

97-23259

**AMENDED AND RESTATED****MASTER DESIGN****FOR****BLACK BUTTE RANCH**

The Black Butte Ranch Association hereby restates and amends the Master Design of Black Butte Ranch to govern, control, and guide the development, ownership, and maintenance of all of the real property and the improvements thereon at Black Butte Ranch, Oregon, whether held by private parties or held by the Black Butte Ranch Association, its subsidiaries or affiliates, including, without limitation, all of the real property described in the attached Exhibit "A."

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 JUL -2 AM 7:57

BY  DEPUTY

NO **97-23259** FEE **150-**  
DESCHUTES COUNTY OFFICIAL RECORDS

**AFTER RECORDING RETURN TO:**

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453 - 1974

**BLACK BUTTE RANCH**

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Restated and Amended Master Design

Master Design

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**BLACK BUTTE RANCH  
MASTER DESIGN  
Table of Contents**

453 - 1975

<b>Objectives.....</b>	<b>1</b>
<b>SECTION 1. Definitions .....</b>	<b>2</b>
1.1 "Architectural Review Committee" .....	2
1.2 "Assessment".....	2
1.3 "Black Butte Ranch" or the "Ranch".....	2
1.4 "Black Butte Ranch Association" or the "Association".....	2
1.5 "Black Butte Ranch Declaration".....	2
1.6 "Black Butte Ranch Master Design".....	2
1.7 "Black Butte Ranch Rules and Regulations" or the "Ranch Rules and Regulations".....	2
1.8 "Board of Directors" or the "Board".....	2
1.9 "Business Invitee".....	2
1.10 "Common Area".....	2
1.11 "Condominium Association".....	3
1.12 "Condominium".....	3
1.13 "General Fund".....	3
1.14 "Guest".....	3
1.15 "Lessee".....	3
1.16 "Lot".....	3
1.17 "Manager of Black Butte Ranch" or "Manager".....	3
1.18 "Miscellaneous Ranch Properties".....	3
1.19 "Private Area".....	4
1.20 "Private Way".....	4
1.21 "Resort Properties".....	4
1.22 "Section".....	4
1.23 "Semi-Public Recreational or Service Area".....	4
1.24 "Special Use Area".....	4
1.25 "Unit".....	4
1.26 "Unit Owner" or "Owner".....	4
<b>SECTION 2. Subjection of Property to the Master Design.....</b>	<b>4</b>
2.1 Filing of Declaration.....	4
2.2 State in Lease.....	4
<b>SECTION 3. Land Classifications and Uses Within         Black Butte Ranch.....</b>	<b>5</b>
3.1 Classifications.....	5
3.2 Private Areas.....	5
3.3 Private Ways.....	5
3.4 Common Areas.....	6

3.5	Semi-Public Recreational or Service Areas.....	6
3.6	Special Use Areas.....	7
3.7	Resort Properties.....	7
3.8	Miscellaneous Ranch Properties.....	8
3.9	General Restrictions.....	8
<b>SECTION 4. Consolidation of Lots Within Private Areas.....</b>		<b>8</b>
<b>SECTION 5. Black Butte Ranch Rules and Regulations.....</b>		<b>9</b>
5.1	Rules and Regulations.....	9
5.2	Petition to Amend Rules and Regulations.....	9
5.3	Guidelines for Rules and Regulations.....	10
<b>SECTION 6. Assessments and General Fund.....</b>		<b>10</b>
6.1	Imposition of Regular Assessments.....	10
6.2	Prepayment of Regular Assessment.....	11
6.3	Increase in Maximum Amount of Assessment.....	11
6.4	Special Assessments.....	11
6.5	Reserve for Major Repairs and Replacements.....	12
6.6	Joint and Several Liability.....	12
6.7	General Fund.....	12
6.8	Annual Accounting.....	13
<b>SECTION 7. Black Butte Ranch Association.....</b>		<b>14</b>
7.1	Powers of the Association.....	14
7.2	Limitation of Liability.....	15
7.3	Board Actions Requiring Prior Owner Approval.....	15
7.4	Annual Capital Expenditures.....	17
7.5	Voting by Association Members.....	17
<b>SECTION 8. Architectural Review Committee.....</b>		<b>17</b>
8.1	Function of Architectural Review Committee.....	17
8.2	Scope of Authority.....	18
8.3	Members.....	18
8.4	Action.....	18
8.5	Duties and Rules.....	18
8.6	Non-Waiver or Precedent.....	19
8.7	Liabilities.....	19
8.8	Right of Appeal.....	19
<b>SECTION 9. Enforcement.....</b>		<b>19</b>
9.1	General Provisions.....	19
9.2	Violation of a Black Butte Ranch Declaration by a Non-Qualifying Improvement.....	19
9.3	Default in Payment of Assessments and Charges.....	20
9.4	Right of Entry.....	20

9.5	Interest.....	20
9.6	Expenses and Attorneys' Fees.....	20
9.7	Non-Exclusiveness and Accumulation of Remedies.....	21
<b>SECTION 10. Timeshare Plans.....</b>		<b>21</b>
<b>SECTION 11. Miscellaneous Provisions.....</b>		<b>22</b>
11.1	Amendment and Repeal.....	22
11.2	Joint Owners.....	22
11.3	Construction; Severability; Number; Captions.....	23
11.4	Disclaimer.....	23
11.5	Termination.....	23
11.6	Notices.....	23



## BLACK BUTTE RANCH MASTER DESIGN

As amended and restated effective 3 May 1997.

A statement of the Design formulated for and utilized in the development, ownership, and maintenance of Black Butte Ranch, containing, among other things, provisions which subject property to certain easements, restrictions, assessments, penalties, and liens.

### Objectives

Black Butte Ranch is a residential development of 1,830 acres encompassing approximately 1250 home sites located in western Deschutes County, Oregon. The Ranch was created and designed as a community which would provide an unusually attractive environment for permanent and vacation homes. The Ranch was originally organized under the unified development plan embodied in this declaration. While the original conceptual design for the Ranch envisioned a number of separate geographically-defined sections retaining their organizational identity within the confines of Black Butte Ranch, the fully developed reality is a unified entity embracing the individual sections in a single planned development. While each of the subsections within the Ranch has followed its own development plan with its own restrictions embodied in a separate recorded declaration, such declarations and the restrictions they contain have been incorporated in and supplemented by those restrictions which govern the Ranch itself. Exceptions to the above exist with respect to the Lodge, Country House, and Golf Course Condominium sections whose organizational identity has been retained and whose provisions serve to supplement those governing the Ranch. Black Butte Ranch property owners enjoy distinct advantages on an economic basis through the sharing of the costs related to the private ways, common areas, and recreational and service facilities, which are and will remain available for use by all property owners, their lessees and guests. By providing and enforcing high standards for the improvement and maintenance of private and non-private areas within the Ranch, the Black Butte Ranch Association intends to ensure that private property within the Ranch will maintain and return maximum value for those who purchase it. The Association has assumed overall responsibility for the administration of the Ranch.

**SECTION 1. Definitions** When used herein, the following terms shall have the following meanings:

- 1.1 "Architectural Review Committee" shall mean the committee appointed pursuant to the provisions of Section 8 herein.
- 1.2 "Assessment" shall mean any assessment imposed in accordance with the provisions of Section 6 herein.
- 1.3 "Black Butte Ranch" or the "Ranch"; shall mean that real property described in the records of deeds of Deschutes County, Oregon together with any additional real property which may be acquired by the Black Butte Ranch Association and with respect to which the Association has filed a declaration in the records of deeds of Deschutes County, Oregon providing that such property shall be a part of Black Butte Ranch
- 1.4 "Black Butte Ranch Association" or the "Association" shall mean the association organized as described in Section 7 herein.
- 1.5 "Black Butte Ranch Declaration" or "Ranch Declaration" shall mean any instrument which subjects an area within Black Butte Ranch to the Master Design.
- 1.6 "Black Butte Ranch Master Design" and "Master Design" shall mean this instrument, together with any amendments or supplements thereto.
- 1.7 "Black Butte Ranch Rules and Regulations" or the "Ranch Rules and Regulations" shall mean the rules and regulations adopted as provided in Section 5 herein.
- 1.8 "Board of Directors" or the "Board" shall mean the duly elected Board of Directors of the Black Butte Ranch Association.
- 1.9 "Business Invitee" shall mean a person who is in Black Butte Ranch for a business purpose of either the invitee or his invitor with the permission or pursuant to the invitation of an owner, lessee, the Black Butte Ranch Association, or its subsidiary, the Black Butte Ranch Corporation. The rights, obligations, and characteristics of this class of visitors are further defined in the Black Butte Ranch Rules and Regulations.
- 1.10 "Common Area" shall mean any area which is designated as such in a Black Butte Ranch Declaration or in the plat of a section along with any improvements constructed thereon.

- 1.11 "Condominium Association" shall mean any association of owners of Condominiums as defined in Section 1.12.
- 1.12 "Condominium" shall mean any property in Black Butte Ranch submitted to unit ownership in the manner provided by the Oregon Revised Statutes relating to Condominiums, as such statutes may be amended.
- 1.13 "General Fund" shall mean the fund established pursuant to Section 6 herein.
- 1.14 "Guest" shall mean any person other than a Business Invitee who is in Black Butte Ranch at the invitation of an owner or lessee at Black Butte Ranch. The term "Guest", as used herein and further defined in the Black Butte Ranch Rules and Regulations, shall include two distinct categories of visitors to Black Butte Ranch:
  - (a) "Guests of Owners and Lessees in Residence" shall mean those visitors to Black Butte Ranch pursuant to the invitation or with the permission of an Owner or Lessee whose presence on the Ranch coincides with that of said Owner or Lessee.
  - (b) "Guests of Owners and Lessees not in Residence" shall mean those visitors to Black Butte Ranch who are present on the Ranch pursuant to the invitation or with the permission of an Owner or Lessee while said Owner or Lessee is not in residence at the Ranch, including any person who is present on the Ranch at the invitation of such a guest.
- 1.15 "Lessee" shall mean that person or persons occupying a unit in Black Butte Ranch subject to a formal, written lease agreement, the duration of which is at least 30 calendar days.
- 1.16 "Lot" shall mean each lot described in any plat of a section which is designated as a private area together with any single family dwelling constructed thereon. If in any case a lot owner shall have consolidated a lot or portion thereof with another lot in the manner set forth in Section 4 herein, then the area consolidated shall be considered one lot.
- 1.17 "Manager of Black Butte Ranch" or "Manager" shall mean the Black Butte Ranch Association or its designated representative.
- 1.18 "Miscellaneous Ranch Properties" shall mean those properties referred to in Section 3.8



- 1.19 "Private Area" shall mean any area which is designated as such in a Black Butte Ranch Declaration or in the plat of a section.
- 1.20 "Private Way" shall mean any area which is designated as such in the plat of a section or in a Black Butte Ranch Declaration or which is dedicated to such use by the Black Butte Ranch Association.
- 1.21 "Resort Properties" shall mean those properties referred to in Section 3.7 herein.
- 1.22 "Section" shall mean any area subjected to the Master Design in a Ranch Declaration which area contains private areas for residential use, together with any areas which may be annexed thereto.
- 1.23 "Semi-Public Recreational or Service Area" shall mean any area devoted to a recreational or service facility which is made available for use by the public as well as by the owners of Black Butte Ranch, their lessees and guests, as provided in Section 3.5 herein.
- 1.24 "Special Use Area" shall mean any area designated by the Black Butte Ranch Association for the benefit of the owners of Black Butte Ranch as provided in Section 3.6 herein.
- 1.25 "Unit" shall mean each lot described in any plat of a section which is designated as a private area, any condominium within a section.
- 1.26 "Unit Owner" or "Owner" shall mean the person or persons who hold legal title to any unit unless provision is made in the instrument creating a section that a lessee or other person entitled to possession of a unit shall be the unit owner, in which case the person so designated shall be the unit owner. The term "Owner" shall include, for most purposes, the immediate family of such "Owner" as defined in the Black Butte Ranch Rules and Regulations.

## SECTION 2. Subjection of Property to the Master Design

Property within Black Butte Ranch may be subjected to the Master Design by either of the following methods:

- 2.1 **Filing of Declaration** The Association may file a declaration in the records of deeds of Deschutes County, Oregon, providing that a particular area shall be subject to the Master Design, or;
- 2.2 **State in Lease.** The Association may state in any lease that an area described in the lease shall be subject to the Master Design. Property subjected to the Master Design pursuant to a lease shall be withdrawn

from the Master Design automatically upon termination or expiration of the lease pursuant to which the property was subjected to the Master Design except to the extent that provision to the contrary is made in such lease.

### **SECTION 3. Land Classifications and Uses Within Black Butte Ranch**

- 3.1 **Classifications.** All lands located within Black Butte Ranch have been subjected to the Master Design. Such lands are classified as either private ways, private areas, common areas, special use areas, semi-public recreational or service areas, resort properties or miscellaneous Ranch properties. With the exception of the private areas, title to all such lands shall be held and retained by Black Butte Ranch Association, or any subsidiary thereof, the Black Butte Ranch Rural Fire Protection District, or the Black Butte Ranch Service District, subject to any easements granted with respect to such lands for utility, cable TV, or public emergency purposes and further subject to the rights of unit owners, their lessees, or guests to the use of such areas as herein provided. The limited conditional use of private ways, common areas, special use areas, semi-public recreational or service areas, or miscellaneous Ranch properties by members of the general public shall be permitted as otherwise provided within the Master Design.
- 3.2 **Private Areas.** Restrictions, rules, and regulations governing the use of private areas within a particular home site section are set forth in the Black Butte Ranch Declaration used to create the section. By accepting a deed or lease to a private area within a section, the grantee is deemed to have covenanted that he will use and permit the use of the property only in accordance with, and that he will abide by and cause all those who come upon his premises to abide by, the restrictions, covenants and conditions contained in the Master Design and in the Ranch Declaration creating the section and in the rules and regulations promulgated hereunder; that he will pay to the Association all amounts provided for in the Master Design and such Black Butte Ranch Declaration; and that his property shall be subject to a lien or liens as provided in such instruments. For the protection of all owners, their lessees and guests, the Association shall be generally responsible for the enforcement of such restrictions, covenants, conditions, rules and regulations.
- 3.3 **Private Ways.** Each owner is hereby granted a non-exclusive easement to use private ways for the purposes of walking or traveling thereon by appropriate means. Each owner may permit his lessees, guests, and business invitees to use the private ways for such purposes. The easement herein granted shall be appurtenant to and assignable with the unit with respect to which it is granted, but shall not otherwise be

assignable. Use of private ways shall be subject to the Black Butte Ranch Rules and Regulations. The Association may also grant free access on private ways to police, fire and other public officials, to employees of utility companies serving the Ranch, and to such other persons to whom the Association reasonably believes access should be given for the benefit of the owners. The Board, in its discretion, may dedicate private ways to the public. The Board shall be deemed to have dedicated such ways to the public only if it shall file in the records of Deschutes County, Oregon, an instrument clearly evidencing its intention to dedicate such ways to the public.

- 3.4 **Common Areas.** With the exception of the common areas referred to in Section 3.6, each owner is hereby granted a non-exclusive easement to use common areas for such recreational purposes as may be permitted by the Black Butte Ranch Rules and Regulations and in the manner permitted therein. Each owner may permit his lessees and guests to use common areas for such purposes and in such manner. Common areas shall not be platted or otherwise divided into parcels for residential use. The Board may develop special recreational or service facilities of a permanent nature on portions of the common areas for the general use and benefit of all owners, their lessees and guests, subject to any requirement set forth herein for obtaining a vote of prior approval by the owners. The Board may from time to time permit the use of designated portions of common areas for temporary recreational uses by owners, their lessees or guests, or by non-owner sponsors of athletic or sporting events or tournaments, provided that (i) adequate provision is made to protect the Association from incurring any loss arising from such temporary use, and (ii) the Association will be held harmless from any liability for damage or injuries arising from such temporary use. The easement and rights herein granted shall be appurtenant to and assignable with the unit in respect of which it is granted, but shall not otherwise be assignable. The Board may, in its discretion, use common areas for the purpose of the location of utilities thereon. The Board may bar any unit owner, members of his family, his lessees, and his guests from using common areas and the improvements thereon during periods in which the owner's assessments are delinquent.
- 3.5 **Semi-Public Recreational or Service Areas.** The Association has determined that it is possible to make certain kinds of recreational and service facilities available to the owners on an economic basis only if the general public is allowed to use such facilities on a fee basis. Therefore, the Board may subject areas to the Master Design which will constitute "semi-public recreational or service areas" if each of the following conditions is met:



- (a) Provision must be made for the use of the facility by the owners, their lessees and guests in the manner permitted by the Ranch Rules and Regulations.
- (b) Fees charged owners, their lessees and guests for the use of the facility shall be no higher and may be less than those charged members of the public for an equivalent use or service.
- (c) The Board may, in its discretion, convert any semi-public recreational or service area into a common area on either a permanent or temporary basis at any time it deems this to be to the general benefit of the owners.

3.6 **Special Use Areas.** The common areas which consist of Parcel A-2 (Big Meadow) and Parcel A-18 (Glaze Meadow) as described in Exhibit A attached to the deed dated May 22, 1982 between Brooks Resources Corporation, as grantor, and Black Butte Ranch Association, as grantee, shall constitute "special use areas." The Board may permit the use of such areas by third parties either by lease or otherwise, even if such use is of a nature that might require that owners be barred from such areas while they are being so used. Such special uses shall be limited to that of sewer pumping and effluent disposal facilities in accordance with applicable Oregon laws, or such other uses which are typical or traditional to a Central Oregon ranch environment, such as the grazing of horses or cattle, and which will serve to enhance the attractiveness and quality of the Ranch. Permanent improvements or structures, whether for residential, commercial, or any other use, other than for fencing, bike paths, designated walkways, and items deemed essential to maintain adequate stream flow, shall not be placed in such special use areas.

3.7 **Resort Properties.** "Resort Properties" shall include the following properties including any additions or extensions thereto:

- (a) the Golf courses at Black Butte Ranch, including the related Pro Shops, Driving Ranges, practice areas, maintenance shops and storage areas and designated parking areas;
- (b) the Black Butte Ranch Lodge, including the adjacent grassy areas;
- (c) the Glaze Meadow Tennis Shop and the leased Tennis Courts.
- (d) the Sport Shop and Pool Place restaurant adjacent to the Lodge Pool.
- (e) the Ranch entrance area, including the Entrance Building and related parking areas; and,
- (f) the General Store and Stable areas, including the related fenced or parking areas.

Title to the Resort Properties shall be held by a subsidiary of the Black Butte Ranch Association. The Black Butte Ranch Corporation shall, either on its own behalf or through its agents or licensees, act as the exclusive operator of all of the commercial resort activities conducted at Black Butte Ranch.

- 3.8 **Miscellaneous Ranch Properties.** "Miscellaneous Ranch Properties" or miscellaneous properties shall include those properties within the boundaries of Black Butte Ranch subject to the Master Design which are used in connection with activities of a service nature, such as utility, maintenance and administrative office activities. It shall also include any other properties located within Black Butte Ranch which do not fall within the meaning of any other land classification as provided within this Section 3. Use of these properties shall be determined by the Board.
- 3.9 **General Restrictions.** No activity will be permitted within the boundaries of Black Butte Ranch which will be unreasonably injurious to land or vegetation. There shall be no discharge of firearms within the boundaries of Black Butte Ranch. The use of fireworks shall not be permitted within the boundaries of Black Butte Ranch. Except as otherwise specifically authorized by action of the Association Board, the operation by any person of a trail bike, motorcycle, snowmobile, or any other motorized non-transportation or off-road vehicle is prohibited within the boundaries of Black Butte Ranch. With the exception of improvements located in a private area which have been authorized and approved by the Architectural Review Committee, no temporary or permanent improvements shall be erected within the boundaries of Black Butte Ranch without the prior authorization of the Association Board. The foregoing general restrictions shall not be all inclusive but may be amended and expanded from time to time as the Association Board shall deem necessary and appropriate. Additions to these general restrictions shall be incorporated in the Ranch Rules and Regulations.

#### SECTION 4. Consolidation of Lots Within Private Areas

Whenever a person shall own all of a lot restricted to single family residence use within a private area (the "basic lot"), together with one or more contiguous lots or contiguous portions thereof, also restricted to single family residential use (the "additional lot" or "additional portion"), and shall wish to consolidate the basic lot and the additional lot or additional portion, he may do so. The consolidation shall be effected by the owner's filing, in the records of deeds of Deschutes County, Oregon, a declaration stating that the two areas are consolidated.

The consolidation provided for in this section shall have the following effects:

- (a) The consolidated areas shall constitute one lot for all purposes under the Master Design and under the Section Declaration for the section in which the consolidated areas are located.
- (b) Only one single family residence may be constructed or maintained on the consolidated areas.
- (c) No residence or other structure may be placed upon the remainder of a lot, a portion of which was consolidated with another lot but which remainder has not been consolidated with another lot, unless the area of such remainder constitutes at least 95 percent of the original area of the lot.
- (d) Areas which have once been consolidated may at no time in the future be partitioned, unconsolidated or otherwise subdivided.

The total number of Units at Black Butte Ranch shall not exceed 1253 units.

## **SECTION 5. Black Butte Ranch Rules and Regulations**

- 5.1 **Rules and Regulations.** The Board of Directors shall adopt rules, to be known as the Black Butte Ranch Rules and Regulations, dealing with the manner in which Owners, their lessees, and guests are entitled to use the private ways, common areas (including the recreational facilities located thereon), semi-public recreational or service areas and special use areas. Such rules shall also contain administrative provisions for the enforcement of the Black Butte Ranch Rules and Regulations, the assessment of fines or penalties for rules violations, and appeals procedures.
- 5.2 **Petition to Amend Rules and Regulations.** A petition signed by five percent (5%) of the owners eligible to vote proposing one or more amendments to the Black Butte Ranch Rules and Regulations must be considered by the Association Board. The Board may, in its discretion, either approve, reject or abstain from acting on the proposed amendments. In the event that the Board does not approve such a petition, the petitioners may demand that the proposed amendments be referred to a vote of the owners, provided that such amendments have been resubmitted to the Board along with a petition signed by at least fifteen percent (15%) of the owners eligible to vote, and the board shall thereupon promptly submit the proposed amendments to the owners for approval. The proposed amendments shall be adopted according to voting provisions set forth in Section 7.5. To the extent



provided for in any Ranch Declaration, the Black Butte Ranch Rules and Regulations may provide for the manner in which private areas may be used. Adoption, amendment or repeal of any such rules and regulations applicable to private areas shall be in accordance with procedures set forth in such Ranch Declarations.

**5.3 Guidelines for Rules and Regulations.** Black Butte Ranch Rules and Regulations may, among other things, provide for any of the following:

- (a) For speed, parking, and other traffic controls and restrictions upon the types of vehicles which may use private ways.
- (b) For the times and manner in which the spaces within common areas may be used by owners, their lessees and guests.
- (c) For charges for the use of recreational facilities and for services to be supplied by the Association.
- (d) For the control of noise, control of litter, and disposal of trash and for the personal conduct of owners, their lessees and guests, while on the Ranch.
- (e) For the conditions upon which the guests of owners and lessees at the Ranch will be entitled to access to private ways, common areas, and semi-public recreational or service areas and for the terms and conditions upon which guest access passes will be issued.

All rules and regulations must be applicable on a nondiscriminatory basis. However, provisions uniformly applicable to a class of persons shall not be deemed discriminatory if the Association shall have defined the class based on reasonable economic or business considerations such as supervision, security, or the adequacy of facilities and services. The foregoing enumeration is intended to be descriptive and should not be construed to be all-inclusive. A current copy of the Ranch Rules and Regulations shall be kept on file at the principal office of the Association at all times. Such Rules and Regulations shall have the same force and effect as if set forth herein as part of the Master Design. Each unit owner shall be given a copy of such rules and regulations and copies of any changes thereto when made.

## **SECTION 6. Assessments and General Fund**

**6.1 Imposition of Regular Assessments.** The Black Butte Ranch Association shall have the right to impose an assessment against each unit owner, such assessments to be applied uniformly to all units. On or before December 1 of each year, the Board of Directors of the Black

Butte Ranch Association shall determine the amount of the assessment to be imposed during the ensuing calendar year and shall notify each person who is then an owner of the amount of the assessment to be imposed for such year. The amount of such assessment may, at the sole discretion of the Board, be increased by up to a maximum of 6 percent above the amount of the regular assessment imposed during the preceding year. Authorization for any assessment increase in excess of the above maximum must be obtained from the Association's membership utilizing the procedure specified in Section 6.3.

- 6.2. **Prepayment of Regular Assessment.** Any owner who shall pay the assessment to be imposed for all 12 months of the ensuing calendar year prior to January 1 of such year shall be entitled to a discount in the amount of five percent (5%) of the gross amount assessed for such 12 month period. Assessments which are not so prepaid shall be paid on or before the first day of the month with respect to which they are imposed. In the event that a person shall acquire a unit or his unit shall first become subject to assessment during the course of a calendar month, his first assessment shall come due on the first day of the following month. New owners shall be jointly and severally liable for the payment of any assessments which remain unpaid at the time of their acceptance of legal title to a unit in Black Butte Ranch.
- 6.3. **Increase in Maximum Amount of Assessment.** In the event that the Association Board shall deem the General Fund to be inadequate for the purposes for which such fund is to be maintained, the regular assessment authorized in Section 6.1 may be increased above the maximum amount specified in said Section 6.1 provided that such increase shall have received the prior approval of the owners according to voting provisions set forth in Section 7.5. Except as otherwise specifically approved by the vote of the owners, such increase in the maximum amount of assessment shall be effective only as to the forthcoming calendar year to which such regular assessment under Section 6.1 shall apply, or to the remaining portion of such calendar year in the case of an increase approved after the commencement of a calendar year period.
- 6.4. **Special Assessments.** In the event that the Board deems it to be to the advantage of the owners to impose a special assessment to provide funds for a special project or purpose, to repay a loan, or to meet an unanticipated need, it may impose such a special assessment, provided that the amount of the assessment and the purpose for which it will be imposed shall be approved in writing according to voting provisions set forth in Section 7.5. All special assessments shall be applied uniformly to all units.



- 6.5 **Reserve for Major Repairs and Replacements.** The Association Board shall maintain a Reserve for Major Repairs and Replacements for the purpose of assuring adequate funding of the estimated costs to replace each of the Association owned properties, including any major or significant amounts of a non-recurring nature which are necessary for the continued operation of any such facility over its normal useful life. Funding of this reserve shall be by means of a monthly assessment levied against each Unit. The monthly assessment for the Reserve for Major Repairs and Replacements shall be in addition to the regular assessment provided for in Section 6.1, and shall not be subject to any further approval by the Owners provided that the maximum amount of such monthly assessment may not exceed \$10. Property owner approval to exceed the \$10 limit on this assessment will be obtained in accordance with the provisions of Section 7.5.
- 6.6 **Joint and Several Liability.** If a unit's ownership is comprised of more than one person, each shall be jointly and severally liable for any and all assessments and charges.
- 6.7 **General Fund.** The Association shall keep all monies which it may collect from assessments other than special assessments together with all other monies which it is required to add to the general fund pursuant to the provisions hereof, or of any Black Butte Ranch Declaration, in a separate fund to be called the "General Fund" and shall use the monies in the general fund only for the following purposes:
- (a) Payment of the cost of acquiring, developing, maintaining, and improving private ways, common areas, recreational and other facilities on common areas, special use areas, Association-owned semi-public recreational or service areas and miscellaneous properties and Association owned or leased properties outside the boundaries of Black Butte Ranch.
  - (b) Payment of taxes and assessments levied against private ways, common areas, special use areas, Association-owned semi-public recreational or service areas and miscellaneous properties, Association owned properties outside the boundaries of Black Butte Ranch and the improvements thereon.
  - (c) Payment of the cost of providing security patrol, police services, fire prevention and control, utilities, and garbage and trash disposal services, if provided.
  - (d) Payment of the cost of insurance, including but not limited to, insurance protecting the Association, its directors, officers, and

committees, against liability arising out of their function and activities in the administration of the Ranch.

- (e) Payment of the cost of enforcing the provisions contained in the Master Design, the Black Butte Ranch Rules and Regulations, Architectural Review Committee Rules and Regulations, and the covenants and provisions contained in any Ranch Declaration.
- (f) Payment of the reasonable expenses and fees of the Board, Architectural Review Committee, and such other special committees as shall from time to time be appointed to serve the Association.
- (g) Payment for other services or facilities which the Board deems to be of general benefit to the owners.
- (h) Payment of costs incurred in collecting assessments.
- (i) Payment of any expense reasonably incurred by the Board in carrying out any function for which it has been given responsibility hereunder.

Included among the monies which are to be paid into the general fund are all regular assessments, penalties, fees for access to the Ranch and for the use of recreational or service facilities located on common areas or on Association-owned semi-public recreational or service areas, revenues from leases of special use areas, Architectural Review Committee fees, interest on amounts payable into the general fund, and payments to reimburse the Association for monies expended from the general fund.

- 6.8 **Annual Accounting.** Books and records shall be established in accordance with the principles and practices as recommended by the AICPA with respect to home owner associations.

Within the time prescribed by Oregon laws which are applicable to homeowner associations, the Association shall make available to each owner, or, on request, a mortgagee of such owner, a copy of the annual statements of revenues and expenses, cash flows and changes in equity prepared on a consolidated basis for the Association and its subsidiary corporations. The Association shall make the records of the Association and its subsidiaries reasonably available for examination by an owner, or an owner's mortgagee, in accordance with provisions of the Association's bylaws and applicable Oregon law.

**SECTION 7. Black Butte Ranch Association**

The Black Butte Ranch Association was incorporated in 1970 as a nonprofit corporation under the general nonprofit corporation laws of the state of Oregon. The articles of incorporation provide, among other things, that each unit owner in Black Butte Ranch shall be a member of the Association. Such membership in the Association shall commence, exist, and continue simply by virtue of the member's ownership of said unit, shall expire automatically upon the termination of such ownership, and need not be separately confirmed or evidenced by any certificate or acceptance of membership.

**7.1 Powers of the Association.** In addition to such other powers as shall be given to or imposed upon it elsewhere in this Master Design or any other Black Butte Ranch Declaration, the Black Butte Ranch Association, acting by and through its Board of Directors, shall have the following powers, subject to any provision contained elsewhere within this Master Design which conditions the exercise of such power upon the prior approval of the owners:

- (a) Construction of such improvements on the private ways, common areas, special use areas, and Association-owned semi-public recreational or service areas and miscellaneous properties as it deems will be of benefit to the owners, their lessees and guests.
- (b) Maintenance and improvement of all private ways, common areas, special use areas, Association-owned semi-public recreational or service areas and miscellaneous properties and the improvements thereon.
- (c) Enforcement of all covenants and restrictions contained in this Master Design and in any Ranch declaration.
- (d) Promulgation and enforcement of the Black Butte Ranch Rules and Regulations and the enforcement of both the Architectural Review Committee Rules and Regulations and the decisions rendered by said committee.
- (e) Payment of all ad valorem taxes and assessments imposed on any of the private ways, common areas, special use areas, or Association-owned semi-public recreational or service areas and miscellaneous properties within the Ranch.
- (f) Provision of such services to the owners as it shall deem to be of benefit to the owners.

- (g) Procurement and maintenance of property and liability insurance reasonable and necessary to protect the Association's interests in its assets. Such insurance shall also provide appropriate coverage for the directors and officers of the Association while in the performance of their duties on behalf of the owners.
- (h) Collection of assessments, fees, and penalties.
- (i) Fixing of fees for access to the Ranch and for the use of the recreational and service facilities within the common areas and in the Association-owned semi-public recreational or service areas and miscellaneous properties and for the collection thereof.
- (j) Upon the determination that there exists on a private area a nuisance or other unattractive or undesirable condition such as a fire hazard, diseased trees, overgrowth of vegetation or the like, which is deemed to be undesirable and not to be in the best interests of the owners generally, the right to request and enforce the correction or removal thereof in accordance with the provisions of paragraph 9.4 hereof.
- (k) In addition to the foregoing, all the other powers granted to nonprofit corporations and to homeowners associations by the Oregon Revised Statutes, as the same may be amended from time to time.

**7.2 Limitation of Liability.** The Association shall indemnify to the fullest extent permitted by the Oregon Nonprofit Corporation Act (as amended from time to time) any person who has been made, or threatened to be made, a party to an action or proceeding, by reason of the fact that the person is or was a director or officer of the Association, or serves or served at the request of the Association Board as director or officer, of another corporation, partnership, joint venture, employee benefit plan or other enterprise. The Association Board may in its discretion require the Association to indemnify an employee or agent of the Association who is not a director or officer to the same extent as a director or officer as herein before provided.

**7.3 Board Actions Requiring Prior Owner Approval.** Except as otherwise provided below, the exercise by the Board of Directors of either the Association, or any subsidiary of the Association, of any of the powers listed below shall be subject to a prior favorable vote conducted in accordance with the provisions of Section 7.5.



- (a) **Acquisition or Construction of New or Expanded Facilities.** The acquisition or construction of any new facility or property, including any substantial addition to or extension of an existing facility by either the Association, or any subsidiary of the Association, but only if such acquisition or construction is to be funded by the imposition of a special assessment. A special assessment, if approved, shall be applied uniformly to all units, and the funds collected therefrom shall be segregated in the special account for and used only for the purpose of such special assessment. This provision shall be construed so as not to require a prior approval from the owners in the case of (i) expenditures for a major repair or replacement of an existing facility; or, (ii) expenditures for the acquisition of property which is necessary or essential in the satisfaction of any requirement imposed by applicable law or regulation by a government regulatory authority.
- (b) **Sales and Dispositions.** The sale or other disposition of any facility or property (including the sale of any shares of a subsidiary of the Association) by either the Association or a subsidiary of the Association other than for a sale or disposition in the normal course of ordinary business operations.
- (c) **Borrowings.** The borrowing of money and the issuance of notes, bonds or other obligations in respect thereto, or the execution of any mortgage or pledge with respect to any property, franchise or income as security therefore. This provision shall be construed so as to not require a prior approval of owners with respect to (i) the establishment of lines of credit or other forms of borrowings which are necessary in the normal course of ordinary business operations or (ii) expenditures for the acquisition of property which is necessary or essential in the satisfaction of any requirement imposed by applicable law or regulation by a government regulatory authority.
- (d) **Utility Properties.** The sale or transfer to an unrelated party of any interest held by the Association or a subsidiary of the Association in the water sources or sewer systems which service Black Butte Ranch.

Nothing herein shall be construed so as to prohibit or delay any expenditure which is reasonably required and deemed necessary and essential by the Board in reacting to an emergency situation or a natural disaster or catastrophe.

- 7.4 **Annual Capital Expenditures Budget.** As a part of the Annual Financial Budget, the Association Board shall prepare a budget for capital expenditures and major repairs and replacements for the Association and its subsidiaries. A summary of this budget shall be made available to the members of the Association following the adoption and approval of the budget but not less than 30 days prior to the commencement of the fiscal period to which the budget applies.
- 7.5 **Voting by Association Members** Each member is entitled to one vote for each unit owned by such member. Where title to a single unit is vested in two or more owners, fractional voting shall not be allowed and the several owners shall be required to designate in writing to the Association the single owner empowered to exercise the voting right attaching to that unit. Cumulative voting shall not be permitted. The election of members to serve on the Association's board of directors shall be governed by procedures set forth in the Association bylaws.

Voting may occur either in person or by written proxy at any meeting of the members for which a quorum has been established in accordance with procedures set forth in the Association's bylaws. Voting may also occur by written ballot without a meeting in accordance with the provisions of the Association's bylaws and applicable Oregon law.

With respect to any matter, other than the election of directors, which may be submitted for a vote by the members or which requires prior approval of the members as provided elsewhere within this Master Design, such approval shall be determined in accordance with the following: (i) in the case of any amendment to this Master Design as provided in Section 11.1 herein, approval of such amendment by the members will require a favorable vote of two-thirds (2/3) of the members eligible to vote on the matter; (ii) in the case of any other matter, including a matter requiring a prior approval by a vote of the members, such approval will require a favorable vote by a majority of the votes actually cast, provided that votes are cast, either in person or by proxy, by at least fifty percent (50%) of the members eligible to vote on such matter.

## **SECTION 8. Architectural Review Committee**

- 8.1 **Function of Architectural Review Committee.** The Architectural Review Committee shall exercise the functions for which it is given responsibility in any Black Butte Ranch Declaration and in this Master Design. Generally, this committee will be responsible for the approval of plans and specifications for the development and maintenance of private areas and for the formulation, promulgation and enforcement of

rules and regulations governing the use and maintenance of private areas and the improvements thereon.

- 8.2 **Scope of Authority.** The Architectural Review Committee Rules and Regulations shall apply equally to all areas of the Ranch. Prior to any final determination by the Board of Directors to exercise its powers under Sections 7.1 (a) and (b), the Board shall refer the proposed construction or improvement to the Architectural Review Committee for its review and comment. The Architectural Review Committee shall consider the matter at its next regularly scheduled meeting or at a special meeting called for that purpose and shall advise the Board of its recommendation. The opinion of the Architectural Review Committee in such matters shall be advisory only.
- 8.3 **Members.** The Architectural Review Committee shall be appointed by the Board of Directors of the Black Butte Ranch Association. Members may be removed and replaced at any time by the Board. The Association shall keep on file at its principal office a list of the names and addresses of the members of the Architectural Review Committee.
- 8.4 **Action.** The Architectural Review Committee may render its decisions only by written instrument setting forth the committee's actions taken and the reasons therefor.
- 8.5 **Duties and Rules.** The Architectural Review Committee shall consider and act upon all matters properly submitted to it pursuant to the Master Design or any section declaration. In furtherance of this function, the Architectural Review Committee may from time to time adopt, amend and repeal rules and regulations, to be known as the "Architectural Review Committee Rules and Regulations", establishing its operating procedures and detailing, interpreting, and implementing the provisions of the instruments pursuant to which it is charged with responsibility. Such rules and regulations shall also contain administrative provisions for the enforcement of the Architectural Review Committee Rules and Regulations, the assessment of fines and penalties for rule violations, and appropriate appeals procedures. The Architectural Review Committee may establish a reasonable fee schedule to offset its costs incurred in considering and acting upon matters submitted to it. Such fees shall be paid into the general fund. A current copy of the Architectural Review Committee Rules and Regulations and schedule of fees shall be kept on file at the principal office of the Association at all times. Such rules shall have the same force and effect as if set forth herein as part of the Master Design. Any rule, regulation, or fee adopted by the Architectural Review Committee or any waiver of published rules, regulations, and fees shall be subject to approval by the Board.

- 8.6 **Non-Waiver or Precedent.** Consent by the Architectural Review Committee to any matter proposed to it or within its jurisdiction shall not be deemed to constitute a waiver or precedent impairing its right to withhold approval as to any other matter thereafter proposed or submitted to it for consent.
- 8.7 **Liabilities.** Neither the Architectural Review Committee nor any member thereof shall be liable to any owner or the Association for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the committee or a member thereof, provided only that the member, in accordance with actual knowledge possessed by him, has acted in good faith.
- 8.8 **Right of Appeal.** All Architectural Review Committee decisions are subject to appeal utilizing the appeal procedure contained in the committee's published Rules and Regulations. The appeal procedure insures that ultimate responsibility for and authority over all Architectural Review Committee decisions rests with the Board who, by majority vote, may confirm, modify, or reverse any such decision thus appealed.

## SECTION 9. Enforcement

- 9.1 **General Provisions.** The Black Butte Ranch Association shall have the right to enforce all covenants, restrictions, conditions, reservations, rules and regulations, liens, and charges now or hereafter imposed by the provisions of the Master Design or any Black Butte Ranch Declaration. Failure to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. Any owner shall have the same right of enforcement, provided that such owner shall have given the Association 90 days' advance notice in writing of his intention to commence such an action and, upon the expiration of the notice period, the Association has not commenced its own independent enforcement action.
- 9.2 **Violation of a Black Butte Ranch Declaration by a Non-Qualifying Improvement.** In the event any owner constructs or permits to be constructed on his unit an improvement contrary to the provisions of a Ranch Declaration or the rules and regulations of the Association or the Architectural Review Committee, or in the event that an owner maintains or permits any improvement or condition on his unit contrary to the provisions of a Ranch Declaration or such Rules and Regulations, the Association may, no sooner than 60 days after delivery to such owner of written notice of the violation, enter upon the offending unit and remove the cause of such violation, or alter, repair or change the improvement or condition which is in violation of such declaration, rule,



453 - 1997

or regulation in such manner as to make it conform thereto. The Association may charge such unit owner for the reasonable cost of the work done by it or performed on its behalf pursuant to this section. Such amounts shall become due and payable upon delivery by the Association to the owner of notice of the amount due, and, upon receipt, shall be paid into the general fund.

- 9.3 **Default in Payment of Assessments and Charges.** Each assessment, charge, or penalty levied or imposed pursuant to the Master Design or any Ranch Declaration, together with interest thereon, shall be a separate, distinct and personal debt and obligation of the owner against whom the assessment or charge is levied or imposed or from whom the amount is due. If the owner fails to pay any such assessment, charge, or penalty or any installment thereof when due, the owner shall be in default and the assessment, charge, or penalty not paid together with interest, costs, and attorneys' fees shall become a lien upon the unit (s) owned by the person from whom the assessment, charge, or penalty is due upon the filing by the Association in the records of mortgages of Deschutes County, Oregon, a notice of lien setting forth the amount due and a description of the unit (s) against which the lien is imposed.
- 9.4 **Right of Entry.** The Association or any member of the Architectural Review Committee may at any reasonable time, upon reasonable notice, and from time to time at reasonable intervals, enter upon any lot within the Ranch for the purpose of determining whether or not such lot or any improvement thereon is then in compliance with the Master Design or any Ranch Declaration, or the Rules and Regulations of the Association or the Architectural Review Committee. In no event shall such entry be deemed to constitute a trespass or otherwise create any right of action in the owner or occupant of such unit.
- 9.5 **Interest.** Any amount not paid to the Association when due shall bear interest from the date due until paid at the rate of 10 percent per annum.
- 9.6 **Expenses and Attorneys' Fees.** In the event that the Association shall bring any suit or action to enforce any provision contained in the Master Design, in any Ranch Declaration, or in the Rules and Regulations of the Association or the Architectural Review Committee or to collect any money due to it thereunder or to foreclose a lien, the defendant in such suit or action shall pay to the Association all costs and expenses which the Association may incur in connection with such suit or action, including a foreclosure title report, and such amount as the court may determine to be reasonable attorneys' fees therein, including attorneys' fees incurred in connection with any appeal from a decision of the trial court or an intermediate appellate court. The

Association shall also be entitled to assess and collect any and all costs incurred incident to the collection process even though no formal action or suit is commenced.

- 9.7 **Non-Exclusiveness and Accumulation of Remedies.** Election by the Association to pursue any remedy shall not prevent concurrent or subsequent exercise of another remedy permitted by law. The remedies provided in the Master Design and in any Ranch Declaration or in the Rules and Regulations of the Association or the Architectural Review Committee are not intended to be exclusive but shall be in addition to all other remedies, including actions for damages or suits for injunctions or specific performance available under applicable law

#### **SECTION 10. Timeshare Plans**

On or after January 1, 1984, the creation of any timeshare plan with respect to any unit, or any portion thereof, within Black Butte Ranch is prohibited. In the case of any such unit which is subject to a timeshare plan created prior to January 1, 1984, the maximum number of timeshares which may be created with respect thereto may not exceed the total number of timeshares in effect on January 1, 1984.

If a violation of the prohibitions set forth in this Section 10 should occur, the Black Butte Ranch Association is authorized to withhold from each and every owner of a timeshare interest in such property, including their families, lessees and guests, the right to further use and enjoyment of the common areas so long as the violation continues. The Association is further authorized to adopt such rules and regulations concerning timeshare properties as it may deem reasonable and necessary for the enforcement of these provisions. Such rules and regulations may, among other things, require and provide for:

- (a) Registration of each timeshare property created prior to January 1, 1984, on forms provided by the Association together with copies of the timeshare agreement, bylaws, timeshare instruments, or right to use agreements;
- (b) Designation of the owner who is authorized to act on behalf of the timeshare owners;
- (c) A list of the current timeshare owners, the nature of the timeshare interest held by each such owner, and the owners' mailing addresses and telephone numbers;
- (d) Notification of changes in ownership of a timeshare interest;

- (e) Maximum number of persons who may occupy or use the timeshare property at any one time, and;
- (f) Parking or storage of vehicles on the timeshare property.

The terms "timeshare", "timeshare agreement", "timeshare instruments", "timeshare plan", and "timeshare property" shall each have the same meaning herein as that which is set forth for such terms in Section 2 of Chapter 530, Oregon Laws 1983 (H.B. 2573). (Effective January 1, 1984)

## **SECTION 11. Miscellaneous Provisions**

**11.1 Amendment and Repeal.** Any provision of this Master Design may at any time be changed by the Black Butte Ranch Association by amending, repealing, or adding provisions in accordance with the following procedures:

- (a) The Board of Directors of the Black Butte Ranch Association shall adopt a resolution setting forth the proposed change and directing that it be submitted to a vote of the owners. The owners shall have the same rights of petition relative to amendment of the Master Design as those set forth in Section 5.2 herein for amendment of the Black Butte Ranch Rules and Regulations.
- (b) Written notice setting forth the proposed change, or a summary of the changes to be effected thereby, shall be given to each owner at least 60 days prior to the time of the meeting at which the proposed change is to be considered.
- (c) At the meeting of the owners at which the proposed change to the Master Design is to be considered, the proposed change shall be submitted to a vote of the owners. Adoption of the proposed change shall be subject to a favorable vote as determined in accordance with the provisions of Section 7.5.
- (d) Any such change shall become effective only upon the filing in the records of deeds of Deschutes County, Oregon, of a certificate of the secretary of the Association setting forth in full the amendment, repeal, or additional provision approved as provided in this section and certifying that said change has been approved in the manner required herein.

**11.2 Joint Owners.** In any case in which two or more persons share the ownership of any unit, regardless of the form of ownership, the responsibility of such persons to comply with the provisions of the Master Design and the Black Butte Ranch declarations shall be joint and



several. The vote or consent of any one or more of such persons shall constitute the vote or consent of the entire ownership interests, provided however, that in the event that such persons disagree among themselves as to the manner in which any vote or right of consent held by them shall be exercised with respect to a pending matter, any such person may deliver written notice of such disagreement to the Association and the vote or right of consent involved shall then be disregarded completely in determining the number of votes or consents given with respect to such matter.

- 11.3 Construction; Severability; Number; Captions.** The Master Design shall be construed as an entire document intended to accomplish the aims set forth in the introductory paragraph headed "Objectives." Nevertheless, each provision of the Master Design shall be deemed independent and severable, and the invalidity or partial invalidity of any provision shall not affect the validity or enforceability of the remaining part of that or any other provision. As used herein the singular shall include the plural, and the plural the singular. The masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of the Master Design.
- 11.4 Disclaimer.** The amending and filing of this Master Design shall not be construed to evidence the intention of the Association to become a Planned Community as defined by the Oregon Revised Statutes or to become subject to the provisions applicable to a Planned Community, except only as expressly set forth herein.
- 11.5 Termination.** This Master Design supersedes in its entirety that certain Master Design filed in the records of deeds of Deschutes County, Oregon on July 26, 1989. The filing of this Master Design pursuant to the terms of Section 11.1 1 (d) above shall serve to terminate all authority and effect of said earlier instrument.
- 11.6 Notices.** Any notice permitted or required by the Master Design or any Black Butte Ranch Declaration may be delivered either personally or by mail. Delivery by mail shall be deemed to have been accomplished 24 hours after the notice has been deposited in the United States mail, with postage prepaid, addressed as follows:  
If to the Association or the Architectural Review Committee;

Black Butte Ranch Association  
Post Office Box 8000  
Black Butte Ranch, OR 97759

or to such other address as the Association may designate in the rules and regulations of Black Butte Ranch.

If to a unit owner, at the address given by him at the time of his purchase of a unit or at the address of his unit within Black Butte Ranch.

The address of any person may be changed by him at any time by notice in writing delivered as provided here.

IN WITNESS WHEREOF, the Black Butte Ranch Association, by affirmation vote of more than two-thirds of the owners, has caused this declaration setting forth the Master Design of Black Butte Ranch to be executed this 15<sup>th</sup> day of May 1997.

BLACK BUTTE RANCH ASSOCIATION

Donald A. Rick  
Chair  
Board of Directors  
Black Butte Ranch Association

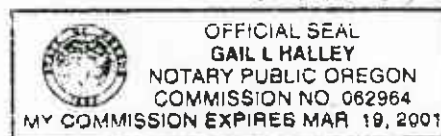
STATE OF OREGON, County of Deschutes

May 15, 1997

Personally appeared, Donald A. Rick, who being duly sworn, did say that he is Chair of the BLACK BUTTE RANCH ASSOCIATION and that the foregoing instrument was signed in behalf of said corporation by authority of its Board of Directors; and he acknowledged said instruments to be its voluntary act and deed. Before me: Gail L. Halley

Notary Public for Oregon

My commission expires March 19, 2001.



**EXHIBIT "A"**

**BLACK BUTTE RANCH LEGAL DESCRIPTION**

453 - 2002

**PARCEL I:**

In Township Fourteen (14) South, Range Nine (9), East of the Willamette Meridian, Deschutes County, Oregon.

Section Nine (9): All of Section.

Section Ten (10): The Southwest Quarter of the Northeast Quarter (SW-1/4 NE-1/4); the Southeast Quarter of the Northwest Quarter (SE-1/4 NW-1/4); the West Half of the Northwest Quarter (W-1/2 NW-1/4); the North Half of the Southwest Quarter (N-1/2 SW-1/4); the West Half of the Southwest Quarter of the Southwest Quarter (W-1/2 SW-1/4 SW-1/4); the South Half of the South Half of the Northeast Quarter of the Northwest Quarter (S-1/2 S-1/2 NE-1/4 NW-1/4); the South Half of the Southwest Quarter of the Northwest Quarter of the Northeast Quarter (S-1/2 SW-1/4 NW-1/4 NE-1/4) and the Southwest Quarter of the Southeast Quarter of the Northwest Quarter of the Northeast Quarter (SW-1/4 SE-1/4 NW-1/4 NE-1/4).

Section Fifteen (15): The West Half.

Section Sixteen (16): The East Half of the Northeast Quarter.

Section Twenty-One (21): Described as follows:

Beginning at a 3" brass cap in a 2-1/2" I.P. marking the Northeast corner of said Section 21; thence North 89°31'06" West along the North line of said Section 21 a distance of 3721.86 feet; thence South 0°07'58" East along a line, 240 feet Easterly of and parallel with the North-South centerline of the NW-1/4 of said Section 21, a distance of 2664.94 feet to a point on the East-West centerline of Section 21; thence South 0°07'58" East along a line 240 feet Easterly of and parallel with the North-South centerline of the Southwest 1/4 of said Section 21 a distance of 1332.47 feet to a point on the East-West centerline of the SW-1/4 of said Section 21; thence South 89°46'56" East along the East-West centerline of the Southwest 1/4 of Section 21 a distance of 1078.36 feet to the center South 1/16 corner of said Section 21; thence South 89°46'56" East along the East-West centerline of the SE-1/4 of said Section 21 a distance of 870.11 feet; thence North 63°51'31" East a distance of 1967.27 feet to a point on the East line of said Section 21; thence North 0°02'14" West along the East line of Section 21 to the true point of beginning.

Section Twenty-Two (22): The North Half of the North Half.

Section Twenty-Three (23): The West 170 feet of the Northwest Quarter of the Northwest Quarter (NW-1/4 NW-1/4).