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AFTER RECORDING RETURN TO:

BATEMAN, SEIDEL MINER BLOMGREN CHELLIS & GRAM, P.C.
STANLEY M. SAMUELS, SENIOR COUNSEL
888 SW Fifth Avenue, Suite 1150
Portland, Oregon 97204

Attn: Randall B. Bateman, Esq.

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MILL QUARTER

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MILL QUARTER ("**Declaration**") is made by MILL QUARTER PROPERTIES, INC., an Oregon corporation ("**Declarant**"), having an address of PO Box 5908, Bend, Oregon 97708, as of this 11th day of August, 2005.

RECITALS

A. Declarant owns the real property and improvements thereon located in Deschutes County, Oregon, described in Exhibit A, attached hereto and by this reference incorporated herein (the "**Phase I Property**" or the "**Mill Quarter—Industrial Way Phase**"), and fronting upon SW Industrial Way, Bend, Oregon.

B. Declarant recorded or will record a plat entitled "**Mill Quarter-Industrial Way Phase**" in the plat records of Deschutes County, Oregon (the "**Phase I Plat**"). The Phase I Plat consists of Lots 1 through 14 (each a "**Lot**" and collectively, the "**Lots**") that will include 12 single-family town home residences with parking on each individual Lot for each town home.

C. Declarant also owns the real property and improvements thereon located in Deschutes County, Oregon, described in Exhibit B, attached hereto and by this reference incorporated herein (the "**Phase II Property**" or the "**Mill Quarter—Arizona Phase**"), and fronting upon SW Arizona Avenue, Bend, Oregon.

D. Declarant recorded or will record a plat entitled "**Mill Quarter- Arizona Phase**" in the plat records of Deschutes County, Oregon (the "**Phase II Plat**"). The Phase II Plat consists of Lots 1 through 15 (each a "**Lot**" and collectively, the "**Lots**") that will include 13 single-family town home residences (some with limited commercial space) with parking on each individual Lot for each town home.

E. Declarant or its affiliate also owns the adjoining real property to the west (the "**Phase III Property**" or the "**Mill Quarter–Wall Street Phase**"). Declarant does not intend to encumber the Phase III Property by this Declaration unless and until it is annexed into the Mill Quarter as provided in Article 2. At some time in the future, Declarant plans to record a plat entitled "**Mill Quarter –Wall Street Phase**" in the plat records of Deschutes County, Oregon

(the "**Phase III Plat**"). The Mill Quarter—Industrial Way Phase, the Mill Quarter—Arizona Phase, the Mill Quarter—Wall Street Phase, and any other property annexed into this Declaration as allowed under Article 2, are sometimes herein collectively referred to as the "**Mill Quarter.**" The Phase I Property and the Phase II Property jointly share use of a private roadway which is located on the northern boundary of the Phase I Property and the southern boundary of the Phase II Property (the "**Private Driveway**"). There exists a Declaration Regarding Driveways and Utilities ("**Access Agreement**") that was recorded immediately before or will be recorded immediately after this Declaration in the records of Deschutes County, Oregon, governing the use and maintenance of the Private Driveway by the owner(s) of the Phase I Property and the owner(s) of the Phase II Property. The Phase III Property is located across Wall Street and will not use this Private Driveway.

F. Declarant, or companies with whom Declarant is affiliated, also owns the land to the east of the Mill Quarter, across Bond Street ("**Bond Street Property**").

G. The design features of the Mill Quarter and the Bond Street Property include traffic islands, tree grates, street lights and irrigated landscaping within the traffic islands along Wall Street, Bond Street, Industrial Way (which is located on the southern boundary of the Phase I Property) and Arizona Avenue (which is located on the northern boundary of the Phase II Property), as well as irrigation within the public right-of-ways of those streets (collectively, the "**Privately Maintained Public Improvements**"). These Privately Maintained Public Improvements are to be maintained in accordance with standards required by the City of Bend in the Decision ("**Access and Maintenance Agreement**"). All of the Commercial Owners of the Mill Quarter together with the owner of the Bond Street Property have agreed to participate in the maintenance of the Privately Maintained Public Improvements by way of the formation of a corporation to be known as "**Mill Quarter Maintenance, Inc.**" ("**MQM**") in which the Commercial Owners in each Phase and the owner of the Bond Street Property will be members and will contribute capital for maintenance.

H. Under Section 94.570 of the Oregon Revised Statutes, Declarant elected to exclude the Mill Quarter from the provisions of the Oregon Planned Community Act.

NOW THEREFORE, Declarant declares that the Phase I Property, the Phase II Property and, when annexed, the Phase III Property, shall be held, transferred, sold, conveyed, and occupied, subject to the following covenants, conditions, restrictions, easements, charges, and liens, which shall run with the land, be binding on all parties having or acquiring any right, title, or interest in the Phase I Property, the Phase II Property and, when annexed, the Phase III Property, or any part thereof, and which shall inure to the benefit of each Owner, such Owner's heirs, successors, successors-in-title, and assigns and all persons claiming under them, and shall be a part of all transfers and conveyances of the Phase I Property, the Phase II Property and, when annexed, the Phase III Property, and each Lot as if set forth in full in such transfers and conveyances:

ARTICLE 1
DEFINITIONS

1.1 *Access Agreement* shall have the meaning set forth in Recital E.

1.2 *Access Easement Areas* shall mean, collectively, the areas covered by the Private Driveway, the Internal Drives, and the Sidewalks within Mill Quarter—Industrial Way Phase, Mill Quarter—Arizona Phase, and, when annexed, the Mill Quarter—Wall Street Phase. The Access Easement Areas do not include the centralized parking displayed in the middle of the Phase I Plat or the Phase II Plat or that may be displayed in the middle of the Phase III Plat. The Commercial Owners in each Phase will own the Access Easement Areas in their respective Phases (e.g., in Phase I, the Owner of Lot 4 owns approximately one-half of the Access Easement Areas in Phase I and the other approximately one-half is owned by the Owner of Lot 11 and in Phase II, the Owner of Lot 5 owns approximately one-half of the Access Easement Areas in Phase II and the other approximately one-half is owned by the Owner of Lot 10). The centralized parking areas in each Phase will be assigned by the Commercial Owners in each Phase for use by their commercial customers and the Occupants of the second-story residential loft units, and are not to be used by the Residential Owners and the Occupants of the Residential Lots, or their tenants or guests.

1.3 *Access and Maintenance Agreement* shall have the meaning set forth in Recital G.

1.4 *Architectural Review Committee* shall mean the committee constituted and acting pursuant to Article 5.

1.5 *Architectural Standards* shall have the meaning set forth in subsection 5.4.

1.6 *Bond Street Property* shall have the meaning set forth in Recital F.

1.7 *Boundary Drains* shall have the meaning set forth in subsection 1.14.

1.8 *Boundary Flashings* shall have the meaning set forth in subsection 1.14.

1.9 *Building or Buildings* shall mean a Town Home or Commercial Building.

1.10 *Caulk Joint* shall have the meaning set forth in subsection 1.14.

1.11 *Commercial Building* shall mean any building constructed on a Commercial Lot (even though such building may include residential loft units).

1.12 *Commercial Lots* shall mean Lots 4 and 11 as designated on the Phase I Plat, Lots 5 and 10 as designated on the Phase II Plat and the commercial lots as so designated on the Plat for the Phase III Property.

1.13 *Commercial Owner(s)* shall mean an Owner of a Commercial Lot.

1.14 *Common Building Boundary* shall mean any zero (0) Lot line boundary between adjoining Buildings. Each Building was designed to be structurally independent from the adjoining Building, except that there may be metal flashings ("**Boundary Flashings**") that straddle the top of the adjacent walls of adjoining Buildings and there may be a caulk joint between the abutting walls of adjoining Buildings ("**Caulk Joint**"). Finally, the rain water

collects on the roof of each Building and is drained through scuppers that then funnel the water through drain pipes that run down between the walls of adjoining Buildings ("**Boundary Drains**").

1.15 *DEA* shall have the meaning set forth in subsection 3.2.7.

1.16 *Decision* shall mean that certain City of Bend Administrative Review and Decision issued under City File Number PZ-04-619, PZ 04-620 and PZ-03-473 for Phase I and City of Bend Administrative Review and Decision issued under City File Number PZ 05-18 for Phase II, as now existing or hereafter amended or supplemented and when annexed the comparable land use decision for Phase III.

1.17 *Declarant* shall mean the party listed as Declarant for each Phase, which for Phases I and II is Mill Quarter Properties, Inc., an Oregon corporation, and its successors or assigns.

1.18 *Declarant Representative* shall mean the individual or entity designated in writing as the representative of Declarant to act on Declarant's behalf in the exercise of all powers granted to Declarant under the Declaration.

1.19 *Declaration* shall mean the covenants, conditions, restrictions, and all other provisions set forth in this Declaration as supplemented by any Supplementary Declaration.

1.20 *Defaulting Owner* shall have the meaning set forth in subsection 7.2.1.

1.21 *Defaulting Responsible Owner* shall have the meaning set forth in subsection 4.21.5.

1.22 *General Plan of Development* shall mean Declarant's general plan of development for the Mill Quarter, as approved by appropriate governmental agencies, as such plan may be amended from time to time, including the requirements set forth in the Decision.

1.23 *Household Pets* shall have the meaning set forth in subsection 4.6.

1.24 *Indemnified Parties* shall have the meaning set forth in subsection 7.7.

1.25 *Internal Drives* shall mean the vehicular passageways shown on the Plat for each Phase that permit the Owners of the Lots in each Phase to access the Buildings on their Lots from the Private Driveway serving their Phase.

1.26 *Lien* shall have the meaning set forth in subsection 4.21.5.1.

1.27 *Lot or Lots* shall have the meaning set forth in Recitals B and D, and when Phase III is annexed, then such terms shall be deemed amended to include the individual lots as so identified on the Phase III Plat.

1.28 *MQM* shall have the meaning set forth in Recital G.

1.29 *Master Documents* shall mean the Phase I Plat, the Phase II Plat, this Declaration, the Decision, the Access Agreement, the Access and Maintenance Agreement and the Rules and Regulations, all as they may be amended or supplemented from time to time. Upon annexation of the Phase III Property, then Master Documents shall be expanded to include the Plat for that

Phase, the Supplemental Declaration for that Phase, the Decision for that Phase and any other ancillary documents or agreements relating to that Phase.

1.30 *Mill Quarter* shall have the meaning set forth in Recital E.

1.31 *Mill Quarter—Arizona Phase* shall have the meaning set forth in Recital D.

1.32 *Mill Quarter—Industrial Way Phase* shall have the meaning set forth in Recital A.

1.33 *Mill Quarter—Wall Street Phase* shall have the meaning set forth in Recital E.

1.34 *Occupant* shall mean the occupant or occupants of a Building whether such person or persons are the Owners, lessees, or any other persons authorized by the Owners to occupy or visit the Building.

1.35 *Owner* shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Lot or a purchaser in possession of a Lot under a land sale contract. The foregoing does not include persons or entities that hold an interest in any Lot merely as security for the performance of an obligation.

1.36 *Phase* shall mean any of Phase I, Phase II or Phase III.

1.37 *Phase I* shall mean the Property contained in the Phase I Plat.

1.38 *Phase II* shall mean the Property contained in the Phase II Plat.

1.39 *Phase III* shall mean the Property contained in the Phase III Plat.

1.40 *Phase I Plat* shall have the meaning set forth in Recital B.

1.41 *Phase I Property* shall have the meaning set forth in Recital A.

1.42 *Phase II Plat* shall have the meaning set forth in Recital D.

1.43 *Phase II Property* shall have the meaning set forth in Recital C.

1.44 *Phase III Plat* shall have the meaning set forth in Recital E.

1.45 *Phase III Property* shall have the meaning set forth in Recital E.

1.46 *Plat* means any of the Phase I Plat, the Phase II Plat or the Phase III Plat.

1.47 *Private Driveway* shall have the meaning set forth in Recital E and is located at the north end of the Phase I Property and south end of the Phase II Property and provides east-west access to all Lots in Phase I and in Phase II to and from the Bond Street Property and the Wall Street Property. It is anticipated that a similar Private Driveway will exist on the Phase III Property but that it will be shorter in length (the final dimensions will be set forth on the Phase III Plat).

1.48 *Privately Maintained Public Improvements* shall have the meaning set forth in Recital G.

1.49 *Prohibited Uses* shall mean use of any Lot for (a) motor vehicle or equipment repair or painting, (b) motor vehicle sales or storage (other than storage by Owners or Occupants of their own or their family members' personal vehicles), (c) veterinary clinics with kennels, (d) drive up windows for motor vehicle service, (e) adult bookstores or similar establishments selling

more than fifty percent of their books, magazines, videos or similar items on an age restricted basis, (f) liquor stores, (g) flea markets or, (h) unless permitted by the Rules and Regulations, video poker, slot machines or similar electronic games of chance. The Architectural Review Committee shall be the final authority on whether a current or prospective use is a Prohibited Use.

1.50 *Property* shall mean any of the property that is subject to a Plat.

1.51 *Residential Lots* shall mean Lots 1, 2, 3, 5, 6, 7, 8, 9, 10, 12, 13 and 14 in Phase I, Lots 1, 2, 3, 4, 6, 7, 8, 9, 11, 12, 13, 14 and 15 in Phase II and the residential lots as so designated on the Plat for Phase III when annexed into the Mill Quarter.

1.52 *Residential Owner(s)* shall mean an Owner of a Residential Lot.

1.53 *Rules and Regulations* shall mean the documents containing rules, regulations and policies adopted by the Architectural Review Committee, as they may be amended from time to time. The Rules and Regulations shall become binding upon each Owner ten (10) days following the date upon which a copy of the Rules and Regulations (or updates thereto) are mailed to the Owner.

1.54 *Sidewalks* shall mean the pedestrian walkways as shown on the Plat for each Phase and those hereafter constructed on the Phase I Property, the Phase II Property and the Phase III Property (when the latter Phase is annexed) in accordance with the requirements of the Decision, both covered and uncovered, around the perimeter of the Buildings and within the breezeways, including those within the public right-of-ways of the public streets that adjoin the Phase I Property, the Phase II Property and the Phase III Property (when the latter Phase is annexed).

1.55 *Supplemental Declaration* shall mean an amendment or supplement to this Declaration that subjects additional property to this Declaration and/or imposes additional restrictions and obligations on the land described in such amendment or supplement.

1.56 *Town Home* shall mean any portion of a residential structure situated on a Residential Lot.

1.57 *Trash Enclosures* shall have the meaning set forth in subsection 4.11.

ARTICLE 2

PROPERTY SUBJECT TO THIS DECLARATION

2.1 Development of Phase I Property and Phase II Property. The development of Mill Quarter shall initially consist of the Phase I Property and the Phase II Property, which shall be held, transferred, sold, conveyed, and occupied subject to this Declaration and the other Master Documents. Declarant does not intend to build any common area improvements in the Mill Quarter except to the extent required by the Decision, the Access Agreement or the Access and Maintenance Agreement.

2.2 Right to Annex Additional Property. Declarant reserves the unilateral right to annex the Phase III Property into the land covered by this Declaration until such time as Declarant, or its affiliates, no longer owns any of the Phase I Property, the Phase II Property or the Phase III Property. Such annexation shall be accomplished by filing in the Recorder's Office

of Deschutes County, Oregon, of a Supplemental Declaration annexing the Phase III Property. Such Supplemental Declaration shall not require the consent of the other Owners. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein. Declarant shall have the unilateral right to transfer to any other person the right, privilege, and option that is herein reserved to Declarant to annex the Phase III Property, provided that such transferee or assignee shall be the developer of at least a portion of the Phase III Property and that such transfer is memorialized in a written, recorded Supplemental Declaration executed by the Declarant Representative on behalf of Declarant.

2.3 Annexation with Approval of Owners. Subject to the consent of the owner of the property to be annexed, the Owners may also annex any other adjacent real property into this Declaration following the expiration of the right of Declarant to annex the Phase III Property as described in subsection 2.2. Such annexation shall require the affirmative vote of all Commercial Owners and seventy percent (70%) of the Residential Owners with each such Owner having one vote for each Lot owned. Any such annexation shall be effective upon the filing for record of a Supplemental Declaration unless otherwise provided therein.

2.4 Amendment. This Article shall not be amended without the prior written consent of Declarant Representative, acting on behalf of Declarant, as long as Declarant owns real property subject to this Declaration or that may become subject to this Declaration in accordance with subsection 2.2.

ARTICLE 3

OWNERSHIP AND EASEMENTS

3.1 Ownership of Lots. Title to each Lot in Mill Quarter—Industrial Way Phase and in Mill Quarter—Arizona Phase is subject to this Declaration and the other Master Documents and shall be conveyed in fee to an Owner. Upon annexation, title to each Lot in Mill Quarter—Wall Street Phase will also be subject to this Declaration and the other Master Documents and shall be conveyed in fee to an Owner. If more than one person and/or entity owns an undivided interest in the same Lot, such persons and/or entities shall constitute one Owner for the purpose of any vote, consent or approval of an Owner hereunder.

3.2 Easements. Individual deeds to Lots may, but shall not be required to, set forth the easements specified in this Article 3.

3.2.1 Easements on Plat. The Lots are subject to the easements and rights-of-way shown on Plat for the Phase in which the Lot is located including those set forth in the Access Agreement, the Access and Maintenance Agreement and easements for fire hydrants on the Phase I Property, Phase II Property and, when annexed, the Phase III Property.

3.2.2 Easements for Private Driveway, Internal Drives, Sidewalks and Bicycle Parking. The Commercial Owners hold divided title to the Private Driveway and Internal Drives as part of their ownership of the Commercial Lots. Portions of the Internal Drives are also located upon the Residential Lots (across the driveway aprons that lead to the garages for each Residential Lot). Some of the Sidewalks are located on the Commercial Lots, some are located on the Residential Lots and some are located in the public rights-of-way of

adjoining public streets. The Decision also requires that the Phases accommodate bicycle parking. Each Owner and each Occupant shall have a nonexclusive right and easement of use and enjoyment in and to the Private Driveway, Internal Drives and Sidewalks ("**Access Easement Areas**") serving the Lots in that Phase for ingress and egress only, which shall be appurtenant to and shall pass with the title to every Lot. No vehicular ingress and egress is permitted on the Sidewalks, except for those portions of the Sidewalks that are also part of the roadbed of the Private Driveway or Internal Drives. Each Commercial Owner shall maintain in good condition and repair that portion of the Access Easement Areas located on its, his or her Lot or Lots; provided, however, that each Owner agrees to reimburse each other Owner for any damage caused to the Access Easement Areas located on the other Owner's Lot as a result of the negligence or willful misconduct of the Owner or the Owner's Occupants. Each Owner shall be responsible to remove trash, garbage and other debris from the Access Easement Areas that is placed or discarded there by the Owner or the Owner's Occupants. With respect to the Access Easement Areas, the parties agree further, as follows:

3.2.2.1 No Owner shall place any buildings or other permanent structures thereon and no Owner shall prevent another Owner's or Occupant's reasonable access or otherwise take any action or fail to take any action that would unreasonably interfere with another Owner's or Occupant's rights under this easement grant.

3.2.2.2 There shall be no change in the manner in which real property taxes are paid on the Access Easement Areas. Those parties who are paying real property taxes on the Access Easement Areas shall continue to do so, and such obligation shall continue with such parties' successors and assigns.

3.2.2.3 No Owner or Occupant shall have the right to park, load or unload any vehicle in the Access Easement Areas other than (a) Owners or Occupants of Commercial Lots in areas reasonably designated for such purpose by a Commercial Owner on that Commercial Owner's Lot, (b) required under the Decision or (c) under emergency conditions.

3.2.2.4 The Access Easement Areas shall not be used in any manner that results in a violation of any (a) Rules and Regulations, (b) other Master Documents or (c) laws, ordinances or governmental regulations affecting the Access Easement Areas.

3.2.2.5 Use of the Access Easement Areas shall be on a nonexclusive, nonpriority basis, except to the extent of the rights of the Commercial Owners as provided in the Decision to accommodate retail customers and the loading and unloading of commercial vehicles; parking shall not be permitted (other than as allowed in the internal parking areas for the tenants of the Commercial Owners) for a period of longer than fifteen (15) minutes and none of the garages may be blocked.

3.2.2.6 The Access Easement Areas and the aprons between the Access Easement Areas and the garages will be heated by a radiant heat system to melt snow and ice during the winter months. Energy costs for these systems will be separately metered to the Commercial Owners and each Commercial Owner shall be obligated to pay the bill for those energy costs. All costs of maintenance and repair of such system shall be equally divided and

paid for by the Commercial Owners (the Commercial Owners in each Phase shall share the costs as they related to that Phase only). The Declarant is granted an easement over the apron of each garage to install the radiant heat system and the Commercial Owners in each Plat are granted the necessary easements over such aprons to operate, maintain and repair the radiant heat system as herein provided.

Each Owner and each Occupant shall have the right to use any area designated by either the Declarant or the Architectural Review Committee for public bicycle parking on such Owner's Phase, although such use shall be on a nonexclusive first-come/first-serve basis.

3.2.3 Easements Reserved by Declarant. As long as Declarant owns any property in the Mill Quarter, Declarant reserves an easement over, under, and across the Access Easement Areas in order to carry out sales activities necessary or convenient for the sale of Lots. Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress to, from, over, in, upon, under, and across the Access Easement Areas and all unimproved Lots and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the improvements on the Phase in such a way as not to interfere unreasonably with the occupancy, use, enjoyment, or access to an Owner's Lot by such Owner or such Owner's Occupants.

3.2.4 Additional Utility, Drainage, Sewer and Walkway and Stairway Easements. Notwithstanding anything expressed or implied to the contrary, ownership of each Lot shall be subject to all easements granted by Declarant Representative, acting on behalf of Declarant, for the installation and maintenance of utilities and drainage facilities necessary for the development of Mill Quarter, although no new easements, except those shown on the Plat or of record as of the date an Owner takes title to a Lot, shall be granted under any area designated on the Plat for a Building. No other structure, planting, or other material that may (a) damage or interfere with the installation or maintenance of utilities, (b) change the direction of flow of drainage channels on the Property, (c) cause flooding of the Sidewalks and stairways, or (d) obstruct or retard the flow of water through drainage channels on the Property shall be placed or permitted to remain.

3.2.5 Easement to Governmental Entities. Declarant grants a nonexclusive easement over the Access Easement Areas to all governmental and quasi-government entities, agencies, utilities, and their agents for the purposes of performing their duties as public safety officers and utility providers. Declarant may, at Declarant's option, require the Commercial Owners to dedicate the Private Driveway to a governmental or quasi-government entity or agency as a public street if the governmental or quasi-government entity or agency accepts the same and agrees to be responsible for the future maintenance thereof.

3.2.6 Perimeter Easements Benefiting Owners. Every Owner shall have an easement over that perimeter portion of other Lots that is included within the building setbacks set by applicable ordinances as may be reasonably necessary to reach such Owner's Lot for purposes of necessary exterior maintenance and repair of the Owner's Buildings.

3.2.7 Utility Service Easements Benefiting Owners. There are utility lines that cross through the Phase I Property and the Phase II Property as set forth in the Utility Plans

prepared by David Evans and Associates, Inc. ("**DEA**") under Job No. BRCX0004 and there will be similar utility plans for Phase III. Those plans are on file with Declarant as to Phase I and Phase II and will be on file with Declarant as to Phase III when that Phase is annexed. There is also surface water that flows from the Residential Lots across the Commercial Lots and Access Easement Areas into drains and is disposed of through the dry-wells located upon the Commercial Lots. Those Lots that benefit from those utility lines and surface water flows shall have a nonexclusive easement to connect to, maintain, repair and replace those utility facilities up to the point where they connect with the publicly owned utilities and an easement to permit the water to flow from the Residential Lots across the Commercial Lots and Access Easement Areas into the drains and thereafter disposed of in the dry-wells. The utility lines within the easement area shall be maintained by the Lot Owner benefited by the easement (or jointly if benefiting more than one Lot). The surface drainage ways and drains (including the dry-wells) shall be maintained by the owner of the Commercial Lot upon which they are located. Any damage caused to the servient Lot or Building located on the servient Lot by the maintenance, repair, removal, or replacement of the utility lines shall be paid by the Lot Owner or the Lot Owner's Occupant causing such damage.

3.2.8 **Foundation Easements.** The foundations of the Buildings include footings that, with respect to certain of the Lots, may encroach below grade into the adjoining Lot or Lots. Each Lot Owner is hereby granted a perpetual easement into the adjoining Lot or Lots to the extent of the Building footing encroachments. Each Lot Owner benefiting from the encroachment easement agrees to maintain the footings in good condition and repair and to defend, indemnify and hold the Lot Owner burdened by the encroachment easement harmless from any and all damages, claims, liabilities and expenses arising from such easement encroachment. If a Building benefiting from such encroachment easement is ever damaged or destroyed and if it is necessary to repair and/or replace such footing encroachment, then the Lot Owner benefiting from the encroachment easement shall have the right to repair and/or replace such footing encroachment, provided that no material damage occurs to the Buildings on the adjoining Lots.

ARTICLE 4

USE OF LOTS AND BUILDINGS

4.1 **Use.** Lots may be used for the following purposes:

4.1.1 **Residential Lots.** The Residential Lots may only be used for residential purposes, including home office use, and (but not in lieu of residential use), to the extent permitted by local zoning and other applicable laws and the other Master Documents, for artisan studios; provided, however that Lots 4, 6, 7, 8, 9 and 11 in Phase II are Residential Lots with some limited commercial space and that limited commercial space (although not the balance of the Residential Lot) may be used for the same types of commercial uses as the Commercial Lots. Artisan studio use shall not be permitted if noise, vibration or odors escape from the Building or Lot in which such use is occurring that a reasonable person would find offensive or a nuisance. The Architectural Control Committee shall be the final authority on whether an artisan studio use is in violation of these noise, vibration or odor restrictions.

4.1.2 **Commercial Lots.** The Commercial Lots are designed for street level retail use and second-story residential loft use. The second story of the Commercial Lots may only be used for residential purposes, including home office use, and, except with the Architectural Review Committee's prior approval, no trade, craft, business, profession, commercial, or similar activity of any kind shall be conducted on or from any second-story residential loft. The street level of the Commercial Lots may be used for any of the purposes permitted by the local zoning ordinances and other applicable laws.

4.1.3 **Prohibited Uses.** Notwithstanding subsections 4.1.1 and 4.1.2, no Lot or Building may be used for any of the Prohibited Uses.

Nothing in this subsection 4.1 shall be deemed to prohibit (a) activities relating to the sale of Lots and Buildings, (b) the right of Declarant or any contractor or homebuilder to construct Town Homes on any Residential Lot or Commercial Buildings (including second-story residential lofts) on the Commercial Lots, to store construction materials and equipment on such Lots in the normal course of construction, and to use any Building as a sales office or model home for purposes of sales in the Mill Quarter, and (c) the right of a Residential Owner to maintain such Owner's personal business or professional library, keep such Owner's personal business or professional records or accounts, handle such Owner's personal business or professional telephone calls, or confer with business or professional associates, clients, or customers in such Owner's Town Home. Except as allowed under subsection 4.1.1, the Architectural Review Committee shall not approve any other commercial activities on or from a Residential Lot otherwise prohibited by this subsection 4.1 unless the Architectural Review Committee determines that only normal activities as permitted above would be observable outside of the Town Home and that the activities would not be in violation of local zoning ordinances and other applicable laws.

4.2 Landscaping. Each Owner, other than Declarant, shall obtain the Architectural Review Committee's prior approval before installing any landscaping. This subsection 4.2 shall apply to Lots with finished Buildings being held for sale as well as to other Lots.

4.3 Maintenance of Lots and Town Homes. Each Owner shall maintain such Owner's Lot, Building and all other improvements thereon in a clean and attractive condition, in good repair, and in such fashion as not to create a fire hazard. Such maintenance shall include, without limitation, maintenance of windows, doors, garage doors, walks, signs, patios, chimneys, and other exterior improvements and glass surfaces, and removal of debris from all driveways and walks that are a part of or immediately adjacent to such Owner's Lot. The Commercial Owners have primary responsibility for the removal of debris from the all of the Access Easement Areas but each Residential Owner must remove all debris placed there by the Residential Owner or the Occupants of that Residential Owner's Lot. All repainting or restaining and exterior remodeling shall be subject to prior review and approval by the Architectural Review Committee. Each Owner shall repair damage caused to such Owner's Lot or improvements located thereon by fire, flood, storm, earthquake, riot, vandalism, or other causes

within a reasonable time (and in the event of a dispute, the Architectural Review Committee shall set such time).

4.4 Boundary Flashing, Caulk Joint and Boundary Drain.

4.4.1. General Rules of Law to Apply. Each Owner shall share the responsibility to maintain the Boundary Flashing that straddles the adjoining walls of his, her or its Building and the Caulk Joint between his, her or its Building and the adjoining Building. The costs of reasonable repair and maintenance shall be shared in equal proportions by the Owners who benefit from the Boundary Flashing and the Caulk Joint. Each Owner shall maintain the Boundary Drain that benefits, his, her or its Building and has an easement to access the Boundary Drain to the extent necessary for such purpose.

4.4.2. Damage and Destruction. If a Boundary Flashing or Caulk Joint is destroyed or damaged by fire or other casualty, then, to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner may restore it. Any other Owner who benefits from a Boundary Flashing or has a Caulk Joint located upon the Owner's Lot, shall contribute to the cost of restoration thereof in equal proportions, without prejudice, however, to the right of any such Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions. Each Owner shall restore his, her or its own Boundary Drain if destroyed or damaged by fire or other casualty.

4.5 Rental of Town Homes. An Owner may rent or lease such Owner's Town Home (although the artisan studio may not be leased, rented, subleased or otherwise occupied separately from the living quarters of such Owner's Town Home), provided that the following conditions are met:

4.5.1 Written Rental Agreements Required. The Owner and the tenant enter into a written rental or lease agreement specifying at a minimum that (a) the tenant shall be subject to all provisions of this Declaration and the Rules and Regulations and (b) a failure to comply with any provision of this Declaration and the Rules and Regulations shall constitute a default under the rental or lease agreement; and

4.5.2 Tenant must be given Documents. The Owner gives each tenant a copy of this Declaration and the current Rules and Regulations.

4.6 Animals. No animals, livestock, or poultry of any kind, other than a reasonable number of Household Pets that are not kept, bred, or raised for commercial purposes and that are reasonably controlled so as not to be a nuisance, shall be raised, bred, kept, or permitted within any Lot. "**Household Pets**" shall mean only dogs, common domesticated cats, fish and birds, but not reptiles. No "exotic animals," as defined in ORS 609.305 as it may be amended, shall be raised, bred, kept or permitted within any Lot. Owners whose pets cause any inconvenience or unpleasantness to other Owners shall take all steps reasonably necessary to prevent recurrence thereof and Owners whose pets damage other Owners' Lots, Buildings or personal property shall reimburse such other Owners for reasonable costs actually incurred by such other Owners in repairing such damage. An Owner shall ensure that such Owner's dog is leashed when in the Mill Quarter and outside of such Owner's Lot. An Owner may be required to remove a pet on the

receipt of the third notice in writing from the Architectural Review Committee of a violation of any Rules or Regulations governing pets within the Mill Quarter.

4.7 Nuisance. No noxious, harmful, or offensive activities shall be carried out on any Lot, Building or within the Access Easement Areas. Nothing shall be done or placed on any Lot, Building or within the Access Easement Areas that interferes with or jeopardizes the enjoyment of, or that is a source of annoyance to, the other Owner or their Occupants.

4.8 Parking and Accessibility. Each Owner and the Occupants of each Owner may only park on the Owner's Lot and not in any other area shown on the Plat. The parking shown in the middle of the Phase I Plat and Phase II Plat (and similar parking will be shown on the Phase III Plat) is owned by the Commercial Lot Owners and is to be used by them and their Occupants only, and Declarant will post a sign in one parking space that reads as follows: "RESERVED FOR TENANT PARKING FROM 5:00 PM until 8:00 AM." Boats, trailers, commercial vehicles, mobile homes, campers, and other recreational vehicles or equipment, regardless of weight, shall not be parked on any part of the Lot, Building or within the Access Easement Areas at any time or for any reason, including loading or unloading except as otherwise permitted in this Declaration. The garages on each Lot shall be used to park the Owner's and Occupant's passenger vehicle or vehicles and for no other purpose. All vehicles must be parked in the Owner's and Occupant's garage when not in use, other than for temporary or emergency situations not to exceed twenty-four (24) hours in any seven- (7-) day period. Each Owner acknowledges that to assure compliance with the Decision, Declarant will include in the Phase I Property and Phase II Property (and anticipates the same in the Phase III Property) at least one accessible route from public transportation stops, accessible parking and accessible passenger loading zones and public streets or sidewalks to the accessible Building entrances they service. This will include at least one parking stall on one of the Commercial Lots for handicapped parking for the Commercial Owners' Occupants.

4.9 Vehicles in Disrepair. No Owner shall permit any vehicle owned by (a) the Owner, (b) an Occupant of the Lot, or (c) a visitor of the Owner or Occupant, that is in a state of disrepair or that is not currently licensed to be abandoned or to remain parked on any Lot. A vehicle shall be deemed in a "state of disrepair" when the Architectural Review Committee reasonably determines that its presence is offensive to two or more Owners other than the owner of the vehicle. If an Owner fails to remove such vehicle within five (5) days following the date on which the Architectural Review Committee mails or delivers to such Owner a notice directing such removal, the Architectural Review Committee may have the vehicle removed from the Property and charge the expense of such removal to the Owner which may be collected and enforced as any other debt as provided in Section 7.

4.10 Signs. No signs shall be erected or maintained on any Lot, except that not more than one (1) "For Sale" or "For Rent" sign placed by the Owner or by a licensed real estate agent not exceeding 18 inches high and 24 inches long may be temporarily displayed on any Lot. The restrictions contained in this subsection shall not prohibit the temporary placement of "political" signs on any Lot by the Owner or Occupant; provided, however, that the political signs shall be removed within three (3) days after the election day pertaining to the subject of the sign. Real estate signs shall be removed within three (3) days after the sale closing date. Commercial

signage shall be permitted on the Commercial Lots that advertise businesses operating within the Buildings on the Commercial Lots to the extent such signage complies with all laws, ordinances and regulations. Similarly, to the extent any Town Home is used as an artisan studio as permitted under subsection 4.1.1, then suitable signs advertising such activities may be posted by the Owner of the Lot in the area in the iron railing intended for such signage to the extent such signage complies with all laws, ordinances and regulations. The Architectural Control Committee, in its sole discretion, may allow larger signs for use at any Town Home.

4.11 Rubbish and Trash. No Lot shall be used as a dumping ground for trash or rubbish of any kind. All garbage and other waste shall be kept in appropriate containers for proper disposal and out of public view. If an Owner fails to remove any trash, rubbish, garbage, or any similar materials from any Lot or any streets where deposited by such Owner or the Occupants of such Owner's Lot after notice has been given by the Architectural Review Committee to the Owner, the Architectural Review Committee may have such materials removed and charge the expense of such removal to the Owner which may be collected and enforced as provided in Section 7. Each Commercial Lot contains an area between the parking stalls that is intended for one or more dumpsters and/or garbage cans ("**Trash Enclosures**"). Each Commercial Owner owns one of the Trash Enclosures on Phase I and Phase II and the same will apply in Phase III. The following shall apply to the Trash Enclosures:

4.11.1 All Commercial Owners and the Occupants of the Commercial Lots shall store all garbage, trash and other rubbish within the Trash Enclosures and ensure that the Trash Enclosures are screened up to six feet in height so that neither the garbage, trash nor other rubbish is visible from ground level from the exterior.

4.11.2. All Commercial Owners shall ensure that regular garbage service is provided so that there is no excess accumulation of garbage, trash and other rubbish within the Trash Enclosures at any time.

4.11.3 The Trash Enclosures are designed to accommodate one residential garbage can for each Residential Lot, with a total of six residential cans for each Trash Enclosure. The Owner of Lot 4 in Phase I shall make room within its Trash Enclosure for one garbage can from each of Lots 1, 2, 3, 5, 6 and 7, and the Owner of Lot 11 in Phase I shall make room within its Trash Enclosure for one garbage can from each of Lots 8, 9, 10, 12, 13 and 14; the Owner of Lot 5 in Phase II shall make room within its Trash Enclosure for one garbage can from each of Lots 1, 2, 3, 4, 6 and 7, and the Owner of Lot 10 in Phase II shall make room within its Trash Enclosure for one garbage can from each of Lots 8, 9, 11, 12, 13, 14 and 15; and similar provisions with respect to the Trash Enclosure in Phase III shall be made for the Residential Owners in Phase III.

4.11.4 The Owner of a Residential Lot shall have the right to place one regular residential-sized garbage can inside a Trash Enclosure as set forth in subsection 4.11.3 but must arrange and pay for regular garbage service for that garbage can so that there is no excess accumulate of garbage, trash and other rubbish outside of such Owner's garbage can. No oversized items of garbage, trash and other rubbish shall be left for pick-up inside the Trash

Enclosure without the express written consent of the Commercial Owner that owns the Trash Enclosure.

4.11.5 Each Commercial Owner shall maintain that Commercial Owner's Trash Enclosure, including (a) removing of garbage, trash and other rubbish on the ground, (b) cleaning to remove stains and odors and (c) otherwise keeping each Trash Enclosure in a clean and reasonably sanitary condition. All Residential Owners using the Trash Enclosure shall take care not to spill garbage, trash and other rubbish when placing garbage, trash and other rubbish in their garbage cans.

4.11.6 If a Residential Owner chooses not to use a Trash Enclosure, then all garbage must be kept inside the Residential Owner's garage until not more than twelve (12) hours prior to the scheduled pick-up of the garbage, and such pick-up arrangement must be acceptable to the local waste management company picking up garbage, trash and other rubbish.

4.11.7 If the City of Bend or any other governmental agency, having jurisdiction over the Mill Quarter, has a mandatory or voluntary recycling program, then recycled materials shall be stored and picked up in accordance with the recommended procedures of the city of Bend or such other agency and stored and screened in a manner similar to the garbage, trash and other rubbish.

4.12 Fences and Hedges. No fences or boundary hedges shall be installed or replaced without prior written approval of the Architectural Review Committee.

4.13 Service Facilities. Service facilities (including garbage containers, fuel tanks, clotheslines, (mail boxes will be placed in the public right of ways), commercial heating, ventilation, air conditioning and other commercial mechanical equipment) shall be screened with materials compatible with the Buildings so that such facilities are not visible at any time from the street or the ground level of a neighboring Lot. All telephone, electrical, cable television, internet and other utility installations shall, to the extent feasible, be placed underground in conformance with applicable laws, ordinances and regulations.

4.14 Antennas and Satellite Dishes. Except as otherwise provided by law or this subsection, no exterior antennas, satellite dishes, microwave, aerial, tower, or other devices for the transmission or reception of television, radio, or other forms of sound or electromagnetic radiation shall be erected, constructed, or placed on any Lot. With prior written approval from the Architectural Review Committee, exterior satellite dishes or antennas with a surface diameter of one (1) meter or less and antennas designed to receive television broadcast signals only may be placed on any Lot if they are not visible from the street and are screened from neighboring Lots. The Architectural Review Committee may adopt reasonable Rules and Regulations governing the installation, safety, placement, and screening of such antennas, satellite dishes, and other transmission devices. Such rules shall not (a) unreasonably delay or increase the cost of installation, maintenance, or use or (b) preclude reception of a signal of acceptable quality. The Architectural Review Committee, in its sole discretion, may determine what constitutes a signal of acceptable quality. Such rules may prohibit installation of exterior satellite dishes or antennas if signals of acceptable quality can be received by placing antennas inside a Building without causing an unreasonable delay or cost increase.

4.15 Exterior Lighting or Noise-Making Devices. Except with the approval of the Architectural Review Committee, no additional exterior lighting or noise-making devices, other than security and fire alarms, shall be installed or maintained on any Lot. All new and replacement light fixtures shall be shielded and directed downward. Any lighting used to illuminate off-street parking areas shall be so arranged that it will not project light rays directly upon any adjoining property.

4.16 Exterior Building Materials and Roofs. All materials used in the initial construction of the Buildings are characteristic of Central Oregon, such as brick, wood, native stone and tinted/textured concrete masonry units and/or glass products. Other materials such as smooth-faced concrete block, undecorated tilt-up concrete panels, or pre-fabricated steel panels may only be used as accents and not dominate the Building exterior. The following materials shall be used in the restoration or repair of the Buildings, subject to variations approved by the Architectural Review Committee: (a) painted standing seam metal roof, (b) brick masonry, (c) integrally colored pre-cast concrete lintels and sills, (d) stained wood siding and trim, (e) painted steel balconies and awnings, (f) painted metal clad windows and (g) painted metal doors. Roofs were designed to reduce the apparent exterior mass of a Building, add visual interest and be appropriate to the architectural style of the Building. Architectural methods were used to conceal flat rooftops. Mansard style roofs are not permitted. If a Building is damaged, destroyed or in need of repair, it shall be restored or repaired using the same types of materials used in its initial construction. Although not encouraged, the Architectural Review Committee, in its discretion and when necessary, may approve a change in materials in connection with restoration or repair.

4.17 Basketball Hoops. No Owner may install a basketball hoop on any Lot.

4.18 Grades, Slopes, and Drainage. There shall be no interference with the established drainage patterns or systems over or through any Lot within the Mill Quarter so as to affect any other Lot or any real property outside the Property unless adequate alternative provision is made for proper drainage and is approved by the Architectural Review Committee. The term "established drainage" shall mean the drainage swales, conduits, inlets, and outlets designed and constructed for the Mill Quarter.

4.19 Trees. No tree may be planted on any Lot without the prior approval of the Architectural Review Committee.

4.20 Damage or Destruction to Building and/or Lot. If all or any portion of a Building is damaged by fire or other casualty, the Owner shall either (a) restore the damaged improvements or (b) remove all damaged improvements, including foundations, and leave the Lot in a clean and safe condition. Any restoration proceeding under (a) above must be performed so that the improvements are in substantially the same condition in which they existed before the damage. The Owner must commence such work within sixty (60) days after the damage occurs and must complete the work within eight (8) months thereafter. Owners of Buildings shall cooperate in respect to repair and reconstruction and application of available insurance proceeds.

4.21 Access and Maintenance Agreement. Upon completion of the construction of the Privately Maintained Public Improvements, the Commercial Owners of Property in Phase I,

Phase II, Phase III and the owner of the Bond Street Property have agreed to form and organize MQM that will have the responsibility to maintain the Privately Maintained Public Improvements in a good, safe and attractive condition, including regular maintenance of the landscaping thereon. Each Commercial Owner in the Mill Quarter and the Owner of the Bond Street Property shall be a member of MQM and the membership interests in MQM shall follow ownership of the Commercial Lots such that a successor owner of a Commercial Lot shall automatically succeed to the membership interest in MQM of that owner. The membership interests (and associated obligation to contribute capital to MQM to cover maintenance costs and costs of operating and maintaining MQM) shall be based on the following percentages:

Phase Right of Way Length Calculations						
Phase	Parcel	Phase L (ft)	% of Total	Side	RW Length (ft)	% of Total
Phase 1	Parcel 3	558.21	15.3%	West	260.28	7.1%
				East	297.93	8.1%
Phase 2	Parcel 2	569.81	15.6%	West	273.48	7.5%
				East	296.33	8.1%
Phase 3	Parcel 1	1044.64	28.6%	All	1044.64	28.6%
Bond Street Owner		1486	40.6%	All	1486	40.6%
Total		3658.30	100.0%	All	3658.30	100.0%

4.21.1 Any member of MQM desiring maintenance or repair of the Privately Maintained Public Improvements shall direct such request to the Board of Directors of MQM. The Board of Directors shall make all decisions regarding the need for repairs and shall order and direct such repairs.

4.21.2 Notwithstanding subsection 4.21.1, if specific damage (above normal wear and tear) to the Privately Maintained Public Improvements results from the willful acts or negligence of any Owner or such Owner's guests, agents, employees, invitees, or licensees, the required maintenance and repair shall not be paid by MQM but shall be the sole responsibility of such Owner. The repair of such damage shall be made under the name of the liable Owner by a contractor acceptable to the MQM, and such repairs shall be promptly made. The same shall apply with respect to the owner of the Bond Street Property.

4.21.3 All work performed at any time on the Privately Maintained Public Improvements shall be performed in a good and workmanlike manner and in compliance with all laws, ordinances, building codes and other governmental regulations applicable to the work being performed. MQM (or a liable Owner or the Owner of the Bond Street Property as set forth above) shall promptly pay the expenses of the work.

4.21.4 The contractor performing the maintenance or repair work shall have the right to enter upon the Lots or land of the Owners and the Bond Street Property adjacent

to the Privately Maintained Public Improvements to the extent necessary to perform such maintenance or repair work after reasonable advance notice to the affected Owners and/or the owner of the Bond Street Property. All maintenance and repair work shall be performed in a manner designed to cause a minimum of interference with the Owners' and the Bond Street Property's owner's use and enjoyment of the Privately Maintained Public Improvements and their own respective Lots and land.

4.21.5 If any Owner who is a members in MQM, or any Owner who is obligated to pay for repairs as provided in subsection 4.21.2, fails to pay such Owner's share of the costs of maintenance and repair required by this Section (either by making a capital contribution to MQM or making payment to MQM, as applicable), or if MQM or another Owner pays the share of another Owner and is not promptly reimbursed by that Owner (either of which is referred to herein as a "**Defaulting Responsible Owner**"), then, in addition to all other remedies available to MQM for a default hereunder, including, without limitation, the right to recover damages, the following shall apply:

4.21.5.1 If MQM is owed money by a Defaulting Responsible Owner for maintenance and repair work, or for a capital contribution to cover maintenance and repair work, then MQM shall make written demand for payment to the Defaulting Responsible Owner. If the Defaulting Responsible Owner fails to pay the amounts owed within ten (10) days following written demand for payment, MQM shall have a lien ("**Lien**") against the defaulting Responsible Owner's Lot or land to secure payment of the Defaulting Responsible Owner's outstanding maintenance and repair contribution or obligation that is owed MQM. MQM may then prepare, sign and record notice of its Lien in the Deschutes County real property records and, if so, MQM shall also provide a copy of the notice of Lien to the Defaulting Responsible Owner. The notice of Lien shall recite the provisions of this subsection and contain recording information sufficient to allow the Defaulting Responsible Owner to locate a copy of the Declaration in the Deschutes County real property records. The notice of Lien shall reasonably set forth the nature of the maintenance and repair made and the costs thereof.

4.21.5.2 MQM, after recording a notice of Lien, may foreclose the same in Deschutes County, Oregon, as permitted by law.

4.21.6 MQM shall, upon the request of any Owner, provide an estoppel letter to any prospective mortgagee or purchaser of an Owner's Lot so that such mortgagee or purchaser shall be aware of any unpaid maintenance and repair obligations owed by the Owner to MQM under this Section. If an estoppel letter is not provided by MQM within ten (10) days following written request for the same, the prospective mortgagee or purchaser shall be entitled to encumber or purchase such Lot or land free and clear of the unpaid maintenance and repair obligations owed by the Owner to MQM, except to the extent notice of a Lien therefor has been recorded in the Deschutes County real property records. In all other circumstances, any transfer

or encumbrance of a Lot by a Defaulting Responsible Owner shall be subject to any and all outstanding maintenance and repair obligations of a Defaulting Responsible Owner.

4.22 Right of Maintenance and Entry by Architectural Control Committee. If an Owner fails to perform maintenance and/or repair that such Owner is obligated to perform pursuant to this Declaration, and if the Architectural Review Committee determines, after notice to the Owner, that such maintenance and/or repair is necessary to preserve the attractiveness, quality, nature, and/or value of Mill Quarter, then the Architectural Review Committee may cause such maintenance and/or repair to be performed and may enter any such Lot whenever entry is necessary in connection with the performance thereof. Entry shall be made with as little inconvenience to an Owner as practicable and only after advance written notice of not less than forty-eight (48) hours, except in emergency situations. The costs of such maintenance and/or repair shall be chargeable to the Owner of the Lot and may be collected and enforced as provided in Section 7. An Owner may request, and the Architectural Review Committee shall then conduct, a hearing on the matter. The Owner's request shall be in writing and delivered within five (5) days after receipt of the notice from the Architectural Control Committee; and the hearing shall be conducted within not less than five (5) days nor more than twenty (20) days after the request for a hearing is received.

4.23 Architectural Review Committee Rules and Regulations. The Architectural Review Committee from time to time may adopt, modify, or revoke such Rules and Regulations governing the conduct of persons and the operation and use of Lots and the Access Easement Areas as it may deem necessary or appropriate to assure the peaceful and orderly use and enjoyment of the Mill Quarter and the administration and operation of the Architectural Control Committee; although any such Rules and Regulations shall not unreasonably limit or restrict free passage through the Access Easement Areas. A copy of the Rules and Regulations, upon adoption, and a copy of each amendment, modification, or revocation thereof, shall be delivered by the Architectural Review Committee promptly to each Owner and shall be binding upon all Owners and occupants of all Lots five (5) days following the date of delivery or actual notice thereof. The Architectural Review Committee may adopt reasonable rules and regulations pertinent to its functions.

4.24 Temporary Structures. No structure of a temporary character or any trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any Lot as a residence, either temporarily or permanently.

4.25 Ordinances, Regulations and Master Documents. The standards and restrictions set forth in this Article 4 shall be the minimum required. To the extent that local governmental ordinances and regulations or the other Master Documents are more restrictive or provide for a higher or different standard, such local governmental ordinances and regulations or other Master Documents shall prevail.

ARTICLE 5

ARCHITECTURAL REVIEW COMMITTEE

5.1 Architectural Review. Except for the initial improvements being constructed by Declarant, no improvement shall be commenced, erected, placed, or altered on any Lot until the

construction plans and specifications showing the nature, shape, heights, materials, colors, and proposed location of the improvement have been submitted to and approved in writing by the Architectural Review Committee. The Architectural Review Committee shall have no duty or responsibility to approve any request by an Owner that conflicts with the Master Documents, including the Decision. This Article's purpose is to ensure quality of workmanship and materials and harmony between exterior design and the existing improvements and landscaping and as to location with respect to topography and finished grade elevations and to ensure compliance with the Decision. The Architectural Review Committee shall not be responsible for determining compliance with structural and building codes, solar ordinances, zoning codes, or other governmental regulations, all of which are the applicant's responsibility. The procedure and specific requirements for review and approval of construction shall be set forth in design guidelines and standards adopted from time-to-time by the Architectural Review Committee. The provisions of this Article shall apply in all instances in which this Declaration requires the Architectural Review Committee's consent or approval. Buildings existing on Lots as of the recording of this Declaration or initial construction on the Lots by Declarant shall be exempt from initial review and approval by the Architectural Review Committee.

5.2 Architectural Review Committee, Appointment and Removal. The Architectural Review Committee shall consist of all Commercial Owners from each Phase and one Residential Owner from each Phase (no members of the committee for a Phase other than Phase I and Phase II shall be appointed until a Phase is annexed). Therefore, while Phase I and Phase II are the only Phases in the Mill Quarter, then the Architectural Review Committee shall consist of the two Commercial Owners in Phase I and one Residential Owner from Phase I that the two Commercial Owners in Phase I appoint and who is willing to serve and the two Commercial Owners in Phase II and one Residential Owner from Phase II that the two Commercial Owners in Phase II appoint and who is willing to serve. When and if Phase III is annexed, then its Commercial Owners shall be added to the Architectural Review Committee along with one Residential Owner for each two new Commercial Owners added. If only one new Commercial Owner is added or if an odd number of Commercial Owners are added as part of the annexation of Phase III, then no additional Residential Owner shall be appointed with respect to that additional single Commercial Owner. Notwithstanding the foregoing, Declarant, acting through Declarant Representative, reserves the right to appoint all members of the Architectural Review Committee and all replacements thereto until Buildings are constructed (and final certificates of occupancy have been issued) on all Lots in a Phase. Thereafter, the Architectural Review Committee shall consist of all Commercial Owners and one Residential Owner for each two Commercial Owners in that Phase. Persons who are not Owners but who have special expertise regarding the matters that come before the Architectural Review Committee may serve as a paid consultant to the Architectural Review Committee. If a Residential Owner member of the Architectural Review Committee dies, resigns or is removed (and the Residential Owner member may be removed at any time with or without cause with the unanimous approval of the Commercial Owners) then his or her replacement shall be made by the Commercial Owner members of the Architectural Review Committee from that Residential Owner's Phase.

5.3 Majority Action. Except as otherwise provided in this Declaration, a majority of the members of the Architectural Review Committee shall have the power to act on behalf of the Architectural Review Committee at any meeting called for the purpose of taking action. Any member of the Architectural Review Committee may call a meeting of the Architectural Review Committee upon not less then five (5) days prior written notice (given to the last known address of the members of the Architectural Review Committee) by first class mail or facsimile (with confirmation of a successful transmission on the sender's facsimile machine). The members of the Architectural Review Committee may waive the requirement of advance notice and any member of the Architectural Review Committee who attends a meeting of the Architectural Review Committee shall be deemed to have waived the requirement of notice. The Architectural Review Committee may act by a majority of the members of the Architectural Review Committee (not a majority of those in attendance at meeting) even if less than all of the members of the Architectural Review Committee appear at a duly called meeting of the Architectural Review Committee. The Architectural Review Committee may render its decision only by written instrument setting forth the action taken by the members consenting thereto.

5.4 Duties. The Architectural Review Committee shall consider and act on the proposals and/or plans submitted pursuant to this Article. The Architectural Review Committee, from time-to-time and at its sole discretion, may adopt architectural rules, regulations, and guidelines ("**Architectural Standards**"). The Architectural Standards shall interpret and implement the provisions of this Declaration for architectural review and guidelines for architectural design, placement of Buildings, color schemes, exterior finishes and materials, and similar features that may be used in Mill Quarter; provided, however, that the Architectural Standards shall not be in derogation of the minimum standards established by this Declaration or the other Master Documents. The Architectural Review Committee may adopt Rules and Regulations for the Mill Quarter to ensure a safe, clean and friendly living and working environment; provided, however, that the Architectural Review Committee shall not adopt Rules or Regulations that are in derogation of the minimum standards established by this Declaration or the other Master Documents.

5.5 Architectural Review Committee Decision. The Architectural Review Committee shall render its written decision approving or denying each application submitted to it within fifteen (15) business days after its receipt of all materials required or requested by the Architectural Review Committee with respect to such application, including reasonable fees to cover the out-of-pocket costs of the work of the Architectural Review Committee on the application. Failure to supply materials and fees required or requested by the Architectural Review Committee within fifteen (15) business days of the Architectural Review Committee's request shall be deemed a withdrawal of the application. If the Architectural Review Committee fails to render such written decision within forty-five (45) business days of its receipt of all required materials and fees or request an extension, the application shall be deemed approved. The Architectural Review Committee shall be entitled to request one or more extensions of time, not to exceed forty-five (45) additional business days. In the event of such extension requests, if the Architectural Review Committee does not render a written decision within fifteen (15) business days after the expiration of the extension(s), the application shall be deemed approved.

Provided, however, the Architectural Review Committee may agree to further extensions to allow the applicant to complete or supplement the application.

5.6 Architectural Review Committee Discretion. The Architectural Review Committee, at its sole discretion, may withhold consent to any proposed work if the Architectural Review Committee finds the proposed work would be inappropriate for the particular Lot or incompatible with the design standards that the Architectural Review Committee intends for Mill Quarter. The Architectural Review Committee may consider siting, shape, size, color, design, height, view restriction, solar access, or other effects on the enjoyment of other Lots or the Access Easement Areas, and any other factors that it reasonably believes to be relevant in determining whether to consent to any proposed work.

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

5.8 Appeal. Any Owner adversely impacted by Architectural Review Committee action may appeal such action to the Declarant for as long as the Declarant owns any land in the Mill Quarter. Thereafter there shall be no right of appeal, and the decision of the Architectural Review Committee shall be the final, conclusive decision. Such appealing Owner shall submit to the Declarant a written notice of appeal, setting forth specific objections or mitigating circumstances justifying the appeal, within ten (10) days after the Architectural Review Committee's action (a failure to appeal within the 10-day period shall eliminate any future right of appeal). The Declarant shall issue a final, conclusive decision within forty-five (45) days after receipt of such notice, and such decision shall be final and binding on the appealing Owner and the Architectural Review Committee; provided, however, that the Declarant shall make reasonable efforts to reach a decision within thirty (30) days. If the Declarant is serving as the Architectural Review Committee, then such appeal shall be deemed a request for reconsideration.

5.9 Effective Period of Consent. The Architectural Review Committee's consent to any proposed work shall automatically expire three (3) months after issuance unless construction of the project has been commenced and, at the Architectural Review Committee's reasonable discretion, is proceeding diligently toward completion, or the Owner has applied for and received an extension of time from the Architectural Review Committee.

5.10 Determination of Compliance. The Architectural Review Committee may inspect, from time to time, all work performed and determine whether it is in substantial compliance with the approval granted. If the Architectural Review Committee finds that the work was not performed in substantial conformance with the approval granted or if the Architectural Review Committee finds that the approval required was not obtained, the Architectural Review Committee shall notify the Owner in writing of the noncompliance. The notice shall specify the particulars of noncompliance and shall require the Owner to remedy the noncompliance.

5.11 Noncompliance. If the Architectural Review Committee determines that an Owner has not constructed an improvement consistent with the specifications of an Architectural

Review Committee approval or has constructed an improvement without obtaining Architectural Review Committee approval and sends a notice of noncompliance to such Owner and such Owner fails to commence diligently remedying such noncompliance in accordance with such notice, then, effective at 5:00 p.m. on the tenth (10^{th}) business day after issuance of such notice, the Architectural Review Committee shall provide notice of a hearing to consider the Owner's continuing noncompliance. The hearing shall be set not more than forty-five (45) business days from the date on which the notice of noncompliance was issued. At the hearing, if the Architectural Review Committee finds that there is no valid reason for the continuing noncompliance, the Architectural Review Committee shall determine the estimated costs of achieving compliance and may issue a fine against the noncomplying Owner for such amount. The Architectural Review Committee also shall require the Owner to remedy such noncompliance within ten (10) business days after the date of the Architectural Review Committee's determination. If the Owner does not comply with the Architectural Review Committee's ruling within such period or any extension thereof granted by the Architectural Review Committee, at its sole discretion, the Architectural Review Committee may remove the noncomplying improvement, remedy the noncompliance, and/or record a notice of noncompliance in the county deed records. The costs of any such action shall be assessed against the Owner as a debt and enforced and collected as provided in Section 7.

5.12 Liability. Neither the Architectural Review Committee nor any member thereof shall be liable to any Owner, Occupant, or builder for any damage, loss, or prejudice suffered or claimed on account of any action or failure to act of the Architectural Review Committee or a member thereof, provided only that the Architectural Review Committee or the member has, in accordance with its, his or her actual knowledge, acted in good faith.

5.13 Estoppel Certificate. Within fifteen (15) business days after the Architectural Review Committee's receipt of a written request from an Owner and the Architectural Review Committee's receipt of payment of a reasonable fee fixed by the Architectural Review Committee to cover estimated costs, which fee shall in no event be less than one hundred dollars ($100), the Architectural Review Committee shall provide such Owner with a certificate executed by a member of the Architectural Review Committee certifying, with respect to any Lot owned by the Owner, that, as of the date thereof either (a) all improvements made or done upon such Lot comply with this Declaration or (b) such improvements do not so comply, in which event, the certificate shall also identify the noncomplying improvements and set forth with particularity the nature of such noncompliance. The Owner and such Owner's heirs, devisees, successors, and assigns shall be entitled to rely on the certificate with respect to the matters set forth therein. The certificate shall be conclusive as among Declarant, the Architectural Review Committee, all Owners, and all persons deriving any interest through any of them.

5.14 Fees. The Architectural Review Committee may charge applicants a reasonable application fee and additional costs incurred or expected to be incurred by the Architectural Review Committee to retain architects, attorneys, engineers, and other consultants to advise the Architectural Review Committee concerning any aspect of the applications and/or compliance with any appropriate architectural criteria or standards. Such fees shall be collectible upon

demand and nonpayment of any fee shall excuse the Architectural Review Committee from taking any further action on the matter until the fee is paid.

5.15 Declarant and Successor Exempt from Architectural Review Committee. Declarant or a successor to Declarant that acquires all of the unsold Lots, shall be exempt from the requirement to submit and have plans approved by the Architectural Review Committee.

ARTICLE 6

DECLARANT'S SPECIAL RIGHTS

6.1 General. Declarant is undertaking the work of developing Lots and other improvements within the Mill Quarter. The completion of the development work and the marketing and sale of the Lots are essential to the establishment and welfare of the Mill Quarter as mixed use residential community. Until the Buildings on all Lots in the Mill Quarter have been constructed, fully completed, and sold, Declarant shall have the special rights set forth in this Article 6.

6.2 Marketing Rights. Declarant shall have the right to maintain a sales office and model on one or more of the Lots that Declarant owns. Declarant and prospective purchasers and their agents shall have the right to use and occupy the sales office and models during reasonable hours any day of the week. Declarant may maintain a reasonable number of "For Sale" signs at reasonable locations on the Property, including, without limitation, on the Access Easements Areas.

6.3 Declarant Easements. Declarant reserves easements over the Property as more fully described in subsection 3.2.3.

6.4 Additional Improvements. Declarant does not agree to build any improvements not described in this Declaration.

ARTICLE 7

GENERAL PROVISIONS

7.1 Records. The Architectural Review Committee shall preserve and maintain minutes of the meetings of the Architectural Review Committee. The minutes of the Architectural Review Committee shall be maintained in the state of Oregon and reasonably available for review and copying by the Owners. A reasonable charge may be imposed by the Architectural Review Committee for providing copies.

7.2 Remedies. Except as provided in subsection 4.21:

7.2.1 In the event an Owner (referred to as a "**Defaulting Owner**" in this Section 7) of a Lot is required to pay or reimburse the Declarant, the Architectural Review Committee, MQM or any other Owner or Owners pursuant to this Declaration, and fails to timely do so, the party or parties entitled to payment or reimbursement shall have the authority to proceed as follows, in addition to all other remedies provided for in this Declaration and available at law:

7.2.1.1 The party or parties entitled to payment or reimbursement shall make written demand for payment to the Defaulting Owner by certified or registered mail, return receipt requested. If the Defaulting Owner fails to pay the party or parties the amounts owed within ten (10) days following such written demand for payment, the party or parties making demand shall have a Lien against the Defaulting Owner's Lot to secure payment of the Defaulting Owner's outstanding obligation owed to such party or parties. The party or parties who made such written demand for payment may then prepare, sign and record a notice of Lien in the Deschutes County real property records and shall also provide a copy of the notice of Lien to the Defaulting Owner. The notice of Lien shall recite the applicable provisions of this subsection and contain recording information sufficient to allow the Defaulting Owner to locate a copy of this Declaration in the Deschutes County real property records. The notice of Lien shall reasonably set forth the nature of the maintenance, repair and or replacement and the costs thereof. If the parties entitled to payment or reimbursement are a group of Owners, it shall be sufficient that a majority of such group of Owners authorize and sign the written demand for payment and the notice of Lien.

7.2.1.2 The party or parties that have recorded a notice of Lien may foreclose the same in Deschutes County as permitted by law.

7.2.2 In the event of any breach of or other noncompliance with any provision of this Declaration for which a remedy has not been specifically provided for in this Declaration, the party or parties affected by such breach or noncompliance may: (a) bring an action to recover monetary damages; (b) institute a proceeding in equity to obtain injunctive or other equitable relief; or (c) exercise any other right or remedy available at law or in equity.

7.2.3 Unless expressly limited by this Declaration, an election to pursue any remedy provided for a violation of this Declaration shall not prevent concurrent or subsequent exercise of other rights or remedies permitted hereunder or at law or in equity. The remedies provided for in this Declaration are not exclusive but shall be in addition to all other remedies, including actions for damages and suits for injunctions and specific performance, available at law or in equity.

7.2.4 Any Lien under this Section 7 or under subsection 4.21.5 shall be deemed automatically subordinate to any first mortgage lien upon any Lot if the holder of such mortgage lien is an institutional lender, such as a bank, mortgage company, life insurance company or finance company.

7.3 **Enforcement.** The Architectural Review Committee, MQM and the Owners and any mortgagee holding an interest in a Lot shall have the right to enforce all of the covenants, conditions, restrictions, reservations, easements, Liens, and charges now or hereafter imposed by any of the provisions of this Declaration as may appertain specifically to such parties or Owners by any proceeding at law or in equity. Failure by either the Architectural Review Committee, MQM or by any Owner or mortgagee to enforce any covenant, condition, or restriction herein contained shall in no event be deemed a waiver of their right to do so thereafter.

7.4 Severability. Invalidation of any one of these covenants, conditions, or restrictions by judgment or court order shall not affect the other provisions hereof and the same shall remain in full force and effect.

7.5 Duration. The covenants, conditions, and restrictions of this Declaration shall run with and bind the land for a term of thirty (30) years from the date of this Declaration being recorded, after which time they shall be automatically extended for one (1) additional term of ten (10) years, unless rescinded by a vote of at least one hundred percent (100%) of the Commercial Owners, eighty percent (80%) of the Residential Owners, and eighty percent (80%) of the lenders holding first mortgage liens on the Lots. Except as limited in subsection 2.4, this Declaration may be amended at any time by an instrument approved by not less than one hundred percent (100%) of the Commercial Owners, eighty percent (80%) of the Residential Owners, and eighty percent (80%) of the lenders holding first mortgage liens on the Lots. Any amendment must be executed, recorded, and certified as provided by law; provided, however, no amendment of this Declaration affecting the general plan of development or any other right of Declarant herein contained may be effected without the express written consent of Declarant Representative, acting on behalf of Declarant or its successors and assigns so long as Declarant owns any Lot.

7.6 Unilateral Amendment by Declarant. In addition to all other rights of Declarant provided in this Declaration, Declarant Representative, acting on behalf of Declarant, may amend this Declaration in order to comply with the requirements of the Federal Housing Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Mortgage Loan Corporation, any department, bureau, commission, or agency of the United States or the state of Oregon, or any other state in which the Lots are marketed and sold, or any corporation wholly owned, directly or indirectly, by the United States or the state of Oregon, or such other state, the approval of which entity is required in order for it to insure, guarantee, or provide financing in connection with development of the Mill Quarter and sale of Lots. So long as Declarant owns any Lot in the Mill Quarter, no such amendment shall require notice to or approval by any Owner.

7.7 Indemnity and Liability Insurance. Each Owner shall indemnify and hold harmless each of the other Owners and their assigns, lessees, mortgagees, invitees, guests, customers, agents, employees and Occupants ("**Indemnified Parties**"), from and against any and all claims arising from or in connection with use of the easements set forth in Section 3 and or the use and enjoyment of such Owner's Lot, together with all costs, expenses and liabilities incurred in connection with each such claim or action or proceeding brought thereon, including, without limitation, all attorney fees and expenses. In case any action or proceeding is brought against an Indemnified Party and such claim is a claim from which an Owner is obligated to indemnify an Indemnified Party pursuant to this Section, such Owner, upon notice from the Indemnified Party, shall resist and defend such action or proceeding (by counsel reasonably satisfactory to the Indemnified Party).

7.8 Attorney Fees. If legal action is commenced by or against Declarant or any other Owner or Occupant in connection with this Declaration or any of the other Master Documents, the prevailing party in such action shall be entitled to recover its reasonable attorney fees and costs incurred in the trial court and any appeal therefrom. The term "action" shall be deemed to

include arbitration and any action commenced in the Bankruptcy Courts of the United States and any other court of general or limited jurisdiction. The reference to "costs" includes, but is not limited to, deposition costs (discovery and otherwise), witness fees (expert and otherwise), out-of-pocket costs, title search and report expenses, survey costs, surety bonds and any other reasonable expenses.

IN WITNESS WHEREOF, Declarant has executed this instrument as of the date set forth above.

DECLARANT:

MILL QUARTER PROPERTIES, INC.

By: _____
Aaron Lafky, President

STATE OF OREGON)
) ss.
County of Deschutes)

This instrument was acknowledged before me on August 17, 2005, by Aaron Lafky, the President of MILL QUARTER PROPERTIES, INC., an Oregon corporation.

_____
Notary Public for Oregon
My commission expires: 5/25/08

OFFICIAL SEAL
KARI BYRD
NOTARY PUBLIC-OREGON
COMMISSION NO. 381131
MY COMMISSION EXPIRES MAY 25, 2008

Exhibit A

(Legal Description—Phase I Property)

Parcel 3 of Partition Plat No. 2004-87, Deschutes County, Oregon.

Exhibit B

(Legal Description—Phase II Property)

Parcel 2 of Partition Plat No. 2004-87, Deschutes County, Oregon.