

198
218
AFTER RECORDING RETURN TO:
Lane Lyons
Lyons & Co., PC
320 SW Upper Terrace Dr. #105
Bend, OR 97702

DESCHUTES COUNTY OFFICIAL RECORDS
NANCY BLANKENSHIP, COUNTY CLERK

2010-38825



\$218.00

00749095201000388250310313

09/30/2010 03:44:47 PM

D-CCR Cnt=1 Stn=1 BN

\$155.00 \$11.00 \$16.00 \$10.00 \$6.00 \$20.00...

31
non
l

DECLARATION OF CODES, COVENANTS AND RESTRICTIONS

FOR

MARKEN HEIGHTS

DATED: SEPTEMBER 27, 2010

Recorded by Western Title as an
accommodation only. No liability
accepted for condition of title or
validity, sufficiency or affect of
document.

TABLE OF CONTENTS

RECITALS.....	6
DECLARATION	6
SECTION 1 DEFINITIONS	6
1.1 “ARCHITECTURE GUIDELINES”	6
1.2 “ARCHITECTURAL REVIEW COMMITTEE”	6
1.3 “ASSESSMENT”	6
1.4 “ASSOCIATION”	6
1.5 “BOARD OF DIRECTORS” OR “BOARD”	6
1.6 “BYLAWS”	6
1.7 “COMMON AREA”	6
1.8 “COMMON EASEMENT AREA”	6
1.9 “DECLARANT”	6
1.10 “DECLARATION”	7
1.11 “IMPROVEMENT”	7
1.12 “LIVING UNIT”	7
1.13 “LOT”	7
1.14 “MANAGER”	7
1.15 “MORTGAGE”	7
1.16 “MORTGAGEE”	7
1.17 “MORTGAGOR”	7
1.18 “MARKEN HEIGHTS”	7
1.19 “OWNER”	7
1.20 “PLAT”	7
1.21 “POLICIES AND PROCEDURES”	7
1.22 “TURNOVER MEETING”	7
SECTION 2 LAND CLASSIFICATION	7
2.1 LAND CLASSIFICATIONS WITHIN MARKEN HEIGHTS.....	7
(a) <i>Lots</i>	7
(b) <i>Common Easement Areas</i>	7
2.2 DECLARANT’S CONSTRUCTION ON LOTS OR COMMON EASEMENT AREAS.....	7
SECTION 3 PROPERTY RIGHTS IN LIVING UNITS	7
3.1 USE AND OCCUPANCY	7
3.2 COMMON EASEMENT AREAS	7
3.3 EASEMENTS RESERVED BY DECLARANT	8
SECTION 4 RESTRICTIONS ON USE OF LOTS AND LIVING UNITS	8
4.1 RESIDENTIAL USE	8
4.2 ANIMALS	8
4.3 ILLEGAL OR OFFENSIVE ACTIVITIES	8
4.4 ON STREET PARKING	9
4.5 VEHICLES IN DISREPAIR	9
4.6 TRAILERS AND RECREATIONAL VEHICLES	9
4.7 RUBBISH AND TRASH	9
4.8 MAINTENANCE	9
4.9 SIGNS	9
4.10 MAINTENANCE OF STRUCTURES	9
4.11 MAINTENANCE OF LANDSCAPE	9
4.12 VIEW	9
4.13 EASEMENTS RESERVED	10

(a)	<i>Adjacent Common Easement Area</i>	10
(b)	<i>Right of Entry</i>	10
(c)	<i>Utility Easements</i>	10
SECTION 5	RESTRICTIONS ON CONSTRUCTION	10
5.1	CONSTRUCTION AND ALTERATION	10
5.2	OUTBUILDINGS	10
5.3	SERVICE FACILITIES	10
5.4	PROHIBITED STRUCTURES	10
5.5	ANTENNAS AND SATELLITE DISHES	10
5.6	FENCING	10
5.7	EXTERIOR LIGHTING OR NOISEMAKING DEVICES	10
5.8	SETBACK, MAXIMUM HEIGHT AND MINIMUM YARD REQUIREMENTS	10
5.9	GRADES SLOPES AND DRAINAGE	11
5.10	LANDSCAPE	11
5.11	RULES AND REGULATIONS	11
SECTION 6	ARCHITECTURAL REVIEW	11
6.1	APPROVAL REQUIRED	11
6.2	PROCEDURE	11
6.3	REQUIRED DOCUMENTS	11
6.4	REVIEW	12
6.5	REVIEW STANDARD	12
6.6	ARCHITECTURAL GUIDELINES	12
6.7	INSPECTION	12
6.8	WAIVER	12
6.9	ARCHITECTURAL REVIEW COMMITTEE	13
6.10	MAJORITY ACTION	13
6.11	EFFECTIVE PERIOD OF CONSENT	13
6.12	LIABILITY	13
6.13	APPEAL	13
6.14	ENFORCEMENT	13
SECTION 7	ASSOCIATION	13
7.1	ORGANIZATION	13
7.2	MEMBERSHIP	13
7.3	VOTING RIGHTS	13
(a)	<i>Living Units</i>	14
(b)	<i>Classes of Voting Membership</i>	14
Class A	14
Class B	14
7.4	POWERS AND OBLIGATIONS	14
(a)	<i>Declaration</i>	14
(b)	<i>Statutory Powers</i>	14
(c)	<i>Association Powers</i>	14
(d)	<i>General</i>	14
7.5	SPECIFIC POWERS AND DUTIES	14
(a)	<i>Maintenance and Services</i>	14
(b)	<i>Insurance</i>	14
(c)	<i>Rulemaking</i>	14
(d)	<i>Assessments</i>	14
(e)	<i>Enforcement</i>	14
(f)	<i>Employment of Agents, Advisers and Contractors</i>	14
(g)	<i>Borrow Money, Hold Title and Make Conveyances</i>	15
(h)	<i>Transfers</i>	15
7.6	LIABILITY	15
7.7	CONTRACTS ENTERED INTO BY DECLARANT OR BEFORE TURNOVER MEETING	15

7.8	INTERIM BOARD; TURNOVER MEETING.....	15
7.9	TRANSITIONAL ADVISORY COMMITTEE	15
(a)	<i>Declarant Failure to Call Meeting</i>	15
(b)	<i>Owners' Failure to Select Members</i>	15
(c)	<i>Turnover Meeting</i>	15
7.10	DECLARANT CONTROL AFTER TURNOVER.....	15
7.11	ASSOCIATION POLICIES AND PROCEDURES.....	16
7.12	MANAGEMENT	16
SECTION 8	INSURANCE.....	16
SECTION 9	MAINTENANCE, UTILITIES AND SERVICES	16
9.1	MAINTENANCE AND LIGHTING OF COMMON EASEMENT AREAS	16
9.2	SERVICES	16
9.3	OWNER'S RESPONSIBILITY	16
9.4	DAMAGE LIABILITY	16
SECTION 10	ASSESSMENTS.....	16
10.1	PURPOSE OF ASSESSMENTS	16
10.2	TYPES OF ASSESSMENTS	16
10.3	APPORTIONMENT OF ASSESSMENT	17
10.4	ANNUAL OPERATING BUDGETS.....	17
10.5	ANNUAL ASSESSMENTS	17
10.6	SPECIAL PURPOSE ASSESSMENTS	17
10.7	SPECIAL ASSESSMENTS	17
10.8	PROPERTY RESERVE ACCOUNT	17
10.9	INDIVIDUAL ASSESSMENTS	18
10.10	PAYMENT OF ASSESSMENTS.....	18
10.11	CREATION OF LIEN; AND PERSONAL OBLIGATION OF ASSESSMENTS.....	18
10.12	ANNUAL ACCOUNTING.....	18
SECTION 11	ENFORCEMENT	18
11.1	REMEDIES	18
11.2	VOLUNTARY CONVEYANCE	19
11.3	NON-QUALIFYING IMPROVEMENTS AND VIOLATION OF GENERAL PROTECTIVE COVENANTS	19
(a)	<i>Remove Cause of Violation</i>	19
(b)	<i>Suit or Action</i>	19
(c)	<i>Fines</i>	19
11.4	DEFAULT IN PAYMENT OF ASSESSMENTS; ENFORCEMENT OF LIEN.....	19
(a)	<i>Suspension of Rights; Acceleration</i>	19
(b)	<i>Lien</i>	19
(c)	<i>Suit or Action</i>	19
(d)	<i>Other Remedies</i>	19
11.5	NOTIFICATION OF FIRST MORTGAGEE.....	19
11.6	SUBORDINATION OF LIEN TO FIRST MORTGAGES	20
11.7	LATE CHARGE, EXPENSES AND ATTORNEY FEES	20
11.8	FINES.....	20
11.9	NONEXCLUSIVENESS OF REMEDIES	20
SECTION 12	MISCELLANEOUS PROVISIONS.....	20
12.1	CLASSIFICATION.....	20
12.2	AMENDMENT AND REPEAL.....	20
12.3	REGULATORY AMENDMENTS	20
12.4	DURATION.....	20
12.5	JOINT OWNERS	21
12.6	LESSEES AND OTHER INVITEES	21
12.7	NONWAIVER.....	21

12.8	CONSTRUCTION; SEVERABILITY	21
12.9	CLAIMS AGAINST DECLARANT.....	21
12.10	NOTICES AND OTHER DOCUMENTS	22
(a)	<i>Addresses</i>	22
(b)	<i>Change of Address</i>	22

DECLARATION OF CODES, COVENANT AND RESTRICTIONS FOR MARKEN HEIGHTS, a Class II Planned Community

This Declaration of Codes, Covenants and Restrictions for Marken Heights (the "Declaration") is made by Marken Heights., an Oregon corporation, (the "Declarant"), as the fee simple owner of the real property described in the plat entitled Marken Heights recorded on September 2008, in the Deschutes County Records at Volume 2008, Page 37384, and described on **Exhibit A** ("Marken Heights").

RECITALS

Marken Heights is a subdivision containing 23 lots for residential use. Declarant owns Marken Heights in fee simple, and wishes to subject Marken Heights to this Declaration for the benefit of itself and subsequent owners and to establish the Marken Heights as a Class II planned community under the Oregon Planned Community Act. This Declaration is intended to establish and maintain Marken Heights as a planned community created for homeowners who want to live in a community with homes that add value and enjoyment to other homes in the community and large well maintained lots. The Plat that created Marken Heights creates several common area tracts, easements, and private roadways. This Declaration, in part, provides for the use and maintenance of the common areas of Marken Heights. Prior to the recordation hereof, Declarant transferred its interest in Lots 22 and 14, Marken Heights, to the undersigned "Consenting Lot Owners." Each of the Consenting Lot Owners, by their signature hereinbelow, agree that this Declaration shall apply to and run with their respective Lots, in the same manner as the remaining Lots in Marken Heights, and that they shall be an Owner as defined herein.

DECLARATION

Declarant declares that Marken Heights shall be held, sold and conveyed subject to the following codes, covenants and restrictions, which shall supersede all prior codes, covenants, and restrictions related to the Property, and shall run with the land and shall be binding upon and inure to all parties having or acquiring any right, title or interest in Marken Heights, or any part thereof, and shall inure to the benefit of each Owner thereof.

SECTION 1 DEFINITIONS

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

1.1 "Architecture Guidelines" means the rules and regulations adopted by the Architecture Review Committee, including but not limited to rules and regulations for the construction and maintenance of structures and improvements within Marken Heights.

1.2 "Architectural Review Committee" or "ARC" means the Architectural Review Committee appointed pursuant to Section 6.

1.3 "Assessment" means all charges, fines and fees imposed by the association on an Owner in accordance with this Declaration, the Bylaws of the Marken Heights Homeowner Association, or the provisions of the Oregon Planned Community Act.

1.4 "Association" means the Marken Heights Homeowner Association, a not-for-profit entity formed to serve as the association of Owners as provided in Section 7, and its successors and assigns.

1.5 "Board of Directors" or "Board" means the individuals appointed to serve the Marken Heights Homeowner Association as described in Section 4.1 of the Bylaws of the Marken Heights Homeowner Association.

1.6 "Bylaws" means the Bylaws of the Marken Heights Homeowner Association.

1.7 "Common Area" means real property owned, held, or leased by the Association or owned as tenants in common by Owners, or designated in this Declaration or the Plat for transfer to the Association, and as described on Exhibit B.

1.8 "Common Easement Area" means the real property subject to an easement created on the Plat.

1.9 "Declarant" means Marken Heights Development Corp., an Oregon Corporation, and its successors and assigns.

1.10 **"Declaration"** means this "Declaration of Codes, Covenants and Restrictions for Marken Heights," as the same may be amended from time to time in accordance with the provisions hereof.

1.11 **"Improvement"** means every temporary or permanent building, fence, street, sidewalk, driveway, wall, swimming pool, and all other structures within Marken Heights.

1.12 **"Living Unit"** means any single family home situated on Lots 1 through 23.

1.13 **"Lot"** means a legally partitioned property within Marken Heights Lots 1 through 23.

1.14 **"Manager"** means the person with whom the Association contracts to provide management services pursuant to Section 7.12.

1.15 **"Mortgage"** means a mortgage, trust deed, or land sales contract.

1.16 **"Mortgagee"** means a mortgagee, beneficiary of a trust deed, or vendor under a land sales contract.

1.17 **"Mortgagor"** means a mortgagor, grantor of a trust deed, or vendee under a land sales contract.

1.18 **"Marken Heights"** means the real property described on the Plat, and any part thereof.

1.19 **"Owner"** means the person or persons, including Declarant, owning any Lot or Living Unit, including any vendee under a recorded land sales contract to whom possession has passed, but expressly excludes a tenant or holder of a leasehold interest or a person holding only a security interest in a Living Unit, including any vendor under a recorded land sales contract who has given up possession. The rights, obligations, and other status of being an Owner commence upon acquisition of the ownership of a Lot or a Living Unit and terminate upon disposition of such ownership, but termination of ownership shall not discharge an Owner from obligations incurred prior to termination.

1.20 **"Plat"** means the plat entitled Marken Heights recorded on September 11, 2008, in the Deschutes County Records at Volume 2007, Page 37384.

1.21 **"Policies and Procedures"** means those policies, procedures, rules and regulations adopted by the Association pursuant to the authority granted in this Declaration.

1.22 **"Turnover Meeting"** means the meeting called by Declarant pursuant to Section 7.9, at which Declarant will turnover administrative responsibility for Marken Heights to the Association.

SECTION 2 LAND CLASSIFICATION

2.1 **Land Classifications Within Marken Heights.** All land within Marken Heights is included in one or another of the following classifications:

(a) **Lots**, which shall consist of Lots 1 through 23.

(b) **Common Easement Areas**, which shall consist of the Public Access Easement across Tract B, the 20 foot wide pedestrian and bicycle path easement over and across Tract D, the Sidewalks and common area of Tract B, the Private Roadway commonly known as Nordeen Way, and the common areas of Tracts A, C, D, and E, all as depicted on the Plat of Marken Heights.

(c) **Private Streets**, which shall consist of those streets shown on the Plat and subject to the management of the Association.

2.2 **Declarant's Construction on Lots or Common Easement Areas.** Declarant may elect to build common facilities on one or more Lots and designate such Lots as Common Areas by a declaration recorded in the deed records of Deschutes County, Oregon. Such declaration shall be executed by Declarant as Owner of the Lots. Declarant also reserves the right to construct Improvements on the Common Easement Areas for the benefit of the Owners and the Association.

SECTION 3 PROPERTY RIGHTS IN LIVING UNITS

3.1 **Use and Occupancy.** Except as otherwise expressly provided in this Declaration, the Owner and his or her invitees of a Lot in Marken Heights shall be entitled to the exclusive use and benefit of such Lot.

3.2 **Common Easement Areas.** The Plat creates Common Easement Areas as described Section 2.1(b), above. The Common Easement Areas shall be maintained by the Association in a manner consistent with this Section 3.2.

(a) **Private Roadway.** The Association shall construct and maintain the private roadway depicted on the Plat. The Association shall establish reasonable reserves to ensure the future repair and maintenance of the roadway including but not limited to sealing, coating, crack sealing/repair, snow removal, and any other

maintenance or repair that the Association deems reasonably necessary in its discretion.

(b) **Pedestrian Access Easements.** The Pedestrian Access Easements were created for the use of the Owners and other members of the public. The Declarant and the Association reserve the right to construct any improvements within the Pedestrian Access Easements other than buildings or similar structures, and specifically reserve the right to construct pathways and park benches within the Pedestrian Access Easement. The Association shall maintain the landscaping and any improvements on the Pedestrian Access Easements. No Owner may construct any landscaping or other improvement within the Pedestrian Access Easements or otherwise interfere with use of the Pedestrian Access Easement by an Owner or other member of the public.

(c) **Sidewalks and Common Area of Tract B.** The Association shall oversee the maintenance and repair of the sidewalks and Common Area of Tract B, including but not limited to snow removal, sealing and other repair, and any other repair or maintenance required in the reasonable judgment of the Association.

3.3 Easements Reserved by Declarant. So long as Declarant owns any Lot, Declarant reserves an easement over, under and across the Common Easement Areas and each adjoining Lot to construct allowed improvements and to maintain the Common Easement Areas, and to carry out sales activities. In addition, Declarant hereby reserves to itself and for the Owners of Lots a perpetual easement and right-of-way for access over, upon and across the Common Easement Areas for construction, utilities, communication lines, drainage, and ingress and egress. Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under and across the Common Easement Areas and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the Improvements on Marken Heights; provided, however, that no such rights shall be exercised by Declarant in such a way as to unreasonably interfere with the occupancy of, use of, enjoyment of or access to an Owner's Lot by that Owner or his or her family, tenants, employees, guests or invitees.

SECTION 4 RESTRICTIONS ON USE OF LOTS AND LIVING UNITS

All Lots and Living Units within Marken Heights shall be subject to the following restrictions:

4.1 Residential Use. Lots and Living Units shall only be used for residential purposes. Except with the written consent of the Board, no trade, craft, business, profession, commercial or similar activity of any kind shall be conducted on any Lot, nor shall any goods, equipment, vehicles, materials or supplies used in connection with any trade, service or business be kept or stored on any such Lot. The mere parking on a Lot of a vehicle bearing the name of a business shall not, in itself, constitute a violation of this provision. Nothing in this paragraph shall prohibit (a) activities relating to the rental or sale of Lots or Living Units; (b) the right of Declarant or any contractor to construct Living Units on any Lot, to store construction materials and equipment on such Lots in the normal course of construction, and to use any Living Unit as a sales office or model home for purposes of sales in Marken Heights; and (c) the right of the Owner of a Living Unit to maintain a personal professional library, to keep personal business or professional records, to handle personal business or professional telephone calls or confer with business or professional associates, clients or customers in the Living Unit. The Board shall not approve commercial activities on a Lot or in Living Unit unless the Board determines that only normal residential activities would be observable outside of the Living Unit and that the activities would not unreasonably disturb or annoy other Owners within Marken Heights.

4.2 Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept or permitted on any Lot or within any Living Unit other than a reasonable number of household pets that are not kept, bred or raised for commercial purposes. No animal shall be permitted to roam Marken Heights unattended, and all animals shall be controlled so that it does not create a nuisance to any other Owner. Any inconvenience, damage or nuisance caused by an animal shall be the responsibility of its respective Owner. Any animal that frequently causes noise that can be heard from an adjoining lot or any animal that physically threatens or injures anyone other than its Owner is deemed to be a nuisance. The Board may require an Owner or occupant of any Lot to temporarily or permanently remove or restrain any animal that is a nuisance or that physically threatens or injures anyone other than its Owner. Whenever possible, the Board will give the Owner or occupant written notice of any violation and an opportunity for the Owner to take corrective action.

4.3 Illegal or Offensive Activities. No illegal activity may be conducted on any Lot, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction over Marken Heights shall be

observed. Furthermore, no activity may be done on any Lot which is or may become an unreasonable annoyance or nuisance to the other Owners.

4.4 On Street Parking. No trailer, travel trailer, boat trailer, camper, incapacitated motor vehicle, snowmobile, motor home, or off-road vehicle shall be parked or stored on any street within Marken Heights except as provided in the Association's Rules and Regulations or the Architectural Guidelines which may, among other things, permit temporary parking of recreational vehicles and boat trailers.

4.5 Vehicles in Disrepair. No Owner shall permit any vehicle that is in an extreme state of disrepair to be abandoned or to remain parked on the Owner's Lot (unless screened from view) or on any street for a period in excess of 48 hours. A vehicle shall be deemed in an "extreme state of disrepair" when the Board determines that its presence unreasonably offends an Owner or occupant of the area due to its appearance. If any Owner fails to remove such vehicle within 5 days following the date on which notice is mailed to him or her by the Association, the Association may have the vehicle removed from Marken Heights and charge the expense of such removal to the Owner.

4.6 Trailers and Recreational Vehicles. Motor vehicles, recreational vehicles and trailers may be parked and stored on the Owner's Lot if screened from view of adjoining Lots and the street. The screening only needs to minimize the impact of the trailer or recreational vehicle and is not required to provide a complete screen from view.

4.7 Rubbish and Trash. No part of Marken Heights shall be used as a dumping ground for trash or rubbish of any kind. All garbage and other waste shall be kept in appropriate sanitary containers for proper disposal and out of public view, except during garbage pickup days. Yard rakings, dirt and other material resulting from landscaping work shall not be dumped onto Lots, streets or Common Easement Areas. Should any Owner or occupant responsible for its generation fail to remove any trash, rubbish, garbage, yard rakings or any other such materials from any streets or Marken Heights where deposited by such person within 5 days following the date on which notice is mailed to the Owner or occupant by the Board, the Association may have such materials removed and charge the expense of such removal to the Owner.

4.8 Maintenance. Each Lot and its landscaping shall be maintained in a clean and attractive condition, in good repair, and in such a fashion as not to create a fire hazard. All garbage, trash, cuttings, refuse, clothes drying apparatus, and other service facilities located on each Lot shall be screened from view in a manner approved by the ARC. Household garbage and refuse containers shall be stored in garages or screened areas, except when containers are placed at curbside for pickup. Yard rakings, dirt and other material resulting from landscaping shall be maintained in appropriate containers or otherwise screened from view of other Lots and streets.

4.9 Signs. No signs shall be erected or maintained on any Lot except signs which are approved as to appearance and location by Declarant. This restriction shall not apply to (a) directional signs, (b) the placement by the Declarant or Declarant's agent of one or more signs identifying the name of the Declarant and/or the location of a sales office or model home, or (c) the temporary placement of not more than one "For Sale" sign on any Lot meeting the guidelines of the ARC and facing the street providing access to such Lot.

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

4.11 Maintenance of Landscape. Each Owner shall keep all sidewalks, shrubs, trees, grass and plantings of every kind on the Owner's Lot (other than Common Easement Areas) neatly trimmed, properly cultivated and free of trash, weeds and other unsightly material. Likewise, each Owner shall be responsible for daily snow removal on the portion of sidewalks which lie on their respective Lot(s).

4.12 View. The height of vegetation and trees on a Lot shall not unreasonably restrict the view of other Owners. The Board shall be the sole judge of the suitability of such heights. This Section is not to be read as justification to create views not present when the Living Unit was originally purchased.

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

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

(b) **Right of Entry.** Declarant, the ARC and any representative of the Association authorized by it may, upon no less than 72 hours prior notice, enter upon any Lot for the purpose of determining whether or not the use and/or Improvements of such Lot are then in compliance with this Declaration. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Lot.

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

SECTION 5 RESTRICTIONS ON CONSTRUCTION

All Lots and Living Units within Marken Heights shall be subject to the following restrictions:

5.1 Construction and Alteration. No Improvement shall be constructed, placed on, remodeled or removed from any Lot without the prior written consent of Declarant or the ARC. Furthermore, all construction activity or improvement of any structure on Lot shall require the prior written consent of the ARC. The minimum size for any Living Unit to be constructed within Marken Heights shall be 1,600 square feet.

5.2 Outbuildings. No shed, garage or other outbuilding may be constructed, placed on, or removed from any Lot without the prior written consent of the ARC. The shed, garage, or other outbuilding shall be constructed with a design and using material consistent with the construction of the Living Unit on the Lot, and shall be located on the Lot to minimize the visual impact on adjoining Lots. The ARC shall prefer sheds, garages and other outbuildings that accommodate the Owner's trailers, recreational vehicles, landscaping equipment, etc.

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

5.4 Prohibited Structures. Except for trailers related to construction activities within Marken Heights, no house trailer, mobile home, manufactured home assembled off site, tent, or other similar outbuilding or structure, whether permanent or temporary, shall be erected or placed on any Lot.

5.5 Antennas and Satellite Dishes. Except as required by state or federal law, no exterior satellite receivers, transmission dishes, exterior antennas, or other sending or receiving devices in excess of 24 inches in diameter shall be permitted to be placed upon any Lot. If state or federal law requires that the Owner be allowed to place a sending or receiving device in excess of 24 inches in diameter, then the size of the sending or receiving device that may be placed is the minimum size required to satisfy the state or federal requirements.

5.6 Fencing. Except for fencing initially installed by Declarant and necessary replacement of such fencing, no Owner is entitled to put up fencing except for fencing no taller than 72". The installation of any fencing shall require approval of the ARC. With the written consent of the ARC, the Owner may construct screening on a Lot using other materials consistent with the siding of the Living Unit.

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

5.8 Setback, Maximum Height and Minimum Yard Requirements. Each Lot shall be subject to the

setback, maximum height and minimum yard requirements set by the City of Bend, which may be modified by an approved variance by the City of Bend, and by the prior approval of the ARC. No Lot may be subdivided or partitioned, nor may its Lot lines be adjusted, without the approval of the City of Bend and the ARC. Unless otherwise required by the City of Bend the minimum setbacks for improvements constructed on each Lot, not including decks and building overhang, shall be five feet on the sides of each lot, ten feet on the back of each lot, and no less than twenty feet on the front of each Lot.

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

5.10 Landscape. All landscaping (including front and rear yards and parking strips) shall be completed within 6 months from the date of occupancy of the Living Unit constructed thereon. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon approval of the ARC. Landscape plans shall be submitted to the ARC for approval.

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

5.12 Building Style and Materials. Living Units constructed on any Lot shall be consistent with northwest lodge, craftsman, or bungalow style designs. Roofing materials must be tile or composition shingle (G.A.F.) Timberline Ultra 25 year limited warranty or like quality. The exterior siding material shall be cedar, stone, bricks, stucco or composite lap siding, or a combination of those materials. Windows and exterior doors shall be wood or approved vinyl. Garage doors can be either of wood or metal construction. In appropriate circumstances the Architectural Control Committee can approve other materials, if necessary, to facilitate design, provided they are in keeping with the character of Marken Heights, and other previously constructed Living Units therein. In all circumstances, Living Unit's shall be stick and site built homes with no manufactured housing allowed, nor other low-budget stick built designs such as that offered by Adair Homes, etc.

SECTION 6 ARCHITECTURAL REVIEW

6.1 Approval Required. No Improvement shall be erected, placed, altered, maintained, or permitted to remain on any land subject to this Declaration until final plans and specifications have been submitted to and approved in writing by the ARC.

6.2 Procedure. Any Owner proposing to construct any Improvements within Marken Heights (including any exterior alteration, addition, destruction, or modification to any such Improvements) shall follow the procedures and shall be subject to the approvals required by this Section 6. Failure to follow such procedures or obtain such approvals shall be deemed a breach of this Declaration.

6.3 Required Documents. Any Owner proposing to utilize, improve, or develop real property within the Marken Heights shall submit the following items for review:

(a) A site plan showing the location, size, configuration, and layout of any building, structure, or Improvement (or, where applicable, any alteration, addition, modification, or destruction thereto), including appurtenant facilities for parking, storage, fences, and vehicular and pedestrian traffic and circulation, with such plans reduced to CD-ROM format if requested by the ARC.

(b) Architectural plans and drawings showing the nature, style, and dimensions of any building, structure, fence, wall, barrier, or deck (or, where applicable, any alteration, addition, modification, or destruction

thereof), including the exterior material types, colors, and appearance. The scale of plans shall be 1 inch equals 20 feet or larger with such plans reduced to CD-ROM format if requested by the ARC.

(c) A landscape plan showing the nature, type, size, location, and layout of all landscaping, vegetation ground cover, landscape and site lighting, walks, major existing vegetation and irrigation systems proposed to be planted or installed (or, where applicable, removed or destroyed).

(d) Such other documents reasonably required by the ARC.

6.4 Review. All plans and drawings identified in Section 6.3 shall be submitted to the ARC for review prior to the performance of any proposed work. No plans shall be reviewed until all items specified in this section are submitted. Within 30 days following receipt of such plans, the ARC shall review the plans and shall inform the Owner in writing whether the plans conform to the development concept of Marken Heights. In the event the Owner is not notified as to the conformity of the plans within the 30-day review period, the plans are conclusively presumed to be approved as submitted. In the event any of the plans do not conform to the Marken Heights development concept, the Owner shall resubmit those nonconforming portions of the plans for review in accordance with the procedures outlined in Section 6.3 and this paragraph. No work may be performed relating to any Improvement unless and until all aspects of all plans required under Section 6.3 have been approved by ARC.

6.5 Review Standard. The ARC may, in its sole discretion, withhold consent to any proposed construction or Improvement if it finds that proposed work or Improvement would be inappropriate for the particular Lot, be a violation of this Declaration, the Bylaws, or the Rules and Regulations, or otherwise be incompatible the development of Marken Heights. It is the intent and purpose of this Declaration to ensure quality of workmanship and materials, to ensure harmony of external design with the existing Improvements and with respect to topography and finished grade elevations and to ensure compliance with the setback requirements contained in the conditions of approval of the City of Bend. Considerations such as siting, shape, size, color, design, materials, height, screening, or other effect on the enjoyment of other Lots, disturbance of existing terrain and vegetation, and any other factors that the ARC reasonably believes to be relevant may be taken into account by the ARC in determining whether or not to consent to any proposed work. Regulations on siting of television antennas and satellite receiving dishes shall be in conformance with any applicable Federal Communications Commission rules.

6.6 Architectural Guidelines. The development concept for Marken Heights shall be determined by the ARC in accordance with applicable statutes, ordinances, regulations, zoning, and other governmental land use controls. Architectural guidelines setting forth various aspects of the development concept, in addition to this Declaration, may be published from time to time by the ARC, but the ARC shall not be required to do so. The ARC shall have the right to alter, rescind, or amend any published guidelines without prior notice to any party; provided, however, that once approval has been given pursuant to Section 6.4, work may proceed in accordance with the approved plans and drawings, notwithstanding any changes in the development concept. All such guidelines shall be in general conformity with this Declaration.

6.7 Inspection. All work related to any building, structure, or Improvement or any landscaping, vegetation, ground cover, or other Improvements within Marken Heights shall be performed in strict conformity with the plans and drawings approved under Section 6.4. The ARC shall have the right to inspect any such work to determine its conformity with the approved plans and drawings and reserves the right to order a stop to all work if, in good faith, it believes that any such work is nonconforming. In the event that it is determined in good faith by the ARC that certain work is nonconforming, a stop work notice may be issued, without necessity of court order, which shall require the Owner to correct all nonconforming work specified in the notice before the remainder of the proposed work may be completed. Continued work without correction of any such nonconforming items shall be deemed a breach of this Declaration. Neither the ARC nor any officer, director, employee, agent, or servant of the ARC shall be responsible for any damages, loss, delay, cost, or legal expense occasioned through a stop work notice given in good faith, even if it is ultimately determined that such work was in conformity with the approved plans and drawings.

6.8 Waiver. Any condition or provision of Sections 6.1 through 6.7 may be waived by the ARC in its exclusive discretion. Any waiver shall be in general conformity with the development concept and development standards for Marken Heights. Any such waiver shall not be deemed a general waiver of any aspect of the development concept or the required procedures and approvals specified under Sections 6.1 through 6.7. The

conditions or provisions. No waiver shall be valid unless it is in writing, signed by an authorized representative of the ARC, and delivered by certified mail to the party claiming the benefit of such waiver.

6.9 Architectural Review Committee. The Board shall have responsibility for appointment and removal of members of the ARC. The ARC shall consist of as many persons, but not less than three, as the Board may from time to time appoint, and shall at all times contain at least one Owner of a Lot. If the Board fails to appoint the members of the ARC, the Board shall itself serve as the ARC. The decision of the ARC shall be by majority vote of its members, and the decisions of the ARC shall be reduced to writing. The meetings of the ARC shall be open to Owners, contractors working or proposing to work in Marken Heights, Declarant and their representatives; however, the ARC may choose to meet in executive session in the same circumstances as the Board may do so.

6.10 Majority Action. Except as otherwise provided herein, following 5 business days written notice to all members of the ARC, 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. The ARC may render its decision only by written instrument setting forth the action taken by the members consenting thereto.

6.11 Effective Period of Consent. The ARC's consent to any proposed Improvement shall automatically be revoked one year after issuance unless construction of the Improvement has been commenced or the Owner has applied for and received a written extension of time from the party granting consent.

6.12 Liability. The scope of the ARC's review is not intended to include any review or analysis of structural, geophysical, engineering, building or zoning code compliance, or other similar considerations. Neither Declarant nor the ARC nor any member thereof shall be liable to any Owner, occupant, builder, or developer for any damage, loss, or prejudice suffered or claimed on account of any action or failure to act of the Declarant, the ARC or a member thereof, provided only that Declarant or the ARC has, or the member has, in accordance with the actual knowledge possessed by Declarant or the ARC or by such member, acted in good faith.

6.13 Appeal. Any Owner adversely affected by action of the ARC may appeal such action to the Board. Appeals shall be made in writing within 30 days of the ARC's action and shall contain specific objections or mitigating circumstances justifying the appeal. The written appeal may also request an opportunity to be heard by the Owner. A final, conclusive decision shall be made by the Board within 60 working days after receipt of such notification.

6.14 Enforcement. If during or after the construction the ARC finds that construction does not comply with the approved plans, the ARC may require conforming changes to be made or that construction be stopped. The cost of any required changes shall be borne by the Owner. The ARC shall have the power and authority to order any manner of changes or complete removal of any Improvement, alteration or other activity for which prior written approval from the ARC is required and has not been obtained or waived in writing. If an Owner fails to comply with an order of the ARC, then, subject to the Owner's right of appeal under Section 6.13, either the ARC or the Association may enforce compliance in accordance with the procedures set forth in Section 11.3 below.

SECTION 7 ASSOCIATION

Declarant shall organize an Association of all of the Owners within the Community. Such Association, its successors, and assigns shall be organized under the name "Marken Heights Homeowner 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 Community and all Owners of property located therein.

7.1 Organization. Declarant shall organize the Association as a nonprofit mutual benefit corporation under the Oregon Nonprofit Corporation Act. Declarant shall, on behalf of the Association adopt the initial Bylaws required under ORS 94.635 to govern the administration of this planned community. The Bylaws shall be recorded in the Deschutes County Recording office.

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

7.3 Voting Rights. Voting rights within the Association shall be allocated as follows:

(a) **Living Units.** Except as provided in Section 7.3(b) with respect to the Class B member, Lots shall be allocated one vote per Lot.

(b) **Classes of Voting Membership.** The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant (except that beginning on the date on which the Class B membership is converted to Class A membership, and thereafter, Class A members shall be all Owners including the Declarant). Class A members shall be entitled to voting rights for each Lot owned computed in accordance with Section 7.3(a). When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

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

- (i) When 75% of the Lots have been sold and conveyed to Owners other than Declarant;
- (ii) At such earlier time as Declarant may elect in writing to terminate Class B membership; or
- (iii) Upon the expiration of seven years from the date hereof.

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

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

(b) **Statutory Powers.** The powers, duties and obligations of a mutual benefit nonprofit corporation pursuant to the Oregon Nonprofit Corporation Act as it may be amended from time to time.

(c) **Association Powers.** The powers, duties and obligations of a homeowners association pursuant to the Oregon Planned Community Act.

(d) **General.** 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.

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 Sections of Incorporation or Bylaws of the Association made in accordance with such instruments and with the Oregon Nonprofit Corporation Act.

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

(a) **Maintenance and Services.** The Association shall provide maintenance and services for Marken Heights as provided in Section 9 and other provisions of this Declaration.

(b) **Insurance.** The Association shall obtain and maintain in force policies of insurance as provided in this Declaration or the Bylaws of the Association, which shall name Declarant as an additional named insured so long as Declarant owns any Lot(s).

(c) **Rulemaking.** The Association shall make, establish, promulgate, amend and repeal Rules and Regulations as provided in Section 5.11 of this Declaration.

(d) **Assessments.** The Association shall adopt budgets and impose and collect Assessments as provided in Section 10 of this Declaration.

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

(f) **Employment of Agents, Advisers and Contractors.** The Association, through its Board, may employ the services of any person or corporation as managers; hire employees to manage, conduct and perform the business, obligations and duties of the Association; employ professional counsel and obtain advice from such persons or firms or corporations such as, but not limited to, landscape architects, architects, planners, lawyers and accountants; and contract for or otherwise provide for all services necessary or convenient for the management,

maintenance and operation of Marken Heights; provided, however, the Association may not incur or commit to incur legal fees in excess of \$5,000 for any specific litigation or claim matter unless the Owners have enacted a resolution authorizing the incurring of such fees by a vote of 75% of the voting rights present in person or by absentee ballot or proxy at a meeting at which a quorum is constituted. This limitation shall not be applicable to legal fees incurred in defending the Association or the Board from claims or litigation brought against them. The limitation set forth in this paragraph shall increase by \$500 on each fifth anniversary of the recording of this Declaration.

(g) Borrow Money, Hold Title and Make Conveyances. The Association may borrow and repay moneys for the purpose of performing its duties under this Declaration. The Association may acquire, hold title to and convey, with or without consideration, real and personal property and interests therein and shall accept any real or personal property, leasehold or other property interests within Marken Heights conveyed to the Association by Declarant.

(h) Transfers. The Association may sell, convey, or subject to a security interest any portion of the common property as provided for in ORS 94.665.

7.6 Liability. Neither the Association nor any officer or member of its Board shall be liable to any Owner for any damage, loss or prejudice suffered or claimed on account of any action or failure to act by the Association, any of its officers or any member of its Board, provided only that the officer or Board member has acted in good faith in accordance with the actual knowledge possessed by him.

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

7.8 Interim Board; Turnover Meeting. Declarant shall have the right to appoint an interim board of three directors or more, who shall serve as the Board of the Association until replaced by Declarant or their successors have been elected by the Owners at the turnover meeting described in this Section. Not later than 90 days after the expiration of the period of Declarant's Class B membership pursuant to Section 7.3, Declarant shall call a meeting for the purpose of turning over administrative responsibility for Community to the Association. Declarant shall give notice of the meeting to each Owner as provided for in the Bylaws of the Association. If Declarant does not call a meeting required by this Section within the required time, the Transitional Advisory Committee described in Section 7.9 or any Owner may call a meeting and give notice as required in this Section. At the turnover meeting the interim directors shall resign and their successors shall be elected by the Owners and Declarant as provided in this Declaration and the Bylaws of the Association.

7.9 Transitional Advisory Committee. Declarant or Owners shall form a transitional advisory committee (the "Transitional Advisory Committee") to provide for the transition from administrative responsibility by Declarant to administrative responsibility by the Association. Not later than the 60th day after the later of (a) Declarant has conveyed to Owners, other than a successor Declarant, 50% of the Lots in Marken Heights to a person, other than a successor Declarant. Declarant shall call a meeting of Owners for the purpose of selecting the Transitional Advisory Committee. The Transitional Advisory Committee shall consist of three or more members. The Owners, other than Declarant, shall select two or more members. Declarant may select no more than one member.

(a) Declarant Failure to Call Meeting. An Owner may call a meeting of Owners to select the Transitional Advisory Committee if the Declarant fails to do so as provided above.

(b) Owners' Failure to Select Members. Notwithstanding the foregoing, if the Owners do not select members for the Transitional Advisory Committee as described above, Declarant shall have no further obligation to form the Transitional Advisory Committee.

(c) Turnover Meeting. The requirement for formation of a Transitional Advisory Committee shall not apply once the turnover meeting specified in Section 7.8 has been held.

7.10 Declarant Control After Turnover. After the turnover meeting described in Section 7.8, Declarant shall continue to have the voting rights described in Section 7.3(b). In addition, a majority of the Board of the Association shall be elected by Declarant, as Class B member, with the balance of the Board elected by the Class A members. After termination of Class B membership, all directors shall be elected by the Class A members.

7.11 Association Policies and Procedures. In addition to the regulations adopted pursuant to Sections 5 and 6, the Association from time to time may adopt, modify, revoke such Rules and Regulations governing the conduct of persons and the operation and use of Lots and Living Units as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of Marken Heights. A copy of the Rules and Regulations, upon adoption, and a copy of each amendment, modification or revocation thereof, shall be delivered by the Board promptly to each Owner and shall be binding upon all Owners and Occupants of all Lots and Living Units upon the date of delivery. The method of adoption of such rules shall be as provided in the Bylaws of the Association.

7.12 Management. The Board may engage a Manager for the Association and may delegate to the Manager such duties of the officers of the Association as the Board deems appropriate.

SECTION 8 INSURANCE

The Association, through the Board, shall obtain and at all time maintain and shall pay for out of operating assessments, insurance covering the legal liability of the Declarant, the Association, the Association's Board, the ARC, and the Manager, if any, related to ownership, supervision, control or use of Marken Heights. Liability insurance required under this Section shall be issued on a comprehensive liability basis and shall provide a cross liability endorsement providing that the rights of a named insured under the policy shall not prejudice any action against another named insured.

SECTION 9 MAINTENANCE, UTILITIES AND SERVICES

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

9.2 Services. The Association shall provide or contract for such services as the Board may reasonably deem to be of benefit to Marken Heights, including, without limitation, landscape services, water, and other utilities for Common Easement Areas.

9.3 Owner's Responsibility. Except as otherwise provided in this Declaration or by written agreement with the Association, all maintenance of the Lots and Improvements thereon shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in a neat and attractive condition in accordance with the community-wide standard of Marken Heights. The Association shall, in the discretion of the Board, assume the maintenance responsibilities of such Owner if, in the opinion of the Board, the level and quality of maintenance being provided by such Owner does not satisfy such standard. Before assuming such maintenance responsibilities, the Board shall notify the Owner in writing of its intention to do so, and if such Owner has not commenced and diligently pursued remedial action within 15 days after mailing of such written notice, then the Association shall proceed. The expenses of such maintenance by the Association shall be reimbursed to the Association by the Owner, together with interest as provided in Section 11.4 below. Such charges shall be an Individual Assessment and lien on the Lot as provided in Sections 10.9 and 11.3 below.

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

SECTION 10 ASSESSMENTS

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

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

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

10.4 Annual Operating Budgets. The Board shall on or before December 1 of each year prepare an operating budget for the Association for the ensuing year, taking into account the current costs of insurance premiums, maintenance, 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 desirable or as may be required by law.

10.5 Annual Assessments. The Board of the Association shall from time to time and at least annually prepare an operating budget for the Association, taking into account the current costs of maintenance and services and future needs of the Association, any previous overassessment and any common profits of the Association. The budget shall take into account the number of Lots subject to assessment as of the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to assessment during the fiscal year. The budget may be based upon a greater number of Lots than those reasonably anticipated to be subject to assessment during the fiscal year if the Declarant agrees to subsidize the Association for any shortfall in the Operations Fund until assumed number of Lots is subject to assessment. The budget shall provide for such reserve or contingency funds as the Board deems necessary or as may be required by law, but not less than the reserves required by Section 10.8 below. Annual Assessments for such operating expenses and reserves ("Annual Assessments") shall then be apportioned among the Lots as provided in Section 10.3 above. Within 30 days after adopting the annual budget, the Board shall provide a summary of the budget to all Owners. If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect. The manner of billing and collection of Assessments shall be as provided in the Bylaws.

10.6 Special Purpose Assessments. In the event that the Board deems it to be the advantage of the Owners to impose a special purpose assessment to provide funds for a particular capital improvement, capital expenditure, or recreational facility; it may impose such a special assessment, provided that the amount of the assessment and the terms upon which it will be imposed have been approved by the vote or written consent of the Class B member, if any, and by not less than 75% of the votes of the Class A members who are voting in person, by absentee ballot or by proxy at a meeting duly called for the purpose of approving the Special Purpose Assessment.

10.7 Special Assessments. In addition to the Annual Assessment authorized above, the Board may levy during any fiscal year a Special Assessment ("Special Assessment"), applicable to that year only, for the purpose of deferring all or any part of the cost of any construction or reconstruction, unexpected repair, or acquisition or replacement of a described capital improvement, or for any other one-time expenditure not to be paid for out of Annual Assessments. Special Assessments for acquisition or construction of new capital improvements or additions which in the aggregate in any fiscal year exceed an amount equal to 15% of the budgeted gross expenses of the Association for the fiscal year may be levied only if approved by a majority of the voting rights voting on such matter, together with the written consent of the Class B member, if any. Prior to the Turnover Meeting, any Special Assessment for acquisition or construction of new capital improvements or additions must be approved by not less than 50% of the Class A voting rights, together with the written consent of the Class B member. Special Assessments shall be apportioned as provided in Section 10.3 above and may be payable in lump sum or in installments, with or without interest or discount, as determined by the Board.

10.8 Property Reserve Account. The Association shall establish a reserve account to fund major maintenance, repair or replacement of all items of Common Area Easements and improvements thereto under the direction and control of the Association which will normally require major maintenance, repair or replacement, in

whole or in part, in more than 1 and less than 30 years. The reserve account need not include reserves for those items: (a) that can reasonably be funded from the general budget or other funds or accounts of the Association; or (b) for which one or more, but less than all, Owners are responsible for maintenance and replacement under the provisions of this Declaration or the Bylaws. The reserve account shall be used exclusively for replacement of items on Common Easement Area, which will normally require replacement, in whole or in part, in more than 1 and less than 30 years, and not for regular or periodic maintenance expenses. Included as a line item in each operating assessment shall be an amount to be added to the reserve account which amount shall take into account the current replacement cost of each item of common property which has an estimated life of greater than 1 but less than 30 years and the estimated remaining life for such items of common property. Declarant shall not be required to pay any amount under this Section assessed to a Living Unit owned by Declarant until such date as the Living Unit is occupied as a residence. At least annually, the Board shall conduct a reserve study or review and update an existing study of the common property to determine the reserve account requirements in accordance with ORS 94.595. At any time after the second year after the turnover meeting described in Section 7.8, future assessments for the reserve account may be increased or reduced by the Board provided that any such action by the Board may be modified by vote of not less than 75% of the Owners.

10.9 Individual Assessments. Individual Assessments include, without limitation, charges for services provided under Sections 9.3 and 9.4 and any common expense that the Board determines is the fault of the Owner and not paid by insurance. Individual Assessments shall also include default Assessments levied against any Lot to reimburse the Association for costs incurred in bringing such Lot or its Owner into compliance with the provisions of this Declaration or the Rules and Regulations of the Association and for fines or other charges imposed pursuant to this Declaration for violation thereof. Unless otherwise provided by the Board, Individual Assessments shall be due 30 days after the Board has given written notice thereof to the Owners subject to the Individual Assessments.

10.10 Payment of Assessments. The Association shall, on or about the 25th day of each month provide notice to the Owner of each Living Unit of the amount of the assessments for such Living Unit for the ensuing month. Assessments shall be due and payable on or before a date set forth in the notice which shall be not less than 15 days from the date the notice is mailed or at such other time or times set in accordance with this Declaration or the Bylaws as the Association may specify in the notice. The Board shall have the right to give discounts for advance payment of assessments.

10.11 Creation of Lien; and Personal Obligation of Assessments. Declarant, for each Lot owned by it within the Community 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 attorney fees imposed pursuant to Section 10, shall be a charge on the land and a continuing lien upon the Lot against which each such assessment or charge is made. Such assessments, charges, and other costs shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment or charge fell due. Such liens and personal obligations shall be enforced in the manner set forth in Section 10.

10.12 Annual Accounting. Each calendar year the Board shall render to each Owner an accounting which shall set forth the amount and source of all income received in the maintenance fund and all disbursements from the fund during the previous calendar year, together with a statement of the assets of and liabilities of the maintenance fund at the close of the last calendar year. The Board shall maintain records of all amounts received into the maintenance fund and of all disbursements therefrom, which records shall be open to inspection by any Owner at any reasonable time during the normal business hours.

SECTION 11 ENFORCEMENT

11.1 Remedies. In the event any Owner or the invitee of any Owner shall violate any provision of this Declaration, the Bylaws of the Association or any Rules or Regulations adopted by the Association governing the use of Lots, then the Association, acting through its Board, may notify the Owner in writing that the violations exist and that such Owner is responsible for them, and may, after reasonable notice and opportunity to be heard, do any or all of the following: (a) bring suit or action against such Owner to enforce this Declaration, or (b) impose fines as provided in Section 11.8. Nothing in this Section, however, shall give the Association the right to deprive any

Owner of access to and from such Owner's Lot prior to judicial foreclosure.

11.2 Voluntary Conveyance. In a voluntary conveyance of a Lot the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments against the grantor of the Lot up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, upon request of an Owner or Owner's agent for the benefit of a prospective purchaser, the Board shall make and deliver a written statement of the unpaid Assessments against the prospective grantor of the Lot effective through a date specified in the statement, and the grantee in that case shall not be liable for any unpaid Assessments against the grantor not included in the written statement.

11.3 Non-qualifying Improvements and Violation of General Protective Covenants. In the event any Owner constructs or permits to be constructed on such Owner's Lot 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 or rules adopted pursuant to Section 5.11 to remain uncorrected or unabated on such Owner's Lot, then the Association acting through its Board may notify the Owner in writing of any such specific violations of this Declaration and may require the Owner to remedy or abate the same in order to bring the Owner's Lot, the Improvements thereon, and the Owner's use thereof, into conformance with this Declaration. If the Owner is unable, unwilling, or refuses to comply with the Association's specific directives or 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 60 days of written notice to the Owner, or 15 days in the event of a violation involving landscape maintenance, then the Association acting through its Board, shall have, in addition to any other rights or remedies provided in this Declaration, at law or in equity, the right to do any or all of the following:

(a) **Remove Cause of Violation.** Enter onto the offending Lot, without being subject to any trespass, conversion or any other claim for damages, and remove the cause of such violation, or alter, repair or change the item which is in violation of the 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.

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

(c) **Fines.** Impose one or more fines as provided in Section 11.4.

11.4 Default in Payment of Assessments; Enforcement of Lien. If an assessment, fine, or other charge levied under this Declaration is not paid within 30 days of its due date, such assessment or charge shall become delinquent and shall bear interest from the due date until paid at the legal rate of 9% per annum, in addition, the Association may exercise any or all of the following remedies:

(a) **Suspension of Rights; Acceleration.** 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 installment of any annual assessment or any other amounts owed by such Owner to the Association immediately due and payable. In no event, however, shall the Association deprive any Owner of access to and from such Owner's Lot, other than through foreclosure of a lien as described below.

(b) **Lien.** The Association shall have a lien against each Lot and Living Unit for any assessment levied against the Lot and Living Unit and any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Living Unit from the date on which the assessment, fine or charge is due. The provisions regarding the attachment, notice, recordation, duration of liens and foreclosure under ORS 94.704 to 94.733 shall apply to the Association's lien. The Association, through its duly authorized agents, may bid on the Lot and Living Unit at such foreclosure sale, and may acquire and hold, lease, mortgage, and convey the Lot and Living Unit. If any assessment is payable in installments, the full amount of the assessment is a lien from the date the first installment of the assessment becomes due.

(c) **Suit or Action.** The Association may bring an action to recover a money judgment for unpaid assessments and charges under this Declaration without foreclosing or waiving the lien described in Section 11.4(b). Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.

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

11.5 Notification of First Mortgagee. The Board may notify any first mortgagee of any Lot of any

default in performance of this Declaration by the Living Unit Owner, which is not cured within 60 days.

11.6 Subordination of Lien to First Mortgages. The lien of the assessments or charges provided for in this Declaration shall be subordinate to the lien of any first mortgage or trust deed of record on such Lot.

11.7 Late Charge, Expenses and Attorney Fees. A late charge may be charged for each delinquent assessment in an amount established from time to time by resolution of the Board of the Association not to exceed 10% 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 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 costs and expenses incurred by it in connection with such suit or action, including a foreclosure title report, and the prevailing party in such suit or action shall recover such amount as the Court may determine to be reasonable as attorney fees at trial and upon any appeal or petition for review thereof or in any bankruptcy proceeding.

11.8 Fines. The Board may establish a schedule of fines applicable to violations of this Declaration or Rules and Regulations established pursuant to this Declaration. Fines may be imposed by the Board after giving the alleged violator notice of the proposed fine and an opportunity to be heard. Fines shall be payable within ten days after receipt of written notice of the imposition of the fine. All fines shall be deposited in the Association's operating account.

11.9 Nonexclusiveness 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.

SECTION 12 MISCELLANEOUS PROVISIONS

12.1 Classification. Marken Heights is a Class II planned community as defined by ORS 94.550(3), and subject to ORS 94.550 to 94.783, except for ORS 94.595 and 94.604.

12.2 Amendment and Repeal. This Declaration, or any provision hereof, may be amended or repealed by the vote or written consent of Owners holding not less than 75% of the Class A votes, together with the written consent of the Class B member, 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 such 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 without Declarant's written consent, or change the boundaries of any Lot or any uses to which any Lot is restricted unless the Owners of the affected Lots unanimously consent to the amendment.

12.3 Regulatory Amendments. Notwithstanding the provisions of Section 12.2, until termination of the Class B membership, Declarant shall have the right to amend this Declaration of the Bylaws of the Association in order to comply with the requirements of any applicable statute, ordinance, or regulation or of the Federal Housing Administration, the 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.

12.4 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 in the Community and the Owners thereof for an initial period of 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 in the Community and the Owners thereof for successive additional periods of 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 6 months prior to the intended termination date by the vote or written consent of Owners owning not less than 75% of the Class A votes and the written consent of the

Class B member, if any, and the written approval of the holders of mortgages on Living Units in the project. Any such termination shall become effective only if prior to the intended termination date 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. Such termination shall not have the effect of denying any Owner access to such Owner's Lot unless such Owner and any mortgagee of such Lot have consented in writing to the termination.

12.5 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.

12.6 Lessees and Other Invitees. Lessees, invitees, contractors, family members, and other persons entering Marken Heights 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 such Owner's Lot, Living Unit, and other areas within the Community. 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.

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

12.8 Construction; Severability. This Declaration and any Supplemental Declaration shall be liberally construed as one document to accomplish the purposes stated in the introductory paragraphs hereof. Nevertheless, each provision of this Declaration and any Supplemental Declarations 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.

12.9 Claims Against Declarant. Except as expressly provided herein or by law, any dispute, controversy or claim by the Association or any Owners, (collectively "Claim") against Declarant, its principals, successors, assigns, agents or brokers, and/or any contractor, subcontractor, architect, materialman, or other person or entity involved in the planning, development or construction of the Community, or any component part thereof, shall be handled as follows:

(a) The Association or Owners, as the case may be, shall deliver written notice of the nature of such Claim to Declarant and any other involved person or entity within 1 year of becoming aware of the existence of such Claim, or the facts giving rise to such Claim. For purposes of this Section, knowledge of such Claim shall be deemed to exist, without limitation, upon the identification of such Claim or facts relating thereto, in (i) a written report prepared following an inspection in accordance with the inspection provisions contained herein, (ii) a writing by an Owner to Declarant, or (iii) upon the discovery of such Claim. If the Association, the Owner, or both cannot bring a Claim against the Declarant unless timely written notice is given.

(b) If Declarant or another involved party requests within 120 days of the date of the receipt of such written notice of a Claim, it shall be provided with access to Marken Heights and a reasonable opportunity and time period to cure or otherwise resolve such Claim.

(c) Any such Claim, if not otherwise resolved, shall be submitted to and resolved by binding arbitration in accordance with the rules of the Arbitration Service of Portland, Inc. Such arbitration shall constitute the sole and exclusive remedy for the resolution of any such Claim.

(d) Any arbitration instituted pursuant to this Declaration shall be conducted in accordance with the rules of Arbitration Service of Portland, Inc., and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The decisions of the arbitrator, including the determination of the amount of any damages suffered, if any, shall be conclusive, final and binding upon all the parties, their heirs, executors, administrators, successors, assigns, officers, directors and shareholders, as applicable. On the demand of the arbitrator or any party to an arbitration initiated hereunder, and after reasonable opportunity to join in and become a party to such arbitration, all of the parties to such arbitration and such concerned parties shall be bound by

the arbitrator or any party to an arbitration initiated hereunder, and after reasonable opportunity to join in and become a party to such arbitration, all of the parties to such arbitration and such concerned parties shall be bound by such arbitration proceeding. If any party refuses or neglects to appear at or participate in such arbitration proceeding, the arbitrator is empowered to decide the controversy in accordance with whatever evidence is presented by the party or parties who do participate. The arbitrator is authorized to award any party or parties such sums as it considers proper for the time, expense and trouble of arbitration, including attorney fees and costs of suit.

(e) In any arbitration of a dispute, controversy or claim by the Association or any Owner or Owners against Declarant, its successors and assigns, and/or any contractor, subcontractor, architect, materialman, consultant, or other person or entity involved in the planning, development or construction of Marken Heights unity or any component part thereof, pertaining to the planning, development or construction of Marken Heights or any component part thereof, not less than 90% of the amount actually awarded, if any, as a result of such arbitration (excluding an award of attorney fees and costs of suit) must be utilized by the Association, Owner or Owners, solely and exclusively, for the construction, reconstruction, repair or replacement of the Association's or Owners' property. In such proceeding there shall be no award in excess of the total costs of such repair, improvement or replacement, save the prevailing party's attorney fees and costs of suit.

12.10 Notices and Other Documents. All notices and other communications under this Declaration shall be in writing and shall be deemed to have been given on the day of delivery when delivered by personal service and to have been given three business days after delivery to the United States mails certified or registered mail, return receipt requested, addressed to the party to which such notice is directed at its address determined as provided in this Section.

(a) **Addresses.** All notices and other communications under this Declaration shall be given to the parties hereto at the following addresses:


(i) If to an Owner, then to the last address for such Owner shown in the Association's records.

(ii) If to Declarant or to the Association, then to Declarant or the Association at: c/o Paul Neiffer, 111 University Parkway, Ste 100, Yakima WA 98901.

(b) **Change of Address.** Any party hereto may change the address to which notices shall be directed by giving ten days' written notice of such change delivered as provided herein.

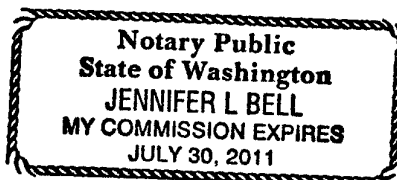
IN WITNESS WHEREOF, Declarant has executed this Declaration the date first above written.

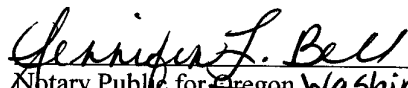
Marken Heights Development Corp.

By: 
Paul Neiffer, President

Washington
STATE OF ~~OREGON~~)
) ss:
County of ~~Deschutes~~ Yakima)

This instrument was acknowledged this September 27, 2010, before me by Paul Neiffer as President of Marken Heights Development Corp.

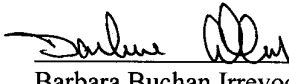



Notary Public for ~~Oregon~~ Washington
My Commission Expires July 30, 2011

CONSENT AND ACKNOWLEDGMENT OF EXISTING LOT OWNERS

The undersigned individuals are the owners of Lots 12, 14, 19, 20, and 22, Marken Heights, Deschutes County, Oregon. The undersigned acknowledge and agree that they have received a copy of this Declaration prior to its recordation, and have reviewed its terms, conditions, and their rights and obligations hereunder. By their signature, they hereby consent to the Declarant's recording of this instrument and subordinate and subject their respective Lots to the terms hereof, run with the land and shall be binding upon and inure to all parties having or acquiring any right, title or interest in their Lots, or any part thereof, and shall inure to the benefit of each Owner thereof.

Consenting Owners:



Barbara Buchan Irrevocable Trust UTD 4/27/06
By: Darlene Allen, Trustee. Owner, Lot 14

Michael Wilkins, Co-Owner, Lot 22


Tonna Wilkins, Co-Owner, Lot 22

E. Marie Landers, Co- Owner, Lots 19 & 20

Michael T. Landers, Co-Owner, Lots 19 & 20

Patricia C. Connolly, Owner, Lot 12

Consenting Owners:


Michael Wilkins, Co-Owner, Lot 22

E. Marie Landers, Co- Owner, Lots 19 & 20

Patricia C. Connolly, Owner, Lot 12

Page 23 – MARKEN HEIGHTS DECLARATION

CONSENT AND ACKNOWLEDGMENT OF EXISTING LOT OWNERS

The undersigned individuals are the owners of Lots 12, 14, 19, 20, and 22, Marken Heights, Deschutes County, Oregon. The undersigned acknowledge and agree that they have received a copy of this Declaration prior to its recordation, and have reviewed its terms, conditions, and their rights and obligations hereunder. By their signature, they hereby consent to the Declarant's recording of this instrument and subordinate and subject their respective Lots to the terms hereof, run with the land and shall be binding upon and inure to all parties having or acquiring any right, title or interest in their Lots, or any part thereof, and shall inure to the benefit of each Owner thereof.

Consenting Owners:

Barbara Buchan Irrevocable Trust UTD 4/27/06
By: Darlene Allen, Trustee. Owner, Lot 14

Michael Wilkins, Co-Owner, Lot 22

Tonna Wilkins, Co-Owner, Lot 22



E. Marie Landers, Co- Owner, Lots 19 & 20



Michael T. Landers, Co-Owner, Lots 19 & 20

Patricia C. Connolly, Owner, Lot 12

CONSENT AND ACKNOWLEDGMENT OF EXISTING LOT OWNERS

The undersigned individuals are the owners of Lots 12, 14, 19, 20, and 22, Marken Heights, Deschutes County, Oregon. The undersigned acknowledge and agree that they have received a copy of this Declaration prior to its recordation, and have reviewed its terms, conditions, and their rights and obligations hereunder. By their signature, they hereby consent to the Declarant's recording of this instrument and subordinate and subject their respective Lots to the terms hereof, run with the land and shall be binding upon and inure to all parties having or acquiring any right, title or interest in their Lots, or any part thereof, and shall inure to the benefit of each Owner thereof.

Consenting Owners:


Barbara Buchan, Owner, Lot 14

Michael Wilkens, Co-Owner, Lot 22

Tonna Wilkens, Co-Owner, Lot 22

E. Marie Landers, Co- Owner, Lots 19 & 20

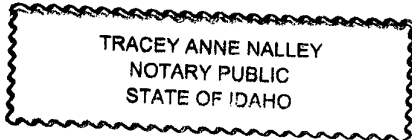
Michael T. Landers, Co-Owner, Lots 19 & 20



Patricia C. Connolly, Owner, Lot 12

STATE OF IDAHO)
) ss:
County of ADA)

This instrument was acknowledged this September 22nd 2010, before me by Darlene Allen, Trustee, the Barbara Buchan Irrevocable Trust u/t/d 4/27/06.



Tracey Anne Nalley
Notary Public for IDAHO
My Commission Expires: 12/08/14

STATE OF OREGON)
) ss:
County of Deschutes)

This instrument was acknowledged this September ___, 2010, before me by Michael Wilkens and Tonna Wilkens.

Notary Public for Oregon
My Commission Expires: _____

STATE OF OREGON)
) ss:
County of Deschutes)

This instrument was acknowledged this September ___, 2010, before me by Michael T. Landers.

Notary Public for Oregon
My Commission Expires: _____

STATE OF OREGON)
) ss:
County of Deschutes)

This instrument was acknowledged this September ___, 2010, before me by E. Marie Landers.

Notary Public for Oregon
My Commission Expires: _____

Notaries continue next page

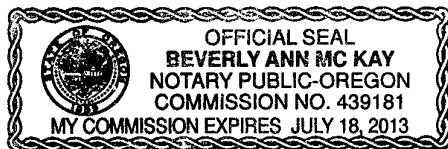
County of _____)

This instrument was acknowledged this September ___, 2010, before me by Darlene Allen, Trustee, the Barbara Buchan Irrevocable Trust u/t/d 4/27/06.

Notary Public for _____
My Commission Expires: _____

STATE OF OREGON)
) ss:
County of Deschutes)

This instrument was acknowledged this September 28, 2010, before me by Michael Wilkens and Tonna Wilkens. *Wilkens*

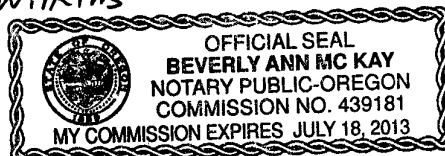


Beverly Ann McKay

Notary Public for Oregon
My Commission Expires: 7-18-13

STATE OF OREGON)
) ss:
County of Deschutes)

This instrument was acknowledged this September 29, 2010, before me by Michael T. Landers. *Landers*
Tonna Wilkins



Beverly Ann McKay

Notary Public for Oregon
My Commission Expires: 7-18-13

STATE OF OREGON)
) ss:
County of Deschutes)

This instrument was acknowledged this September ___, 2010, before me by E. Marie Landers.

Notary Public for Oregon
My Commission Expires: _____

Notaries continue next page

STATE OF OREGON)
) ss:

STATE OF _____)
) ss:
County of _____)

This instrument was acknowledged this September ____, 2010, before me by Darlene Allen, Trustee, the Barbara Buchan Irrevocable Trust u/t/d 4/27/06.

Notary Public for _____
My Commission Expires: _____

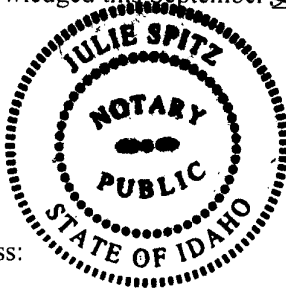
STATE OF OREGON)
) ss:
County of Deschutes)

This instrument was acknowledged this September ____, 2010, before me by Michael Wilkens and Tonna Wilkens.

Notary Public for Oregon
My Commission Expires: _____

STATE OF ~~OREGON~~ ^{Idaho})
) ss:
County of ~~Deschutes~~ ^{Ada})

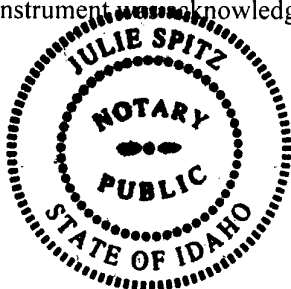
This instrument was acknowledged this September 28, 2010, before me by Michael T. Landers.



Julie Spitz
Notary Public for ~~Oregon~~ ^{Idaho}
My Commission Expires: 8/24/2011

STATE OF ~~OREGON~~ ^{Idaho})
) ss:
County of ~~Deschutes~~ ^{Ada})

This instrument was acknowledged this September 28, 2010, before me by E. Marie Landers.

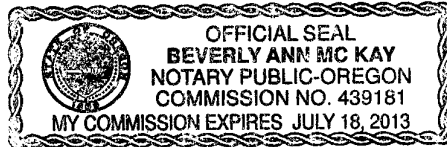


Julie Spitz
Notary Public for ~~Oregon~~ ^{Idaho}
My Commission Expires: 8/24/2011

Notaries continue next page

STATE OF OREGON)
) ss:
County of Deschutes)

This instrument was acknowledged this September 9th, 2010, before me by Patricia C. Connolly



Beverly Ann McKay
Notary Public for Oregon
My Commission Expires: 7-18-13

MARKEN HEIGHTS

Lots 1-23, Marken Heights, City of Bend, Deschutes County, Oregon.