

97-31513

DECLARATIONS, RESTRICTIONS,
PROTECTIVE COVENANTS AND CONDITIONS
FOR
SCENIC HEIGHTS

This Declaration of Covenants, Conditions, and Restrictions is made this 19 day of Sept., 1997, by a partnership consisting of Clyde W. Purcell, Mary Lou Purcell and Wayne Purcell, doing business as THE RIVERHOUSE, an Oregon partnership, hereinafter referred to as "Declarant".

WHEREAS, Declarant is the owner of the real property described in Exhibit "A", attached hereto and incorporated herein by reference. Declarant intends by this Declaration to impose upon the Properties mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of residential property within Scenic Heights, the planned unit development made subject to this Declaration and amendments thereto by the recording of this Declaration Declarant desires to provide a flexible and reasonable procedure for the overall development of the Properties and the interrelationship of the component residential associations, and to establish a method for the administration, maintenance, preservation, use, and enjoyment of such Properties as are now or may hereafter be subjected to this Declaration;

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

ARTICLE I: DEFINITIONS

Section 1. "Area of Common Responsibility" shall mean and refer to the Common Area, together with those areas, if any, within or upon a Lot, and the wall and adjacent landscaping along Mt Washington Dr. adjacent to Scenic Heights, the maintenance, repair, or replacement of which is the responsibility of the Association.

Section 2. "Bylaws" shall refer to the Bylaws of Scenic Heights Owners Association, Inc

Section 3. "Common Area" shall mean all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the Owners, including roadways.

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Section 4. "Common Expenses" shall mean and include the actual and estimated expenses of operating the Association, both for general and Parcel purposes, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to the Declaration, the Bylaws, and the Articles of Incorporation of the Association

Section 5. "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors of the Association.

Section 6. "Eligible Mortgage Holder" shall mean a holder, insurer, or guarantor of a first mortgage on a Lot who has requested notice of certain matters from the Association as hereinafter and in the Association's By-laws provided.

Section 7. "Eligible Votes" shall mean those votes available to be cast on the issue at hand. A vote which is for any reason suspended is not available to be cast.

Section 8. "Lot" shall mean a portion of the Properties other than the Common Area intended for any type of independent ownership and use as may be set out in this Declaration and as shall be shown on the plats of survey filed with this Declaration or amendments thereto. Where the context indicates or requires, the term Lot includes any structure on the Lot.

Section 9. "Majority" means those eligible votes, Owners, or other groups as the context may indicate totalling more than fifty (50%) percent of the total eligible number

Section 10. "Member" shall mean and refer to a person or entity entitled to membership in the Association, as provided herein.

Section 11. "Mortgage" means any mortgage, deed to secure debt, and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

Section 12. "Mortgagee" shall include a beneficiary or holder of a deed of trust, as well as a mortgagee.

Section 13. "Mortgagor" shall include the trustor of a deed of trust, as well as a mortgagor

Section 14. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of any Lot which is part of the Properties, but excluding any party holding the fee simple title merely as security for the performance of an obligation. Owner shall include the Declarant.

Section 15. "Person" means a natural person, a corporation, a partnership, trustee, or other legal entity.

Section 16. "Property or Properties" shall mean and refer to the real property described on page one of this Declaration and such additional real property as may be added in accordance with this Declaration.

Section 17. "Subsequent Amendment" shall mean an amendment to this Declaration which adds additional property to that covered by this Declaration. Such Subsequent Amendment may, but is not required to impose, expressly or by reference, additional restrictions and obligations on the land submitted by that Amendment to the provisions of this Declaration.

Section 18. "Scenic Heights" means the property subject to this official Declaration and consists of the real property described in the plat of River's Edge Village, Phase IV, City of Bend, Deschutes County, Oregon.

ARTICLE II: PROPERTY RIGHTS

Section 1. OWNER'S EASEMENT OF ENJOYMENT. Every Owner shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions

(a) The right of the Association to charge reasonable admission and other fees for the use of any facility now or hereafter situated or constructed upon the Common Area and to impose reasonable limits on the number of guests who may use the facilities.

(b) The right of the Association to suspend an Owner's voting rights and the right to use any of the facilities for any period during which any assessment of the Association against that Owner's Lot remains unpaid, and for any infraction by an Owner of the Association's rules and regulations for the duration of the infraction and for an additional period thereafter not to exceed thirty (30) days;

(c) The right of the Declarant, with regard to the Properties which may be owned for the purpose of development, to grant easements in and to the Common Area contained within the respective Properties to any public agency, authority, or utility for such purposes as benefits only the Properties or portions thereof and Owners or Lots contained therein.

(d) The right of the Association to borrow money for the purpose of improving the Common Area, or any portion thereof, for acquiring additional Common Area, or for constructing,

repairing, or improving any facilities located or to be located thereon, and to give as security for the payment of any such loan a mortgage conveying all or any portion of the common Area, provided two-thirds (2/3) of each Class of members present at a meeting called for such purpose shall approve; provided, however, the lien and encumbrance of any such mortgage given by the association shall be subject and subordinate to any and all rights, interests, options, easements, and privileges reserved or established in this Declaration for the benefit of Declarant or any Owner, or the holder of any mortgage, irrespective of when executed, given by Declarant or any Owner encumbering any Lot or other property located within Scenic Heights, and

(e) The right of the Association to dedicate or transfer all or any portion of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members of the Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved (i) by at least two-thirds (2/3) of the votes which those Class A members of the Association which are present or represented by proxy are entitled to cast at a meeting duly called for such purpose, and (ii) by the Class B members of the Association, so long as such membership shall exist

Article II, Section 1(c) may not be amended without the written consent of Declarant

Section 2. AERIALS AND ANTENNAS. Any radio or television or other aerial, antenna, dish, tower, or other transmitting or receiving structure, or support thereof, must be approved in writing prior to installation or erection by the New Construction Committee pursuant to Article X hereof.

Section 3. EXTERIOR LIGHTING. No exterior lighting fixture (other than standard fixtures approved by the New Construction Committee or other Modifications Committee or installed by Declarant) shall be installed within or upon any Lot without adequate and proper shielding of the fixture. No lighting fixture shall be installed that may become an annoyance or a nuisance to owners or occupants of adjacent properties. All modifications of exterior lighting must be approved in writing by the Modifications Committee, in advance, as provided in Article XI, Section 2, of the Declaration

Section 4. DELEGATION OF USE. Any Owner may delegate, in accordance with the By-laws of the Association and subject to reasonable rules, regulations, and limitations as may be adopted in accordance therewith, his or her right of enjoyment to the Common Area and facilities to the members of his or her family, tenants, and social invitees and shall be deemed to have made a delegation of all such rights to the occupants of any leased Lot

Section. 5. OWNER'S RIGHT TO INGRESS, EGRESS, AND SUPPORT Each Owner shall have the right to ingress and egress over, upon, and across the Common Area necessary for access to his or her Lot and shall have the right to lateral support for his or her Lot, and such rights shall be appurtenant to and pass with the title to each Lot.

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Section 6. USE OF LOTS. Except as may be otherwise expressly provided in this Declaration, each Lot shall be used for residential purposes only as a residence for a single family related by blood, adoption, or marriage; no trade or business of any kind may be conducted. Lease or rental of a Lot or any building thereon for residential purposes shall not be considered to be a violation of this covenant, so long as the lease is in compliance with reasonable rules and regulations as the Board of Directors may promulgate. Any lessee or tenant shall in all respects be subject to the terms and conditions of this Declaration, the By-laws, and the rules and regulations adopted hereunder.

Without the prior written consent of the Association's Board of Directors, nothing shall be done or kept on any Lot or on the Common Area or any part thereof to increase the rate of insurance on the Properties or any part thereof over what the Association, but for such activity, would pay. Noxious, destructive, or offensive activity, or any activity constituting an unreasonable source of annoyance, shall not be conducted on any Lot or on the Common Area or any part thereof, and the Association shall have standing to initiate legal proceedings to abate such activity. Each Owner shall refrain from any act or use of his or her Lot which could reasonably cause embarrassment, discomfort, or annoyance to other Owners, and the Board of Directors shall have the power to make and to enforce reasonable rules and regulations in furtherance of this provision.

Section 7. USE OF COMMON AREA. No planting or gardening shall be done, and no fences, hedges, or walls shall be erected or maintained upon the Common Area or upon any Lot, except in accordance with the initial construction of the improvements located thereon or as approved by the Association's Board of Directors or their designated representatives. No antennas may be erected upon the Property, except the Association may erect a master antenna serving the members. Except for the right of ingress and egress, the Owners of Lots may use the property outside their respective Lots only in accordance with reasonable regulations as may be adopted by the Association's Board of Directors or as is expressly provided herein. It is expressly acknowledged and agreed by all parties concerned that this Section is for the mutual benefit of all Owners and is necessary for the protection of all Owners.

Section 8. SIGNS. All advertising signs and billboards shall be erected, placed, or permitted only as allowed by the standards adopted by the New Construction Committee pursuant to Article X hereof.

Section 9. RULES AND REGULATIONS. The Board of Directors may establish reasonable rules and regulations concerning the use of the Common Area, facilities located thereon, and individual Lots. Copies of such regulations and amendments thereto shall be furnished by the Association to all Owners prior to the rules' effective date. Such regulations shall be binding upon the Owners, their families, tenants, guests, invitees, and agents until and unless such regulation, rule, or requirement shall be specifically overruled, cancelled, or modified by the Board or the Association in a regular or

special meeting by the vote of Class A members holding a majority of the total votes in the Association and by the vote of the Class B members, so long as such membership shall exist. The Board shall have the authority to impose reasonable monetary fines and other sanctions, and monetary fines may be collected by lien and foreclosure as provided in Article X.

Section 10. DECLARANT'S RESERVED EASEMENT. Notwithstanding any provisions contained in the Declaration to the contrary, Declarant hereby expressly reserves unto itself and its successors and assigns a nonexclusive, perpetual right, privilege, and easement with respect to Scenic Heights for the benefit of Declarant, its successors, and assigns over, under, in, and/or on Scenic Heights, without obligation and without charge to Declarant, for the purposes of construction, installation, relocation, development, sale, maintenance, repair, replacement, use, and enjoyment, and/or otherwise dealing with Scenic Heights and any other property now owned or which may in the future be owned by Declarant (such other property is hereinafter referred to as Additional Property). The reserved easement shall constitute a burden on the title to Scenic Heights and specifically includes, but is not limited to:

(a) The right of access, ingress, and egress for vehicular and pedestrian traffic over, under, on or in Scenic Heights; and the right to tie into any portion of Scenic Heights with driveways, parking areas, and walkways; and the right to tie in to and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services including, without limitation, electrical, telephone, natural gas, water, sewer, and drainage lines and facilities constructed or installed in, on, under and/or over Scenic Heights; and

(b) The right to construct, install, replace, relocate, maintain, repair, use, and enjoy signs, model residences, sales offices, construction offices and business offices as, in the sole opinion of Declarant, may be required, convenient, or incidental to the construction and sale by Declarant of residences in Scenic Heights or in any portion of the Additional Property

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

This Section may not be amended without the written consent of Declarant

Section 11. STORAGE AND PARKING OF VEHICLES. There shall be no outside storage or parking upon any Lot or the Common Area of any automobile, commercial vehicle, truck, tractor, mobile home or trailer (either with or without wheels), camper, camper trailer, boat or other

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watercraft, boat trailer, or any other transportation device of any kind, except for Owners within the parking spaces in the Owner's garage and for visitors temporarily parking in spaces and in accordance with rules and regulations designated and promulgated by the Board. No owners or tenants shall repair or restore any vehicle of any kind upon any Lot or Common Area, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility. No garage may be altered in such a manner that the number of automobiles which may reasonably be parked therein after the alteration is less than the number of automobiles that could have been reasonably parked in the garage as originally constructed.

Section 12. PETS. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on the Properties, except that no more than a total of four (4) dogs, cats, or other normal household pets may be kept in residences subject to rules and regulations adopted by the Association through its Board of Directors, provided that such pets are not kept, bred, or maintained for any commercial purpose. More than four (4) birds may be kept in residences so long as they are kept exclusively indoors and are not bred for commercial purposes.

Section 13. TRANSIENT RENTAL USE. No Owner or Owners of any unit within Scenic Heights shall be permitted to rent their unit to any person or persons for transient occupancy which shall be for a period of 30 days or less. A rental shall be defined as the use or possession or the right to use or possess for lodging or sleeping purposes any unit in Scenic Heights and rent shall mean the consideration charged whether or not received by the Owner for the occupancy of the unit any money, goods, labor, credits, property or other consideration valued in money without any deduction. Transient use shall not include a rental of any unit for a period of in excess of 30 consecutive calendar days. Owner and transient occupants shall be responsible for compliance with all provisions of the Declarations, Restrictions, Protective Covenants and Conditions of this document, and any and all rules and regulations promulgated by the Association to protect the natural environment, quiet enjoyment and quality of life of Scenic Heights.

ARTICLE III. MEMBERSHIP AND VOTING RIGHTS

Section 1. MEMBERSHIP. Every person or entity who is the record owner of a fee or undivided fee interest in any Lot that is subject to this Declaration shall be deemed to have a membership in the Association. Membership shall be appurtenant to and may not be separated from such ownership. The foregoing is not intended to include persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more persons, shall have more than one (1) membership per Lot owned. In the event the Owner of a Lot is more than one person or entity, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership, including the right to vote, may be exercised by a Member or the Member's spouse, but in

no event shall more than one (1) vote for each class of membership applicable to a particular Lot be cast for each Lot.

Section 2. VOTING. The Association shall have two (2) classes of membership, Class A and Class B, as follows:

(a) Class A. Class A Members shall be all Owners with the exception of the Class B Members if any.

Class A Members shall be entitled on all issues to one (1) vote for each Lot in which they hold the interest required for membership by Section 1 hereof, there shall be only one (1) vote per Lot; provided, however, no vote shall be cast or counted for any Lot not subject to assessment. When more than one person or entity holds such interest in any Lot, the vote for such Lot shall be exercised as those persons or entities themselves determine and advise the Secretary of the Association prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended in the event more than one person or entity seeks to exercise it.

Any Lots which are leased may, in the lease or other written instrument, assign the voting right appurtenant to that Lot to the lessee, provided that a copy of such instrument is furnished to the Secretary prior to any meeting.

(b) Class B. Class B Members shall be the Declarant and any successor of Declarant who takes title for the purpose of development and sale and who is designated as such in a recorded instrument executed by Declarant. The Class B Member shall originally be entitled to thirty (30) votes; this number shall be decreased by one (1) vote for each Class A Member existing at any one time. The Class B membership shall terminate and become converted to Class A membership upon the happening of the earlier of the following.

- (i) When the total outstanding Class A votes equal or exceed fifteen (15).
- (ii) January 1, 2006; or
- (iii) When in its discretion, the Declarant so determines.

From and after the happening of these events, whichever occurs earlier, the Class B Member shall be deemed to be a Class A Member entitled to one (1) vote for each Lot in which it holds the interest required for membership under Section 1 hereof. At such time, the Declarant shall call a meeting, as provided in the By-laws of the Association for special meetings, to advise the membership of the termination of Class B status.

ARTICLE IV MAINTENANCE

Section 1. ASSOCIATION'S RESPONSIBILITY. The Association shall maintain and keep in good repair the Area of Common Responsibility, such maintenance to be funded as hereinafter provided. This maintenance shall include, but not be limited to, maintenance, repair and replacement, subject to any insurance then in effect, of all landscaping and other flora, structures, roadways and improvements situated upon the Area of Common Responsibility.

Section 2. OWNER'S RESPONSIBILITY: Except as provided in Section 1 of this Article, all maintenance of the Lot and all part of the residence thereon shall be the responsibility of the Owner, and each Owner shall maintain and keep in good repair such property and improvements

ARTICLE V. INSURANCE

Section 1. INSURANCE. The Association's Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain insurance for all insurable improvements on the Common Area and may, but shall not be obligated to, by written agreement with any Parcel Committee (as defined in the By-laws of the Association) in the Properties subject to this Declaration, assume the insurance responsibility for the Properties subject to this Declaration against loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief. This insurance shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard.

In addition to casualty insurance on the Common Area, the Association may, but shall not under any circumstances be obligated to, obtain and continue in effect adequate blanket all-risk casualty insurance in such form as the Board of Directors deemed appropriate for the full replacement cost of all structures on the Lots. Costs of such coverage shall be a common expense to the Association, if carried on all Lots. If the Association elects not to obtain such insurance, then an individual Parcel may obtain such insurance as a common expense of the Parcel to be paid by Parcel Assessments. In the event such insurance is obtained by either the Association or a Parcel, the provisions of this Article shall apply to policy provisions, loss adjustment, and all other subjects to which this Article applies to insurance on the Common Area. All such insurance shall be for the full replacement cost. All such policies shall provide for a certificate of insurance for each Member to be furnished to the Association or Parcel, as applicable.

The Board shall also obtain a public liability policy covering the Common Area, the Association, and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents. The public liability policy shall have at least a \$500,000 single person limit as respects bodily injury and property damage, a \$1,000,000 limit per occurrence, and

a \$250,000 minimum property damage limit. Premiums for all insurance on the Common Area shall be common expenses of the Association; premiums for insurance provided to other associations or Parcels shall be charged to those associations or Parcels. The policy may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

In addition to the other insurance required by this Section, the Board shall obtain, as a common expense, worker's compensation insurance, if and to the extent necessary, and a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds. The amount of fidelity coverage shall be determined in the directors' best business judgment, but may not be less than three (3) months' assessments, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be cancelled or substantially modified without at least ten (10) days' prior written notice to the Association.

Section 2. INDIVIDUAL INSURANCE. By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that in the event that neither the Association or the Parcel Committee of the Parcel in which the Lot is located carries blanket all-risk casualty insurance on the Lot and structures constructed thereon as provided for in Section 1 of this Article V, (as they are not obligated to do) each individual Owner shall carry such insurance. Each individual Owner further covenants and agrees that in the event of a partial loss or damage and destruction resulting in less than total destruction, the individual Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction. In the event that the structure is totally destroyed and the individual Owner determines not to rebuild or to reconstruct, the individual Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction. A Parcel Committee may impose more stringent requirements regarding the standards for rebuilding or reconstructing structures on the Lot and the standard for restoring the Lot to its natural state in the event the Owner decides not to rebuild or reconstruct.

Section 3. DISBURSEMENT OF PROCEEDS. Proceeds of insurance policies shall be disbursed as follows:

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

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This is a covenant for the benefit of any mortgagee of a Lot and may be enforced by such mortgagee.

(b) If it is determined, as provided for in Section 3 of this Article, that the damage or destruction to the Common Area for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be disbursed in the manner as provided for excess proceeds in Section 3(a) of this Article V.

Section 4. DAMAGE AND DESTRUCTION.

(a) Immediately after the damage or destruction by fire or other casualty to all or any part of the Properties covered by insurance written in the name of the Association, the Board of Directors, or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Properties. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Properties to substantially the same condition in which they existed prior to the fire or other casualty.

(b) Any damage or destruction to the Common Area shall be repaired or constructed unless at least seventy-five (75%) percent of the total vote of the association shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No mortgagee shall have the right to participate in the determination of whether the Common Area damage or destruction shall be repaired or reconstructed.

(c) In the event that it should be determined by the Association in the manner described above that the damage or destruction of the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the Properties shall be restored to their natural state and maintained as an undeveloped portion of the Common Area by the Association in a neat and attractive condition.

Section 5. REPAIR AND RECONSTRUCTION: If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall use general funds or seek a special assessment as permitted in Article X, Section 4.

ARTICLE VI. NO PARTITION

Except as is permitted in the Declaration or amendments thereto, there shall be no physical partition of the Common Area or any part thereof, nor shall any person acquiring any interest in the Properties or any part thereof seek any such judicial partition until the happening of the conditions set forth in Section 3 of Article V in the case of damage or destruction, or unless the Properties have been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

ARTICLE VII. CONDEMNATION

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

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

ARTICLE VIII. RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 1. COMMON AREA. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements therein (including furnishings and equipment related thereto, if any), and shall keep it in good, clean, attractive, sanitary condition, order, and repair, pursuant to the terms

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and conditions of this Declaration and the By-laws.

Section 2. SERVICES. The Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Properties, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or with which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Properties or the enforcement of this Declaration. The Association may, but shall not be required to, arrange as an Association expense with third parties to furnish water, trash collection, sewer service, and other common services to each Lot.

Section 3. PERSONAL PROPERTY AND REAL PROPERTY FOR COMMON USE. The Association, through action of its Board of Directors, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold, or other property interests located within the properties described in Exhibit "A" or "B" conveyed to it by the Declarant.

Section 4. IMPLIED RIGHTS. The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-laws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

Section 5. SELF-HELP. In addition to any other remedies provided for herein, the Association or its duly authorized agent shall have the power to enter upon a Lot or any portion of the Common property to abate or remove, using such force as may be reasonably necessary, any erection, thing or condition which violates this Declaration, the By-laws, the rules and regulations, or the use restrictions. Unless an emergency situation exists, the Board shall give the violating Lot Owner ten (10) days' written notice of its intent to exercise self-help. All costs of self-help, including reasonable attorney's fees actually incurred shall be assessed against the violating Lot Owner and shall be collected as provided for herein for the collection of assessments.

Section 6. RIGHT OF ENTRY. The Association shall have the right, in addition to and not in limitation of all the rights it may have, to enter into units for emergency, security, or safety purposes, which right may be exercised by the association's Board of Directors, officers, agents, employees, managers and all police officers, firefighters, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after reasonable notice to the owner or occupant of the Unit.

ARTICLE IX. ASSESSMENTS

Section 1. PURPOSE OF ASSESSMENT. The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of Units, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors

Section 2. CREATION OF ASSESSMENTS. Each Owner of any Unit, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association; (a) annual assessments or charges; (b) special assessments, such assessments to be established and collected as hereinafter provided; and (c) specific assessments against any particular Lot which are established pursuant to the terms of this Declaration, including, but not limited to, reasonable fines as may be imposed in accordance with the terms of this Declaration. All such assessments, together with late charges, interest, not to exceed the maximum legal rate, costs, and reasonable attorney's fees actually incurred, shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made.

Section 3. COMPUTATION OF ASSESSMENT. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year, which shall include a capital contribution or reserve in accordance with a capital budget separately prepared. The Board shall cause the budget and the assessments to be levied against each Lot for the following year to be delivered to each member at least thirty (30) days prior to the end of the current fiscal year. The budget and the assessment shall become effective unless disapproved at a meeting by a Majority of the Owners. Notwithstanding the foregoing, however, in the event the membership disapproved the proposed budget or the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

Section 4. SPECIAL ASSESSMENTS. In addition to the other assessments authorized herein, the Association may levy special assessments in any year. So long as the total amount of special assessments allocable to each Lot does not exceed Five Hundred Dollars (\$500) in any one fiscal year, the Board may impose the special assessment. Any special assessment which would cause the amount of special assessments allocable to any Lot to exceed this limitation shall be effective only if approved by a Majority of the Class A members. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

Section 5. LIEN FOR ASSESSMENTS. All sums assessed against any Lot pursuant to this Declaration, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, as provided herein, shall be secured by a lien on such Lot in favor of the Association. Such

lien shall be superior to all other liens and encumbrances on such Lot, except for (a) liens for ad valorem taxes; or (b) liens for all sums unpaid on a first Mortgage or on any Mortgage to Declarant duly recorded in the land records of Deschutes County, Oregon, and all amounts advanced pursuant to such Mortgage and secured thereby in accordance with the terms of such instrument

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

Section 6. EFFECT OF NONPAYMENT OF ASSESSMENTS; REMEDIES OF THE ASSOCIATION. Any assessments which are not paid when due shall be delinquent. Any assessment delinquent for a period of more than ten (10) days shall incur a late charge in an amount as the Board may from time to time determine. The Association shall cause a notice of delinquency to be given to any member who has not paid within ten (10) days following the due date. If the assessment is not paid within thirty (30) days, a lien, as herein provided, shall attach and, in addition, the lien shall include the late charge, interest, not to exceed the maximum legal rate, on the principal amount due, and all late charges from the date first due and payable, all costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. In the event that the assessment remains unpaid after sixty (60) days, the Association may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage, or convey the Unit. No Owner may waive or otherwise except liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Unit

All payments shall be applied first to costs and attorneys' fees, then to late charges, then to interest, then to delinquent assessments, then to any unpaid installments of the annual assessment or special assessments which are not the subject matter of suit in the order of their coming due, and then to any unpaid installments of the annual assessment or special assessments which are the subject matter of suit in the order of their coming due.

Section 7. CAPITAL BUDGET AND CONTRIBUTION. The Board of Directors shall annually prepare a capital budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution, if any, in an amount sufficient to permit meeting the

projected capital needs of the Association, as shown on the capital budget, with respect to both amount and timing by annual assessments over the period of the budget. The capital contribution required shall be fixed by the Board and included within the budget and assessments, as provided in Section 3 of this Article. A copy of the capital budget shall be distributed to each member in the same manner as the operating budget.

Section 8. SUBORDINATION OF THE LIEN TO FIRST DEEDS OF TRUST AND FIRST MORTGAGES. The lien of the assessments, including interest, late charges, costs (including attorneys' fees) provided for herein, shall be subordinate to the lien of any first Mortgage upon any Lot. The sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from lien rights for any assessments thereafter becoming due. Where the Mortgagee of a first Mortgage of record or other purchaser of a Lot obtains title, his or her successors and assigns shall not be liable for the share of the common expenses or assessments by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all the Lots, including such acquirer, his or her successors and assigns.

Section 9. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS. The annual assessments provided for herein shall commence as to all Units then existing and subject to assessment under the Declaration on the first day of the month following the conveyance of the first Lot by the Declarant to a Class A member and shall be due and payable in a manner and on a schedule as the Board of Directors may provide. The first annual assessment shall be adjusted according to the number of months then remaining in that fiscal year. The date any Lot becomes subject to assessment hereunder shall be the date on which the later of the following occurs:

(a) The Lot becomes subject to the Declaration, or

(b) The appropriate official of Deschutes County, Oregon, issues a certificate of occupancy or its equivalent stating that the Lot is substantially complete and available for occupancy

Section 10. ASSESSMENTS BY DECLARANT. After the commencement of assessment payments as to any Lot, Declarant, if any, covenants and agrees to pay the full amount of the annual assessment for each occupied Lot it owns, notwithstanding anything contained herein to the contrary, the Declarant shall not be required to pay the annual assessment for unoccupied Lots that it owns.

Section 11. INTEREST, EXPENSES AND ATTORNEY FEES. Any amount not paid to the Association when due in accordance with this Declaration shall bear interest from the due date

until paid at a rate three percentage points per annum above the prevailing Portland, Oregon prime rate at the time, or such other rate as may be established by the Board of Directors, but not to exceed the lawful rate of interest under the laws of the State of Oregon. A late charge may be charged for each delinquent assessment in an amount established from time to time by resolution of the Board of Directors of the Association not to exceed thirty percent (30%) of such assessment. In the event the Association shall file a notice of lien, the lien amount shall also include the recording fees associated with filing the notice, and a fee for preparing the notice of lien established from time to time by resolution of the Board of Directors of the Association. In the event the Association shall bring any suit or action to enforce this Declaration, or to collect any money due hereunder to foreclose a lien, the Owner-defendant shall pay to the Association all costs and expenses incurred by it in connection with such suit or action, including a foreclosure title report, and the prevailing party in such suit or action shall recover such amount as the court may determine to be reasonable as attorneys' fees at trial and upon any appeal or petition for review thereof.

Section 11. ENFORCEMENT PROCEDURES In the event that any owner constructs or permits to be constructed on said owner's property an improvement contrary to the provisions of the Scenic Heights Declaration or of the Design Review Committee Rules and Guidelines, or in the event that an owner maintains or permits any improvement, condition or other thing on his or her property contrary to the provisions of the Scenic Heights Declaration or the Design Review Committee Rules and Guidelines, the Scenic Heights Owners Association, Inc. and/or the Design Review Committee may, no sooner than sixty (60) days after delivery to such owner of written notice of the violation, order the owner to cease and desist all work, construction, repair, alteration, landscaping and excavation of any kind, until such breach is remedied, and certified in writing by the Design Review Committee. The stop work order shall continue until the violation has been corrected as authorized by the Committee, as certified in writing by the Committee. If the owner/contractor/subcontractor refuses to stop work, a certified letter shall be sent to the property owner who is in violation. The letter shall describe what the violation is and require that all work be discontinued until the problem is rectified. A limit shall be placed on the amount of time allowed to correct the problem. In most cases, the time limit will be set at either twenty-four (24) or forty-eight (48) hours. In the event the written notice is ineffective or is breached, the Scenic Heights Owners Association, Inc. may seek an injunction to force compliance. A fine may also be levied in conjunction with the stop work order, in conjunction with a schedule of fines reviewed and approved on an annual basis by the Design Review Committee, and subject to the oversight and approval of the Scenic Heights Owners Association, Inc.

ARTICLE X. ARCHITECTURAL STANDARDS

The Board of Directors shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdictions decisions of either Committee established in subsections 1 and 2 of this Section X. This Article may not be amended without the Declarant's written

consent, so long as the Declarant owns any land subject to this Declaration or subject to annexation to this Declaration.

No construction, which term shall include within its definition staking, clearing, excavation, grading, and other site work, and no plantings or removal of plants, trees, or shrubs shall take place except in strict compliance with this Section, until the requirements thereof have been fully met, and until the approval of the appropriate Committee has been obtained.

Section 1. NEW CONSTRUCTION COMMITTEE. The New Construction Committee (NCC) shall have exclusive jurisdiction over all original construction on any portion of the Properties. The NCC shall prepare and, on behalf of the Board of Directors, shall promulgate design guidelines and application procedures. The standards and procedures shall be those of the Association, and the NCC shall have sole and full authority to prepare and to amend the standards and procedures. It shall make both available to Owners, builders, and developers who seek to engage in development of or construction upon all or any portion of the Properties and who shall conduct their operations strictly in accordance therewith. The Declarant to submit such properties expires, the Declarant retains the right to appoint all members of the NCC, which shall consist of at least three (3), but no more than five (5), persons until Declarant elects to surrender that right to the Board of Directors. There shall be no surrender of this right prior to that time, except in a written instrument in recordable form executed by Declarant. Upon the surrender of such right, the Board of Directors shall appoint the members in the same manner as provided in subsection 2 for the Modifications Committee.

Section 2. MODIFICATIONS COMMITTEE. The Modifications Committee (MC) shall consist of at least three (3) and no more than five (5) members, all of whom shall be appointed by the Board of Directors. At the time when 13 Lots have been sold, the MC shall be turned over to Scenic Heights Owners Association, Inc. The MC shall have exclusive jurisdiction over modifications, additions, or alterations made on or to existing Lots or structures containing on the Lots and the open space, if any, appurtenant thereto; provided, however, the MC may delegate this authority to the appropriate board or committee of any residential association subsequently created or subsequently subjected to this Declaration so long as the MC has determined that such board or committee has in force review and enforcement practices, procedures and appropriate standards at least equal to those of the MC. Such delegation may be revoked and jurisdiction reassumed at any time by written notice.

The MC shall promulgate detailed Standards and Procedure governing its area of responsibility and practice. In addition thereto, the following shall apply Plans and specifications showing the nature, kind, shape, color, size, materials, and location of such modifications, additions, or alterations, shall be submitted to the Modifications Committee for approval as to quality of workmanship and design and harmony of external design with existing structures, and as to location

in relation to surrounding structures, topography, and finish grade elevation. No permission or approval shall be required to repaint in accordance with an originally approved color scheme, or to rebuild in accordance with originally approved plans and specifications. Nothing contained herein shall be construed to limit the right of an owner to remodel the interior of his or her residence, or to paint the interior of his or her residence any color desired. In the event the MC fails to approve or to disapprove such plans or to request additional information reasonably required within forty-five (45) days after submission, the plans shall be deemed approved.

ARTICLE XI. MORTGAGEE RIGHTS

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

Section 1. NOTICES OF ACTION. An institutional holder, insurer, or guarantor of a first mortgage, who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lotnumber), (therefore becoming an eligible holder), will be entitled to timely written notice of:

- (a) Any proposed termination of the Association;
- (b) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Lot on which there is a first mortgage held, insured, or guaranteed by such eligible holder;
- (c) Any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the mortgage of such eligible holder, insurer, or guarantor, where such delinquency has continued for a period of sixty (60) days;
- (d) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or
- (e) Any proposed action which would require the consent of eligible holders, as required in Section 2 and 3 of this Article.

Section 2. OTHER PROVISIONS FOR FIRST LIEN HOLDERS To the extent possible under Oregon law:

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

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

Section 3. AMENDMENTS TO DOCUMENTS. The following provisions do not apply to amendments to the constituent documents or termination of the Association made as a result of destruction, damage, or condemnation pursuant to Section 2(a) and (b) in this Article, or to the addition of land in accordance with Article VIII.

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

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

- (i) Voting;
- (ii) Assessments, assessment liens, or subordination of such liens;
- (iii) Reserves for maintenance, repair, and replacement of the Common Area;
- (iv) Insurance or fidelity bonds;
- (v) Rights to use of the Common Area;
- (vi) Responsibility for maintenance and repair of the Properties;

- (vii) Expansion or contraction of the Properties or the addition, annexation, or withdrawal of Properties to or from the Association,
- (viii) Boundaries of any Lot,
- (ix) Leasing of Lots;
- (x) Imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer, or otherwise convey his or her Lot;
- (xi) Establishment of self-management by the Association where professional management has been required by an eligible holder, or
- (xii) Any provisions included in the Declaration, Bylaws, or Articles of Incorporation which are for the express benefit of holders, guarantors, or insurers of first mortgages on Lots.

Section 4. SPECIAL FFLMC PROVISION: So long as required by the mortgage corporation, the following provisions apply in addition to and not in lieu of the foregoing three Sections of this Article. Unless two-thirds (2/3) of the first mortgagees or Owners give their consent, the Association shall not:

- (a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Area which the Association owns, directly or indirectly (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Properties shall not be deemed a transfer);
- (b) Change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner;
- (c) By act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Lots and of the Common Area;
- (d) Fail to maintain fire and extended coverage insurance, as required by this Declaration; or
- (e) Use hazard insurance proceeds for any Common Area losses for other than the repair, replacement, or reconstruction of such Properties.

The provisions of this Section 4 shall not be construed to reduce the percentage vote that must be obtained from mortgagees or Owners where a larger percentage vote is otherwise required for any of the actions contained in this Section.

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

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

ARTICLE XII. GENERAL PROVISIONS

Section 1. DURATION. The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any Properties subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same.

Section 2. AMENDMENT. This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Units subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Units subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure

mortgage loans on Units subject to this Declaration, provided, however, any such amendment shall not adversely affect the title to any Owner's Lot. Owner shall consent thereto in writing. Further, so long as the Class B membership exists, Declarant may unilaterally amend this Declaration for any other purposes; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Lot Owner hereunder, nor shall it adversely affect title to any Lot without the consent of the affected Lot Owner.

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

Section 3. INDEMNIFICATION. The Association shall indemnify every officer and director against any and all expenses, including counsel fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or directors, may be entitled. The Association shall, as a common expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 4. EASEMENTS FOR UTILITIES. There is hereby reserved to the Association blanket easements upon, across, above, and under all property within the Community for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving the Community or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone, and electricity, as well as storm drainage and any other service such as, but not limited to, a master television antenna system, cable television system, or security system which the Association might decide to have installed to serve the Community. It shall be expressly permissible for the Association or its designee, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wire, conduits, cables, and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the

Board shall have the right to grant such easement.

Section 5. CONSTRUCTION AND SALE Notwithstanding any provisions contained in the Declaration to the contrary, so long as construction and initial sale of Residential Units shall continue, it shall be expressly permissible for Declarant to maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such residences, including, but not limited to, business offices, signs, model units, and sale offices, and the Declarant shall have an easement for access to such facilities. The right to maintain and carry on such facilities and activities shall include specifically the right to use residences owned by the Declarant and the clubhouse complex, if any, which may be owned by the Association, as models and sales offices. This Section may not be amended without the express written consent of the Declarant, provided, however, the rights contained in this Section 5 shall terminate upon the earlier of (a) twenty-five (25) years from the date this Declaration is recorded, or (b) upon the Declarant's recording a written statement that all sales activity has ceased

Section 6. GENDER AND GRAMMAR. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

Section 7. SEVERABILITY. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable

Section 8. CAPTIONS. The captions of each Article and Section hereof, as to the contents of each Article and Section are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

Section 9. PERPETUITIES. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now-living descendants of Elizabeth, Queen of England.

Section 10. ENFORCEMENT. This Declaration shall be specifically enforceable by Declarant or by any owner of any lot in Scenic Heights. Any breach of this Declaration shall subject the breaching party to any and all legal remedies, including damages or the destruction, removal or the enjoining of

any offending improvement or condition.

Section 11. ATTORNEY FEES. In the event that legal suit or action is instituted for the enforcement of this Declaration or for any remedy for the breach of this Declaration, the prevailing party shall recover that party's reasonable attorney fees incurred in such suit or action (or any appeal therefrom) as adjudged by the trial or appellate court.

IN WITNESS WHEREOF, the undersigned Declaration has executed this Declaration this 19 day of Sept., 1997.

Clyde W. Purcell
CLYDE W. PURCELL

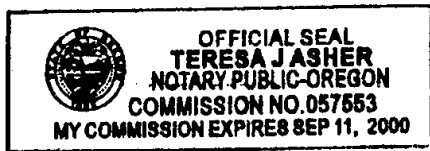
Mary Lou Purcell
MARY LOU PURCELL

Wayne Purcell
WAYNE PURCELL

STATE OF OREGON, County of Deschutes, ss:

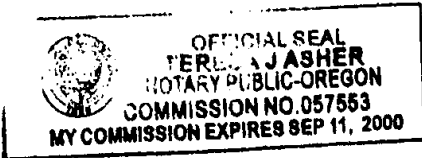
On 9/19, 1997, the undersigned, a Notary Public in and for said County and State, personally appeared Clyde W. Purcell known to me to be a partner of the partnership that executed the within instrument and acknowledged to me that such partnership executed the same.

Teresa J. Asher
Notary Public for Oregon
My Comm. Expires: 9/11/00



STATE OF OREGON, County of Deschutes, ss:

On 9/19, 1997, the undersigned, a Notary Public in and for said County and State, personally appeared Mary Lou Purcell known to me to be a partner of the partnership that executed the within instrument and acknowledged to me that such partnership executed the same.



Teresa J Asher
Notary Public for Oregon
My Comm. Expires: 9/11/00

STATE OF OREGON, County of Deschutes, ss:

On 9/19, 1997, the undersigned, a Notary Public in and for said County and State, personally appeared Wayne Purcell known to me to be a partner of the partnership that executed the within instrument and acknowledged to me that such partnership executed the same.



Teresa J Asher
Notary Public for Oregon
My Comm. Expires: 9/11/00

CONSENT

THE UNDERSIGNED owners of Lots within River's Edge Village Phase IV, hereby consent to and agree to be bound by the terms and conditions of the above Declaration of Covenants, Conditions and Restrictions for Scenic Heights.

ROBERT SHIMEK

Wayne Purcell
WAYNE PURCELL

DEBBIE SHIMEK

Cheri Purcell
CHERI PURCELL

Mary Lou Purcell
MARY LOU PURCELL

FRANK BAKER

STATE OF OREGON, County of Deschutes, ss:

On _____, 1997, the undersigned, a Notary Public in and for said County and State, personally appeared Wayne Purcell known to me to be a partner of the partnership that executed the within instrument and acknowledged to me that such partnership executed the same.

Notary Public for Oregon
My Comm. Expires: _____

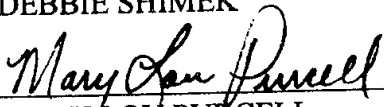
CONSENT

THE UNDERSIGNED owners of Lots within River's Edge Village Phase IV, hereby consent to and agree to be bound by the terms and conditions of the above Declaration of Covenants, Conditions and Restrictions for Scenic Heights.




ROBERT SHIMEK

WAYNE PURCELL

DEBBIE SHIMEK


MARY LOU PURCELL

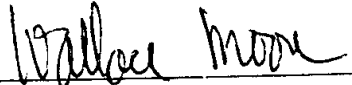
CHERI PURCELL


FRANK BAKER

MICHAEL MAGULA



KATHLEEN BAKER

GLORIA MAGULA


WALLACE MOORE

JERRY BONCELLI



ANN MOORE

VIVIAN BONCELLI

STATE OF OREGON, County of Deschutes, ss:

On _____, 1997, the undersigned, a Notary Public in and for said County and State, personally appeared Wayne Purcell known to me to be a partner of the partnership that executed the within instrument and acknowledged to me that such partnership executed the same.

Notary Public for Oregon
My Comm. Expires: _____

CONSENT

THE UNDERSIGNED owners of Lots within River's Edge Village Phase IV, hereby consent to and agree to be bound by the terms and conditions of the above Declaration of Covenants, Conditions and Restrictions for Scenic Heights.

ROBERT SHIMEK

WAYNE PURCELL

DEBBIE SHIMEK

CHERI PURCELL

MARY LOU PURCELL

FRANK BAKER

MICHAEL MAGULA

KATHLEEN BAKER

GLORIA MAGULA

JERRY BONCELLI

WALLACE MOORE

VIVIAN BONCELLI

ANN MOORE

Nancy Obama, Esq.

WASHINGTON FEDERAL SAVINGS

Michael Magula
MICHAEL MAGULA

JERRY BONCELLI

Gloria Magula
GLORIA MAGULA

VIVIAN BONCELLI

STATE OF OREGON, County of Deschutes, ss:

On _____, 1997, the undersigned, a Notary Public in and for said County and State, personally appeared Robert and Debbie Shimek, husband and wife, and executed the within instrument and acknowledged it to be their voluntary act and deed

Notary Public for Oregon
My Comm Expires _____

STATE OF OREGON, County of Deschutes, ss:

On _____, 1997, the undersigned, a Notary Public in and for said County and State, personally appeared Mary Lou Purcell and executed the within instrument and acknowledged it to be her voluntary act and deed.

Notary Public for Oregon
My Comm Expires _____

STATE OF OREGON, County of Deschutes, ss:

On June 4, 1997, the undersigned, a Notary Public in and for said County and State, personally appeared Wayne and Cheri Purcell, husband and wife, and executed the within instrument and acknowledged it to be their voluntary act and deed

Sarah L. Reynolds
Notary Public for Oregon
My Comm Expires 2-9-2001



STATE OF OREGON, County of Deschutes, ss:

On August 13, 1997, the undersigned, a Notary Public in and for said County and State, personally appeared Robert ~~and Debbie Shimok~~, husband ~~and wife~~, and executed the within instrument and acknowledged it to be their voluntary act and deed.



Sarah L. Reynolds
 Notary Public for Oregon
 My Comm. Expires: 2-9-2001

STATE OF OREGON, County of Deschutes, ss:

On August 12, 1997, the undersigned, a Notary Public in and for said County and State, personally appeared Mary Lou Purcell and executed the within instrument and acknowledged it to be her voluntary act and deed.



Sarah L. Reynolds
 Notary Public for Oregon
 My Comm. Expires: 2-9-2001

STATE OF OREGON, County of Deschutes, ss:

On _____, 1997, the undersigned, a Notary Public in and for said County and State, personally appeared Wayne and Cheri Purcell, husband and wife, and executed the within instrument and acknowledged it to be their voluntary act and deed.

 Notary Public for Oregon
 My Comm. Expires: _____

STATE OF OREGON, County of Deschutes, ss:

On _____, 1997, the undersigned, a Notary Public in and for said County and State, personally appeared Frank Baker and executed the within instrument and acknowledged it to be his voluntary act and deed.

Notary Public for Oregon
My Comm. Expires: _____

STATE OF OREGON, County of Deschutes, ss:

On _____, 1997, the undersigned, a Notary Public in and for said County and State, personally appeared Jerry and Vivian Boncelli, husband and wife, and executed the within instrument and acknowledged it to be their voluntary act and deed

Notary Public for Oregon
My Comm. Expires: _____

STATE OF OREGON, County of Deschutes, ss:

On May 30, 1997, the undersigned, a Notary Public in and for said County and State, personally appeared Michael and Gloria Magula, husband and wife, and executed the within instrument and acknowledged it to be their voluntary act and deed.

Sarah L. Reynolds

Notary Public for Oregon
My Comm. Expires: 2-9-2001



STATE OF OREGON, County of Deschutes, ss:

On June 27, 1997, the undersigned, a Notary Public in and for said County and State, personally appeared Frank Baker and Kathleen Baker and executed the within instrument and acknowledged it to be their voluntary act and deed.



Sarah L. Reynolds
Notary Public for Oregon
My Comm. Expires: 2/9/2001

STATE OF OREGON, County of Deschutes, ss:

On _____, 1997, the undersigned, a Notary Public in and for said County and State, personally appeared Jerry and Vivian Boncelli, husband and wife, and executed the within instrument and acknowledged it to be their voluntary act and deed.

Notary Public for Oregon
My Comm. Expires: _____

STATE OF OREGON, County of Deschutes, ss:

On _____, 1997, the undersigned, a Notary Public in and for said County and State, personally appeared Michael and Gloria Magula, husband and wife, and executed the within instrument and acknowledged it to be their voluntary act and deed.

Notary Public for Oregon
My Comm. Expires: _____

STATE OF OREGON, County of Deschutes, ss:

On 9/15, 1997, the undersigned, a Notary Public in and for said County and State, personally appeared Wallace and Ann Moore, husband and wife, and executed the within instrument and acknowledged it to be their voluntary act and deed.

Teresa J Asher
Notary Public for Oregon
My Comm. Expires: 9/11/00



- 38 - DECLARATIONS, RESTRICTIONS, PROTECTIVE
COVENANTS & CONDITIONS (RSL:RIVERSEDG.013)

STATE OF OREGON, County of Deschutes, ss:

On _____, 1997, the undersigned, a Notary Public in and for said County and State, personally appeared Wallace and Ann Moore, husband and wife, and executed the within instrument and acknowledged it to be their voluntary act and deed.

Notary Public for Oregon
My Comm. Expires: _____

**ACKNOWLEDGEMENT OF PERSON
SIGNING IN A REPRESENTATIVE CAPACITY**

STATE OF OREGON)
) ss.
COUNTY OF DESCHUTES)

I certify that I know or have satisfactory evidence that NANCY O'CONNOR

[Name(s) of person(s)]

is/are the person(s) who appeared before me, and said person(s) acknowledged that (he/she/they) signed this instrument, on oath stated that (he/she/they) was/were authorized to execute the instrument and acknowledged it as the BRANCH MANAGER

(Type of Authority, e.g., Officer, Trustee)

of WASHINGTON FEDERAL SAVINGS

(Name of the Party on Behalf of Whom the Instrument was Executed)

to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

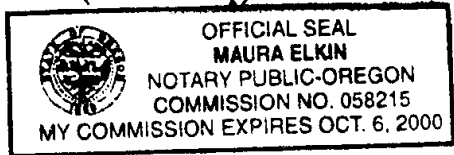
Dated: 9-09-97

Maura Elkin

(Signature)

Notary Public in and for the State of OREGON,
residing at BEND, OREGON
My commission expires OCTOBER 6, 2000

(Seal or Stamp)



STATE OF OREGON)
COUNTY OF DESCHUTES) SS.

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:

97 SEP 22 PM 3:54

MARY SUE PENHOLLOW
COUNTY CLERK

BY: *Gnowski* DEPUTY
NO. 97-34543 FEE 170-
DESCHUTES COUNTY OFFICIAL RECORDS