provisions of this Declaration for architectural review and guidelines for architectural design, placement of buildings, color schemes, exterior finishes and materials and similar features which may be used in Property; provided, however that the Architectural Standards shall not be in derogation of the minimum standards established by this Declaration.
- 5.0. ARC Decision. The ARC shall render its approval or denial decision with respect to the construction proposal within twenty (20) working days after it has received all material required by it with respect to the application. All decisions shall be in writing. In the event the ARC fails to render its decision of approval or denial in writing within sixty (60) days of receiving all material required by it with respect to the proposal, the application shall be deemed approved. Approval by the ARC does not imply government approval, which is solely the responsibility of the Owner.
- 5.0. ARC Discretion. The ARC may, at its sole discretion, withhold consent to any proposed work if the ARC finds the proposed work would be inappropriate for the particular Lot or incompatible with the design standards that the ARC intends for Summerhill First Addition. Consideration such as siting or location on the Lot, shape, size, color, design, height, solar access, or other effect on the enjoyment of other Lots or the Common Area, and any other factors which the ARC reasonably believe to be relevant, may be taken into consideration by the ARC in determining whether or not to consent to proposed work.

- 5.7. Non-waiver. Consent by the ARC to any matter proposed to it or within its jurisdiction shall not be deemed to constitute a precedent or waiver impairing the ARC's right to withhold approval as to any similar matter thereafter proposed or submitted to it for consent.
- 5.0. Appeal. At any time after Declarant has delegated appointment of the members of the ARC to the Board of Directors pursuant to Section 5.2, any Owner adversely impacted by action of the ARC may appeal such action to the Board of Directors. Appeals shall be made in writing within ten (10) days of the ARC's action and shall contain specific objections or mitigating circumstances justifying the appeal. If the Board is already acting as the ARC, the appeal shall be treated as a request for a rehearing, but in such case the Board must actually meet and receive evidence and argument. A final, conclusive decision shall be made by the Board of Directors within fifteen (15) days after receipt of such notification. The determination of the Board shall be final.
- 5.0. Effective Period of Consent. The ARC's consent to any proposed work shall automatically be revoked three (3) months after issuance unless construction of the work has been commenced or the Owner has applied for and received an extension of time from the ARC.
- 5.0. Determination of Compliance. The ARC shall inspect, from time to time, all work performed and determine whether it is in substantial compliance with the approval granted. If the ARC finds that the work was not performed in substantial conformance with the approval granted, or if the ARC finds that the approval required was not obtained, the ARC shall notify the Owner in writing of the noncompliance. The notice shall specify the particulars of any noncompliance and shall require the Owner to take the necessary action to bring the work into compliance with the approved project.
- 5.0. Non-compliance. If the ARC determines that an Owner has not constructed an improvement consistent with the specifications on which approval is based, and if the Owner fails to diligently commence to remedy such noncompliance in accordance with the provisions of the notice of noncompliance, then at the expiration of the third (3rd) day from the date of such notification, the ARC shall provide a notice of a hearing to consider the Owner's continuing noncompliance. The hearing shall be set not more than thirty (30) days from the date of the notice of noncompliance. At the hearing, if the ARC finds that there is no valid reason for the continuing noncompliance, the ARC shall determine the estimated costs of correcting it. The ARC shall then require the Owner to remedy or remove the same within a period of not more than ten (10) days from the date of the ARC's determination. If the Owner does not comply with the ARC's ruling within such period or within any extension of such period as the ARC, at its discretion, may grant, the Association may (a) remove the non-complying improvement, (b) remedy the noncompliance, or (c) file suit to compel compliance. The costs of such action shall be assessed against the Owner and his Lot, including all attorneys' fees and other costs expended and incurred to enforce compliance before suit or action is filed and at trial or on any appeal or review of same.

- 5.0. Liability. Neither the ARC, the Board, their agents, nor any member thereof shall be liable to any Owner, Occupant, or builder for any damage, loss or prejudice suffered or claimed or claimed to be suffered arising from any action by the ARC or a member thereof or failure of the ARC or a member thereof, provided only that the member has acted in good faith in accordance with the actual knowledge possessed by him.
- 5.0. Estoppel Certificate. Within fifteen (15) working days after written request is delivered to the ARC by an Owner, and upon payment to the ARC of a reasonable fee fixed by the ARC to cover costs, the ARC shall provide such Owner with a certificate executed by the Chairman of the ARC, 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 any Rules and Regulations either promulgated by the Board or the ARC, or (b) such improvements do not so comply, in which event, the certificate shall also identify the non-complying improvements and set forth with particularity the nature of such noncompliance. The Owner, his heirs, devisees, successors and assigns shall be entitled to rely on the certificate with respect to the matters set forth. The certificate shall be conclusive as between the Declarant, the ARC, the Association and all Owners, and all such persons deriving an interest through any of them.

ARTICLE 6

HAYDEN SQUARE OWNERS ASSOCIATION

- 5.0 Members. Each Owner shall be a member of the Association. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of any Lot. Transfer of ownership of a Lot automatically transfers membership in the Association. Without any other act or acknowledgement, Occupants and Owners shall be governed and controlled by this Declaration the Articles, Bylaws, and Rules and Regulations and any amendments thereof.
- 5.0 Proxy. Each Owner may cast his/her vote in person, pursuant to a proxy executed by the Owner, or by written ballot, as provided by ORS 65.222. An Owner may not revoke a proxy given pursuant to this Section except by actual notice or revocation to the person presiding over a meeting of the Association. A proxy shall not be valid if it is undated or purports to be revocable without notice. A proxy shall terminate one (1) year after its date, unless the proxy specifies a shorter term.
- 5.0 Voting Rights. The Association shall have two (2) classes of voting members.
- () Class A. Class A members shall be all Owners of Lots other than the Declarant, and each Class A member shall be entitled to one (1) vote for each Lot owned with respect to all matters upon which Owners are entitled to vote.

(d) Class B. The Class B member shall be Declarant, its successors and assigns. The Class B member shall have five (5) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership upon the earlier of:

- (). When eighty percent (80%) of the Lots have been sold and conveyed to Owners other than Declarant ("Termination Date"); or
- (). At such earlier time as Declarant may elect in writing to terminate Class B membership.

Thereafter, each Owner, including the Declarant, shall be entitled to one (1) vote for each Lot owned with respect to all matters upon which Owners are entitled to vote, and the total number of votes shall be equal to the total number of Lots.

When more than one (1) person or entity owns a Lot, the vote for such Lot may be cast as they shall determine, but in no event will fractional voting be allowed. Fractional or split votes shall be disregarded, except for purposes of determining a quorum. The total number of votes as of the Termination Date and thereafter shall be equal to the total number of Lots.

5.0 Procedure. All meetings of the Association, the Board of Directors, and Association committees, including any Board authorized Architectural Review Committee ("ARC"), shall be conducted with such rules of order as may from time to time be adopted by the Board of Directors. Notwithstanding which rule of order is adopted, the chairman shall be entitled to vote on all matters, not merely to break a tie vote. A tie vote does not constitute a majority or approval of any motion or resolution.

5.0 Turnover Meeting. Declarant shall call a meeting for the purpose of turning over administrative control of the Association from Declarant to the Class A Members within one hundred and twenty (120) days of when eighty (80%) percent of the lots are comprised of Class A Members.

At the Turnover Meeting, Declarant shall relinquish control of the administration of the Association and the Owners shall assume such control and elect a Board of Directors in accordance with the provisions of these Bylaws. Additionally, Declarant shall deliver to the Association those items specified in the Oregon Planned Community Act to be turned over by Declarant at the Turnover Meeting. There is no quorum requirement for the Turnover Meeting.

5.0 Transitional Advisory Committee. Declarant shall form a Transitional Advisory Committee to provide for the transition of administrative control of the Association from Declarant to the Class A Members within sixty (60) days of which fifty (50%) percent of the lots are comprised of Class A Members. The function of the Transitional Committee shall be to facilitate transition from control of the administration of the Association by

Declarant to control by the Owners. Declarant shall give notice of the meeting stating the purpose, time and place of the meeting. If the Owners, other than Declarant, do not select Members for the Committee under this Section, Declarant shall have no further responsibility to form the Committee.

- 5.0 Annual Meetings. The Annual Meeting of the Association shall be held as directed by the Board of Directors in accordance with the Bylaws, but in no event less than each calendar year. At such meeting, members of the Board of Directors shall be elected in accordance with Section 7.3 below, and the Bylaws. The Owners may transact such other business of the Association as may properly come before them.
- 5.0 Special Meetings. Special Meetings of the Owners may be called by the President of the Association, a Resolution of the Board of Directors upon a Petition signed by twenty-five percent (25%) or more of the Directors, or by Petition signed by twenty percent (20%) or more of the Owners.
- 5.0 Notice of Meetings. It shall be the duty of the Secretary of the Association to mail a notice of each annual, special or meeting by ballot, stating the purpose, time and place of the meeting. Notice shall be mailed at least seven (7) days, but not more than fifty (50) days prior to such meeting. The notice shall be mailed to the Owner's address last given the Secretary in writing by the Owner. If Lot ownership is split or the Lot has been sold on contract, notice shall be sent to a single address of which the Secretary has been notified in writing by such parties.
- 5.0 Association Rules and Regulations. The Board of Directors, from time to time, may adopt, modify or revoke Rules and Regulations governing the conduct of persons and the operation or use of Lots 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 any Rules and Regulations, upon adoption, amendment, modification or revocation thereof, shall be delivered by the Board of Directors promptly to each Owner and shall be binding upon all Owners and Occupants of all Lots upon the date of delivery or actual notice thereof. The method of adoption of such Rules and Regulations shall be provided in the Bylaws of the Association.
- 5.0 Security. The Association is not responsible for security of the neighborhood or any Homes. The Owners are exclusively responsible for security of their Home and Property.

ARTICLE 7

DECLARANT CONTROL

- 7.0 Interim Board and Officers. The Declarant hereby reserves administrative control of the Association. The Declarant, in its sole discretion, shall have the right to appoint and remove members of the Interim Board of Directors, which shall manage the affairs of the Association and which shall be vested with all powers and rights of the Board of Directors. The Interim Board shall consist of from one to three members. Notwithstanding the provision of this Section, at the Turnover Meeting (as hereinafter defined) at least one (1) Director shall be elected by Owners other than the Declarant, even if the Declarant otherwise has voting power to elect all of the members of the Board.
- 7.0 Turnover Meeting. The Declarant shall call a meeting for the purpose of turning over administrative control of the Association from the Declarant to the Class A members within ninety (90) days of the earlier of:
- () Upon Sale of Lots. The date that Lots representing eighty percent (80%) of Lots subject to this Declaration, plus any recorded annexation of additional Lots, have been conveyed to persons other than the Declarant; or
 - () Declarant's Earlier Election. At such earlier time as Declarant may elect in writing to terminate Class B membership.

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

- 7.0 Board of Directors. At and following Turnover, the Board of Directors of the Association shall be comprised of from three (3) to five (5) directors, as provided for in the Bylaws of this Association, and in accordance with the term provisions contained therein. The directors will be elected by a plurality of the total membership of the Hayden Square Owners Association. In the event of a vacancy occurring on the Board, the position of such director(s) shall be filled in accordance with the terms and provisions of the Bylaws through appointment by the Board of Directors for the remainder of the existing term.

ARTICLE 8

DECLARANT'S SPECIAL RIGHTS

- 8.0 General. Declarant is undertaking the work of developing Lots and other improvements within Hayden Square. The completion of the development work and the marketing and sale of the Lots is essential to the establishment and welfare of the Property as a residential community. Until the Homes on all Lots on the Property have been constructed, fully completed and sold, with respect to the Common Areas and each Lot on the Property, the Declarant shall have the special rights set forth in this Article VIII.
- 8.0 Marketing Rights. Declarant shall have the right to maintain a sales office and model on one or more of the Lots which the Declarant may or may not own, to be staffed by the employees of the Declarant or any licensed real estate sales agents. The Declarant and prospective purchasers and their agents shall have the right to use and occupy the sales office and models during reasonable hours any day of the week. The Declarant may maintain a reasonable number of "For Sale" signs at reasonable locations of the Property, including, without limitation, the Common Area.
- 8.0 Declarant's Easements. The Declarant has reserved easements over the Property as more fully described in Article 3.2 hereof.
- 8.0 Construction by Declarant. All construction by Declarant is presumed to have been approved by the ARC and to meet any Design Guidelines of the Association.

ARTICLE 9

FUNDS AND ASSESSMENTS

- 8.0 Purpose of Assessment. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners and Occupants and for the improvement, operation and maintenance of the Common Area and/or other areas, as specified elsewhere in this document, including administrative costs and insurance for the Association. No individual structure insurance will be provided by the Association.
- (a) Insurance By the Association. The Board shall obtain, and maintain in effect, from reputable insurance companies authorized to do business in the State of Oregon, public liability insurance with respect to all the Common Area in such amounts and in such forms as the Board deems advisable to provide adequate protection for bodily injury, including deaths of persons, and property damage, whether caused by the negligence of the Association or otherwise; provided, however, that such policy(ies) shall not be for an amount of less than

\$1,000,000.00 per person, per occurrence, and that such policy(ies) shall provide that the coverage there under cannot be canceled or substantially modified without at least 10 days written notice to the Association. No fire and casualty coverage will be purchased for Homes. The Association may obtain such other and further policies of insurance, as it deems advisable. The named insured on the policy may read "Hayden Square Owners Association." The casualty insurance to be obtained by the Association pursuant to this paragraph 7.1(b) shall include the following terms, if the Board determines they are reasonably available:

- () A waiver of subrogation by the insurer as to any claims against the Board, any Owner, or any guest of an Owner;
- () A waiver by the insurer of its right to repair and reconstruct instead of paying cash;
- () A provision that no policy may be canceled, invalidated, or suspended because of the action of an Owner;
- () A provision that no policy may be canceled, invalidated, or suspended because of the conduct of any director, officer, or employee of the Association unless the insurer gives the Association a prior written demand that the Association correct the defect and allows the Association a reasonable time to make the correction; and
- () A provision that any "other insurance" clause in any policy shall exclude from its coverage all owners' policies.

At the discretion of the Board, the Association may purchase and maintain insurance on behalf of any person who is or was a Director, Officer, employee, or agent of the Association, against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his/her/their status as such, whether or not the Association would have the power to indemnify him or her against such liability under the provisions of the Articles of Incorporation of the corporation.

8.0 Covenants to Pay. Declarant, on behalf of each and every subsequent Owner of any Lot, covenants and agrees that each Lot will pay the Association the assessments and any additional charges levied pursuant to this Article IX.

- () Funds Held. The assessments collected by the Association shall be held by the Association for and on behalf of each Owner and shall be used solely for the operation, care and maintenance of Hayden Square, as provided by this Declaration. Upon the sale or transfer of any Lot, the Owner's interest in the funds shall be deemed automatically transferred to the successor in interest of such Owner, and is not refundable.

- 8.0 Basis of Assessments and Commencement of Assessments. Assessments are to be levied against all Lots, commencing with the latter date on which either the Articles of Incorporation are recorded with the Oregon Corporation Division, or the Plat is recorded with the County of Deschutes. Assessments for all Lots shall commence with the date of the conveyance of the first Lot to an Owner, other than Declarant, their successors or assigns. Assessments for Lots conveyed by the Declarant to purchaser/Owner, either by deed or land sales contract, shall begin on the day of the recording of the deed or land sale contract conveying or contracting to convey the Lot of the new Owner and will be prorated from said date. Declarant may elect to defer payment of their assessments until the date of the conveyance of the Lot to an Owner, other than Declarant. Declarant may advance funds, at their sole discretion, for Association operating and reserve expenditures, which will be considered as an advance of any assessments deferred to the conveyance of Lots to an Owner.
- 8.0 Annual Assessments. Annual assessments for each fiscal year shall be established when the Board approves the budget for that fiscal year. The fiscal year shall be the calendar year unless another year is adopted by a vote of the Board members. Annual assessments shall be invoiced at such intervals as determined by the Board. Assessments will be due and payable within 30-days of the invoice date. The Association may assess all interest, fines and late charges allowable under the Oregon Revised Statutes.
- 8.0 Initial Assessment Contribution. Upon acquiring title to a Lot, the Owner of a Lot shall pay to the Association an "Initial Assessment" of \$300.00 per Lot. The Declarant is exempt from this assessment. Said Initial Assessment shall constitute an initial contribution to the working capital of the Association by such Owner and shall be used by the Association to pay Operating and Reserve Common Expenses of the nature described in this Declaration.
- 8.0 Budget. Regardless of the number of Members or the amount of assets of the Association, each year the Board shall prepare, approve and make available to each Member a pro forma operating statement (budget) containing; (i) estimated revenue and expenses on an accrual basis, including a Board approved estimate for the annual maintenance cost of the Private Streets and private street lights; (ii) the amount of the total cash reserves of the Association currently available for replacement or major repair of the Common Area and for contingencies; (iii) an itemized estimate for the remaining life of, and the methods of funding to defray repair, replacement or additions to major components of the Common Area; and (iv) a general statement setting forth the procedures used by the Board in the calculation and establishment of reserves to defray the costs and repair, replacement or additions to major components of the Common Area. For the first fiscal year, the budget shall be approved by the Board no later than the date on which annual assessments are scheduled to commence. Thereafter, the Board shall annually prepare and approve the budget and distribute a copy thereof to each Member, together with written notice of the amount of the annual assessments to be levied against the Owner's Lot, not less than thirty (30) days and not more than ninety (90) days prior to the beginning of the fiscal year.

- (a) Allocation of Assessments. The total amount in the budget shall be charged equally against all Lots as annual assessments, except Lots 16 through 20 will not pay for the private alley maintenance or reserve assessments. All lots will pay for the remaining budgeted operating expenses.
- (a) Non-Waiver of Assessments. If before the expiration of any fiscal year the Association fails to fix annual assessments for the next fiscal year, the annual assessments established for the preceding year shall continue until a new annual assessment is fixed.

8.0 Reserve Funds.

- (a) Reserve Fund for Replacing Common Area Improvements. Declarant shall in addition establish a reserve fund in the name of the Association for replacement, in whole or in part, of the Common Area and any improvements located in, on, or under the Common Area for which the Association is responsible pursuant to this Declaration, that will normally require replacement in more than three (3) and fewer than thirty (30) years, including any exterior painting, if the Common Area includes exterior painted surfaces. The reserve account need not include those items that could reasonably be funded from the maintenance fund. For purposes of funding the reserve fund, the Declarant initially, and thereafter the Association shall impose an assessment to be called the "Reserve Fund Assessment" against each Lot, which assessment shall be spread equally over the Lots. The Reserve Fund Assessment shall be based on the reserve study, and updates thereof, described in Section 9.7 (b), or other sources of reliable information. Nothing herein shall limit the authority of the Declarant or the Association to establish other separate and unrelated reserve funds that are funded by assessments for reserves that are in addition to the Reserve Fund or that relate only to a particular type or category of Lot. The Reserve Fund shall be kept separate from other funds and may be used only for the purposes for which reserves have been established as specified in this Section.

After the Turnover Meeting, the Board may borrow funds from the Reserve Fund to meet high seasonal demands on the regular operating funds or to meet other unexpected increases in expenses. Such funds borrowed from the Reserve Fund shall be repaid from regular annual or special assessments against the Lots, if the Board 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 shall adopt by resolution a written payment plan providing for repayment of the borrowed funds within a reasonable period.

The Board may adjust the amount of the Reserve Fund Assessments as indicated by any reserve study or update, and provide for any other reserve items that the Board, in its discretion, may deem appropriate during a fiscal year. In addition, after the second anniversary of the turnover meeting, the Association may elect to reduce or increase future Reserve Fund Assessments by a 75% vote of the Owners.

Any funds established for any of the purposes mentioned in this Section shall be deemed to be within the Reserve Fund notwithstanding that it may not be so designated by the Board of Directors. The amount of the Reserve Fund shall constitute an asset of the Association and shall not be refunded or distributed to any Owner.

- (b) Reserve Study. The Board of Directors shall annually conduct a reserve study, or review and update an existing study, of the Common Area components to determine the requirements of the reserve fund described in Section 9.7 (a) above. The reserve study shall include (a) identification of all items for which reserves are required to be established; (b) the estimated remaining useful life of each item as of the date of the reserve study; (c) the estimated cost of maintenance, repair, or replacement of each item at the end of its useful life; and (d) a thirty (30) year plan with regular and adequate contributions, adjusted by estimated inflation and interest earned on the reserve fund, to meet the maintenance, repair, and replacement schedule.

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

- () Deficits in Operating Budget. To correct a deficit in the operating budget, by vote of a majority of the Board;
- () Breach of Documents. To collect amounts due to the Association from an Owner for breach of the Owner's obligations under the Declaration, the Bylaws, or the Rules and Regulations, by vote of a majority of the Board;
- () Repairs. To make repairs or renovations to the Common Area if sufficient funds are not available from the operating budget or replacement reserve accounts by vote of a majority of the Board; or
- () Capital Additions. To make capital acquisitions, additions or improvements, by vote of at least seventy-five percent (75%) of all votes allocated to the Lots.

8.0 Accounts.

- () Types of Accounts. Assessments collected by the Association should be deposited into at least two (2) separate accounts with a bank, which accounts shall be designated as (i) the Current Operating Account and (ii) the Reserve Account. Those portions of the assessments collected for current maintenance and operation levied under this Article IX will be in the Current Operating Account and those portions of the assessments collected as reserves for replacement and deferred maintenance of capital improvements into the Reserve Account. Special Assessments shall be deposited into one of the two accounts, whichever is deemed by the Board to be appropriate. Withdrawal of funds for the Association's Reserve Account shall require the signatures of two (2) Directors.

- (b) Reserve Account. The Association shall pay out of the Reserve Account only those costs that are attributable to the maintenance, repair or replacement of capital improvements for which reserves have been collected and held. No funds collected for the Reserve Account may be used for ordinary maintenance and operation purposes, unless repaid within six (6) months of withdrawal, or as approved by a majority of Owners.
- () Current Operating Account. All ordinary maintenance and operating expenses shall be paid from the Current Operating Account.

8.0 Default in Payment of Assessments, Enforcement of Liens.

- () Personal Obligation. All assessments properly imposed under this Declaration or the Bylaws shall be the joint and several personal obligation of all Owners of the Lot to which such assessment pertains. In a voluntary conveyance (that is, one other than through foreclosure or a deed in lieu of foreclosure) the grantees shall be jointly and severally liable with the grantor(s) for all Association assessments imposed through the recording date of the instrument affecting the conveyance. A suit for a money judgment may be initiated by the Association to recover such assessments without either waiving or foreclosing the Association's lien.
- () Association Lien. At any time any assessment (of any type provided for by this Declaration or the Bylaws) or installment thereof is delinquent, the Association, by and through its Board or any management agent, may file a notice of lien in the deed records of Deschutes County, Oregon against the Lot in respect to which the delinquency pertains. Once filed, such lien shall accumulate all future assessments or installments, interest, late fees, penalties, fines, attorneys' fees (whether or not suitor action is instituted) and other appropriate costs properly chargeable to an Owner by the Association, until such amounts are fully paid. 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 lien of the Association shall be superior to all other liens and encumbrances except property taxes and assessments, any first mortgage, deed of trust or land sale contract recorded previously to the Association's notice of lien and any mortgage or deed of trust granted to an institutional lender which is recorded previously to the Association's notice of lien.
- (c) Interest; Fines; Late Fees; Penalties. The Board in its reasonable discretion may from time to time adopt resolutions to set the rate of interest, and to impose late fees, fines and penalties on delinquent assessments or for violations of the provisions of this Declaration, the Bylaws, any Rules and Regulations, and any rules and regulations adopted by the Board or ARC. The adoption of such impositions shall be communicated to all Owners in writing not less than thirty

(30) days before the effective date by a notice mailed to the assessment billing addresses of such Owners. Such impositions shall be considered assessments, which may be liened, and are collectible in the same manner as any other assessments. Provided, however, no fine or penalty for violation of this Declaration, the Bylaws or any Rules and Regulations (other than late fees, fines or interest arising from an Owner's failure to pay regular or special assessments) may be imposed against an Owner or his/her Lot until such Owner is given an opportunity for a hearing.

- (d) Acceleration of Assessments. In the event an Owner is delinquent in payment of any assessment or installment on any assessment, the Association, upon not less than ten (10) days written notice to the Owner, may accelerate the due date of the full annual assessment for that fiscal year and all future installments of any special assessments.
- (e) Association's Right to Rents/Receiver. In any foreclosure suit by the Association with respect to such lien, the Association shall be entitled to collect reasonable rent from the defaulting Owner for the use of his/her Lot or shall be entitled to the appointment of a Receiver. Any default by the Owner in any provisions of the Declaration or Bylaws shall be deemed to be a default by the Owner of any mortgage to which the Owner is party or to which the Lot is subject.

ARTICLE 10

GENERAL PROVISIONS

- 9.0 Remedies for Violations-Invalidations. For a violation or a breach of any of these covenants, conditions and restrictions by any person claiming by, through, or under the Declarant, or by virtue of any judicial proceedings, the Declarant, and the lot owners, or any of them severally, shall have the right to proceed at law or in equity to compel a compliance with the terms hereof or to prevent the violation or breach of any of them. In addition to the foregoing right, the Declarant shall have the right, whenever there shall have been built on any lot any structure which is in violation of these restrictions, to enter upon the property where such violation of these covenants upon the property where such violation of these Covenants, Conditions, and Restrictions exists and summarily abate or remove the same at the expense of the owner, and any such entry and abatement or removal shall not be deemed a trespass. The failure to not promptly enforce any of the Covenants, Conditions, and Restrictions, or the application of these Covenants, Conditions, and Restrictions to any person or circumstances in no way shall affect any of the other Covenants, Conditions, and Restrictions or their application to other persons or circumstances, but they shall remain in full force and effect.

Should a Lot Owner fail, neglect, or refuse to satisfy and discharge any amount incurred at the expense of the owner within 30 days, the Declarant, its successors and assigns shall have the right to charge interest on such amount at the rate of 12% per annum and shall be entitled to receive all costs of collection, including a reasonable attorney's fee. If any Lot Owner, or the Declarant, or Board of Directors shall bring an action to enforce any provision hereof, the substantially prevailing party in such action shall be entitled to an award for such party's reasonable attorney's fees and expense of litigation.

- 9.0 Severability. Invalidation of any one of these covenants or restrictions by judgment or Court shall in no way invalidate any other provisions of this Declaration, which shall remain in full force and effect.
- 9.0 Terms. The provisions outlined in this Declaration shall apply to all units in Hayden Square, and shall be binding on all lot owners, their heirs, their successors, or assigns for a period of thirty (30) years from the date this Declaration is recorded, thereafter, they shall automatically be extended for successive periods of ten (10) years.
- 9.0 Amendments. This Declaration, with the exception of provisions specifically stating the rights of the Declarant, may be amended by an instrument signed by not less than seventy-five (75%) of the lot owners within Hayden Square. Any amendments must be recorded with Deschutes County.

