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RECORDER REQUESTED BY AND
WHEN RECORDED RETURN TO:

RPB
WPH
River Bend Limited Partnership
15 S.W. Colorado Ave., Suite A
Bend, OR 97702

98-35330

STATE OF OREGON) SS.
COUNTY OF DESCHUTES)

I, MARY SUE PENHOLLOW, COUNTY CLERK AND
RECORDER OF CONVEYANCES, IN AND FOR SAID
COUNTY, DO HEREBY CERTIFY THAT THE WITHIN
INSTRUMENT WAS RECORDED THIS DAY:

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98 AUG 11 PM 2:24

MARY SUE PENHOLLOW
COUNTY CLERK



BY: _____ DEPUTY

98-35330

NO. _____ FEE 225

DESCHUTES COUNTY OFFICIAL RECORDS

**SUPPLEMENTAL DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS FOR RIVER BEND**

[UPPER TERRACE PHASES II AND III]

RIVER BEND LIMITED PARTNERSHIP

("Declarant")

Dated July 27, 1998

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**SUPPLEMENTAL DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS FOR RIVER BEND**

[UPPER TERRACE PHASES II AND III]

This SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR RIVER BEND (this "Upper Terrace Phases II and III Declaration") is made as of the 27th day of July, 1998, by RIVER BEND LIMITED PARTNERSHIP, an Oregon limited partnership ("Declarant").

Declarant previously executed that certain Master Declaration of Covenants, Conditions and Restrictions for River Bend, dated November 4, 1997, and recorded in the deed records of Deschutes County, Oregon on November 4, 1997 in Book 468, Page 1683 as Document No. 97-41096 and re-recorded on June 26, 1998 in Book 499, Page 2948 as Document No. 98-27427 (the "Master Declaration"). Declarant desires to subject a portion of the property encumbered by the Master Declaration to the covenants and easements set forth in this Upper Terrace Phases II and III Declaration. The property which is subject to this Upper Terrace Phases II and III Declaration is more particularly described in the attached Exhibit A (the "Upper Terrace Phases II and III Property").

Declarant desires to establish mutually beneficial restrictions for the Upper Terrace Phases II and III Property under a general plan of improvement for the benefit of the owners of each portion of the Upper Terrace Phases II and III Property and establishes procedures for the overall development, administration, maintenance, and preservation of the Upper Terrace Phases II and III Property. Through this Upper Terrace Phases II and III Declaration, Declarant seeks to ensure the attractiveness of the individual lots, parcels, and facilities developed within the Upper Terrace Phases II and III Property and to preserve, protect, and enhance the value and amenities of the Upper Terrace Phases II and III Property.

Section 2.1.3 of the Master Declaration provides that Declarant may, among other things, create limited common areas and establish a sub-association pertaining to such limited common areas.

Declarant hereby declares that the Upper Terrace Phases II and III Property and all parts thereof shall be held, used, mortgaged, and conveyed subject to the terms of this Upper Terrace Phases II and III Declaration, which shall run with the Upper Terrace Phases II and III Property and shall be binding upon and inure to the benefit of all Persons (defined in Section 1.1) having or acquiring any right, title, or interest in or to the Upper Terrace Phases II and III Property or any part thereof.

1. Definitions.

1.1 Certain Defined Terms.

As used in this Upper Terrace Phases II and III Declaration, the terms set forth below shall have the following respective meanings:

“Articles of Incorporation” or “Articles” means the Articles of Incorporation of the Upper Terrace Phases II and III Association, as amended and in effect from time to time.

“Bylaws” means the bylaws of the Upper Terrace Phases II and III Association, as amended and in effect from time to time.

“City” means the City of Bend, Oregon.

“Class A Members” has the meaning set forth in Section 7.3.1.

“Class B Member” has the meaning set forth in Section 7.3.2.

“Common Expenses” means the actual expenses incurred and the estimated expenses anticipated to be incurred by the Upper Terrace Phases II and III Association pursuant to the Upper Terrace Phases II and III Documents or for the general benefit of the Upper Terrace Phases II and III Property or a Upper Terrace Phases II and III Limited Area of Common Responsibility, including any reasonable reserves, all as determined by the Upper Terrace Phases II and III Board pursuant to the Upper Terrace Phases II and III Documents, provided, however, prior to Turnover, Common Expenses shall not include the initial construction of Improvements on a Upper Terrace Phases II and III Limited Area of Common Responsibility.

“Condemnation” and grammatical variations thereof, means a taking by any authority having the power of eminent domain or a conveyance in lieu of and under a bona fide threat of such a taking.

“Condominium Association” means the condominium owners association formed pursuant to the Oregon Condominium Act with respect to any Condominium Project.

“Condominium Documents” means the condominium declaration and other documents creating and governing any Condominium Project.

“Condominium Class A Members” means the Class A Members who are Owners of Condominium Units.

“Condominium Project” means any condominium project created pursuant to the Oregon Condominium Act and developed on the Upper Terrace Phases II and III Property.

“Condominium Unit” means a condominium unit within any Condominium Project.

"County" means Deschutes County, Oregon.

"County Records" means the official records of Deschutes County, Oregon.

"Declarant" means River Bend Limited Partnership, an Oregon limited partnership, or any successor or assign who has or takes title to any portion of the Upper Terrace Phases II and III Property or any subsequent Phase for the purpose of development and/or resale in the ordinary course of its business and who is designated as a Declarant in a written instrument executed by an immediately preceding Declarant and recorded in the County Records.

"Design Guidelines" means the design guidelines and procedures adopted by the Design Review Committee pursuant to Section 6 of the Master Declaration, as amended or supplemented and in effect from time to time.

"Design Review Committee" or "Committee" means the committee appointed pursuant to Section 6.7 of the Master Declaration, as amended or supplemented and in effect from time to time.

"First Mortgage" means a Mortgage recorded in the County Records, made in good faith and for value, and having a first priority over other Mortgages, if any, on a Parcel or Condominium Unit.

"Improvement" means any structure or improvement of any kind, including buildings, fences, walls, trees, hedges, plantings, poles, driveways, parking areas, loading areas, ponds, lakes, recreational facilities, signs, changes in any exterior color or shape, and site work (including excavation, grading, road construction, utility improvements, and removal of trees or plantings); provided that "Improvement" does not include turf, shrub, or tree maintenance or replacement.

"Master Association" means River Bend Master Owners Association, Inc., to be formed pursuant to the Master Declaration.

"Master Board" means the board of directors of the Master Association.

"Master Use Guidelines and Restrictions" means any rules and regulations adopted by the Master Board pursuant to Section 4.3 of the Master Declaration.

"Maximum Developable Acreage" means the total number of acres in the Upper Terrace Phases II and III Property and the Potential Expansion Property less the total number of acres which are: (i) removed from the Potential Expansion Property by Declarant, (ii) removed from the coverage of this Upper Terrace Phases II and III Declaration pursuant to Section 3.2, (iii) dedicated to and accepted by any public authority, or (iv) conveyed to the Upper Terrace Phases II and III Association as Upper Terrace Phases II and III Limited Common Area.

"Member" means a Person entitled to membership in the Upper Terrace Phases II and III Association, as provided in Section 7.2.

"Mortgage" means a mortgage, a trust deed, or a real estate contract utilized as a financing device.

"Mortgagee" means a mortgagee, a beneficiary of a trust deed, or a vendor under a real estate contract utilized as a financing device.

"Owner" means the Person(s) who holds the record title to any Parcel or Condominium Unit, excluding any Person(s) who holds an interest merely as security for the performance of an obligation. If a Parcel or Condominium Unit is sold pursuant to a real estate contract utilized as a financing device, then, upon the recording of such contract or a memorandum thereof, the vendee thereunder (rather than the fee owner) will be considered the Owner of such Parcel or Condominium Unit.

"Parcel" means any portion of the Upper Terrace Phases II and III Property, whether improved or unimproved, which may legally be independently owned and conveyed and which is intended for development, use, and occupancy for commercial, industrial, or residential purposes, including all Improvements thereon; provided that, with respect to any Condominium Project, "Parcel" means entire portion of the Upper Terrace Phases II and III Property on which the Condominium Project, including any common or limited common elements, is located and not any Condominium Unit therein; and provided further that "Parcel" does not include any property dedicated to and accepted by any public authority.

"Permitted User" means all of an Owner and such Owner's tenants, subtenants and franchisees and all of their respective officers, suppliers, patrons, customers, guests, employees, invitees and agents.

"Person" means a natural person, a corporation, a partnership, a limited liability company, an unincorporated association, a trust, or any other legal entity.

"Phase" means all Parcels simultaneously subjected to this Upper Terrace Phases II and III Declaration by Declarant by execution and recordation of this Upper Terrace Phases II and III Declaration or any Supplemental Declaration in the County Records.

"Plat" means any plat or planned development map affecting the Upper Terrace Phases II and III Property or any part thereof and recorded in the County Records, as such plat or map may be modified of record from time to time.

"Potential Expansion Property" means the real property described on Exhibit B, whether or not such property has been annexed to River Bend as provided herein.

"Properties" means the property encumbered by the Master Declaration.

"Regular Class A Members" means the Class A Members other than the Condominium Class A Members.

"River Bend" means the multi-phase mixed-use project to be developed on the Properties.

"67% Vote" means the affirmative vote of Class A Members together holding at least 67% of the total votes held by Class A Members.

"Special Assessment" means an assessment levied pursuant to Section 9.4.

"Specific Assessment" means an assessment levied pursuant to Section 9.5.

"Supplemental Declaration" means any amendment or supplement to this Upper Terrace Phases II and III Declaration recorded pursuant to Section 3.1 which annexes and thereby subjects additional property to this Upper Terrace Phases II and III Declaration and any other amendment or supplement to this Upper Terrace Phases II and III Declaration recorded in accordance with this Upper Terrace Phases II and III Declaration.

"Turnover" means the turnover of control of the Upper Terrace Phases II and III Association from Declarant to the Owners, which shall occur at the time and in the manner set forth in Section 7.5.

"Turnover Meeting" means the meeting of the Upper Terrace Phases II and III Association called pursuant to Section 7.5 for the purpose of effecting the Turnover.

"Upper Terrace Phases II and III Limited Area of Common Responsibility" means: (i) the Upper Terrace Phases II and III Limited Common Area, (ii) any additional areas of the Upper Terrace Phases II and III Property which by the terms of this Upper Terrace Phases II and III Declaration, any other Supplemental Declaration, any other applicable covenants, or any contract become the responsibility of the Upper Terrace Phases II and III Association, and (iii) prior to Turnover, any additional areas which Declarant from time to time designates as a "Upper Terrace Phases II and III Limited Area of Common Responsibility," the location of which additional areas may be modified, supplemented, changed, redesignated or undesignated from time to time by Declarant in its sole discretion.

"Upper Terrace Phases II and III Association" means Upper Terrace Phases II and III Owners Association, Inc., to be formed as an Oregon nonprofit mutual benefit corporation, and its successors and assigns.

"Upper Terrace Phases II and III Board of Directors" or "Upper Terrace Phases II and III Board" means the board of directors of the Upper Terrace Phases II and III Association, selected as provided in the Bylaws.

"Upper Terrace Phases II and III Documents" means this Upper Terrace Phases II and III Declaration, any Supplemental Declarations, the Articles, the Bylaws, the Design Guidelines, the Upper Terrace Phases II and III Use Guidelines and Restrictions, the Master Use Guidelines and Restrictions, and any other rules and regulations adopted by the Upper Terrace Phases II and III Association.

“Upper Terrace Phases II and III Limited Common Area” means: (i) all real and personal property that the Upper Terrace Phases II and III Association owns, leases, or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners pursuant to this Upper Terrace Phases II and III Declaration or other agreement, and (ii) those areas of the Upper Terrace Phases II and III Property and such personal property located thereon that are owned by Declarant and designated from time to time by Declarant as “Upper Terrace Phases II and III Limited Common Area,” the location of which may be modified, supplemented, changed, redesignated, or undesignated from time to time by Declarant in its sole discretion; provided, however, no later than the date of the Turnover Meeting, Declarant shall, pursuant to Section 8.2 of this Upper Terrace Phases II and III Declaration, convey to the Upper Terrace Phases II and III Association any areas owned by Declarant which are then designated as Upper Terrace Phases II and III Limited Common Area.

“Upper Terrace Phases II and III Property” means the property described on that attached Exhibit A, together with any additional property annexed and thereby subjected to this Upper Terrace Phases II and III Declaration in accordance with Section 3.1 hereof.

“Upper Terrace Phases II and III Use Guidelines and Restrictions” means any rules and regulations adopted by the Upper Terrace Phases II and III Board pursuant to Section 5 of this Upper Terrace Phases II and III Declaration, establishing requirements and restrictions regarding uses of and conduct on the Upper Terrace Phases II and III Property or any part thereof.

1.2 Liberal Construction.

The provisions of this Upper Terrace Phases II and III Declaration shall be liberally construed to effect its purpose of creating a uniform plan for the development and operation of the Upper Terrace Phases II and III in a manner which complies with all applicable laws and governmental regulations and requirements.

1.3 Interpretation.

The captions or headings of Sections of this Upper Terrace Phases II and III Declaration are intended for ease of reference only and shall have no effect whatsoever on the construction or interpretation of any provision of this Upper Terrace Phases II and III Declaration. The term “including,” as used in this Upper Terrace Phases II and III Declaration, is not limiting and means “including without limitation.” Unless otherwise specified, the words “hereof,” “herein,” and “hereunder” and similar words refer to this Upper Terrace Phases II and III Declaration as a whole and not to any particular provision of this Upper Terrace Phases II and III Declaration. References to any Section or Exhibit are references to Sections of or Exhibits to this Upper Terrace Phases II and III Declaration, unless otherwise specified. All of the terms and words used in this Upper Terrace Phases II and III Declaration regardless of the number used, shall be deemed and construed to include any other number (singular or plural), as the context or sense of this Upper Terrace Phases II and III Declaration or any paragraph or clause hereof may require, the same as if the words had been fully and properly written in the number.

2. Declaration.

Declarant hereby declares that the Upper Terrace Phases II and III Property and all portions thereof are hereby made subject to all of the conditions, covenants, restrictions and provisions of this Upper Terrace Phases II and III Declaration. All portions of the Upper Terrace Phases II and III Property are declared to be expressly subject to the Master Declaration, which Master Declaration is hereby incorporated herein by reference. Declarant hereby specifically provides that all Upper Terrace Phases II and III Limited Common Area in the Upper Terrace Phases II and III Property shall be deemed "Limited Common Area" under the Master Declaration.

3. Annexation and Withdrawal of Property.

3.1 Annexation.

3.1.1 Annexation Without Approval of Members.

At any time and from time to time prior to Turnover, Declarant may in its sole discretion unilaterally subject all or any part of the Potential Expansion Property to the provisions of this Upper Terrace Phases II and III Declaration by recording in the County Records a Supplemental Declaration containing a legal description of the property being annexed and specifically subjecting it to the terms of this Upper Terrace Phases II and III Declaration. Any such Supplemental Declaration: (i) shall not require the consent of the Members, but shall require the consent of the owner of the annexed property, if other than Declarant; and (ii) shall be signed by Declarant and by the owner of the annexed property, if other than Declarant. Any annexation pursuant to this Section 3.1.1 shall be effective upon recordation in the County Records of the Supplemental Declaration relating to such annexation, unless otherwise provided therein.

3.1.2 Annexation With Approval of Members.

At any time and from time to time after Turnover, the Upper Terrace Phases II and III Association or Declarant may subject any real property, including any Potential Expansion Property, to the provisions of this Upper Terrace Phases II and III Declaration with: (i) the consent of the owner of such property, and (ii) the approval of the Class A Members by a 67% Vote. Any such annexation shall be accomplished by recording in the County Records a Supplemental Declaration containing a legal description of the property being annexed and specifically subjecting it to the terms of this Upper Terrace Phases II and III Declaration. Any such Supplemental Declaration shall be signed by the President and Secretary of the Upper Terrace Phases II and III Association and by the owner of the annexed property. Any annexation pursuant to this Section 3.1.2 shall be effective upon recordation in the County Records of the Supplemental Declaration relating to such annexation, unless otherwise provided therein.

3.1.3 Additional Covenants and Easements.

At any time and from time to time prior to Turnover, Declarant may unilaterally (but with the consent of the owner of the property in question, if other than Declarant) subject any portion of the property subjected to this Upper Terrace Phases II and III Declaration initially or by Supplemental Declaration pursuant to Section 3.1.1 to additional covenants and easements, including covenants requiring the Upper Terrace Phases II and III Association to maintain and insure such property; provided that the foregoing right of Declarant shall be subject to the provisions of Section 5.2 and any other applicable limitations set forth in the Upper Terrace Phases II and III Documents. Any additional covenants and easements pursuant to this Section 3.1.3 shall be set forth in a Supplemental Declaration recorded in the County Records either concurrently with or after the annexation of the property in question.

3.2 Withdrawal of Property.

Declarant reserves the right, without prior notice and without the consent of any Person, to amend this Upper Terrace Phases II and III Declaration at any time prior to Turnover for the purpose of removing property then owned by Declarant, its affiliates, or the Upper Terrace Phases II and III Association from the coverage of this Upper Terrace Phases II and III Declaration if and to the extent that: (i) such property was originally included in error, or (ii) Declarant's plans for development of the Upper Terrace Phases II and III Property no longer include such property, so long as the withdrawal of such property is not unequivocally contrary to the overall, uniform scheme of development for the Upper Terrace Phases II and III Property. Any withdrawal of property pursuant to this Section 3.2 shall be reflected in a Supplemental Declaration signed by Declarant and recorded in the County Records.

3.3 Assignment of Rights.

At any time and from time to time, Declarant may transfer or assign its right to annex or withdraw property in accordance with this Section 3 to any Person who is the developer of at least a portion of the Upper Terrace Phases II and III Property or the Potential Expansion Property. Any such transfer or assignment shall be reflected in a written instrument signed by Declarant and recorded in the County Records.

4. Property Rights.

4.1 Upper Terrace Phases II and III Limited Common Area.

Each Owner shall have a non-exclusive right and easement of use, access, and enjoyment in and to the Upper Terrace Phases II and III Limited Common Area, which easement shall be appurtenant to and shall pass with the title to every Parcel and Condominium Unit, subject to: (i) the Upper Terrace Phases II and III Documents; (ii) any restrictions or limitations contained in any deed conveying property included in the Upper Terrace Phases II and III Limited Common Area to the Upper Terrace Phases II and III Association; (iii) the rights of Declarant and the Upper Terrace Phases II and III Board pursuant to this Upper Terrace Phases II and III Declaration to adopt rules regulating the use and enjoyment of the Upper Terrace Phases

II and III Limited Common Area; (iv) the rights of Declarant and the Upper Terrace Phases II and III Board to acquire or dispose of portions of the Upper Terrace Phases II and III Limited Common Area subject to any applicable limitations contained in this Upper Terrace Phases II and III Declaration, and (v) the right of the Upper Terrace Phases II and III Association to mortgage, pledge, or hypothecate any or all of the Upper Terrace Phases II and III Limited Common Area as security for money borrowed or debts incurred, subject to the approval requirements set forth in the Upper Terrace Phases II and III Documents.

4.2 Delegation.

Subject to the Master Declaration and the limitations set forth in Section 4.1 herein and any other applicable restrictions or limitations set forth in the Upper Terrace Phases II and III Documents, any Owner may delegate such Owner's right and easement of use, access, and enjoyment in and to the Upper Terrace Phases II and III Limited Common Area to such Owner's Permitted Users.

5. Restrictions on Use.

5.1 General Applicability.

Declarant intends to create River Bend as a commercial, industrial, and residential development and, in furtherance of its and every other Owner's interests, has established a general plan of development for River Bend as a master planned community. The Upper Terrace Phases II and III Property is and will be subject to architectural, design, and land development guidelines as set forth in Section 6 of the Master Declaration and any guidelines and restrictions regarding use and conduct as provided in this Section 5. All provisions of this Upper Terrace Phases II and III Declaration containing any such guidelines and restrictions, and of any Master Use Guidelines and Restrictions and/or Upper Terrace Phases II and III Use Guidelines and Restrictions shall apply to all occupants of any Parcel or Condominium Unit and to each Permitted User, except as otherwise provided therein.

5.2 Declarant Authority.

At any time and from time to time prior to the first sale of any Parcel in any Phase, Declarant shall have the authority, subject to the provisions of Section 5.7, to establish requirements and restrictions with respect to the use of and conduct on Parcels contained in such Phase or any subsequent Phase. Any requirements and restrictions established by Declarant pursuant to this Section 5.2 shall be set forth in a Supplemental Declaration recorded in the County Records.

5.3 Board Authority.

Subject to the provisions of this Section 5, the Upper Terrace Phases II and III Board shall have the authority to adopt and thereafter to modify or supplement from time to time Upper Terrace Phases II and III Use Guidelines and Restrictions. The Upper Terrace Phases II and III Board shall send a copy of any proposed new, modified, or supplemented rule or

regulation to each Owner at least thirty (30) days prior to the Upper Terrace Phases II and III Board meeting at which such rule or regulation will be considered. Members shall have a reasonable opportunity to be heard at any such meeting. If any such rule or regulation is approved by the Upper Terrace Phases II and III Board, it shall become effective unless disapproved at such meeting by Class A Members by a 67% Vote or by Declarant, so long as Declarant owns any Upper Terrace Phases II and III Property or any Potential Expansion Property. The Upper Terrace Phases II and III Board shall provide a copy of the Master Use Guidelines and Restrictions and/or the Upper Terrace Phases II and III Use Guidelines and Restrictions then in effect to any Member or Mortgagee upon request and without cost.

5.4 Members' Power.

At a meeting duly called for such purpose as provided in the Bylaws, the Class A Members may adopt, repeal, modify, limit, and expand the Upper Terrace Phases II and III Use Guidelines and Restrictions by a 67% Vote and with the approval of Declarant, so long as Declarant owns Upper Terrace Phases II and III Property or any Potential Expansion Property.

5.5 Owners' Acknowledgment.

By accepting a deed to or entering into a recorded contract of sale for a Parcel or a Condominium Unit, each Owner acknowledges and agrees that the use, enjoyment, and marketability of such Owner's property may be affected by the provisions of the Master Use Guidelines and Restrictions and/or the Upper Terrace Phases II and III Use Guidelines and Restrictions, and that the Upper Terrace Phases II and III Use Guidelines and Restrictions may be modified or supplemented from time to time as provided in this Section 5.

5.6 General Restrictions.

Each Parcel and Condominium Unit may be used only for purposes permitted by applicable law and in a manner complying with any Supplemental Declaration applicable thereto and adopted pursuant to Section 5 and with any applicable Master Use Guidelines and Restrictions and Upper Terrace Phases II and III Use Guidelines and Restrictions. Subject to the limitations set forth in this Section 5, the Master Use Guidelines and Restrictions and/or the Upper Terrace Phases II and III Use Guidelines and Restrictions may address, without limitation, any or all of the following matters relating to the Upper Terrace Phases II and III Property or any portion thereof: Signage, parking, utility and landscaping installation, garbage and trash disposal, exterior antennas and similar apparatus, exterior lighting, the maintenance and repair of exteriors and landscaping, and view obstruction.

5.7 Limitations.

The authority of Declarant, the Upper Terrace Phases II and III Board, and the Members to adopt requirements or restrictions regarding use or conduct or Upper Terrace Phases II and III Use Guidelines and Restrictions shall be subject to the following limitations: (i) similarly situated Owners and occupants shall be generally treated similarly; (ii) no rule or restriction adopted pursuant to Section 5 shall be inconsistent with any Master Use Guidelines

and Restrictions (if any such rule or restriction is determined by the Master Board to be inconsistent, such rule or restriction shall be void), which determination shall be made by the Master Board in its sole discretion; (iii) no rule shall interfere with the activities carried on within the confines of the structures on any Parcel or Condominium Unit, except that the Upper Terrace Phases II and III Association may: (a) prohibit activities not normally associated with property restricted to the use applicable to such Parcel or Condominium Unit, and (b) restrict or prohibit activities that create the possibility of monetary costs for the Upper Terrace Phases II and III Association or other Owners, that endanger the health or safety of occupants of other Parcels or Condominium Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the confines of such structures, or that create a source of unreasonable annoyance to occupants of other Parcels or Condominium Units; (iv) the Upper Terrace Phases II and III Association shall not impose any fee for the transfer of any Parcel or Condominium Unit in an amount greater than the costs estimated to be incurred by the Upper Terrace Phases II and III Association in connection with the transfer; and (v) no rule or regulation adopted or action taken by the Upper Terrace Phases II and III Association shall unreasonably impede or interfere with Declarant's right to develop the Upper Terrace Phases II and III Property in accordance with authorizations obtained from the City or County or from any other applicable governmental authority.

5.8 Development.

Nothing in this Section 5, in any Supplemental Declaration pursuant to Section 5.2, or in any of the Upper Terrace Phases II and III Use Guidelines and Restrictions shall be construed to prohibit or unreasonably impede or interfere with the activities of Declarant or Declarant's employees, agents, independent contractors, successors, and assigns in connection with the development and construction of Improvements on, or the providing of utility services to, the Upper Terrace Phases II and III Property or other real property owned by Declarant, or the maintenance on portions of the Upper Terrace Phases II and III Property of such facilities as may be reasonably required or convenient in connection with such activities, including business offices, storage areas, construction yards and equipment, signs, and sales offices; provided, however, that no such activity shall be performed and no such facility shall be maintained on any portion of the Upper Terrace Phases II and III Property in such a way as to interfere unreasonably and substantially with the use, enjoyment, or access of any Owner or any Permitted User.

6. Easements.

6.1 Master Declaration.

All of the easements granted pursuant to Section 5 in the Master Declaration are incorporated herein by reference with respect to the Upper Terrace Phases II and III Property except to the extent inconsistent with this Section 6.

6.2 Parking Regulations.

Except to the extent inconsistent with Section 5.6 of the Master Declaration, the use of parking areas on the Upper Terrace Phases II and III Property is subject to the following regulations:

6.2.1 Except in cases of emergency, no vehicle or piece of motorized equipment shall be left in a dismantled or inoperable condition in a parking area without the consent of Declarant (and after the Turnover, the Upper Terrace Phases II and III Board).

6.2.2 All parking shall occur only in spaces specifically designated by striping for parking purposes. Each Owner shall exercise its parking rights on the other Parcels so as to minimize interference with the business operations of the other Owners.

6.2.3 No Owner may charge any Permitted User of a parking area any fee or toll for parking without the consent of Declarant (and after the Turnover, the Upper Terrace Phases II and III Board).

6.3 Obstructions and Alterations

6.3.1 Obstructions Prohibited. All parking areas constructed on the Upper Terrace Phases II and III Property shall be constructed at no less than the minimum construction standards set forth in the Design Guidelines, and shall meet at equal grades (unless otherwise approved by the Design Review Committee (i) for aesthetic reasons or (ii) because equal grades would not be reasonably practicable), and no obstructions shall be erected or permitted on the Parcels which would unreasonably interfere with the rights established by this Upper Terrace Phases II and III Declaration.

6.3.2 Permitted Alterations. Without the consent of the Upper Terrace Phases II and III Board, an Owner may not alter or remove any roadways, sidewalks and parking areas situated on that Owner's Parcel.

6.4 Maintenance Easement.

Easements are hereby reserved in favor of the Upper Terrace Phases II and III Association over and across portions of each Parcel other than the portions on which buildings are located for the purpose of operating, maintaining, repairing and replacing the parking areas and landscaping on each Parcel. The Upper Terrace Phases II and III Association shall be responsible for the operation, maintenance, repair and replacement of such parking areas; provided, however, if any repairs or replacements of the parking areas on a particular Parcel is necessary or prudent as a result of any defects in such parking area or the failure of such parking area to be constructed or repaired in accordance with the minimum standards established in the Design Guidelines, all costs incurred by the Upper Terrace Phases II and III Association in connection therewith shall be paid by the Owner of such Parcel as a Specific Assessment. The Upper Terrace Phases II and III Association's easement for landscaping purposes shall be

exercised only to the extent the Upper Terrace Phases II and III Association has the right to perform such landscaping under Section 11.2.

7. Upper Terrace Phases II and III Association Function, Membership, and Voting Rights.

7.1 Function of Upper Terrace Phases II and III Association.

The Upper Terrace Phases II and III Association shall be responsible for: (i) the management, maintenance, repair, operation, and control of the Upper Terrace Phases II and III Limited Area of Common Responsibility; (ii) the enforcement of this Upper Terrace Phases II and III Declaration, any Supplemental Declaration, and such rules and regulations governing the use of the Upper Terrace Phases II and III Property as the Upper Terrace Phases II and III Board may adopt in accordance with this Upper Terrace Phases II and III Declaration or any Supplemental Declaration, including the Upper Terrace Phases II and III Use Guidelines and Restrictions; and (iii) concurrent with the rights and responsibilities of the Master Association, the administration and enforcement of the design standards and controls set forth in any Supplemental Declaration, and in the Design Guidelines.

7.2 Membership.

Every Owner shall be a Member of the Upper Terrace Phases II and III Association. There shall be only one membership per Parcel or Condominium Unit. If a Parcel or a Condominium Unit is owned by more than one Person, all co-Owners shall: (i) share the privileges of the membership associated with such Parcel or Condominium Unit, subject to reasonable Upper Terrace Phases II and III Board regulation and the restrictions on voting set forth in Section 7.4 and in the Bylaws, and (ii) be jointly and severally liable for the performance of the responsibilities of Owners, including the payment of assessments. The membership rights and privileges of an Owner who is a natural person may be exercised by the Member or the Member's spouse. The membership rights of an Owner which is a corporation, partnership, limited liability company, or other legal entity may be exercised by any officer, director, partner, member, manager, or trustee, or other individual designated from time to time by the Owner in a written instrument delivered to the Upper Terrace Phases II and III Association. Membership in the Upper Terrace Phases II and III Association shall commence, exist, and continue simply by virtue of ownership of a Parcel or a Condominium Unit, shall expire automatically upon the termination of such ownership, and need not be confirmed or evidenced by any certificate or acceptance of membership.

7.3 Voting.

The Upper Terrace Phases II and III Association shall have Class A Members and one or more Class B Members.

7.3.1 Class A.

The "Class A Members" shall consist of all Owners other than: (i) the Class B Member(s), if any (provided, however, once a Parcel owned by Declarant has been developed and the occupant of such Parcel is conducting business on such Parcel, Declarant shall be deemed to be a Class A Member with respect to such Parcel), and (ii) any Condominium Association. Each Regular Class A Member shall have one equal vote for each 1,000 square feet of surface area included in the Parcel owned by such Member. The Condominium Class A Members in any Condominium Project shall collectively have one equal vote for each 1,000 square feet of surface area included in the Parcel on which such Condominium Project is located. All votes held by Condominium Class A Members shall be cast only by the Condominium Association of such Condominium Project and individual Condominium Class A Members shall not be entitled to separate voting rights.

7.3.2 Class B.

The "Class B Member" shall consist of Declarant. The Class B Member shall be entitled to voting rights equal to the product of: (i) the number of votes pertaining to each Parcel owned by Declarant, determined as provided in Section 7.3.1 as if Declarant were a Regular Class A Member, multiplied by (ii) three. If Declarant owns a majority of the Condominium Units in any Condominium Project, Declarant shall be deemed to own all of the Condominium Units for purposes of the immediately preceding sentence. Notwithstanding anything to the contrary contained in this Section 7.3.2, as set forth in Section 7.3.1 above, a portion of the Class B membership shall be converted to Class A membership as Parcels owned by Declarant are developed and business is conducted on such Parcels, and any remaining Class B membership shall terminate and be converted to Class A membership upon the earliest to occur of: (a) the first date on which 95% of the Maximum Developable Acreage is owned by Owners other than Declarant; (b) January 1, 2022; or (c) the date on which Declarant, in its sole discretion, terminates the Class B membership by recordation in the County Records of an instrument expressly providing for such termination.

7.4 Exercise of Voting Rights.

If more than one Regular Class A Member owns any Parcel, the votes attributable to such Parcel shall be exercised in such manner as the co-Owners may determine among themselves and advise the Secretary of the Upper Terrace Phases II and III Association in writing prior to any meeting. In the event the Secretary is not advised to the contrary, any Owner of such a Parcel shall be deemed to have the power to cast all votes allocable to the Parcel and the Parcel's votes shall be suspended if more than one Person seeks to cast them.

7.5 Turnover.

Within 120 days after termination of the Class B membership pursuant to Section 7.3.2, Declarant shall call a meeting in the manner provided in the Bylaws for the purpose of turning over administrative responsibility for the Upper Terrace Phases II and III Property to the Upper Terrace Phases II and III Association. If Declarant does not call the Turnover Meeting

within the required period, any two or more Members may do so by giving notice in the manner provided in the Bylaws. At the Turnover Meeting: (i) the members of the Upper Terrace Phases II and III Board then holding office shall resign and their successors shall be elected as provided in the Bylaws; and (ii) Declarant shall deliver to the Upper Terrace Phases II and III Association the originals of all books, records, plans, contracts, and other appropriate documents and materials in Declarant's possession relating to the Upper Terrace Phases II and III Association.

8. Rights and Obligations of the Upper Terrace Phases II and III Association.

8.1 Upper Terrace Phases II and III Limited Area of Common Responsibility.

Subject to the rights of Declarant and of the Owners set forth in this Upper Terrace Phases II and III Declaration and in any Supplemental Declaration, the Upper Terrace Phases II and III Association shall manage and control the Upper Terrace Phases II and III Limited Area of Common Responsibility, all Improvements thereon, and all fixtures and personal property related thereto, and shall keep it in good, clean, attractive, and sanitary condition, order, and repair.

8.2 Real and Personal Property for Common Use.

Subject to any limitations set forth in the Upper Terrace Phases II and III Documents, the Upper Terrace Phases II and III Association may acquire (from Declarant or any other Person), hold, mortgage or otherwise assign or pledge, and dispose of tangible and intangible real and personal property for any purpose of the Upper Terrace Phases II and III Association. Declarant shall convey the Upper Terrace Phases II and III Limited Common Area to the Upper Terrace Phases II and III Association no later than the date of the Turnover Meeting.

8.3 Enforcement.

The Upper Terrace Phases II and III Association may exercise all rights and remedies set forth in the Upper Terrace Phases II and III Documents in connection with the enforcement thereof. The Upper Terrace Phases II and III Association may, by contract or other agreement, enforce applicable County and City ordinances and permit governmental authorities to enforce applicable ordinances on the Upper Terrace Phases II and III Property for the benefit of the Upper Terrace Phases II and III Association and its Members.

8.4 Implied Rights: Board Authority.

The Upper Terrace Phases II and III Association may exercise any other right or privilege given to it expressly by this Upper Terrace Phases II and III Declaration or the other Upper Terrace Phases II and III Documents, or reasonably implied from or reasonably necessary to effect any such right or privilege. Except as otherwise expressly provided in the Upper Terrace Phases II and III Documents or by applicable law, all rights and powers of the Upper Terrace Phases II and III Association may be exercised by the Upper Terrace Phases II and III Board without a vote of the Members.

8.5 Property for Public Use.

So long as Declarant owns any property in the Upper Terrace Phases II and III Property or any Potential Expansion Property, Declarant may designate sites within the Upper Terrace Phases II and III Property owned by Declarant or the Upper Terrace Phases II and III Association, including portions of the Upper Terrace Phases II and III Limited Common Area, for utility facilities and other public facilities.

8.6 Professional Management: Contracts.

The Upper Terrace Phases II and III Association may employ or contract for professional management services. The Upper Terrace Phases II and III Association may also enter into such contracts for goods or services as the Upper Terrace Phases II and III Association deems appropriate, including, without limitation, any contracts with Declarant or any person or entity affiliated with Declarant (and if the Upper Terrace Phases II and III Association enters into any such contract with Declarant or any person or entity affiliated with Declarant, the terms and provisions of any such contract shall be presumed to be fair to the Upper Terrace Phases II and III Association absent manifest evidence that the terms and provisions of such contract were both: (i) commercially unreasonable at the time such contract was created, and (ii) materially more onerous to the Upper Terrace Phases II and III Association at the time such contract was entered into than the terms and provisions the Upper Terrace Phases II and III Association would have obtained had the Upper Terrace Phases II and III Association contracted with a third-party in an arm's-length transaction).

8.7 Liability and Indemnification.

The officers and directors of the Upper Terrace Phases II and III Association, and members of committees established by the Upper Terrace Phases II and III Board, shall not be liable for: (i) any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith; or (ii) any contract or other commitment made or action taken in good faith on behalf of the Upper Terrace Phases II and III Association. The Upper Terrace Phases II and III Association shall indemnify, hold harmless, and defend each such officer, director, and committee member for, from and against any and all claims, losses, liabilities, and expenses (including reasonable attorneys' fees) incurred in connection with any suit, action, or proceeding which results from any action taken by or on behalf of the Upper Terrace Phases II and III Association, the Upper Terrace Phases II and III Board, or such committee pursuant to the Upper Terrace Phases II and III Documents. Any right to indemnification provided for in this Section shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled under applicable law. The Upper Terrace Phases II and III Association shall use reasonable efforts to obtain errors and omissions insurance coverage for officers, directors, and committee members of the Upper Terrace Phases II and III Association. In accordance with ORS 65.784, if the Upper Terrace Phases II and III Association indemnifies or advances expenses pursuant to this Section or ORS 65.391-65.401, the Upper Terrace Phases II and III Association shall report the indemnification or advance in writing to the Members with or before the notice of the next meeting of the Members.

8.8 Security.

The Upper Terrace Phases II and III Association may, but shall not be obligated to, maintain or support certain activities within the Upper Terrace Phases II and III Property designed to make the Upper Terrace Phases II and III Property safer than they otherwise might be. NEITHER THE UPPER TERRACE PHASES II AND III ASSOCIATION, THE UPPER TERRACE PHASES II AND III BOARD, NOR DECLARANT SHALL IN ANY WAY BE CONSIDERED AN INSURER OR GUARANTOR OF SECURITY FOR THE UPPER TERRACE PHASES II AND III PROPERTY, NOR SHALL ANY OF THEM BE LIABLE FOR ANY LOSS OR DAMAGE RESULTING FROM ANY FAILURE TO PROVIDE ADEQUATE SECURITY OR THE INEFFECTIVENESS OF ANY SECURITY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY FIRE PROTECTION, BURGLAR ALARM, OR OTHER SECURITY SYSTEM CANNOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEM OR OTHER SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH SUCH SYSTEM OR MEASURE IS DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES, UNDERSTANDS, AND AGREES TO INFORM ITS TENANTS THAT THE UPPER TERRACE PHASES II AND III ASSOCIATION, THE UPPER TERRACE PHASES II AND III BOARD, AND DECLARANT ARE NOT INSURERS AND THAT EACH PERSON USING THE PROPERTIES ASSUMES ALL RISK FOR LOSS OR DAMAGE TO PERSONS AND PROPERTY RESULTING FROM ACTS OF THIRD PARTIES.

9. Assessments.

9.1 Creation of Assessments.

9.1.1 The Upper Terrace Phases II and III Association is hereby authorized to levy assessments against each Parcel and Condominium Unit for Upper Terrace Phases II and III Association expenses as the Upper Terrace Phases II and III Board may specifically authorize from time to time, subject to the provisions of this Section. There shall be three types of assessments: (i) Base Assessments to fund Common Expenses; (ii) Special Assessments, as described in Section 9.4; and (iii) Specific Assessments, as described in Section 9.5. Each Owner, by accepting a deed to or entering into a recorded contract of sale for any Parcel or Condominium Unit, is deemed to covenant and agree to pay all assessments levied in accordance with this Section.

9.1.2 All assessments levied against a Parcel or Condominium Unit, together with interest, late charges, costs, and reasonable attorneys' fees as provided in this Section, shall be: (i) a charge and continuing lien upon such Parcel or Condominium Unit until paid, as more particularly provided in Section 9.7; and (ii) the personal obligation of the Owner(s) of such Parcel or Condominium Unit on the date the assessment is levied by the Upper Terrace Phases II and III Association. Upon a transfer of title to a Parcel or Condominium Unit, the grantee shall not be personally liable for any assessments and other charges levied prior to the date of conveyance unless such liability is expressly assumed by such grantee, but such Parcel or Condominium Unit shall remain subject to the lien rights of the Upper Terrace Phases II and III

Association and the liability of the Owner(s) of the Parcel or Condominium Unit on the date the assessment was levied shall not be extinguished by such transfer. No holder of a First Mortgage who acquires title to a Parcel or Condominium Unit by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments levied prior to the date of such acquisition of title.

9.1.3 Assessments shall be paid in such manner and on such dates as the Upper Terrace Phases II and III Board may establish from time to time. If the Upper Terrace Phases II and III Board so determines, assessments may be payable in two or more installments. Unless the Upper Terrace Phases II and III Board otherwise determines, the Base Assessment shall be due and payable quarterly in advance on the first day of each fiscal quarter of the Upper Terrace Phases II and III Association.

9.1.4 Within ten (10) business days after written request therefor is delivered to the Upper Terrace Phases II and III Association by any Owner who is liable for any assessment hereunder, the Upper Terrace Phases II and III Association shall furnish to such Owner a written certificate signed by an officer of the Upper Terrace Phases II and III Association stating whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Upper Terrace Phases II and III Association may require the advance payment of a reasonable processing fee for the issuance of any such certificate.

9.1.5 No Owner may exempt himself, herself, or itself from liability for assessments, whether by nonuse of the Upper Terrace Phases II and III Limited Common Area, abandonment of such Owner's Parcel or Condominium Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of Declarant, the Upper Terrace Phases II and III Association, or the Upper Terrace Phases II and III Board to take any action or perform any function, for inconvenience or discomfort arising from the construction, alteration, repair, replacement, or maintenance of Improvements, or as a result of any other action taken by Declarant, the Upper Terrace Phases II and III Association or the Upper Terrace Phases II and III Board, or their respective partners, members, managers, employees, agents, or independent contractors.

9.2 Determination of Base Assessment.

9.2.1 The Base Assessment shall be set at a level which is reasonably expected to produce total income for the Upper Terrace Phases II and III Association equal to the total budgeted Common Expenses, including reserves, as determined by the Upper Terrace Phases II and III Board for each fiscal year of the Upper Terrace Phases II and III Association, taking into account: (i) other sources of funds available to the Upper Terrace Phases II and III Association, if any; (ii) the number of Parcels and Condominium Units which are subject to assessment under Section 9.6 on the first day of the fiscal year for which the assessment is being levied; and (iii) the number of Parcels and Condominium Units reasonably anticipated to become subject to assessment during the fiscal year.

9.2.2 Subject to the provisions of Section 9.2.3, the Base Assessment for each year shall be allocated among all Parcels in proportion to the number of votes attributable to each Parcel pursuant to Section 7.3.1. The Base Assessment so allocated to each Condominium Project shall be allocated equally among the Condominium Units in such Condominium Project, unless the applicable Condominium Documents otherwise provide.

9.2.3 Subject to the provisions of Section 9.2.4, Parcels owned by Declarant or Declarant's affiliates (excluding affiliates who are natural persons) shall not be subject to payment of the Base Assessment so long as: (i) Declarant is not a Class A Member with respect to such Parcels (as determined pursuant to Section 7.3.1 above), (ii) any Parcel owned by Declarant's affiliates has not been developed and/or the occupant of such Parcel is not conducting business on such Parcel, or (iii) termination of Class B membership pursuant to Section 7.3.2 has not occurred; provided, however, that in the event that the aggregate Base Assessments levied with respect to any fiscal year ending prior to the date of the Turnover Meeting, even if paid in full by all Owners liable for such assessments, would not be sufficient to pay all actual operating expenses for which line items are included in the budget approved by the Upper Terrace Phases II and III Board for that year, Declarant shall have the right (but not the obligation) to loan to the Upper Terrace Phases II and III Association the amount of such deficiency, interest free. Any amount loaned to the Upper Terrace Phases II and III Association by Declarant pursuant to this Section 9.2.3 shall be repaid by the Upper Terrace Phases II and III Association to Declarant as soon as funds are available and to the extent the Upper Terrace Phases II and III Association has available funds. If any such loan has not been repaid in full on the date of the Turnover Meeting, such loan shall be deemed forgiven and Declarant shall have no right to the repayment of such loan and the Upper Terrace Phases II and III Association shall have no further obligation with respect to such loan.

9.2.4 From and after the first date on which a Condominium Unit in any Condominium Project developed by Declarant is sold to a Person other than Declarant, the Condominium Units in such Condominium Project which are owned by Declarant shall be subject to the payment of the Base Assessment in the same manner as Condominium Units owned by Condominium Class A Members, subject to any contrary provisions in the applicable Condominium Documents.

9.2.5 The Upper Terrace Phases II and III Board shall send a copy of the budget for each fiscal year of the Upper Terrace Phases II and III Association and notice of the amount of the Base Assessment for such year to each Owner within thirty (30) days after adoption of such budget.

9.3 Reserves.

The budget for each fiscal year of the Upper Terrace Phases II and III Association may include provision for reserves which take into account the number and nature of replaceable assets of the Upper Terrace Phases II and III Association, the expected life of each such asset, and its expected repair or replacement cost.

9.4 Special Assessments.

The Upper Terrace Phases II and III Association shall have the power to levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Special Assessments shall be payable in such manner and at such times as may be determined by the Upper Terrace Phases II and III Board, and may be payable in installments extending beyond the fiscal year to which the Special Assessment relates. Special Assessments shall be allocated in the manner provided for Base Assessments pursuant to Section 9.2.

9.5 Specific Assessments.

The Upper Terrace Phases II and III Association shall have the power to levy Specific Assessments from time to time against any particular Parcel or Condominium Unit in order to pay: (i) costs, including overhead and administrative costs, of providing benefits, items, or services to such Parcel or Condominium Unit or occupants thereof upon request of the Owner pursuant to a menu of special services which the Upper Terrace Phases II and III Board may from time to time authorize to be offered to Owners (which services may include landscape maintenance, handyman service, pest control, etc.), which assessments may be levied in advance of the provision of the requested benefit, item, or service as a deposit against charges incurred by the Owner; or (ii) costs incurred in bringing the Parcel or Condominium Unit into compliance with the terms of the Upper Terrace Phases II and III Documents (including, without limitation, a breach of an Owner's obligation under Section 11.2) or as a consequence of the conduct of the Owner or occupants of the Parcel or Condominium Unit or their respective invitees, employees, tenants, or licensees.

9.6 Date of Commencement of Assessments.

The obligation to pay the assessments in accordance with this Section shall commence as to all Parcels within each Phase on the earlier of: (i) the first day of the calendar month immediately following the first conveyance of a Parcel or Condominium Unit in such Phase to an Owner other than Declarant; or (ii) the first day of the calendar month immediately following conveyance of the Upper Terrace Phases II and III Limited Common Area in such Phase to the Upper Terrace Phases II and III Association. The Base Assessment for the fiscal year during which the obligation to pay assessments commences as to any Phase shall be prorated for Parcels and Condominium Units in that Phase based upon the number of days remaining in such year after the date on which such obligation commences.

9.7 Lien for Assessments.

9.7.1 Each assessment levied against a Parcel or Condominium Unit in accordance with this Section shall constitute a lien on such Parcel or Condominium Unit. Such lien shall also secure payment of interest and late charges as provided in Section 9.11, costs of collection (including reasonable attorneys' fees) and recording fees incurred by the Upper Terrace Phases II and III Association in connection with such assessment and lien, and a fee for preparing the notice of lien in such amount as the Upper Terrace Phases II and III Board may determine from time to time. Such lien shall be superior to all other liens, except: (i) the liens of

those taxes, bonds, assessments, and other levies which are superior by operation of law; and (ii) the lien of any First Mortgage on such Parcel or Condominium Unit. The Upper Terrace Phases II and III Association may enforce such lien, when delinquent, by suit, judgment, and foreclosure.

9.7.2 The Upper Terrace Phases II and III Association may file a statement of lien with respect to any Parcel or Condominium Unit by recording in the County Records a written statement setting forth the name of the Owner(s), the legal description of the Parcel or Condominium Unit, the name of the Upper Terrace Phases II and III Association, and the delinquent assessments and other amounts then owing. Such statement shall be executed and acknowledged by an officer or property manager of the Upper Terrace Phases II and III Association, and shall be served upon the Owner of the Parcel or Condominium Unit by mail in the manner provided herein for notices. The Upper Terrace Phases II and III Association may proceed to foreclose the lien in accordance with applicable law at any time after the expiration of the 30-day period following the mailing of such notice. The Upper Terrace Phases II and III Association may sue for unpaid assessments and costs without foreclosing or waiving the lien securing the same.

9.7.3 The Upper Terrace Phases II and III Association may bid for the Parcel or Condominium Unit at any foreclosure sale pursuant to this Section and acquire and thereafter hold, lease, mortgage, and convey such Parcel or Condominium Unit. While a Parcel or Condominium Unit is owned by the Upper Terrace Phases II and III Association following foreclosure: (i) no right to vote shall be exercised on its behalf; (ii) no assessment shall be levied on it; and (iii) each other Parcel and Condominium Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Parcel or Condominium Unit had it not been acquired by the Upper Terrace Phases II and III Association.

9.7.4 The sale or transfer of any Parcel or Condominium Unit shall not affect any assessment lien thereon; provided, however, that the sale of any Parcel or Condominium Unit pursuant to foreclosure of a First Mortgage thereon shall extinguish the lien as to any installments of such assessments levied prior to the date of sale. A Mortgagee or other purchaser of a Parcel or Condominium Unit who acquires title pursuant to such a foreclosure shall not be personally liable for assessments levied on such Parcel or Condominium Unit prior to the date of such acquisition of title; provided that such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Parcels and Condominium Units subject to assessment under Section 9.6, including the Person acquiring such title and its successors and assigns.

9.8 Failure to Assess.

Any failure of the Upper Terrace Phases II and III Board to fix assessment amounts or rates or to deliver or mail assessment notices shall not be deemed a waiver or modification of the right to impose assessments or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments on the same basis as for the most recent year for which an assessment was expressly levied until a new

assessment is levied, at which time the Upper Terrace Phases II and III Association may retroactively assess any shortfalls in collections.

9.9 Reallocation Upon Annexation or Withdrawal of Property.

If property is annexed to or withdrawn from the Upper Terrace Phases II and III Property, the Upper Terrace Phases II and III Association shall, within sixty (60) days after the date of annexation or withdrawal, recompute the budget for the fiscal year in question and recompute all applicable assessments for each Parcel and Condominium Unit. Newly annexed Parcels and Condominium Units shall be subject to assessment in accordance with Section 9.6. The Upper Terrace Phases II and III Association shall send notices of any assessment applicable to the newly-annexed Parcels or Condominium Units and of any adjustments to assessments applicable to Parcels and Condominium Units which were within the Upper Terrace Phases II and III Property prior to the date of annexation or withdrawal within sixty (60) days after the date of annexation or withdrawal. Assessments under this Section shall be due and payable on or before a date set forth in the notice, which date shall be not less than thirty (30) days after the date the notice is mailed. To the extent that any adjustment pursuant to this Section results in a credit for assessments payable with respect to a Parcel or Condominium Unit, such credit shall be applied toward the next due payment or payments of the applicable assessment.

9.10 Default in Payment of Assessments; Enforcement of Lien.

If an assessment or other charge levied pursuant to this Section is not paid within thirty (30) days after its due date, such assessment or charge shall become delinquent and shall bear interest from the due date until paid at the rate set forth in Section 9.11. In addition, the Upper Terrace Phases II and III Association may: (i) suspend the delinquent Owner's voting rights, if any, (ii) declare all remaining periodic installments of any annual assessment or any other amounts owed by such Owner to the Upper Terrace Phases II and III Association immediately due and payable; (iii) file a statement of lien against such Owner's Parcel or Condominium Unit and foreclose the lien in accordance with Section 9.7; (iv) bring an action to recover monetary damages; and/or (v) exercise any other right or remedy available to it at law, in equity, or under the Upper Terrace Phases II and III Documents.

9.11 Interest and Late Charges.

Any assessment or other charge which is delinquent pursuant to Section 9.10 shall bear interest from the due date until paid at a rate three percentage points per annum above the prime rate, as of such due date, announced by such financial institution operating in Oregon as selected by the Upper Terrace Phases II and III Board or at such other rate as may be established by the Upper Terrace Phases II and III Board from time to time, or, if less, at the maximum rate which may be charged under applicable law. In addition, a late charge may be imposed for each delinquent assessment in an amount established from time to time by the Upper Terrace Phases II and III Board; provided that such late charge shall not exceed 30% of the delinquent amount.

10. Enforcement of Covenants.

10.1 Remedies.

In the event of any breach of or other non-compliance with any provision of the Upper Terrace Phases II and III Documents (other than the provisions of Section 9, as to which the rights and remedies set forth therein shall apply), the Upper Terrace Phases II and III Association may: (i) bring an action to recover monetary damages; (ii) institute a proceeding in equity to obtain injunctive or other equitable relief; (iii) suspend the breaching or non-complying Owner's voting rights, if any, (iv) impose reasonable fines against such Owner in such amount as the Upper Terrace Phases II and III Board deems appropriate in response to the violation; (v) enter the Parcel or Condominium Unit in question, remove, abate, modify, or replace the item which is the cause of such violation in a manner that results in conformance with the Upper Terrace Phases II and III Documents, and assess the cost thereof against the such Parcel or Condominium Unit and collect the same as a Specific Assessment, unless otherwise prohibited under this Upper Terrace Phases II and III Declaration; and/or (vi) exercise any other right or remedy available to it at law, in equity, or under the Upper Terrace Phases II and III Documents.

10.2 Rights of Owners.

Any action to enforce the Upper Terrace Phases II and III Documents may be instituted by Declarant, by the Upper Terrace Phases II and III Board, or by any property manager retained by the Upper Terrace Phases II and III Board, in each case in the name and on behalf of the Upper Terrace Phases II and III Association. If, after written request from an aggrieved Owner, none of the foregoing Persons commences an action to enforce the Upper Terrace Phases II and III Documents within a reasonable period, then the aggrieved Owner may bring such an action independently.

10.3 Limitations on Liability.

Reasonable and good faith exercise of any rights of entry set forth in the Upper Terrace Phases II and III Documents shall not subject Declarant, the Upper Terrace Phases II and III Association, the Upper Terrace Phases II and III Board, any committee established under the Bylaws, or their respective partners, officers, directors, members, managers, agents, employees, or contractors to any liability for trespass, conversion, or other claim for damages. Neither Declarant, the Upper Terrace Phases II and III Association, the Upper Terrace Phases II and III Board, any committee established under the Bylaws, nor their respective partners, officers, directors, members, managers, agents, employees, or contractors shall be liable to any Owner or other Person for failure at any time to enforce any of the Upper Terrace Phases II and III Documents.

10.4 Recovery of Costs and Fees.

In the event any suit, action, or other proceeding is instituted to enforce any of the Upper Terrace Phases II and III Documents or in connection with any dispute arising thereunder, the prevailing party shall be entitled to recover its costs and expenses incurred in connection

therewith, including such amount as the court may determine to be reasonable as attorneys' fees at trial and on any appeal or review.

10.5 Remedies Not Exclusive.

An election to pursue any remedy provided for violation of the Upper Terrace Phases II and III Documents shall not prevent concurrent or subsequent exercise of other rights or remedies permitted thereunder. The remedies provided in this Upper Terrace Phases II and III Declaration and the other Upper Terrace Phases II and III Documents are not exclusive, but shall be in addition to all other remedies, including actions for damages and suits for injunctions and specific performance, available under at law or in equity.

11. Maintenance of Properties.

11.1 Upper Terrace Phases II and III Association's Responsibility.

11.1.1 The Upper Terrace Phases II and III Association shall maintain (which, for all purposes of this Section, shall include repair and replacement as needed) and keep in good repair the Upper Terrace Phases II and III Limited Area of Common Responsibility, including: (i) all landscaping and other flora, parks, signage, structures, private streets, parking areas, water features, fencing, and bicycle and pedestrian pathways or trails situated in the Upper Terrace Phases II and III Limited Area of Common Responsibility; and (ii) any property or facilities owned by Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Upper Terrace Phases II and III Association and its Members, which property and facilities shall be identified by written notice from Declarant to the Upper Terrace Phases II and III Association and remain a part of the Upper Terrace Phases II and III Limited Area of Common Responsibility until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Upper Terrace Phases II and III Association.

11.1.2 Easements are hereby reserved over the Upper Terrace Phases II and III Property to the extent necessary to enable the Upper Terrace Phases II and III Association to fulfill its maintenance responsibilities pursuant to this Section.

11.1.3 The Upper Terrace Phases II and III Association may maintain property which it does not own, including publicly owned property, conservation easements held by nonprofit entities, and other property dedicated to public use, if the Upper Terrace Phases II and III Board determines that such maintenance is in the interests of the Upper Terrace Phases II and III Association and the Members.

11.1.4 Except as otherwise expressly provided herein, all costs associated with maintenance of the Upper Terrace Phases II and III Limited Area of Common Responsibility shall be Common Expenses to be included in the Base Assessment, without prejudice to the right of the Upper Terrace Phases II and III Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Upper Terrace Phases II and III Limited Area of Common Responsibility pursuant to this Upper Terrace Phases

II and III Declaration, other recorded covenants, or agreements with such owner(s) or other Persons.

11.2 Owner's Responsibility.

Each Owner shall maintain such Owner's Parcel or Condominium Unit and all structures, parking areas, landscaping, and other Improvements on or comprising such Parcel or Condominium Unit in good order and repair and in a manner consistent with all applicable covenants and legal requirements, unless such maintenance responsibility is assumed by or assigned to the Upper Terrace Phases II and III Association pursuant to this Upper Terrace Phases II and III Declaration, any Supplemental Declaration, or other agreement. In connection therewith, all landscaping shall be installed and maintained at no less than the minimum standards set forth in the Design Guidelines and any applicable Upper Terrace Phases II and III Use Guidelines and Restrictions, it being acknowledged that one of the intentions of this Upper Terrace Phases II and III Declaration is that all landscaping of the Upper Terrace Phases II and III Property be uniform and consistent and that any failure of any Owner to maintain the landscaping on such Owner's Parcel or Condominium Unit in accordance herewith shall be a material breach of this Upper Terrace Phases II and III Declaration. In addition to any other enforcement rights provided in the Upper Terrace Phases II and III Documents, if an Owner fails properly to perform the foregoing maintenance responsibilities, the Upper Terrace Phases II and III Association may enter onto the property in question and perform such maintenance responsibilities and assess all costs incurred by the Upper Terrace Phases II and III Association against the Parcel or Condominium Unit and the Owner thereof as a Specific Assessment in accordance with Section 9.5.

12. Insurance and Casualty Losses.

12.1 Upper Terrace Phases II and III Association Insurance.

12.1.1 The Upper Terrace Phases II and III Association shall obtain blanket "all-risk" property insurance, if available at reasonable cost, for all insurable Improvements in the Upper Terrace Phases II and III Limited Area of Common Responsibility. If blanket "all-risk" coverage is not available at reasonable cost, the Upper Terrace Phases II and III Association shall obtain fire and extended coverage insurance, including coverage for vandalism and malicious mischief. The Upper Terrace Phases II and III Association may also obtain flood insurance, if available at reasonable cost. The face amount of any policy shall be sufficient to cover the full replacement cost of the insured property.

12.1.2 The Upper Terrace Phases II and III Association also shall obtain a public liability policy insuring the Upper Terrace Phases II and III Association and its Members for damage or injury caused by the negligence of the Upper Terrace Phases II and III Association or any of its Members, employees, agents, or contractors while acting on its behalf. If available at reasonable cost, such policy shall have at least a \$1,000,000 combined single limit with respect to bodily injury and property damage and at least a \$3,000,000 limit per occurrence and in the aggregate. To the extent available at reasonable cost, such public liability insurance shall

also include protection against such risks as are customarily covered with respect to projects similar in construction, location, and use to River Bend.

12.1.3 Each policy of insurance contemplated by this Section may contain a reasonable deductible that shall not be subtracted from the face amount of the policy in determining whether the insurance provides the required coverage. In the event of an insured loss, the deductible shall constitute a Common Expense and be included in the Base Assessments.

12.1.4 All insurance coverage obtained by the Upper Terrace Phases II and III Association 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) be written in the name of the Upper Terrace Phases II and III Association as trustee for the benefited parties and include a standard mortgagee's clause; (iii) vest in the Upper Terrace Phases II and III Board exclusive authority to adjust losses; provided, however, that no Mortgagee having an interest in such losses shall be prohibited from participating in the settlement negotiations, if any, related to the loss; (iv) not be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees; and (v) have an inflation guard enforcement, if available at reasonable cost. If a policy contains a co-insurance clause, it shall also have an agreed amount endorsement. The Upper Terrace Phases II and III Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified Persons, at least one of whom shall be in the real estate industry and familiar with construction in the City.

12.1.5 The Upper Terrace Phases II and III Board shall use reasonable efforts to secure insurance policies containing endorsements that: (i) waive subrogation as to any claims against the Upper Terrace Phases II and III Board and the Upper Terrace Phases II and III Association's officers, employees, and property manager (if any), as well as the Owners and their tenants, servants, agents, and guests; (ii) waive the insurer's rights to repair and reconstruct instead of paying cash; (iii) preclude cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Upper Terrace Phases II and III Association to cure the defect or violation and allowance of a reasonable time to cure; (iv) exclude individual Owners' policies from consideration under any "other insurance" clause; and (v) require at least thirty (30) days written notice to the Upper Terrace Phases II and III Association (and any Mortgagee or other insureds named therein) prior to any cancellation, substantial modification, or nonrenewal.

12.1.6 The Upper Terrace Phases II and III Association shall obtain worker's compensation insurance and employer's liability insurance, if and to the extent required by law, and shall use reasonable efforts to obtain errors and omission insurance coverage for officers, directors and committee members of the Upper Terrace Phases II and III Association.

12.1.7 The Upper Terrace Phases II and III Association shall obtain a fidelity bond or bonds, if available at reasonable cost, covering all Persons responsible for handling Upper Terrace Phases II and III Association funds. The Upper Terrace Phases II and III Board shall determine the amount of fidelity coverage in its best business judgment. Bonds shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation and shall require at least thirty (30) days written notice to the Upper Terrace Phases II and III Association prior to any cancellation, substantial modification, or nonrenewal.

12.1.8 The premiums for all insurance and bonds contemplated by this Section shall constitute Common Expenses and be included in the Base Assessments.

12.2 Owners' Insurance.

12.2.1 By accepting a deed to or entering into a recorded contract of sale for a Parcel or a Condominium Unit, each Owner covenants and agrees to carry such insurance as is required under the Master Declaration.

12.2.2 In the event of damage to or destruction of the structures on or comprising a Parcel or Condominium Unit, the Owner thereof shall proceed promptly to take such action as required under the Master Declaration and the Upper Terrace Phases II and III Association shall have the same rights and remedies as the Master Association with respect to any failure of an Owner to perform.

12.3 Damage and Destruction.

12.3.1 Promptly after any damage to or destruction of all or any part of the Upper Terrace Phases II and III Property covered by insurance written in the name of the Upper Terrace Phases II and III Association, the Upper Terrace Phases II and III Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the condition in which it existed prior to the damage or destruction, taking into account changes or Improvements necessitated by changes in applicable legal requirements.

12.3.2 Any damage to or destruction of the Upper Terrace Phases II and III Limited Common Area shall be repaired or reconstructed unless Class A Members together holding at least 75% of the total votes held by Class A Members and Declarant (so long as Declarant owns any property in the Upper Terrace Phases II and III Property or any Potential Expansion Property) decide within sixty (60) days after the loss not to repair or reconstruct. If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Upper Terrace Phases II and III Association within such 60-day period, then the period shall be extended until such funds and such information are available. Assessments of the Upper Terrace Phases II and III Association shall not be abated during the period of insurance adjustment and repair and reconstruction.

12.3.3 If, pursuant to Section 12.3.2, damage to or destruction of the Upper Terrace Phases II and III Limited Common Area is not to be repaired or reconstructed and no alternative Improvements are authorized, the affected property shall be cleared of all debris and ruins and maintained by the Upper Terrace Phases II and III Association in a neat and attractive, landscaped condition consistent with the Upper Terrace Phases II and III Documents. In such event, any remaining insurance proceeds shall be retained by the Upper Terrace Phases II and III Association and used for such purposes as the Upper Terrace Phases II and III Board may determine.

12.4 Upper Terrace Phases II and III Association as Attorney-in-Fact.

By accepting a deed to or entering into a recorded contract of sale for a Parcel or a Condominium Unit, each Owner irrevocably constitutes and appoints the Upper Terrace Phases II and III Association as such Owner's true and lawful attorney-in-fact in such Owner's name, place, and stead for the purpose of dealing with the Improvements in the Upper Terrace Phases II and III Limited Area of Common Responsibility upon damage or destruction as provided in this Section or upon a complete or partial Condemnation as provided in Section 13. As attorney-in-fact, the Upper Terrace Phases II and III Association shall have full and complete authority, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any Owner which may be necessary or appropriate to exercise the foregoing powers.

13. Condemnation.

13.1 Partial Condemnation.

If any part of the Upper Terrace Phases II and III Limited Common Area is Condemned, the resulting award shall be payable to the Upper Terrace Phases II and III Association as trustee for all Owners and shall be applied as follows:

13.1.1 If the Condemnation involves a portion of the Upper Terrace Phases II and III Limited Common Area on which Improvements have been constructed, the Upper Terrace Phases II and III Association shall restore or replace such Improvements on the remaining land included in the Upper Terrace Phases II and III Limited Common Area, to the extent available, unless, within sixty (60) days after the date of such Condemnation, Class A Members together holding at least 75% of the total votes held by Class A Members and Declarant (so long as Declarant owns any property in the Upper Terrace Phases II and III Property or any Potential Expansion Property) otherwise decide.

13.1.2 If the Condemnation does not involve any Improvements on the Upper Terrace Phases II and III Limited Common Area, or if a decision is made pursuant to Section 13.1. not to repair or restore, or if funds from the Condemnation award remain after the completion of such restoration or replacement, then such award or such remaining funds shall be retained by the Upper Terrace Phases II and III Association and used for such purposes as the Upper Terrace Phases II and III Board may determine.

13.2 Complete Condemnation.

If all of the Upper Terrace Phases II and III Property is Condemned, the regime created by this Upper Terrace Phases II and III Declaration shall terminate and the portion of the Condemnation award attributable to the Upper Terrace Phases II and III Limited Common Area shall be distributed in proportion to the respective obligations for Base Assessments for the fiscal year during which the Condemnation occurs, first to the Mortgagees and then to the Owners, as their interests may appear.

14. Declarant's Rights.

14.1 Transfer of Rights.

Any or all of the special rights and obligations of Declarant set forth in this Upper Terrace Phases II and III Declaration or in the other Upper Terrace Phases II and III Documents may be transferred to other Persons, without the consent of any Mortgagee or Owner, so long as the transfer does not enlarge any such right or reduce any such obligation. No such transfer shall be effective unless it is reflected in a written instrument signed by Declarant and recorded in the County Records. Nothing in this Upper Terrace Phases II and III Declaration shall be construed to require Declarant or any successor to develop any of the Potential Expansion Property in any manner whatsoever or to annex any such property to the Upper Terrace Phases II and III Property.

14.2 Construction and Sales Period.

So long as construction on and initial sales of Parcels continue, Declarant may maintain and carry on upon portions of the Upper Terrace Phases II and III Limited Common Area such facilities and activities as are, in the sole opinion of Declarant, reasonably required, convenient, or incidental to such construction or sales, including business offices, signs, model units, and sales offices. Declarant hereby reserves easements for access to and use of such facilities. Declarant's unilateral right to use the Upper Terrace Phases II and III Limited Common Area for the purposes set forth in this Section shall not be exclusive and shall not interfere unreasonably and substantially with use of the Upper Terrace Phases II and III Limited Common Area by Owners, except to the extent, if any, that portions of the Upper Terrace Phases II and III Limited Common Area are leased to Declarant for a reasonable rent.

14.3 Other Covenants.

No Person shall record any declaration of covenants, conditions, and restrictions, any condominium declaration, or any similar instrument affecting any portion of the Upper Terrace Phases II and III Property without Declarant's prior written consent. Any such instrument which is recorded without such consent shall be void and of no force and effect unless subsequently approved by Declarant.

14.4 Amendment.

Notwithstanding any other provision of the Upper Terrace Phases II and III Documents, this Section may not be amended without the prior written consent of Declarant.

14.5 Termination of Special Rights.

The rights contained in this Section shall terminate upon the earlier of: (i) forty (40) years after the date this Upper Terrace Phases II and III Declaration is recorded, or (ii) the recording by Declarant of a written statement to the effect that all initial sales activity in connection with the Upper Terrace Phases II and III Property has ceased. Thereafter, Declarant may continue to use the Upper Terrace Phases II and III Limited Common Area for purposes stated in this Section only pursuant to a lease agreement between Declarant and the Upper Terrace Phases II and III Association which provides for rental payments based on the fair market rental value of such portion of the Upper Terrace Phases II and III Limited Common Area.

15. General Provisions.

15.1 Term.

This Upper Terrace Phases II and III Declaration shall run with and bind the Upper Terrace Phases II and III Property, and shall inure to the benefit of and shall be enforceable as provided herein by the Upper Terrace Phases II and III Association, any Owner, and their respective legal representatives, heirs, successors, and assigns, for a term of forty (40) years from the date this Upper Terrace Phases II and III Declaration is recorded. After such period, this Upper Terrace Phases II and III Declaration shall automatically be extended for successive periods of ten (10) years each, unless a written instrument, signed by Owners together holding a majority of the votes held by Class A Members and by Declarant (prior to Turnover), is recorded in the County Records within one year prior to the end of any such extension period providing for the termination of this Upper Terrace Phases II and III Declaration, in which case this Upper Terrace Phases II and III Declaration shall terminate as provided therein. Notwithstanding the foregoing: (i) all easements granted in this Upper Terrace Phases II and III Declaration (other than those easements whose terms are specifically limited by this Upper Terrace Phases II and III Declaration) shall be perpetual and bind the Upper Terrace Phases II and III Property and inure to the benefit of and shall be enforceable by any Owner and their legal representatives, heirs, successors and assigns, (ii) except to the extent provided herein, this Upper Terrace Phases II and III Declaration shall automatically terminate upon the termination of the Master Declaration.

15.2 Amendment.

15.2.1 By Declarant.

At any time and from time to time prior to the initial conveyance of a Parcel to an Owner other than Declarant, Declarant may unilaterally amend this Upper Terrace Phases II and

III Declaration. Thereafter, until the termination of the Class B membership pursuant to Section 7.3.2, Declarant may, subject to the provisions of Section 14, unilaterally amend this Upper Terrace Phases II and III Declaration; provided, however, that no such amendment shall materially and adversely affect any material rights of any Members hereunder without the consent of affected Members who together hold a majority of the total votes held by all affected Members.

15.2.2 By Owners.

In addition to the rights of Declarant pursuant to Section 16.2.1, this Upper Terrace Phases II and III Declaration may, subject to the provisions of Section 14, be amended at any time and from time to time upon the affirmative vote or written consent, or any combination thereof, of: (i) Class A Members together holding at least 75% of the total votes held by Class A Members, and (ii) Declarant, so long as Declarant owns any of the property in the Upper Terrace Phases II and III Property or any of the Potential Expansion Property.

15.2.3 Validity and Effective Date of Amendments.

Amendments to this Upper Terrace Phases II and III Declaration shall become effective upon recordation in the County Records, unless a later effective date is specified therein. Any procedural challenge to an amendment shall be made within one year after the date of its recordation or such amendment shall be conclusively presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provision of this Upper Terrace Phases II and III Declaration.

15.2.4 Declarant Rights.

No amendment to this Upper Terrace Phases II and III Declaration or any of the other Upper Terrace Phases II and III Documents may remove, revoke, or modify any right or privilege of Declarant hereunder or under any of the other Upper Terrace Phases II and III Documents without the written consent of Declarant and any assignee of such right or privilege.

15.2.5 Boundaries.

No amendment to this Upper Terrace Phases II and III Declaration shall change the boundaries of any Parcel or Condominium Unit without the consent of the affected Owner.

15.3 Severability.

Invalidation of any provision of this Upper Terrace Phases II and III Declaration, in whole or in part, or of any application of a provision of this Upper Terrace Phases II and III Declaration, by judgment or court order shall in no way affect other provisions or applications.

15.4 Notice of Sale or Transfer of Title.

Any Owner wishing to sell or otherwise transfer title to such Owner's Parcel or Condominium Unit (other than by operation of law) shall give the Upper Terrace Phases II and

III Board at least seven (7) days prior written notice of the name and address of the purchaser or transferee, the anticipated date of the transfer of title, and such other information as the Upper Terrace Phases II and III Board may reasonably specify from time to time. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Parcel or Condominium Unit, including assessment obligations, until the date on which such notice is received by the Upper Terrace Phases II and III Board, notwithstanding the transfer of title.

15.5 Revocation.

Except as provided in Section 13.2, this Upper Terrace Phases II and III Declaration shall not be revoked without the consent of all of the Members in a written instrument recorded in the County Records.

15.6 Notices.

All notices pursuant to this Upper Terrace Phases II and III Declaration shall be in writing. Notice to any Member shall be considered delivered and effective upon personal delivery, or three days after deposit in the U.S. Mail, certified, return receipt requested, addressed to the address of such Member on file in the records of the Upper Terrace Phases II and III Association at the time of such mailing. Notice to the Upper Terrace Phases II and III Board or the Upper Terrace Phases II and III Association shall be considered delivered and effective upon personal delivery, or three days after deposit in the U.S. Mail, certified, return receipt requested, addressed to the Upper Terrace Phases II and III Association or the Upper Terrace Phases II and III Board at such address as may be established by the Upper Terrace Phases II and III Association from time to time by notice to the Members. General notices to all Members need not be certified, but may be sent by regular first class mail.

15.7 Waiver.

No failure on the part of Declarant, the Upper Terrace Phases II and III Association or the Upper Terrace Phases II and III Board to give notice of default or to exercise any right or remedy, nor any delay in exercising any right or remedy, shall operate as a waiver, except as specifically provided herein in the event the Upper Terrace Phases II and III Board fails to respond to certain requests. No waiver shall be effective against Declarant, the Upper Terrace Phases II and III Association or the Upper Terrace Phases II and III Board unless it is in writing, signed, as applicable, by Declarant, by the President or Vice President of the Upper Terrace Phases II and III Association on behalf of the Upper Terrace Phases II and III Association or the Upper Terrace Phases II and III Board.

15.8 Conflicts Between Documents.

In case of any conflict between this Upper Terrace Phases II and III Declaration and the Articles of Incorporation or the Bylaws, this Upper Terrace Phases II and III Declaration shall control. In case of conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control. In the case of any conflict between this Upper Terrace

Phases II and III Declaration and the Master Declaration, the Master Declaration shall control. In case of any conflict between this Upper Terrace Phases II and III Declaration and the Upper Terrace Phases II and III Use Guidelines and Restrictions, this Upper Terrace Phases II and III Declaration shall control.

IN WITNESS WHEREOF, Declarant has executed this Upper Terrace Phases II and III Declaration effective as of the date set forth above.

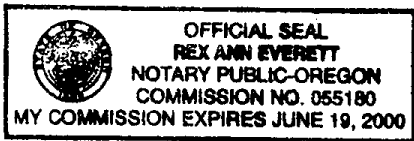
RIVER BEND LIMITED PARTNERSHIP, an Oregon limited partnership

By: The Bend Company, an Oregon corporation, General Partner

By: William L. Smith
William L. Smith, President

STATE OF OREGON)
) ss.
County of Deschutes)

The foregoing instrument was acknowledged before me on this 27th day of July, 1998, by William L. Smith, who is President of the Bend Company, an Oregon corporation, general partner of RIVER BEND LIMITED PARTNERSHIP, an Oregon limited partnership, on behalf of the limited partnership.



Rex Ann Everett
Notary Public for Oregon
My Commission Expires: June 19, 2000

EXHIBIT A

UPPER TERRACE PHASES II AND III
(EXCLUDING PROPOSED LOT 27)

PROPERTY DESCRIPTION

A parcel of land located in Section 5, Township 18 South, Range 12 East, Willamette Meridian, City of Bend, Deschutes County, Oregon, being more particularly described as follows:

Beginning at a point on the southeasterly line of the plat of Northside Terrace as filed on June 30, 1998 in plat cabinet E pages 60-64 in the office of the Deschutes County Clerk, said beginning point bears South $02^{\circ}47'18''$ East, 1064.49 feet from a 3" aluminum cap marking the North One-Quarter Corner of said Section 5, said point hereinafter known as "Point A"; thence leaving said southeasterly line 119.58 feet along the arc of a 220.00 foot radius curve to the left, the long chord of which bears South $58^{\circ}56'03''$ East, 118.11 feet; thence South $74^{\circ}30'21''$ East, 211.18 feet; thence North $15^{\circ}29'39''$ East, 5.00 feet; thence South $74^{\circ}30'21''$ East, 434.89 feet; thence 360.24 feet along the arc of a 360.00 foot radius curve to the right, the long chord of which bears South $45^{\circ}50'19''$ East, 345.40 feet; thence South $17^{\circ}10'17''$ East, 10.03 feet; thence 162.98 feet along the arc of a 560.00 foot radius curve to the right, the long chord of which bears South $08^{\circ}50'01''$ East, 162.41 feet; thence North $89^{\circ}30'15''$ East, 80.00 feet; thence 270.89 feet along the arc of a 640.00 foot radius non-tangent curve to the right, the long chord of which bears South $11^{\circ}37'48''$ West, 268.88 feet to the northernmost corner of the parcel described as "Exhibit A Parcel" in Correction Warranty Deed filed January 6, 1998 in Vol. 475, Page 2152 of Deschutes County Deed Records in the office of the Deschutes County Clerk; thence along the westerly and southwesterly boundary line of said "Exhibit A Parcel" the following four courses and four curves:

22.45 feet along the arc of a 23.00 foot radius non-tangent curve to the left, the long chord of which bears South $53^{\circ}26'00''$ West, 21.57 feet;
 29.98 feet along the arc of the 630.00 foot radius curve to the right, the long chord of which bears South $26^{\circ}49'49''$ West, 29.98 feet;
 South $28^{\circ}11'37''$ West, 405.30 feet;
 355.87 feet along the arc of a 630.00 foot radius curve to the right, the long chord of which bears South $44^{\circ}22'34''$ West, 351.16 feet;
 South $60^{\circ}33'32''$ West, 153.85 feet;

78.45 feet along the arc of a 570.00 foot radius curve to the left, the long chord of which bears South 56°36'58" West 78.39 feet;
South 52°40'24" West, 282.50 feet;
North 89°57'04" East, 16.51 feet;

thence leaving the boundary line of said "Exhibit A Parcel" South 52°40'24" West, 60.99 feet; thence 261.54 feet along the arc of a 460.00 foot radius curve to the left, the long chord of which bears South 36°23'07" West, 258.03 feet; thence South 20°05'49" West, 134.51 feet; thence North 69°54'11" West, 80.00 feet; thence 72.26 feet along the arc of a 46.00 foot radius non-tangent curve to the right, the long chord of which bears South 65°05'49" West, 65.05 feet; thence North 69°54'11" West, 7.48 feet; thence 63.75 feet along the arc of a 150.00 foot radius curve to the right, the long chord of which bears North 57°43'43" West, 63.27 feet; thence North 45°33'15" West, 280.21 feet; thence 94.69 feet along the arc of a 230.00 foot radius curve to the left, the long chord of which bears North 57°20'54" West, 94.02 feet; thence North 69°08'34" West, 130.50 feet to a point on the thread of the Deschutes River; thence along said thread the following six courses:

North 13°01'35" East, 198.53 feet;
North 07°11'35" West, 479.37 feet;
North 11°37'14" West, 274.04 feet;
North 07°26'08" East, 321.75 feet;
North 18°30'37" West, 280.19 feet;
North 45°13'49" West, 138.27 feet to a point on the southerly line of said plat of Northside Terrace;

thence leaving said thread of the Deschutes River and along the southerly and southeasterly lines of said plat of Northside Terrace the following three courses and five curves:

North 72°11'38" East, 475.73 feet;
140.97 feet along the arc of a 180.00 foot radius non-tangent curve to the left, the long chord of which bears South 42°50'45" East, 137.39 feet;
22.09 feet along the arc of a 15.00 foot radius curve to the right, the long chord of which bears South 23°05'39" East, 20.15 feet;
28.95 feet along the arc of a 355.00 foot radius curve to the right, the long chord of which bears South 16°45'25" West, 28.94 feet;
South 75°34'46" East, 110.00 feet;
91.91 feet along the arc of a 245.00 foot radius non-tangent curve to the right, the long chord of which bears North 25°10'02" East, 91.37 feet;
North 44°39'39" East, 300.86 feet;

8.41 feet along the arc of a 220.00 foot radius non-tangent curve to the left, the long chord of which bears South 42°16'03" East, 8.41 feet to the point of beginning.

EXCEPTING THEREFROM :

A parcel of land located in Section 5, Township 18 South, Range 12 East, Willamette Meridian, City of Bend, Deschutes County, Oregon, being more particularly described as follows:

Beginning at "Point A" in the above description which falls on the southeasterly line of the plat of Northside Terrace as filed on June 30, 1998 in plat cabinet E pages 60-64 in the office of the Deschutes County Clerk, said beginning point bears South 02°47'18" East, 1064.49 feet from a 3" aluminum cap marking the North One-Quarter Corner of said Section 5; thence leaving said southeasterly line 119.58 feet along the arc of a 220.00 foot radius curve to the left, the long chord of which bears South 58°56'03" East, 118.11 feet; thence South 74°30'21" East, 42.55 feet; thence South 00°00'00" East, 19.06 feet; thence South 22°16'36" East, 41.12 feet; thence South 00°28'57" East, 51.41 feet; thence South 09°35'43" West, 87.70; thence South 14°40'10" West, 116.32 feet; thence South 37°08'34" West, 33.20 feet; thence South 24°50'44" West, 36.63 feet; thence South 02°05'51" East, 21.11 feet; thence 36.00 feet along the arc of a 150.00 foot radius non-tangent curve to the left, the long chord of which bears South 45°16'59" West, 35.91 feet; thence South 38°24'28" West, 145.22 feet; thence South 52°43'51" East, 42.85 feet; thence South 30°02'06" West, 225.67 feet; thence South 38°42'52" West, 321.80 feet; thence South 10°19'01" West, 86.91 feet; thence South 22°45'38" East, 79.55 feet; thence South 64°47'38" East 56.66 feet; thence North 52°28'28" East, 128.36 feet; thence South 46°32'35" East, 636.88 feet; thence South 52°40'24" West, 327.09 feet; thence 307.03 feet along the arc of a 540.00 foot radius curve to the left, the long chord of which bears South 36°23'07" West, 302.90 feet; thence South 20°05'49" West, 134.51 feet; thence 72.26 feet along the arc of a 46.00 foot radius curve to the right, the long chord of which bears South 65°05'49" West, 65.05 feet; thence North 69°54'11" West, 7.48 feet; thence 63.75 feet along the arc of a 150.00 foot radius curve to the right, the long chord of which bears North 57°43'43" West, 63.27 feet; thence North 45°33'15" West, 280.21 feet; thence 94.69 feet along the arc of a 230.00 foot radius curve to the left, the long chord of which bears North 57°20'54" West, 94.02 feet; thence North 69°08'34" West, 130.50 feet to a point on the thread of the Deschutes River; thence along said thread the following six courses:

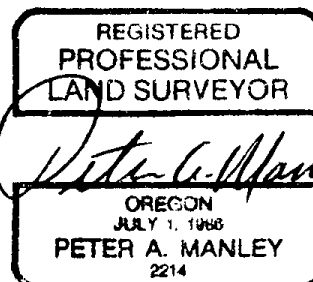
North 13°01'35" East, 198.53 feet;
 North 07°11'35" West, 479.37 feet;
 North 11°37'14" West, 274.04 feet;

North 07°26'08" East, 321.75 feet;
 North 18°30'37" West, 280.19 feet;
 North 45°13'49" West, 138.27 feet to a point on the
 southerly line of said plat of Northside Terrace;

thence leaving said thread of the Deschutes River and along the
 southerly lines of said plat of Northside Terrace the following three
 courses and five curves:

North 72°11'38" East, 475.73 feet;
 140.97 feet along the arc of a 180.00 foot radius non-
 tangent curve to the left, the long chord of which bears
 South 42°50'45" East, 137.39 feet;
 22.09 feet along the arc of a 15.00 foot radius curve to the
 right, the long chord of which bears South 23°05'39" East,
 20.15 feet;
 28.95 feet along the arc of a 355.00 foot radius curve to
 the right, the long chord of which bears South 16°45'25"
 West, 28.94 feet;
 South 75°34'46" East, 110.00 feet;
 91.91 feet along the arc of a 245.00 foot radius non-
 tangent curve to the right, the long chord of which bears
 North 25°10'02" East, 91.37 feet;
 North 44°39'39" East, 300.86 feet;
 8.41 feet along the arc of a 220.00 foot radius non-
 tangent curve to the left, the long chord of which bears
 South 42°16'03" East, 8.41 feet to the point of beginning,
 the terminus of this description.

NET AREA: Contains 31.68 acres, more or less.



8-7-98

EXPIRES 12-31-98

EXHIBIT B**Legal Description**

A tract of land located in a portion of Sections 5 and 6, Township 18 South, Range 12 East, Willamette meridian, Deschutes County, Oregon, being more particularly described as follows:

Commencing at the east one quarter corner of said Section 5; thence westerly along the east-west center section line, South 89° 28' 54" West, 617.14 feet to the True Point of Beginning of this description, said point further being the southwest corner of that tract of land described in Volume 322, Page 335, of the Deschutes County Deed Records; thence southerly, 315.00 feet, more or less, to the Southerly corner of Lot 12, of Block 133, of the plat of Second Addition to Bend Park; thence in a straight line to the southerly terminus of that certain course in the deed to River Bend Limited Partnership recorded in Volume 370 at page 2214 of Official Records of Deschutes County, described as "South 80° 56' 36" East, 289.04 feet", being also the North-South centerline of said Section 5, said terminal point being also the southeast corner of that tract of land described in Volume 62, Page 103, of the Deschutes County Deed Records; thence leaving said North-South line and along the Southerly line of said tract of land, West 738.79 feet to a point on the Westerly right-of-way line of S.A. Blakely Road; thence leaving said South line and along said right-of-way line South 46° 28' 30" West 137.11 feet; thence along an arc of a 603.69 foot radius curve left, 389.57 feet, the long chord of which bears South 27° 59' 15" West 382.85 feet; thence South 09° 30' 00" West 57.47 feet to the Southeast corner of that tract of land described in Volume 313, Page 429, Deschutes County Deed Records; thence leaving said S.A. Blakely Road right-of-way line and along the Southerly line of said tract of land on an arc of a 30.00 foot radius curve left, 48.41 feet, the long chord of which bears North 36° 44' 22" West 43.33 feet; thence North 82° 58' 45" West 16.77 feet; thence along on an arc of a 100.00 radius curve right 120.12 feet, the long chord of which bears North 48° 34' 08" West 113.03 feet to a point on the Southerly line of that tract of land described in Volume 58, page 270; thence leaving said tract of land described in Volume 313, Page 429, and along said tract of land described in Volume 58, Page 270, South 89° 57' 54" West 162.92 feet to the Southwest corner of said tract of land; thence in a straight line to a point which bears South 89° 44' 41" West, 660 feet from the center - southwest 1/16 corner of said Section 5, said point lying also on the southerly line of that tract of land described in Volume 29, Page 478 of Deschutes County Deed Records; thence along said southerly line, South 89° 44' 41" West 673.95 feet, more or less, to the south 1/16 corner between said Sections 5 and 6; thence along said south line, North 89° 32' 07" West, 299.47 feet

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to a point on the easterly line of that tract of land described in Volume 308, Page 443 of Deschutes County Deed Records; thence North 89° 32' 13" West, following the said east-west centerline of the southeast quarter of Section 6, a distance of 1018.89 feet to the southeast 1/16 corner of said Section 6; thence South 01° 23' 32" East, following the North-South centerline of the southeast quarter of said Section 6, a distance of 1314.79 feet to the east 1/16 corner between Sections 6 and 7, said township and range, from which the Southeast corner of said Section 6 bears South 89° 36' 31" East, a distance of 1340.26 feet, and from which the South 1/4 corner of said Section 6 bears North 89° 36' 31" West, a distance of 1340.26 feet; thence North 89° 36' 31" West, following the South line of said Section 6, a distance of 200.00 feet, more or less, the centerline of the Deschutes River; thence following the said centerline of the Deschutes River the ten following courses and distances: North 04° 19' 16" West, a distance of 156.47 feet; North 16° 17' 17" West, a distance of 569.05 feet; North 10° 46' 01" East, a distance of 255.77 feet; North 04° 38' 16" West, a distance of 354.34 feet; North 33° 41' 26" East, a distance of 230.15 feet; North 60° 51' 36" East, a distance of 221.10 feet; North 74° 12' 17" East, a distance of 364.01 feet; North 84° 22' 04" East, a distance of 397.02 feet; North 75° 13' 15" East, a distance of 199.38 feet; South 88° 16' 08" East, a distance of 95.00 feet, more or less, to a point on a line lying 20.00 feet Easterly of and parallel with the centerline of the existing Brooks-Scanlon Bridge (a private bridge for motor vehicles); thence leaving the centerline of the said river, and following the boundary of the property conveyed in Memorandum of Real Estate Contract to SFP-B Limited Partnership recorded in Book 370, Page 807 of Deschutes County Official Records, North 1° 46' 12" East, 174.85 feet to an angle point on Lot 2 of Block 3 of the Plat of Shevlin Center; thence leaving said Lot 2 boundary line, South 82° 21' 44" East, 76.91 feet, thence North 80° 49' 15" East, 47.70 feet, thence South 86° 46' 08" East, 96.60 feet; thence North 82° 12' 49" East, 132.38 feet, thence North 64° 29' 13" East, 123.21 feet; thence North 74° 29' 09" East, 69.18 feet; thence North 40° 50' 45" East, 203.26 feet; thence North 02° 34' 29" East, 158.80 feet; thence North 75° 39' 10" West, 130.47 feet; thence North 48° 19' 14" West, 58.43 feet; thence North 82° 28' 23" West, 102.97 feet; thence North 18° 25' 08" East, 68.77 feet; thence North 51° 26' 19" East, 81.69 feet; thence North 38° 57' 34" East, 185.95 feet to a point on the south line of Shevlin Center Business Park Phase One; thence along said south line, South 50° 37' 34" East, 72.19 feet; thence continuing along the boundary line of said plat, the following five courses; thence North 23° 17' 45" East, 369.93 feet; thence North 06° 55' 00" East, 171.61 feet; thence South 77° 17' 56" East, 50.04 feet; thence North 03° 14' 22" West, 84.96 feet; thence North 03° 13' 22" West, 336.60 feet to the Southwest corner of the land described in the deed to Oregon Military Department as recorded in Book 362 at Page 842 Deschutes County Official Records; thence leaving said boundary line of said plat and following along the Southerly line of the land described in said deed, South 62° 40' 46" East, 412.49 feet to the southeast corner of the land described in said deed; thence North 27° 19' 14" East, along the east line of the land described in said deed and also along the east line of parcel "A" of partition plat number 1992-48, 363.91 feet to angle point of said parcel "A", thence along the boundary line of said parcel "A" the next five courses; North 62° 40' 46" West, 158.32 feet; thence South 27° 16' 39" West, 13.22 feet; thence North 62° 43' 21" West, 100.00 feet; thence North 27° 16' 39" East, 172.29

feet; thence North 63° 01' 12" West, 277.72 feet to the Northeast corner of the right-of-way of Simpson Avenue as shown on said Partition Plat number 1992-48; thence along the arc of a 225.00 foot radius non-tangent curve to the left, through a central angle of 66°13' 04", an arc distance of 260.04 feet (the long chord of which bears North 10° 01' 49" West, 245.80 feet) to a point of tangency; thence North 43° 08' 21" West, 63.29 feet to the southeasterly right-of-way line of Colorado Avenue; thence North 46° 51' 43" East, along said southeasterly right-of-way line, 422.85 feet to the most Northerly corner of said Lot 2; said corner being also the most westerly corner of the property conveyed to Maynard Alves in deed recorded in Book 429, Page 1589 of Official Records; thence along the boundary of last said property by the following - courses; North 47° 23' 27" East, 358.94 feet to the beginning of a tangent curve; thence along the arc of a 597.74 foot radius curve to the left, through a central angle of 3° 00' 08", an arc distance of 31.32 feet (the long chord of which bears North 45° 53' 23" East, 31.32 feet) to a point of reverse curvature; thence along the arc of a 55.00 foot radius curve to the right, through a central angle of 32° 25' 59", an arc distance of 31.13 feet (the long chord of which bears North 60° 36' 06" East, 30.72 feet) to the most Northerly Corner of Lot 1, Block 3, of Shevlin Center; said corner being also the most Northwesterly corner of Lot 4, Block 2 of Mill "A" Area of Shevlin Center Second Addition; thence along the Southerly line of Industrial Way (a private street) as shown on last said plat by the following courses, continuing along a tangent curve with a radius of 55.00 feet to the right, through a central angle of 49° 12' 11", an arc distance of 47.23 feet (the long chord of which bears South 79° 06' 42" East, 45.79 feet); thence North 35° 29' 24" East, 10.00 feet; thence South 54° 30' 36" East, 11.95 feet to the beginning of a tangent curve; thence along the arc of a 591.98 foot radius curve to the left, through a central angle of 24° 06' 24", an arc distance of 249.07 feet (the long chord of which bears South 66° 33' 48" East, 247.24 feet) to a point of compound curvature; thence along the arc of a 1192.72 foot radius curve to the left, through a center angle of 11° 47' 05", an arc distance of 245.32 feet (the long chord of which bears South 84° 30' 33" East, 244.89 feet) to a point of tangency; thence North 89° 35' 54" East, 800.41 feet; thence North 89° 35' 54" East, 80.07 feet; thence South 2° 47' 16" East, 11.07 feet to the Northwest corner of the property conveyed to Willamette Industries in deed recorded in Book 102, Page 162 of Official Records of Deschutes County; thence South 2° 47' 39" East, 571.38 feet to a 5/8 inch iron rod with plastic cap, said point further being on an existing fence; thence along said fence North 69° 49' 53" East 189.62 feet; thence South 85° 14' 59" East 1246.32 feet; thence leaving said fence, South 85° 14' 59" East, 51.48 feet to a point on the centerline of Oregon Trunk Railroad; thence along said railroad, North 18° 30' 29" East 272.51 feet; thence along on an arc of a 603.11 foot radius curve right, 74.33 feet, the chord of which bears North 24° 18' 53" East 74.28 feet, to a point on the Westerly line of said tract of land described in Volume 322, Page 335, Deschutes Country Deed Records; thence leaving said railroad and along said Westerly line, South 33° 54' 54" East 555.09 feet; thence along on an arc of 535.00 foot radius curve right, 317.18 feet, the long chord of which bears South 16° 55' 05" East 313.55 feet; thence South 00° 03' 12" West 1116.64 feet to the point of beginning and terminus of this description.