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After recording return to:

West Bend Property Company LLC  
2677 NW Ordway Avenue, Suite 100  
Bend, Oregon 97701  
Attn: David E. Ford

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR NORTHWEST CROSSING COMMUNITY CENTER**

THIS DECLARATION is made this 11<sup>th</sup> day of June 2003, by West Bend Property Company LLC ("Declarant").

Declarant owns property located in the City of Bend, County of Deschutes, Oregon. Declarant proposes to develop portions of this property as a commercial development to be known as NorthWest Crossing Community Center.

Declarant has filed a plat of NorthWest Crossing District 1 (as amended from time to time, the "NorthWest Crossing District 1 Plat"), which includes NorthWest Crossing Community Center, in the plat records of Deschutes County, Oregon. The NorthWest Crossing Community Center is comprised of Lots 1, 2, 3 and 5 of the NorthWest Crossing District 1 Deschutes County, Oregon and Lot 1 of NorthWest Crossing Phase 1 Deschutes County, Oregon. Declarant desires to subject the NorthWest Crossing Community Center to the covenants, conditions, restrictions, and charges set forth herein for the benefit of such property and its present and subsequent owners.

NOW, THEREFORE, Declarant hereby declares that the property described as Lots 1, 2, 3 and 5 on the NorthWest Crossing District 1 and Lot 1 of NorthWest Crossing Phase 1 shall be held, sold, and conveyed subject to the following easements, covenants, conditions, restrictions, and charges, which shall run with such property and shall be binding upon all parties having or acquiring any right, title, or interest in such property or any part thereof 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 "Association" means the nonprofit corporation to be formed to serve as the association of Owners (as hereinafter defined) as provided in Article 5 hereof, and its successors and assigns.

1.2 "Building" means a structure located on a Lot within the Project.

1.3 "Common Area" means all areas designated as Common Areas of the NorthWest Crossing Community Center on the NorthWest District 1 Plat or in any Supplemental

Declaration. Common Area shall not include any areas identified as common area on the NorthWest Crossing District 1 Plat except to the extent the same are identified as common areas of the NorthWest Crossing Community Center.

1.4 "Declarant" means West Bend Property Company LLC, an Oregon limited liability company, any person who succeeds to any special Declarant right and to whom all the Declarant's ownership interest in the Project is transferred, or any person, other than Owners, to whom Declarant has transferred, for purposes of resale, all Declarant's ownership interest in the Project.

1.5 "Improvement" means every temporary or permanent structure or improvement of any kind, including but not limited to a building, fence, wall, driveway, parking area, storage shelter, signs, trash screens, drinking fountains, benches, lighting, bicycle racks, tables, displays or other product of construction efforts on or in respect to any property within the Project, including landscaping, and every alteration, painting, or reconstruction thereof.

1.6 "Lot" means a platted or legally partitioned lot within the Project.

1.7 "Manager" means the person, if any, with whom the Association contracts to provide management services pursuant to Section 7.3.

1.8 "Master Declaration" means the Master Declaration of Covenants, Conditions, and Restrictions for NorthWest Crossing, as contained in instrument recorded December 27, 2001, in Volume 2001, Page 63854 in the Real Property Records of Deschutes County, Oregon.

1.9 "Mortgage" means a mortgage, trust deed, or land sales contract; "mortgagee" means a mortgagee, beneficiary of a trust deed, or vendor under a land sales contract; and "mortgagor" means a mortgagor, grantor of a trust deed, or vendee under a land sales contract.

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

1.11 "Project" means the property described on Exhibit A attached hereto, and any property covered by any Supplemental Declaration recorded in accordance with Section 2.2.

1.12 "Supplemental Declaration" means an instrument annexing additional real property to the Project.

## ARTICLE 2

### **PROPERTY SUBJECT TO THIS DECLARATION**

2.1 Initial Development. Declarant hereby declares that all the real property described on Exhibit A attached hereto, is owned and shall be owned, conveyed, hypothecated, encumbered, used, occupied, and improved subject to this Declaration.

2.2 Annexation of Additional Property. At any time after the Declarant no longer owns any Lots, Owners representing 75% of the Class A votes of the Association may approve the annexation of additional property to the Project. As used herein, the Declarant shall be deemed to own a Lot for so long as Declarant owns at least fifty percent (50%) of such Lot. For so long as the Declarant owns any Lot or until ten (10) years from the date hereof, whichever is later, Declarant may from time to time, and in its sole discretion, annex additional property to the Project. Annexation of additional property shall be accomplished as follows:

(a) Supplemental Declaration by Declarant. Declarant shall record a Supplemental Declaration that shall be executed by or bear the approval of Declarant and be executed by the Owner if such property is not owned by Declarant and shall, among other things, describe the real property to be annexed, establish any additional limitations, uses, restrictions, covenants, and conditions that are intended to be applicable to such property, and declare that such property is held and shall be held, conveyed, hypothecated, encumbered, used, occupied, and improved subject to this Declaration.

(b) Supplemental Declaration by Owners. The Association shall cause to be recorded a Supplemental Declaration that shall be executed by the owner of the property to be annexed and shall bear evidence of the approval of the Owners representing 75% of the Class A votes. Such Supplemental Declaration shall, among other things, describe the real property to be annexed and declare that such property is held and shall be held, conveyed, hypothecated, encumbered, used, occupied, and improved subject to this Declaration.

(c) Effect of Annexation. The property included in any such annexation shall thereby become a part of the Project and subject to this Declaration, and Declarant and the Association shall have and shall accept and exercise administration of this Declaration with respect to such property.

(d) Voting Rights. Upon annexation, additional Lots so annexed shall be entitled to voting rights as set forth in Section 5.3 below.

## ARTICLE 3

### **PROPERTY RIGHTS**

3.1 Owners' Easements. Subject to the terms of this Declaration, every Owner and such Owner's tenants and invitees shall have a right and easement of enjoyment in and to the Common Areas or as may be conveyed by Declarant to the Association.

3.2 Use of the Common Areas/Use of Rights-of-Way. Except as otherwise provided in this Declaration, the Common Areas shall be reserved for the use and enjoyment of all Owners, their tenants, and invitees and no private use may be made of the Common Areas. Nothing herein shall prevent the placing of a sign or signs upon the Common Areas for the purpose of identifying the Project and businesses operated by Owners and their tenants, provided such signs and their location comply with applicable law and are approved as required under the Master Declaration. Owners may use the public and private rights of way adjacent to their Lots, including sidewalks and landscaping strips, provided they first obtain the approval of the Association, any approvals required under the Master Declaration, and any approvals required by law and any approvals required by the owner(s) of such rights-of-way.

3.3 Alienation of the Common Areas. The Association may not by act or omission seek to cause the Common Areas to be subject to any security interest or to abandon, partition, subdivide, encumber, sell, or transfer the Common Areas owned directly or indirectly by the Association for the benefit of the Owners unless the holders of at least 75 percent of the Class A voting rights (as described in Section 5.3(b) below) and the Class B member (as defined in Section 5.3(b) below), if any, have given their prior written approval.

## ARTICLE 4

### RESTRICTIONS ON USE OF LOTS

4.1 Approved Uses. Lots within the Project may be improved, operated, and used only for uses permitted under the ordinances and regulations of the City of Bend. In addition, no portion of the Project shall be used for residential purposes; provided, however, the Owner of a Lot may establish an apartment building provided it is compliant with all applicable laws or condominiums so long as the same are established and governed in accordance with all applicable laws.

4.2 Maintenance. Each Lot and all Buildings thereon shall be maintained in a clean and attractive condition, in good repair, and in such a fashion as not to create a fire hazard. All garbage, trash, cuttings, refuse, garbage and refuse containers, and other service facilities located on each Lot shall be screened from view as required by the Master Declaration or any design review guidelines established thereunder. Grass on vacant Lots shall be mowed on a regular basis and weeds and other noxious vegetation shall be eradicated. Owners are responsible for maintenance of sidewalks adjacent to their Lots unless such responsibility is specifically assumed by the Association in writing.

4.3 Illegal or Offensive Activity. No illegal or offensive activity shall be carried on nor shall anything be done on any Lot that may be or become a nuisance to the other Owners.

4.4 Signs. All signs shall comply with applicable laws and any requirements established by or pursuant to the Master Declaration.

4.5 Sales Activity. All banners or signs visible from the exterior of a Building or exterior pennants shall comply with applicable laws and any requirements established by or pursuant to the Master Declaration. No sidewalk or outdoor sales shall be conducted on any Lot

unless the same has first been approved by the Association and provided the applicable Owner has obtained and complied with all necessary approvals from the City of Bend or as required by the Master Declaration.

**4.6 Compliance with Laws and Regulations.** In addition to compliance with this Declaration, each Owner shall comply with the terms of the Master Declaration and all documents established thereunder, all applicable state and local laws and regulations, including, but not limited to those of the State of Oregon Department of Environmental Quality, the ordinances of Deschutes County and the City of Bend, and all applicable building codes. This Declaration is designed to complement such laws and regulations, and where any conflict occurs, the more rigid requirement shall prevail.

**4.7 Conflicts with Master Declaration.** In the event of any conflict between the terms of this Declaration and the terms of the Master Declaration, the terms of the Master Declaration shall prevail.

## **ARTICLE 5**

### **ASSOCIATION**

Declarant shall organize an association of all the Owners within the Project. Such Association, its successors, and its assigns shall be organized under the name "NorthWest Crossing Community Center Association, Inc.," 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 Project and all Owners of property located therein.

**5.1 Organization.** Declarant shall organize the Association as a nonprofit mutual benefit corporation under the Oregon Nonprofit Corporation Act (as the same may be amended from time to time, the "Act").

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

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

(a) **Lots.** Except as provided in Section 5.3(b) with respect to the Class B member, Lots shall be allocated one vote per square foot of land area included in the Lot.

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

**Class A.** Class A members shall be all Owners with the exception of Declarant (except that beginning on the date on which the Class B membership is converted to

Class A membership, and thereafter, Class A members shall be all Owners including Declarant). Class A members shall be entitled to voting rights for each Lot owned computed in accordance with Section 5.3(a) above. 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 votes be cast with respect to any Lot than is provided for in Section 5.3(a).

Class B. The Class B member shall be Declarant and shall be entitled to nine times the voting rights computed under Section 5.3(a) for each Lot owned by Declarant. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

- (i) When Declarant no longer owns any Lots; or
- (ii) At such earlier time as Declarant may elect in writing to terminate Class B membership.

For purposes of this Section 5.3, the Declarant shall be deemed to own a Lot for so long as Declarant owns at least fifty percent (50%) of such Lot.

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

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

(b) Statutory Powers. The powers, duties, and obligations of a mutual benefit nonprofit corporation pursuant to the Act.

(c) General. Any additional or different powers, duties, and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to this Declaration.

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

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

5.6 Association Rules and Regulations. The Association from time to time may adopt, modify, or revoke such rules and regulations governing the conduct of persons and the operation and use of Lots as it may deem necessary or appropriate in order to ensure the peaceful and orderly use and enjoyment of the property within the Project. A copy of the rules and

regulations, upon adoption, and a copy of each amendment, modification, or revocation thereof shall be delivered by the Association Board of Directors promptly to each Owner and shall be binding upon all Owners and tenants within the Project upon the date of delivery.

## ARTICLE 6

### **IMPROVEMENTS, MAINTENANCE AND MANAGEMENT SERVICES**

6.1 Construction of Improvements. Declarant shall construct the initial sidewalks and lighting along NorthWest Crossing Drive. Power for each street light directly in front of each Owner's lot shall be provided by said lot Owner. Each purchaser of a Lot shall install the initial street trees and associated irrigation between the curb of NorthWest Crossing Drive and Owner's Lot. Each Owner may elect to install additional Improvements to the right-of-way (between the curb and the Lot) adjacent to his or her Lot; provided, such Owner first obtains the approval of the Association, any approvals required under the Master Declaration, any approvals required by law and any approvals required by the owner(s) of such rights-of-way; and provided further, such Owner maintains such Improvements. In no event shall the Association be liable for any such Improvement(s) installed by a Lot Owner.

6.2 Maintenance of Common Areas. The Association shall perform all maintenance upon the Common Areas, if any. In addition, the Association shall be responsible for maintaining, operating and replacing all Improvements made to the right of way between NorthWest Crossing Drive and individual Lots within the Project to the extent the same are constructed by Declarant or required by this Declaration. This includes, without limitation, landscaping and sidewalk maintenance (including irrigation as necessary), snow removal, street light maintenance, and insurance and other operating costs for Common Areas and Improvements within the Project. The Association shall have no responsibility to maintain any Improvements constructed on Lot.

6.3 Maintenance Reserves. The Association shall establish a reserve fund for replacement, in whole or in part, of the Common Areas and any Improvements thereon, that will normally require replacement in more than three (3) and fewer than thirty (30) years, including any exterior painting. For purposes of funding the reserve fund, the Association shall include a "reserve fund assessment" component in the assessments imposed upon each Lot. Allocation of the "reserve fund assessment" component shall be made in the same way as other assessments. The Board shall set future assessments for the reserve fund annually. The amount of the reserve fund shall constitute an asset of the Association and shall not be refunded or distributed to any Owner. The reserve portion of the assessments shall be based upon the reserve study described below, or other sources of reliable information. The Board shall annually conduct a reserve study, or review and update an existing study, to determine the reserve fund account requirements and may adjust the amount of payments as indicated by the study or update and provide for other reserve items that the Board, in its discretion, may deem appropriate. The reserve study shall include (a) identification of all items for which reserves are required to be established; (b) the estimated remaining useful life of each item as of the date of the reserve study; (c) the estimated cost of maintenance, repair, or replacement of each item at the end of its useful life; and (d) a thirty (30) year plan with regular and adequate contributions, adjusted by

estimated inflation and interest earned on the reserve fund, to meet the maintenance, repair, and replacement schedule.

6.4 Roundabout and Medians Maintenance. The Association may elect to maintain the landscaping within the roundabout at NorthWest Crossing Drive and Mt. Washington Drive and Mt. Washington Drive medians in the event that the City either fails to do so or the Association desires a higher level of maintenance.

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

## ARTICLE 7

### ASSESSMENTS

7.1 Assessments. The Association Board of Directors shall levy assessments for the purpose of carrying out its responsibilities pursuant to this Declaration. Assessments shall also cover the cost of operation of the Association.

7.2 Allocation. Assessments shall be levied against each Lot on the basis of the net area (exclusive of public streets and Common Areas) of such Lot as a fraction of the total net area (exclusive of public streets and Common Area) of all Lots within the Project. The determination of area made by the Association Board of Directors shall be binding on all Owners absent manifest error.

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

7.4 Creation of Lien; and Personal Obligation of Assessments. Each Owner of any Lot by acceptance of a conveyance thereof, whether or not so expressed in any such conveyance, shall be deemed to covenant to pay to the Association all assessments or other charges as may be fixed, established, and collected from time to time in the manner provided in this Declaration or the Association Bylaws. Such assessments and charges, together with any interest, expenses, or attorney fees imposed pursuant to Section 8.5, shall be a charge on the Lot and a continuing lien upon the Building against which each such assessment or charge is made. Such assessments, charges, and other costs shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment or charge fell due. Such liens and personal obligations shall be enforced in the manner set forth in Article 8 below.

7.5 Annual Accounting. Each calendar year the Association Board of Directors shall render to each Owner an accounting, which shall set forth the amount and source of all income received and all disbursements made by the Association during the previous calendar



year. The Association Board of Directors shall maintain records of all amounts received and of all disbursements therefrom, which records shall be open to inspection by any Owner at any reasonable time during normal business hours.

## ARTICLE 8

### ENFORCEMENT

8.1 Remedies. In the event any Owner or the tenant or invitee of any Owner shall violate or otherwise breach any provision of this Declaration, the Bylaws of the Association, or any rules or regulations adopted by the Association governing the use of Lots or Buildings, then the Association, acting through its Board of Directors, may notify the Owner in writing that the violations exist and that such Owner is responsible for them, and may, after reasonable notice and opportunity to be heard, do any or all of the following: (a) suspend the Owner's voting rights for the period that the violations remain unabated, or for any period not to exceed sixty (60) days for any infraction of its rules and regulations; (b) bring suit or action against such Owner to enforce this Declaration; or (c) impose fines or responsibility for payment of costs of remediation as provided in Section 8.6.

8.2 Nonqualifying Improvements and Violation of General Protective Covenants. In the event any Owner constructs or permits to be constructed on such Owner's Lot an Improvement contrary to the provisions of this Declaration, or causes or permits any Improvement, activity, condition, or nuisance contrary to the provisions of this Declaration to remain uncorrected or unabated on such Owner's Lot, then the Association acting through its Board of Directors may notify the Owner in writing of any such specific violations of this Declaration and may require the Owner to remedy or abate the same in order to bring the Owner's Lot, the Improvements thereon, and the Owner's use thereof into conformance with this Declaration. If the Owner refuses to comply with the Association's specific directives for remedy or abatement, or is unable or unwilling to comply, or the Owner and the Association cannot agree to a mutually acceptable solution within the framework and intent of this Declaration, after notice and opportunity to be heard and within thirty (30) days of written notice to the Owner, then the Association acting through its Board of Directors shall have, in addition to any other rights or remedies provided in this Declaration, at law or in equity, the right to do any or all of the following:

(a) Remove Cause of Violation. Enter onto the offending Lot, without being subject to any trespass, conversion, or any other claim for damages, and remove the cause of such violation, or alter, repair, or change the item that is in violation of the Declaration in such a manner as to make it conform thereto, in which case the Association may assess such Owner for the entire cost of the work done.

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

8.3 Default in Payment of Assessments; Enforcement of Lien. If an assessment, fee, or other charge levied under this Declaration is not paid within thirty (30) days of its due date, such assessment or charge shall become delinquent and shall bear interest from the due date

until paid at the legal rate of interest and, in addition, the Association may exercise any or all of the following remedies:

(a) Suspension of Rights. The Association may suspend such Owner's voting rights until such amounts, plus other charges under this Declaration, are paid in full.

(b) Lien. The Association shall have a lien against each Lot and Building for any assessment levied against the Lot and Building and any other charges imposed under this Declaration or the Bylaws against the Owner of the Lot from the date on which the assessment or charge is due. The provisions regarding the attachment, notice, recordation, and duration of liens established on real property under ORS 87.352 to 87.386 or successor statutory provisions shall apply to the Association's lien. The lien shall be foreclosed in accordance with the provisions regarding the foreclosure of liens under ORS Chapter 88. The Association, through its duly authorized agents, may bid on the Lot and Building at such foreclosure sale and may acquire and hold, lease, mortgage, and convey the Lot and Building. If any assessment is payable in installments, the full amount of the assessment is a lien from the date the first installment of the assessment becomes due.

(c) Suit or Action. The Association may bring an action to recover a money judgment for unpaid assessments and charges under this Declaration without foreclosing or waiving the lien described in paragraph 8.3(b) above. Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.

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

8.4 Subordination of Lien to First Mortgages. The lien of the assessments or charges provided for in this Declaration shall be subordinate to the lien of any first mortgage on such Lot and Building that was made in good faith and for value and that was recorded prior to the recordation of the notice of lien. Sale or transfer of any Lot and Building shall not affect the assessment lien, provided however, that if a first mortgagee acquires a Lot and Building by foreclosure or deed in lieu of foreclosure, such mortgagee and a subsequent purchaser (other than the Owner liable for payment of the asset covered by the lien) shall not be liable for any of the common expenses chargeable to the Lot and Building that became due before the mortgagee or purchaser acquired title to the Lot and Building by foreclosure or deed in lieu of foreclosure. Such sale or transfer, however, shall not release the Lot and Building from liability for any assessments or charges thereafter becoming due or from the lien of such assessments or charges.

8.5 Late Charge, Expenses, and Attorneys' Fees. A late charge may be charged for each delinquent assessment in an amount established from time to time by resolution of the Board of Directors of the Association. In the event the Association shall file a notice of lien, the lien amount shall also include the recording fees associated with filing the notice and a fee for preparing the notice of lien established from time to time by resolution of the Board of Directors of the Association. In the event the Association shall bring any suit or action to enforce this Declaration or to collect any money due hereunder or to foreclose a lien, the Owner-defendant shall pay to the Association all costs and expenses incurred by it in connection with such suit or action, including a foreclosure title report, and the prevailing party in such suit or action shall

recover such amount as the court may determine to be reasonable as attorneys' fees at trial and upon any appeal or petition for review thereof or in any bankruptcy proceeding.

8.6 Fines and Costs of Remediation. The Board of Directors may establish a schedule of fines applicable to violation of this Declaration or rules and regulations established pursuant to this Declaration. The Board may also impose liability against an offending Owner for costs of remediation of damage caused by an Owner in violation of this Declaration or in violation of the rules and regulations of the Association. Fines or liability for costs of remediation may be imposed by the Board of Directors after giving the alleged violator notice of the proposed fine or cost of remediation and an opportunity to be heard. Amounts payable pursuant to this Section 8.6 shall be payable within ten days after receipt of written notice of the imposition of the fine or liability for costs of remediation. All amounts paid pursuant to this Section 8.6 shall be deposited in the Association's operating account.

8.7 Nonexclusiveness of Remedies. An election by the Association to pursue any remedy provided for violation of this Declaration shall not prevent concurrent or subsequent exercise of another remedy permitted hereunder.

## ARTICLE 9

### INSURANCE; INDEMNITY

#### 9.1 Liability Insurance.

(a) Each Owner shall obtain a public liability policy which shall have at least a \$1,000,000 combined single limit with respect to bodily injury and property damage. Such public liability insurance shall be written on occurrence basis and shall include liability for non-owned and hired automobiles, liability for property of others, and coverage against such other risks as are customarily covered with respect to projects similar in construction, location, and use to the Project. Such policy(ies) shall name the Association, and so long as there is a Class B member, the Declarant, as additional insureds.

(b) All insurance coverage required by this Declaration shall: (i) be written with a company authorized to issue insurance in Oregon which holds a Best's rating of "A" or better and is assigned a financial size category of IX or larger as established by A.M. Best Company, Inc., if available at reasonable cost, or, if not so available, with a company authorized to issue insurance in Oregon which holds the most nearly equivalent rating which is so available; (ii) provide that the policy may not be canceled or materially reduced in amount or coverage without at least thirty (30) days prior written notice by the insured to each additional insured; (iii) shall provide for severability of interests; and (iv) shall provide for contractual liability coverage with respect to all indemnity obligations contained herein.

#### 9.2 Casualty Insurance.

(a) By accepting a deed to or entering into a recorded contract of sale for a Lot, each Owner covenants and agrees to carry, at such Owner's expense, blanket "all-risk" property insurance on the structures on or comprising such Lot, providing full replacement cost coverage less a reasonable deductible. In addition, each Owner may obtain such other and

additional insurance coverage on and in relation to such Owner's Lot as such Owner concludes to be desirable. Any insurance obtained by an Owner shall include a waiver of the insurer's right of subrogation against Declarant, the Association and other Owners.

(b) In the event of damage to or destruction of the structures on or comprising a Lot, the Owner thereof shall proceed promptly to repair or reconstruct such structures in a manner consistent with the original construction or as may otherwise be approved pursuant to the Master Declaration. Alternatively, the Owner of a Lot shall clear such Lot of all debris and ruins and maintain such Lot in a neat and attractive, landscaped condition consistent with the Declaration. The Owner shall pay any costs of repair or replacement that are not covered by insurance proceeds. If the required repair or restoration is not commenced within 180 days after the date of damage or destruction, or if repair and reconstruction is commenced but is not diligently pursued or is abandoned for a period of more than ninety (90) days, Declarant may, following reasonable notice, impose a reasonable fine on the Owner until repair and reconstruction is commenced, unless the Owner can demonstrate to the satisfaction of the Declaration that such failure is due to circumstances beyond the Owner's reasonable control.

**9.3 Indemnity.** Each Owner ("Indemnitor") covenants and agrees to indemnify, defend and hold harmless the other Owners ("Indemnitee") for, from and against all claims, costs, expenses and liability (including, without limitation, reasonable attorneys' fees and costs) arising from or as a result of the injury to or death of any person, or damage to the property of any person which shall occur on the Lot owned by each Indemnitor, except for claims caused by the negligence or willful act or omission of such Indemnitee, its licensees, concessionaires, agents, servants or employees, or agents, servants or employees or any licensee or concessionaire thereof.

**9.4 General Insurance Requirement.** The Association shall have the right to change the types and/or amounts of insurance required to be carried hereunder; provided, each Owner is first given not less than thirty (30) days' written notice prior to the effective date of any such changes.

## **ARTICLE 10**

### **MISCELLANEOUS PROVISIONS**

**10.1 Declarant's Rights.** Any or all of the special rights and obligations of Declarant set forth in this Declaration may be transferred to other persons, without the consent of any Owner, so long as the transfer does not enlarge any such right or reduce any such obligation and the transferee owns a portion of the Project. No such transfer shall be effective unless it is reflected in a written instrument signed by Declarant and recorded in the official property records of Dechutes County, Oregon.

**10.2 Amendment and Repeal.** This Declaration, or any provision hereof, may be amended or repealed by the vote or written consent of Owners holding not less than 75% of the Class A votes, together with the vote or written consent of the Class B member, if such membership has not been terminated as provided herein. Any such amendment or repeal shall

become effective only upon recordation in the official property records of Deschutes County, Oregon, of a certificate of the president or secretary of the Association setting forth in full the amendment, amendments, or repeal so approved and certifying that such amendment, amendments, or repeal has been approved in the manner required by this Declaration. In no event shall an amendment under this section create, limit, or diminish special Declarant rights without Declarant's written consent or change the boundaries of any Lot or any uses to which any Lot is restricted unless the Owners of the affected Lots unanimously consent to the amendment.

10.3 Duration. This Declaration shall run with the land and shall be and remain in full force and effect at all times with respect to all property included in the Project and the Owners thereof for an initial period of thirty (30) years commencing with the date on which this document is recorded. Thereafter, this Declaration shall continue to run with the land and be and remain in full force and effect at all times with respect to all property in the Project and the Owners thereof for successive additional periods of ten (10) years each. The continuation from the initial or any additional period into the next subsequent period shall be automatic and without the necessity of any notice, consent, or other action whatsoever; provided, however, that this Declaration may be terminated at the end of the initial or any additional period by resolution approved not less than six (6) months prior to the intended termination date by the vote or written consent of Owners owning not less than 75 % of the Class A votes and the vote or written consent of the Class B member, if any. Any such termination shall become effective only if prior to the intended termination date a certificate of the president or secretary of the Association, certifying that termination as of a specified termination date has been approved in the manner required herein, is duly acknowledged and recorded in the official property records of Deschutes County, Oregon. Such termination shall not have the effect of denying any Owner access to such Owner's Lot unless such Owner and any mortgagee of such Lot have consented in writing to the termination.

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

10.5 Tenants and Other Invitees. Tenants, invitees, contractors, and other persons entering the Project under rights derived from an Owner shall comply with all the provisions of this Declaration restricting or regulating the Owner's use, improvement, or enjoyment of such Owner's Lot, Building, and other areas within the Project. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner.

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

10.7 Construction; Severability. This Declaration shall be liberally construed as one document to accomplish the purposes stated in the introductory paragraphs hereof. Nevertheless, each provision of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision shall not affect the validity or enforceability of the remaining part of that or any other provision.

10.8 Notices and Other Documents. All notices and other communications under this Declaration shall be in writing and shall be deemed to have been given on the day of delivery when delivered by personal service and to have been given three business days after delivery to the United States mails certified or registered mail, return receipt requested, addressed to the party to which such notice is directed at its address determined as provided in this Section 9.8.

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

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

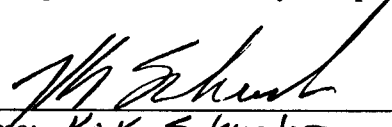
(ii) If to Declarant or to the Association, then to Declarant or the Association at:

NorthWest Crossing Community Center Association, Inc.  
2677 NW Ordway Avenue, Suite 100  
Bend, Oregon 97701

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

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

WEST BEND PROPERTY COMPANY LLC,  
an Oregon limited liability company

By:   
Name: Kirk Schueler  
Title: President, Brooks Resources Corporation,  
Managing Member

STATE OF OREGON            )  
  ) ss  
COUNTY OF DESCHUTES )

This instrument was acknowledged before me on June 11, 2003, by  
Kirk Schneider, the managing member of West Bend Property Company LLC, on  
behalf of the company.

Laura M. Ginley  
Notary Public for Oregon  
My commission expires: 8-1-2006

