



00563711200700415430260268

07/27/2007 04:23:08 PM

D-CCR Cnt=1 Stn=25 CLERK
\$130.00 \$11.00 \$10.00 \$5.00

After recording, return to:

Sharon R. Smith
Bryant Lovlien & Jarvis, PC
591 SW Mill View Way
Bend, Oregon 97702

DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS
FOR
McClellan Commons Subdivision

26
This Declaration of Covenants, Conditions, and Restrictions is made this 27 day of July, 2007, by the Coughlin and Holloway, LLC, an Oregon Limited Liability Corporation hereinafter referred to as "Declarant".

WHEREAS, Declarant is the owner of the real property described in *Exhibit "A"*, attached hereto and incorporated herein by reference. Declarant intends by this Declaration to impose upon the Properties mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of residential property within McClellan Commons Subdivision, the planned unit development made subject to this Declaration and amendments thereto by the recording of this Declaration, and to establish such property as a Class III Planned Community under the Oregon Planned Community Act, ORS 94.550 to 94.783; and

WHEREAS, Declarant desires to provide a flexible and reasonable procedure for the overall development of the Properties and the interrelationship of the component residential associations, and to establish a method for the administration, maintenance, preservation, use, and enjoyment of such Properties as are now or may hereafter be subjected to this Declaration;

NOW, THEREFORE, Declarant hereby declares that all the Properties described in *Exhibit "A"* shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of and which shall run with the real property subjected to this Declaration and which shall be binding on all parties having any right, title, or interest in the described Properties or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE 1.

Definitions

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

1.1 "Articles of Incorporation" shall mean and refer to the Articles of Incorporation for the Association.

1.2 **"Assessments"** means all assessments and other charges, fines and fees imposed by the Association on an Owner or Lot in accordance with this Declaration, including, without limitation, Annual Assessments, Special Assessments, and Specific Assessments described in Article 8.

1.3 **"Association"** means the Oregon nonprofit corporation formed to serve as the Owners' association and known as McClellan Commons Homeowner's Association.

1.4 **"Board"** shall mean the Board of Directors of the McClellan Commons Homeowner's Association

1.5 **"Bylaws"** shall refer to the Bylaws of McClellan Commons Homeowner's Association, recorded under ORS 94.625.

1.6 **"Common Area"** shall mean all real and personal property, if any, now or hereafter owned by the Association for the common use and enjoyment of the Owners.

1.7 **"Declarant"** shall mean Coughlin and Holloway, LLC., an Oregon Limited Liability Corporation.

1.8 **"Common Expenses"** shall mean the actual and estimated expenses of operating the Association, both for general purposes, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to the Declaration, the Bylaws, and the Articles of Incorporation.

1.9 **"Eligible Votes"** shall mean those votes available to be cast on the issue at hand. A vote which is for any reason suspended is not available to be cast.

1.10 **"Improvement"** shall mean every structure or improvement of any kind, including, but not limited to, a dwelling, landscaping, fences, wall, driveways, fixtures, shelters, or other product of construction efforts on or with respect to the Subdivision.

1.11 **"Lot"** shall mean a portion of the Properties other than the Common Area intended for any type of independent ownership and use as may be set out in this Declaration and as shall be shown on the plats of survey filed with this Declaration or amendments thereto. Where the context indicates or requires, the term Lot includes any structure on the Lot.

1.12 **"Majority"** means those eligible votes, Owners, or other groups as the context may indicate totaling more than fifty (50%) percent of the total eligible number.

1.13 **"Member"** shall mean and refer to a person or entity entitled to membership in the Association, as provided herein.

1.14 **"Mortgage"** means any mortgage, deed to secure debt, and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

1.15 "Mortgagee" shall include a beneficiary or holder of a deed of trust, as well as a mortgagee.

1.16 "Mortgagor" shall include the trustor of a deed of trust, as well as a mortgagor.

1.17 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of any Lot which is part of the Properties, but excluding any party holding the fee simple title merely as security for the performance of an obligation. Owner shall include the Declarant.

1.18 "Person" means a natural person, a corporation, a partnership, trustee, or other legal entity.

1.19 "Plat" shall mean the duly recorded Plat of McClellan Commons Subdivision recorded at document number _____ in Deschutes County, Oregon.

1.20 "Property or Properties" shall mean and refer to the real property described in Article 2 of this Declaration and such additional real property as may be added in accordance with this Declaration.

1.21 "Subdivision" shall mean the McClellan Commons Subdivision.

1.22 "Turnover" shall mean the date that control of the Association is turned over to the Owners of the Subdivision from the Declarant.

ARTICLE 2.

Property Subject to This Declaration

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

All real property within that certain plat entitled "McClellan Commons Subdivision" filed in the Plat records of Deschutes County, Oregon, on _____ as record number _____.

2.2 **Amendment.** This Article shall not be amended without the written consent of Declarant, so long as the Declarant owns any property in the Subdivision.

ARTICLE 3.

Land Classifications

3.1 Land Classifications within Development. All land within the Development is included in one or another of the following classifications:

3.1.1 Lots, which shall consist of Lots 1-8 on the plat of the Development.

3.1.2 Private roads, sidewalks and ditches, which shall be considered Common Area.

3.2 Conversion of Lots to Common Areas. Declarant may elect to build common facilities or amenities on one or more Lots and designate such Lots as Common Areas by a declaration recorded in the deed records of Deschutes County, Oregon. Declarant, as owner of the Lots, shall execute such declaration.

ARTICLE 4.

Architectural Design and Review

4.1 Architectural Review Committee. Declarant shall serve as the Architectural Review Committee (the "ARC") for the duration of time required for all Lots to be developed with a residential dwelling or for a period of three years, whichever occurs first.

4.1.1 The purpose of the ARC is to enforce the architectural and design standards of the community and to approve or disapprove plans for Improvements proposed for the Lots.

4.1.2 The ARC shall have the authority to delegate its duties or to retain the services of a professional engineer, architect, designer, inspector or other person to assist in the performance of its duties. The ARC may render its decision only in written setting forth the action taken by the ARC.

4.1.3 The ARC shall have discretion to withhold consent if it believes the improvement does not meet the Design Guidelines. Any condition or provision of the Design Guidelines may be waived by the ARC in its exclusive discretion. Any waiver shall be in general conformity with the development concept and the development standards for the Subdivision. Any such waiver shall not be deemed a general waiver. The granting of a waiver as to one Owner shall not automatically entitle any other Owner to the waiver of the same or similar 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.

4.2 Design Guidelines. The Declarant may adopt, and from time to time, amend, modify, or revise the Design Guidelines. Adoption, amendments, modifications, or revisions of the Design Guidelines may occur without the consent of anyone prior to the conveyance of the first Lot to an Owner other than the Declarant. No such amendments, modifications, or revisions shall affect any prior ARC approval. The Design Guidelines may show the nature, kind, shape, color, size,

materials, and quality of workmanship and design and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation.

4.3 Approval Required. No Improvement, as defined in Article 1, shall be erected, placed, altered, maintained, or permitted to remain on any Lot subject to this Declaration, except Lots owned by Declarant, until final plans and specifications have been submitted to and approved in writing by the ARC. The procedure and specific requirements for review and approval of residential construction may be set forth in Design Guidelines adopted from time to time by the ARC. The ARC may charge a reasonable fee to cover the cost of processing the application. No work may be performed relating to any Improvement unless and until all aspects of all plans have been approved in writing by the ARC.

4.4 Inspection. All work related to any building, structure or Improvement or any landscaping, vegetation, ground cover or other improvements within the Property shall be performed in strict conformity with the plans and drawings approved by the ARC. The ARC shall have the right to inspect any such work to determine its conformity with the approved plan 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 by the ARC that certain work is nonconforming, a stop work notice may be issued, without necessity of a court order, which shall required the Owner to correct all non-conforming work specified in the notice before the remainder of the proposed work may be completed. Continued work without correction of any such non-conforming items shall be deemed a breach of the Declaration. Neither the Declarant nor the ARC shall be deemed 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.

4.5 Enforcement. The ARC may approve or deny plans based on compliance with the Design Guidelines. Owners of nonconforming structures or structures built without prior approval of the ARC may be required to pay fines or to remove the offending structure as set out in the Design Guidelines.

4.6 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 the Declarant, ARC nor any member thereof shall be liable to any Owner, tenant, occupant, invitee, builder, or developer for any damage, loss, or prejudice suffered or claimed on account of any action or failure to act of the Declarant, ARC, or a member thereof, provided only that the Declarant, ARC, or the member has acted in good faith, in accordance with the actual knowledge possessed.

4.7 Duration of ARC. The ARC shall terminate after all lots have been developed with a residential dwelling or after a period of three years, whichever occurs first. The ARC will only review initial dwellings and will not review subsequent additions.

ARTICLE 5
Homeowner's Association

5.1 Association. Declarant shall organize an Association of all of the Owners within the Subdivision. Such Association, its successors and assigns, shall be organized as an Oregon nonprofit corporation under the name "McClellan Commons Homeowners Association" or such similar name as Declarant shall designate, and shall have such property, powers and obligations as are set forth in this Declaration for the benefit of the Property and all Owners of Lots located therein.

5.2 Organization. Declarant shall, before the first Lot is conveyed to an Owner, organize the Association as a nonprofit corporation under the general nonprofit corporation laws of the State of Oregon. The Articles of Incorporation shall provide for its perpetual existence, but in the event the Association is at any time dissolved, whether inadvertently or deliberately, an unincorporated association of the same name shall automatically succeed it. In that event the assets of the Association shall be dedicated to a public body, or all of the property, powers and obligations of the incorporated association existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated association, and such vesting shall thereafter be confirmed as evidenced by appropriate conveyances and assignments by the incorporated association. To the greatest extent possible, the Articles of Incorporation and Bylaws shall govern any successor-unincorporated association as if they had been made to constitute the governing documents of the unincorporated association. The Bylaws shall be recorded pursuant to ORS 94.625.

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

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

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

5.4.2 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 either of the following events, whichever occurs earlier:

5.4.2.1 When ninety percent (90%) of the Lots of the last phase of the Subdivision have been sold and conveyed to Owners other than a successor Declarant; or

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

5.5 Suspension of Voting Rights. All voting rights of an Owner shall be suspended during any period in which such Owner is delinquent in the payment of any Assessment. Voting rights may also be suspended if an Owner is otherwise in default under this Declaration, the Bylaws or the regulations promulgated by the Association.

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

5.6.1 The powers, duties and obligations granted to the Association by this Declaration.

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

5.6.3 The powers, duties and obligations of a homeowners association pursuant to the Oregon Planned Community Act.

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

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

5.7 Turnover Meeting. For the purposes of turning over control of the Association to the Class A members, the Declarant shall call a meeting (the "Turnover Meeting") not later than one hundred twenty (120) days after seventy-five percent (75%) of the Lots of the Subdivision have been sold and conveyed to Owners other than Declarant. The Declarant shall give notice of the Turnover Meeting to each Owner as provided in the Bylaws. The Turnover Meeting shall be conducted in accordance with the Bylaws. At the Turnover Meeting, the Declarant shall turn over to the Association the responsibility for the Subdivision and of the Association and the Association shall accept such administrative responsibility. At the Turnover Meeting, the Owners shall elect a three to five member Board in accordance with the Bylaws. Members may vote by proxy at the Turnover Meeting. At the Turnover Meeting, the Declarant shall deliver to the Association those items and documents required by ORS 94.616 or applicable successor provisions. In order to facilitate an orderly transition, during the three month period following the Turnover Meeting, the Declarant or an informed representative shall be available to meet with the Board on at least three mutual acceptable dates to review the documents delivered pursuant to this Section.

5.8 Contracts Entered into by Declarant or Prior to Turnover Meeting.

Notwithstanding any other provision of this Declaration, any management contracts, service contracts or employment contracts entered into by the Declarant or the Board on behalf of the Association prior to the Turnover Meeting shall have a term not in excess of three (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 thirty (30) days' notice to the other party given not later than sixty (60) days after the Turnover Meeting.

ARTICLE 6

Specific Rights and Obligations of the Association

6.1 Regulations. The Association may establish reasonable regulations concerning the use of the Common Area, facilities located thereon (if any), and individual Lots. Copies of such regulations and amendments (the "McClellan Commons Regulations") thereto shall be furnished by the Association to all Owners prior to the regulations' effective date. The McClellan Commons Regulations shall be binding upon the Owners, their families, tenants, guests, invitees, and agents until and unless such regulation shall be specifically overruled, cancelled, or modified by the Association in a regular or special meeting by the vote of Class A members holding a majority of the total votes in the Association and by the vote of the Class B members, so long as such membership shall exist.

6.2 Enforcement. The Board shall have the authority to impose reasonable monetary fines and other sanctions, and monetary fines may be collected by lien and foreclosure as provided in the McClellan Commons Regulations and this Declaration to enforce any regulations established by the Association, and to enforce the decisions of the Architectural Review Committee.

6.3 Maintenance of Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements therein (including snow removal) and shall keep it in good, clean, attractive, sanitary condition, order, and repair, pursuant to the terms and conditions of this Declaration and the By-laws.

6.4 Services. The Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Properties, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or with which it contracts. The Association may obtain and pay for legal, management and accounting services necessary or desirable in connection with the operation of the Properties or the enforcement of this Declaration. The Association may, but shall not be required to, arrange as an Association expense with third parties to furnish water, trash collection, sewer service, and other common services to each Lot.

6.5 Personal Property and Real Property for Common Use. The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal

property and real property for common use. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold, or other property interests located within the Properties.

6.6 Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or the Bylaws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

6.7 Self Help. In addition to any other remedies provided for herein, the Association or its duly authorized agent shall have the power to enter upon a Lot or any portion of the Common Area to abate or remove, using such force as may be reasonably necessary, any erection, thing or condition which violates this Declaration, the Bylaws, the McClellan Commons Regulations or the Design Guidelines. Unless an emergency situation exists, the Board shall give the violating Lot Owner ten (10) days' written notice of its intent to exercise self-help. All costs of self-help, including reasonable attorney's fees actually incurred shall be assessed against the violating Lot Owner and shall be collected as provided for in this Declaration for the collection of Specific Assessments.

6.8 Right of Entry. The Association shall have the right, in addition to and not in limitation of all the rights it may have, to enter into units for emergency, security, or safety purposes, which right may be exercised by the association's Board, officers, agents, employees, managers and all police officers, firefighters, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after reasonable notice to the owner or occupant of the Lot. Entry upon the Lot as provided herein shall not be deemed a trespass, and the Association shall not be liable for any damage so created unless such damage is caused by the Association's willful misconduct or gross negligence.

6.9 Liability. A member of the Board shall not be liable to the Association or any member thereof for any damage, loss or prejudice suffered or claimed on account of any action or failure to act in the performance of his duties, except for acts of gross negligence or intentional acts. In the event any member of the Board or any officer of the Association is made a party to any proceeding because the individual is or was a director or officer of the Association, the Association shall indemnify such individual against liability and expenses incurred to the maximum extent permitted by law. The managing agent of the Association, and its officers and employees, shall not be liable to the Owners or any third parties on account of any action or failure to act in the performance of its duties as managing agent, except for acts of gross negligence or intentional acts, and the Association shall indemnify the managing agent and its officers and employees from any such claims, other than for gross negligence or intentional misconduct.

ARTICLE 7

Property Rights In Common Areas

7.1 Common Area Description. The Common Area in the Subdivision includes the private roads, sidewalks and ditches of the Subdivision. The Common Area shall be reserved for the use and enjoyment of all Owners, and no private use may be made of Common Areas.

7.2 Title to Common Areas. Declarant shall convey the title to the Common Areas to the Association, free and clear of financial liens and encumbrances not later than Turnover. The Association shall own all Common Areas in fee simple and assume all maintenance obligations, including any Common Areas which may be hereafter established.

7.3 Owner's Easement of Enjoyment. Every Owner shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot.

7.4 Owner's Right To Ingress, Egress, and Support. Each Owner shall have the right to ingress and egress over, upon, and across the Common Area necessary for access to his or her Lot and shall have the right to lateral support for his or her Lot, and such rights shall be appurtenant to and pass with the title to each Lot, subject to reasonable rules, regulations, and limitations as may be adopted in accordance therewith.

7.5 Alienation of the Common Areas. The Association may not by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas owned directly or indirectly by the Association for the benefit of the Lots unless the holders of at least 80 percent of the Class A members and the Class B member, if any, have given their prior written approval and unless approved by the applicable governmental authority. The Association, upon approval in writing of at least 80 percent of the Class A members and the Class B member, if any, and if approved by order or resolution of the City of Bend, may dedicate or convey any portion of the Common Areas to a park district or other public body.

7.6 Condemnation. Whenever all or any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation of the Board acting on the written direction of all Owners) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as Trustee for all Owners to be disbursed as follows:

7.6.1 If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking the Declarant and at least seventy-five (75%) percent of the Class A Members of the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available therefor, in accordance with plans approved by the Board of the Association. If such improvements are to be repaired or restored, the provisions in Article 11 hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair

or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

ARTICLE 8

Property Right In Lots

8.1 Use and Occupancy. The Owner of a Lot in the Property shall be entitled to the exclusive use and benefit of such Lot except as may be expressly limited by this Declaration or other documents binding the Owner. Except as may be otherwise expressly provided in this Declaration, each Lot shall be used for residential purposes; no trade or business of any kind may be conducted except such home occupations as may be allowed under applicable zoning codes, if approved by the Board in their sole discretion. Lease or rental of a Lot or any building thereon for residential purposes shall not be considered to be a violation of this covenant, so long as the lease is in compliance with reasonable rules and regulations as the Board may promulgate. Any lessee or tenant shall in all respects be subject to the terms and conditions of this Declaration, the Bylaws, and the McClellan Commons Regulations adopted hereunder.

8.2 Easements Granted. In addition to any easements shown on the recorded plats, in recorded access easements, Declarant hereby reserves for itself and grants to the Association the following easements for the benefit of the Declarant and the Association:

8.2.1 Adjacent Common Area. The Owner of any Lot which blends together visually with any Common Area shall, if the Association elects from time to time to so require, permit the Association to enter upon the Lot to perform the maintenance of such Common Area.

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

8.2.3 Utility Easements. Easements for installation and maintenance of utilities and drainage facilities may be reserved over portions of certain Lots, as shown on or described in the recorded plat or which are reasonably necessary to provide utilities or adequate drainage. Within the easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities, or which may change the direction or flow of drainage channels in the easements, or which may 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. Notwithstanding the provisions of this paragraph, no such easements shall exist along adjoining side lots on which a party wall exists.

ARTICLE 9

Association Funds and Assessments Required

9.1 Funds Held by Association.

9.1.1 Operations Fund. The Association shall keep all funds received by it as Assessments other than reserves separate and apart from its other funds, in an account to be known as the Operations Fund. The Association shall use such fund exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents within the property and in particular for the improvements and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas situated on the Property, including but not limited to: normal recurring maintenance of the Common Areas improvements, payment of the cost of insurance required by the Bylaws, payment of taxes assessed against Common Areas and improvements thereon, and payment of service costs deemed to be of general benefit to the Owners, including but not limited to management, accounting, legal and secretarial services.

9.1.2 Reserve Fund. Declarant shall establish a reserve fund for replacement of those items to be maintained by the Association all or part of which will normally require replacement in more than three (3) and less than thirty (30) years ("the Reserve Fund"). Such Reserve Fund shall be funded against the individual Lots assessed for maintenance of the items for which the Reserve Fund is being established based on the Reserve Study. Declarant may elect to defer payment of accrued assessments for reserves for a Lot until the date the Lot is conveyed; provided however, that the Declarant may not defer such payment beyond the date of the Turnover Meeting. The amount assessed shall take into account the estimated remaining life of the items for which the reserve is created and the current replacement cost of such items. The Reserve Fund shall be established in the name of the Association and shall be adjusted at regular intervals to recognized changes in current replacement cost over time. The Reserve Fund shall be used only for repair or replacement of common property as determined by the Board and shall be kept separate from any Operations Funds. However, the Association may borrow funds from the Reserve Fund to meet high seasonal demands on the regular operating funds or to meet other temporary expenses which will later be paid from Annual or Specific Assessments. Any interest earned on fund deposited in the Reserve Fund however, may either be accumulated in the Reserves Fund or deposited in the Operations Fund. Nothing in this section shall prohibit prudent investment of the Reserve Account. Assessments paid into the Reserve Fund are the property of the Association and are not refundable to sellers or Owners of Lots. Sellers of the Lots, however, may treat their outstanding share of the Reserve Fund as a separate item in any sale agreement.

9.2 Reserve Study. To assist in determining the amount of money necessary to fund the Reserve Fund, prior to conveying the first Lot, the Declarant shall conduct an initial study, ("the Reserve Study") and thereafter the Association shall annually conduct a Reserve Study, or review of the existing Reserve Study to determine the Reserve Fund account requirements and adjust the amount of payments as indicated by the Reserve Study. The Reserve Study shall include (a) identification of all items for which reserves are required to be established; (b) the estimated remaining useful life of each item as of the date of the reserve study; (c) the estimated

cost of maintenance, repair, or replacement of each item at the end of its useful life; and (d) a thirty (30) year plan with regular and adequate contributions, adjusted by estimated inflation and interest earned on the Reserve Fund, to meet the maintenance and replacement schedule.

9.3 Purpose of Assessments. The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of Lots, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board. 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 of enjoyment of any of the Common Area or by abandonment by the Owner of the Owner's Lot. An Owner may not claim an offset against an Assessment for failure of the Association to perform its obligations, and no Owner may offset amounts owing or claimed to be owing by the Association or Declarant to the Owner.

9.4 Creation of Assessments. Each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association; (a) annual assessments; (b) special assessments; and (c) specific assessments. All such assessments, together with late charges, interest, not to exceed the maximum legal rate, costs, and reasonable attorney's fees actually incurred, shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made.

9.5 Types of Assessments.

9.5.1 Annual Assessments. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year, which shall include an Operations Fund contribution and Reserve Fund contribution in accordance with the operating expenses budget and reserve study budget separately prepared. The amount due from each lot shall be the assessments (the "Annual Assessment"). All Lots subject to assessments shall pay an equal share of Annual Assessments. The Board shall cause the budget and the Annual Assessments to be levied against each Lot for the following year to be delivered to each member at least thirty (30) days prior to the end of the current fiscal year. The budget and the Annual Assessment shall become effective unless disapproved at a meeting by a Majority of the Owners. Notwithstanding the foregoing, however, in the event the membership disapproved the proposed budget or the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the then current year shall continue for the succeeding year. The Association shall, upon written demand and for a reasonable charge, furnish a certificate signed by and officer of the Association setting forth whether or not the assessment for a particular Lot has been paid for a particular assessment period. No Lot Owner shall have any right to any common profits of the Association.

9.5.2 Specific Assessments. Any common expense or any part of a common expense benefiting fewer than all of the Lots may be assessed exclusively against the Lots benefited (the "Specific Assessment"). Specific Assessments include, without limitations, charges for services to maintain easements. Specific 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 provision of this Declaration or the Policies and Procedures of the Association and for fines or other charges imposed pursuant to this Declaration for violation thereof. Unless otherwise provided by the Board, Specific Assessments shall be due 30 days after the Board has given written notice thereof. During the period of Declarant control, any Specific Assessment for capital improvements or additions must be approved by not less than fifty percent (50%) of the voting rights.

9.5.3 Special Assessments. In addition to the other assessments authorized herein, the Association may levy special assessments in any year (the "Special Assessments"). Special Assessments shall be paid as determined by the Board, and the Board may permit Special Assessments to be paid in installments extending beyond the fiscal year in which the Special Assessment is imposed. All lots shall pay an equal share of any Special Assessments.

9.6 Date of Commencement of Annual Assessments. The annual assessments provided for herein shall commence as to all Lots then existing and subject to assessment under the Declaration on the first day of the month following the conveyance of the first Lot by the Declarant to a Class A member. The first Annual Assessment shall be adjusted according to the number of months then remaining in that fiscal year. The Declarant must pay the portion of Annual Assessments that are for the Operations Fund. Declarant, however, may defer payment of the portion of the Annual Assessments for the Reserve Fund for a Lot until the date the Lot is conveyed to a person other than Declarant, or a successor Declarant, but not beyond the date of the Turnover Meeting or, if no Turnover Meeting is held, the date the Owners assumed administrative control of the Association. The books and records of the Association shall reflect the amount owing from Declarant for all annual assessments.

9.7 Capitalization of Association. Upon acquisition of record title to a Lot from Declarant, each Owner shall contribute to the capital of the Association an amount equal to two (2) months of Assessments for that Lot as determined by the Board. This amount shall be deposited by the buyer into the Purchase and Sales Escrow and disbursed therefrom to the Association.

9.8 Reapportionment of Assessments Upon Removal Of Property. If Lots are removed from the Property, they will no longer be required to pay Assessments and the Assessments will be reapportioned equally among all remaining Lots.

9.9 Owner's Acceptance of Right of Association to Attach Lien Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. No Owner may waive or otherwise except liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot.

9.10 Effect of Nonpayment or Late Payment of Assessments. Any Assessments which are not paid when due shall be delinquent. All late payments shall be applied first to costs and attorneys' fees, then to late charges, then to interest, then to delinquent assessments, then to

any unpaid installments of the Annual Assessment or Special Assessments which are not the subject matter of suit in the order of their coming due, and then to any unpaid installments of the Annual Assessment or Special Assessments which are the subject matter of suit in the order of their coming due.

9.11 Remedies of the Association for Nonpayment of Assessments

9.11.1 Any Assessment delinquent for a period of more than ten (10) days shall incur a late charge in an amount as the Board may from time to time determine.

9.11.2 The Association shall cause a notice of delinquency to be given to any member who has not paid within ten (10) days following the due date. If the assessment is not paid within thirty (30) days, a lien, as herein provided, shall attach and, in addition, the lien shall include the late charge, interest, not to exceed the maximum legal rate, on the principal amount due, and all late charges from the date first due and payable, all costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. The lien provided for in this Section shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage, or convey the Lot. Such lien shall be superior to all other liens and encumbrances on such Lot, except for (a) liens for ad valorem taxes; or (b) liens for all sums unpaid on a first Mortgage or on any Mortgage to Declarant duly recorded in the land records of Deschutes County, Oregon, and all amounts advanced pursuant to such Mortgage and secured thereby in accordance with the terms of such instrument.

All other persons acquiring liens or encumbrances on any Lot after this Declaration shall have been recorded in such records shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

9.11.3 In the event that the assessment remains unpaid after sixty (60) days, the Association may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien. Before foreclosure, the Association must record a notice of claim of lien for assessments under this Section in the deed records of Deschutes County. The notice must contain: (a) a true statement of the amount due for the unpaid assessments after deduction all just credits and offsets; (b) the name of the owner of the lot, or reputed owner, if known (c) the name of the association; (d) the description of the lot as provided in ORS 93.600; and (e) a statement that if the owner of the lot thereafter fails to pay any assessments when due, as long as the original or any subsequent unpaid assessment remains unpaid, the unpaid amount of assessments automatically continue to accumulate with interest without the necessity of further recording.

9.11.4 The lien of the assessments, including interest, late charges, and costs (including attorneys' fees) provided for herein, shall be subordinate to the lien of any first Mortgage upon any Lot. The sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to judicial or non-judicial foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments which became due prior

to such sale or transfer. No sale or transfer shall relieve such Lot from lien rights for any assessments thereafter becoming due. Where the Mortgagee of a first Mortgage of record or other purchaser of a Lot obtains title, his or her successors and assigns shall not be liable for the share of the common expenses or assessments by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all the Lots, including such acquirer, his or her successors and assigns.

9.12 Effect of Voluntary Conveyance if Assessments are Unpaid. 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 a prospective purchaser, the Board of the Association shall make and deliver a statement of the unpaid Assessments against the prospective grantor or the Lot, and the grantee in that case shall not be liable for, nor shall the Lot when conveyed be subject to, a lien filed thereafter for any unpaid Assessments against the grantor in excess of the amount set for the in the statement.

ARTICLE 10

Maintenance

10.1 Association's Responsibility. The Association shall maintain and keep in good repair the Common Area, such maintenance to be funded as provided in this Declaration. This maintenance shall include, but not be limited to road or sidewalk repairs and maintenance.

10.2 Owner's Responsibility. Except as provided in Section 1 of this Article, all maintenance of the Lot and all part of the residence thereon shall be the responsibility of the Owner, and each Owner shall maintain and keep in good repair such property and improvements. Owners shall be responsible for onsite drainage. Run-off must be collected in gutters and discharged to contained planter boxes via downspouts.

ARTICLE 11

Insurance

11.1 Common Area Insurance. The Board, or its duly authorized agent, shall have the authority to and shall obtain insurance for all insurable improvements on the Common Area subject to this Declaration, assume the insurance responsibility for the Properties subject to this Declaration against loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief. This insurance shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard.

The Board shall also have the authority to and shall obtain a public liability policy covering the Common Area, the Association, and its Members for all damage or injury caused by

the negligence of the Association or any of its Members or agents. The Board shall have the authority to obtain any other insurance it deems appropriate.

11.1.1 Disbursement Of Proceeds. Proceeds of insurance policies shall be disbursed as follows:

11.1.2 If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repairs or reconstruction to the Common Area or, in the event no repair or reconstruction is made, after making such settlement as is necessary and appropriate with the affected Owner or Owners and their mortgagee(s) as their interests may appear, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of any mortgagee of a Lot and may be enforced by such mortgagee.

11.1.3 By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association to carry blanket all risk casualty insurance on the residential structures constructed thereon. Each individual Owner further covenants and agrees that in the event of a partial loss or damage and destruction resulting in less than total destruction, the individual Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction. In the event that the structure is totally destroyed and the individual Owner determines not to rebuild or to reconstruct, the individual Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction.

ARTICLE 12

Mortgagee Rights

The following provisions are for the benefit of holders, insurers, or guarantors of first mortgages on Lots in the Subdivision. To the extent applicable, necessary, or proper, the provisions of this Article 12 apply to both this Declaration and to the Bylaws of the Subdivision. Where indicated, these provisions apply only to eligible holders, as hereinafter defined.

12.1 Notices of Action. An institutional holder, insurer, or guarantor of a first mortgage, who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the unit number), (therefore becoming an eligible holder), will be entitled to timely written notice of:

12.1.1 Any proposed termination of the Association;

12.1.2 Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Lot on which there is a first mortgage held, insured, or guaranteed by such eligible holder;

12.1.3 Any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the mortgage of such eligible holder, insurer, or guarantor, where such delinquency has continued for a period of sixty (60) days;

12.1.4 Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or

12.1.5 Any proposed action which would require the consent of eligible holders, as required in Section 12.2 and 12.3 of this Article.

12.2 Other Provisions For First Lien Holders. To the extent possible under Oregon law:

12.2.1 Any restoration or repair of the Properties after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with this Declaration and the original plans and specifications unless the approval of the eligible holders of first mortgages on Lots to which at least fifty-one percent (51%) of the votes of Lots, subject to mortgages held by such eligible holders are allocated, is obtained.

12.2.2 Any election to terminate the Association after substantial destruction or a substantial taking in condemnation must require the approval of the eligible holders of first mortgages on Lots to which at least fifty-one percent (51%) of the votes of Lots, subject to mortgages held by such eligible holders, are allocated.

12.3 Amendments To Documents. The following provisions do not apply to amendments to the constituent documents or termination of the Association made as a result of destruction, damage, or condemnation pursuant to Section 2(a) and (b) in this Article, or to the annexation of land.

12.3.1 The consent of at least sixty-seven percent (67%) of the Class A members and of the Declarant so long as it owns any land subject to this Declaration and the approval of the eligible holders of first mortgages on Units to which at least sixty-seven percent (67%) of the votes of Units subject to a mortgage appertain, shall be required to terminate the Association.

12.3.2 The consent of at least sixty-seven percent (67%) of the Class A members and of the Declarant so long as it owns any land subject to this Declaration and the approval of eligible holders of first mortgages on Lots to which at least fifty-one percent (51%) of the Lots subject to a mortgage appertain, shall be required materially to amend any provisions of the Declaration, Bylaws, or Articles of Incorporation of the Association, or to add any material provisions thereto, which establish, provide for, govern, or regulate any of the following:

12.3.2.1 Voting;

12.3.2.2 Assessments, assessment liens, or subordination of such
liens;

- Common Area;
- 12.3.2.3 Reserves for maintenance, repair, and replacement of the
 - 12.3.2.4 Insurance or fidelity bonds;
 - 12.3.2.5 Rights to use of the Common Area;
 - 12.3.2.6 Responsibility for maintenance and repair of the Properties;
 - 12.3.2.7 Boundaries of any Lot;
 - 12.3.2.8 Leasing of Lots;
 - 12.3.2.9 Imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer, or otherwise convey his or her Lot;
 - 12.3.2.10 Establishment of self-management by the Association where professional management has been required by an eligible holder; or
 - 12.3.2.11 Any provisions included in the Declaration, Bylaws, or Articles of Incorporation which are for the express benefit of holders, guarantors, or insurers of first mortgages on Lots.

12.4 Special FHLMC Provision. So long as required by the mortgage corporation, the following provisions apply in addition to and not in lieu of the foregoing three Sections of this Article. Unless two-thirds (2/3) of the first mortgagees or Owners give their consent, the Association shall not:

12.4.1 By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Area which the Association owns, directly or indirectly (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Properties shall not be deemed a transfer);

12.4.2 Change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner;

12.4.3 By act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Lots and of the Common Area;

12.4.4 Fail to maintain fire and extended coverage insurance, as required by this Declaration; or

12.4.5 Use hazard insurance proceeds for any Common Area losses for other than the repair, replacement, or reconstruction of such Properties.

The provisions of this section shall not be construed to reduce the percentage vote that must be obtained from mortgagees or Owners where a larger percentage vote is otherwise required for any of the actions contained in this Section.

First mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on casualty insurance policies, or secure new casualty insurance coverage upon the lapse of a policy, for the Common Area, and first mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

It is Declarant's intention that the development qualify for the possible sale of mortgages encumbering Lots to the Federal National Mortgage Association and/or the Federal Home Loan Mortgage Corporation. The requirements contained in this Section are to effectuate that purpose. Should either the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association subsequently delete any of their respective requirements which necessitate the provisions of this Section or make any such requirements less stringent, this Section shall automatically be amended to reflect such changes.

ARTICLE 13

Easements

13.1 Utility Easements. As long as the Declarant owns a Lot, the Declarant hereby reserves the right to grant perpetual, nonexclusive easements for the benefit of Declarant or its designee, upon, across, through and under any portion of the Common Area ingress, egress, installation, replacement, repair, maintenance, use and operation of all utility and service lines and service systems, public and private, including, without limitation, cable television. Declarant, for itself and its designee, reserves the right to retain title to any and all pipes, lines, cables or other improvements installed on or in such easements. The Association shall also have the right to grant the easements described herein, subject to the approval of the Declarant so long as Declarant owns a Lot.

13.2 Declarant's Easement to Correct Drainage. Declarant hereby reserves for the benefit of Declarant and the Association a blanket easement on, over and under the ground within the Property to maintain and correct drainage of surface waters and other erosion controls in order to maintain reasonable standards of health safety and appearance and shall be entitled to remove trees or vegetation, without liability for replacement or damages, as may be necessary to provide adequate drainage facilities. Notwithstanding the foregoing, nothing herein shall be interpreted to impose any duty upon Declarant or the Association to correct or maintain any drainage facilities within the Property.

13.3 Easements for Unintentional Encroachment. The Declarant hereby reserves an exclusive easement for the unintentional encroachment by an structure upon the Common Area caused by or resulting from, construction, repair, shifting, settlement or movement of any portion of the Property, which exclusive easement shall exist at all times during the continuance of such

encroachment as an easement appurtenant to the encroaching party to the extent of such encroachment.

13.4 Entry Easement. If the Owner of any Lot fails to maintain the Lot as required herein, or if there is an emergency, the Association shall have the right to enter upon the Lot to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of the Property. Except in the case of emergency, such entry shall first require at least twenty-four hours' written notice to the Owner, which notice may be made by the posting on the front door of the dwelling located on such Lot.

13.5 Reserved Easements. Easement for installation and maintenance of utilities, storm water retention/detention ponds, and/or a conservation area are reserved as may be shown on the recorded Plat. Within these easement areas, no structure, plating or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may hinder or change the direction of flow of drainage channels or slopes in the easements. The easement area of each Lot and all improvements contained therein shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority, utility company or the Association is responsible.

13.6 Temporary Completion Easement. All Lots shall be subject to an easement of ingress and egress for the benefit of the Declarant, its employees, subcontractors, successors and assigns, over and upon the front, side and rear yards of the property as may be expedient or necessary for the construction, servicing and completion of dwellings and landscaping upon Lots adjacent to the property, provided that such easement shall terminate twenty-four (24) months after the date such Lot is conveyed to the Owner by the Declarant.

13.7 Maintenance Easements. An easement is hereby granted and reserved in favor of the Association and its successors, assigns, contractors, property managers, agents and employees over, across, upon, the Common Areas and any other areas of the Subdivision necessary or appropriate for purposes of accomplishing the maintenance, repair, replacement or other obligations of the Association hereunder.

13.8 Restrictions on Easements. No rights, privileges, and easements granted or reserved herein shall be merged into the title of any property, including, without limitation, the Subdivision, but shall be held independent of such title, and no such right privilege, or easement shall be surrendered, conveyed, or released unless and until and except by delivery of a quitclaim deed from Declarant releasing such right, privilege, or easement by express reference thereto.

13.9 Amendment to this Article. This Article may not be amended without the written consent of Declarant.

ARTICLE 14

Declarant's Reserved Rights

14.1 Declarant's Right To Remove Property. Declarant may withdraw property from the Subdivision by an amendment to this Declaration executed by Declarant and recorded

in the Deed Records of Deschutes County, Oregon. All voting rights otherwise allocated to Lots being withdrawn shall be eliminated and the Common Expenses shall be reallocated to the remaining Lots. Such withdrawal may be accomplished without prior notice and without the consent of any owner if such withdrawal (a) is all or a portion of the Property initially subject to this Declaration and additional Property annexed pursuant to a supplemental declaration at any time prior to the first sale of a Lot in the Property initially subject to this Declaration, or in the case of Additional Property, prior to the first sale of a Lot in such property so annexed or (b) if the property to be withdrawn was originally included in error or if the withdrawal is for the purpose of making minor adjustments to boundary lines which do not reduce the total number of Lots. Declarant may withdraw any Lot then owned by Declarant if such withdrawal is a result of any changes in Declarant's plans for the Subdivision. In addition, Declarant may withdraw any common area provided that such withdrawal is approved by a majority of the voting rights in the Association. The right to remove property shall expire when the Class B membership no longer exists.

14.2 Amendment of This Article. This Article may not be amended without the written consent of Declarant.

ARTICLE 15

Dispute Resolution.

15.1 Mediation. Except as otherwise provided in this section, before initiating litigation or an administrative proceeding in which the Association and an Owner have an adversarial relationship, the party that intends to initiate litigation or an administrative proceeding shall offer to use any dispute resolution program available within Deschutes County, Oregon, that is in substantial compliance with the standards and guidelines adopted under ORS 36.175. The written offer must be hand-delivered or mailed by certified mail, return receipt requested, to the address contained in the records of the Association for the other party.

15.1.1 If the party receiving the offer does not accept the offer within ten (10) days after receipt of the offer, such acceptance to be made by written notice, hand-delivered or mailed by certified mail, return receipt requested, to the address contained in the records of the Association for the other party, the initiating party may commence the litigation or administrative proceeding. The notice of acceptance of the offer to participate in the program must contain the name, address and telephone number of the body administering the dispute resolution program.

15.1.2 If a qualified dispute resolution program exists within Deschutes County, Oregon and an offer to use the program is not made as required under this Section 15, then litigation or an administrative proceeding may be stayed for thirty (30) days upon a motion of the non-initiating party. If the litigation or administrative action is stayed under this paragraph, both parties shall participate in the dispute resolution process.

15.1.3 Unless a stay has been granted as described above, if the dispute resolution process is not completed within thirty (30) days after receipt of the initial offer, the

initiating party may commence litigation or an administrative proceeding without regard to whether the dispute resolution is completed.

15.1.4 Once made, the decision of the court or administrative body arising from litigation or an administrative proceeding may not be set aside on the grounds that an offer to use a dispute resolution program was not made.

15.1.5 The requirements of this section do not apply to circumstances in which irreparable harm to a party will occur due to delay or to litigation or an administrative proceeding initiated to collect Assessments, other than Assessments attributed to fines.

15.2 Costs and Attorney's Fees. The fees of the mediator and the costs of mediation shall be divided and paid equally by the parties. Each party shall pay its own attorney's fees and costs in connection with any mediation.

15.3 Survival. The mediation agreement set forth in this Section shall survive the transfer by any party of its interest or involvement in the Property and any Lot or Living Unit therein and the termination of this Declaration.

ARTICLE 16

General Provision

16.1 Duration. The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any Properties subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same.

16.2 Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Units subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Units subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on Lots subject to this Declaration or (e) to correct clerical errors. Provided, however, if any such amendment shall not adversely affect the title to any Owner's Lot, such Owner shall consent thereto in writing. Further, so long as the Class B membership exists, Declarant may unilaterally amend this Declaration for any other purposes; provided, however, any such amendment shall not materially adversely affect the

substantive rights of any Lot Owner hereunder, nor shall it adversely affect title to any Lot without the consent of the affected Lot Owner.

In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of at least a majority of the Class A members and the consent of the Declarant, so long as Declarant has an unexpired option to subject property to this Declaration. Amendments to this Declaration shall become effective upon recordation in the records of Deschutes County, Oregon, unless a later effective date is specified therein.

16.3 Indemnification. The Association shall indemnify every officer and director of the Board against any and all expenses, including counsel fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or directors, may be entitled. The Association shall, as a common expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

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

16.5 Gender And Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

16.6 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

16.7 Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

16.8 **Perpetuities.** If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now-living descendants of Elizabeth, Queen of England.

16.9 **Attorneys Fees.** In the event any party shall bring any suit or action to enforce this Declaration, or to collect any money due hereunder or to foreclose a lien, the party not prevailing shall pay to the prevailing party all costs and expenses incurred by it in connection with such suit or action, such amount as the court may determine to be reasonable as attorneys' fees at trial and upon any appeal or petition for review thereof or other proceedings, including any bankruptcy or arbitration proceeding.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 27 day of July, 2007.

COUGHLIN AND HOLLOWAY, LLC

By: Ed Coughlin, Mgr.
Ed Coughlin, Manager

STATE OF OREGON, County of Deschutes, ss:

On July 27, 2007, the undersigned, a Notary Public in and for said County and State, personally appeared Ed Coughlin, known to me to be the Manager of the limited liability company that executed the within instrument and acknowledged to me that such limited liability company executed the same.



Donna R Thorsen
Notary Public for Oregon
My Comm. Expires: Feb 27, 2011

EXHIBIT A

PLAT RECORDING NO.: _____

**MCCLELLAN COMMONS SUBDIVISION
LOCATED IN THE NW 1/4, NW ¼ of SECTION 8, TOWNSHIP 18 SOUTH, RANGE 12
EAST, WILLAMETTE MERIDIAN, CITY OF BEND,
DESCHUTES COUNTY, OREGON**