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Bend, OR 97702

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## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SHEVLIN RIDGE PHASE 4

This Declaration of Covenants, Conditions, and Restrictions ("Declaration") is made this 5 day of May 2005, by McClain Investments, LLC and Transcend Ekistics, LLC (collectively "Declarants"), owners of the real property described as Shevlin Ridge Phase 4, Deschutes County, Oregon, and shown on the final plat recorded in the Deschutes County Official Records at Volume 2005, Page 18400, on March 30, 2005 ("the Property").

### RECITALS

Whereas, Declarants currently own the Property in its entirety and do hereby wish to establish contractual obligations between themselves and future owners of lots within the Property, as are set forth herein; and

Whereas Declarants are developing the Property as a part of a phased subdivision for purposes of accommodating residential homes in a design and function described herein; and

Whereas Declarants by these Covenants, Conditions and Restrictions ("Declarations") provide for reciprocal use, maintenance, and construction restrictions on lots within the Property; and

Whereas Declarants are causing these Declarations to be recorded to subject the Property to the covenants, conditions, and restrictions set forth herein;

### DECLARATIONS

NOW, THEREFORE, Declarants hereby declare that the property within Shevlin Ridge Phase 4, Deschutes County, Oregon, including Lots 1, 2, 46, 47, 48, 49, 50, 51, 52, 53, 60, 76, 77, 78, 79, 80, 81, 82, 83, and 102, shall be held and conveyed subject to the following easements, codes, covenants, conditions, restrictions, and charges, which shall run with the Property and shall be binding upon and inure to all parties having or acquiring any right, title or interest in the Property or any part thereof.

### ARTICLE 1 DEFINITIONS

As used in this Declaration, the terms set forth below shall have the following meanings:

1.1 Architectural Review Committee: A committee of the Shevlin Ridge Phase 4 Homeowners Association, Inc., assigned responsibility for reviewing plan submittals for original construction and remodeling, and reviewing actual construction for consistency with required plan submittals. The Architecture Review Committee is also referred to as the "ARC."

1.2 Association: The not-for-profit entity to be formed pursuant to these Declarations and known as Shevlin Ridge Phase 4 Homeowners' Association, Inc.

- 1.3 Board of Director: The directors of the Association as appointed pursuant to these Declarations.
- 1.4 Bylaws: The Bylaws of the Shevlin Ridge Phase 4 Homeowners Association, Inc.
- 1.5 Declarants: McClain Investments, LLC and Transcend Ekistics, LLC.
- 1.6 Declaration: These declarations of Covenants, Conditions and Restrictions for Shevlin Ridge, Phase 4, Deschutes County, Oregon.
- 1.7 Improvements: Any building, outbuilding, driveway, parking area, fence, barrier, retaining wall, stairs, deck, electrical and gas and water and sewer and fiber optic and telephone and satellite and communication lines or pipes or conduits or equipment, hedges, windbreaks, plantings, planted trees and shrubs, sign, loading area and all other structures and superstructures or exterior landscaping, vegetation or ground cover of every type and every kind above or below the land surface.
- 1.8 Lot: The individually subdivided real property lot as described on the plat recorded on March 30, 2005, in the Deschutes County Official Records at Volume 2005, Page 18400.
- 1.9 Manager: The person or entity with whom the Association contracts to provide management services pursuant to Section 4.9.
- 1.10 Mortgage: A mortgage, trust deed, or land sales contract.
- 1.11 Mortgagee: A mortgagee, beneficiary of a trust deed, or vendor under a land sales contract.
- 1.12 Mortgagor: A mortgagor, grantor of a trust deed, or vendee under a land sales contract.
- 1.13 Owner: The holder of a fee simple interest in a lot, or the holder of a vendee's interest in a lot under a recorded installment contract of sale.
- 1.14 Policies and Procedures: Those policies, procedures, rules and regulations adopted by the Association pursuant to the authority granted in this Declaration.
- 1.15 Property: The real property described as Shevlin Ridge Phase 4, Deschutes County, Oregon, including Lots 1, 2, 46, 47, 48, 49, 50, 51, 52, 53, 60, 76, 77, 78, 79, 80, 81, 82, 83, and 102.
- 1.16 Street: Any paved surface constructed for the purpose of transporting automotive vehicles or bicycles and designed to function as a vehicular thoroughfare within or adjacent to the Property and shown on any current and valid recorded subdivision or partition map or survey map of record, whether designated thereon as a street, boulevard, place, drive, road, way, or functional equivalent of same.

## **ARTICLE 2**

### **PROPERTY RIGHTS IN LIVING UNITS**

- 2.1 Use and Occupancy: Except as otherwise expressly provided in this Declaration, the Owner of a Lot in the Property shall be entitled to the exclusive use and benefit of such Lot.
- 2.2 Easements Reserved: In addition to any easements shown on the recorded plats, Declarants hereby reserve as an easement for the benefit of the Association, the Declarants, the Board of Directors, the Architectural Review Committee, and the Manager may at any reasonable time, and from time to time at reasonable intervals, enter upon any Lot for the purpose of determining whether or not the use of and/or Improvements on such Lot are then in compliance with this Declaration. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Lot.

### ARTICLE 3 RESTRICTIONS ON USE OF LIVING UNITS

All development, construction, and use of the Property shall meet City of Bend standards and specifications, local building codes, and zoning requirements. Furthermore, all development, construction, and use of the Property shall comply with the following restrictions:

3.1 Accessory Building/Structures: Prior to substantial completion of the main residence on the Lot, the Owner or the Owner's contractor may place a temporary construction shelter on the Lot. No other permanent or temporary structure may be placed on the Lot without the written approval of the ARC. Generally, the ARC will not consent to constructing a temporary or permanent structure, i.e., doghouses, tool sheds, garden sheds, and wood storage units, on a Lot unless integrated into the main residence.

3.2 Adjacent Private Property: Adjacent property may not be used for access to any Lot under any circumstance. Also, adjacent property may not be used as a parking lot or for the storage or staging of construction materials or construction debris by any Owner, contractor or subcontractor. If an adjacent property is damaged during construction, either directly or indirectly, the Owner will be responsible for repairing the damage or restoring the adjacent property to its condition before the damage. Adjacent property must be kept free of construction litter.

3.3 Animal Runs and Animal Restraint Areas: All animal runs and animal restraint areas should be situated on the Lot to be completely concealed or screened from view from roadways and neighboring Lots. As described in Section 3.1, the Owner must obtain ARC consent before constructing a doghouse, animal run or animal restraint area on the Lot. If consent is granted to build a doghouse, it will be conditioned upon the Owner painting the doghouse a color that will blend with or match the Owner's home.

3.4 Corner Lot Development: A home constructed on a corner Lot, whether the corner is formed by the intersection of a street or alley, shall be designed and constructed in such a manner as to create architectural features of interest on respective building elevations, fencing and landscaping.

3.5 Chimneys: All exterior chimneys must be wood, stone or brick and must incorporate a metal flue shroud and spark arrestor. In some cases, a faux chase may be required, for example in the instance of a gas fireplace using a direct vent system. All visible metals (including metal chimneys within the flue shrouds) must be painted to blend with roof or wood chimney colors.

3.6 Decks, Porches, and Deck/Porch Skirting: Decks and/or porches which are more than 3-feet above existing grade shall be skirted. The skirting below all decks and/or porches shall be recessed to create shadows and alleviate the appearance of massive under deck/porch walls. Deck/porch skirting should be made of the same material as the home and be applied in the same direction, unless otherwise approved by the ARC.

3.7 Driveways: All driveways shall be designed in compliance with City of Bend rules and regulations. Front driveways will be limited to one per Lot, unless otherwise approved the ARC, and driveway widths shall be kept to one car width (14') where possible and, in general, the amount of paved areas exposed to view from adjacent roadways or Lots shall be kept to a minimum. If the curb cut is relocated and the original curb cut is not used, the sidewalk and curb area must be restored to City of Bend sidewalk and curb standards, at the Owner's expense.

Alley access (back) driveways with rolled curbs may span widths as large as necessary to access garage openings. Driveway material shall be asphalt, concrete or masonry. Owner may also use a material, or color accent at edges, or construction breaks. No driveways or parking areas of asphalt, concrete or pavers of any kind

are permitted closer than 5' to any side property line (the driveways of flag lots are exempt) without ARC approval.

3.8 House Design Originality: Duplication of a house design within the Property or any phase of Shevlin Ridge is discouraged. Premanufactured homes or structures are prohibited.

3.9 Excavation: Each Lot shall be developed with minimal modification of the existing topography. All dirt and debris resulting from excavation must be incorporated in the landscaping or removed from the site. All areas disturbed during construction must be restored to their original appearance or in accordance with an approved landscape plan.

3.10 Exterior Colors and Stains: All exterior colors to be painted or otherwise used on a home or other structure must be reviewed and approved by the ARC. This includes colors used in the original construction, as well as colors to be used as part of any maintenance or remodeling. Care shall be taken to avoid duplicating colors of nearby homes. Natural wood siding, peeled logs and natural shakes must be stained or treated with an accent or complimentary color.

3.11 Exterior Lighting: All exterior lighting shall meet applicable City of Bend requirements and codes. Except as described below in this Section, all exterior lighting must be reviewed and approved by the ARC. This includes lighting affixed to the home or other structure and landscape lighting. The goal of the ARC's review is to eliminate glare, upward light, and annoyance to adjacent property owners. When requesting ARC approval, the Owner must provide a drawing showing the proposed lighting placement together with a catalog cut or drawing of the proposed lighting fixture. Direct lighting (maximum of 60 watt bulbs) may be used to enhance and identify the entrance of the home, but only two fixtures on any house, and all fixtures must have transparent or opaque glass. All other exterior lighting must be shielded and directed downward. Colored light sources are prohibited. Exterior wall-mounted flood and spotlights must be covered with a shroud. From the Saturday after Thanksgiving through the first weekend in January, an Owner may place temporary exterior decorative lights without ARC review or approval.

3.12 Exterior Walls and Trims: Exterior material treatment used on the building walls shall be continuous and consistent on all elevations for a residence in order to achieve a uniform and complete design and to avoid a "veneer" look. Exterior siding material must be carried down to within eight inches of grade and sloped, or stepped. No extensive amounts of exposed foundation are permitted.

The following materials are suggested for use on exterior walls and trims; subject to approval by the ARC.

- Wood – (treated with semi-transparent or solid body stains or paints)
- Lap and cement based siding material
- Board and batten type siding
- Log style homes
- Brick, natural and cultured stone
- Textured masonry block units not to exceed eight inches in height – medium to dark colors unless approved by the ARC
- Stucco and synthetic stucco

NOTE: Siding applications which involve a mix of directions (horizontal, diagonal, and vertical) are discouraged.

3.13 Fencing: All fencing on a Lot or within the Property is subject to the ARC's prior review and approval. Individual fences are discouraged within the Property. When allowed, fences shall be limited to 60-inches in height, shall be connected to the house structure and shall blend with the terrain and landscape. Long

runs of fencing shall be staggered vertically. Solid wood fences, which completely surround a Lot and/or run along property boundaries are not permitted.

The use of monofilament line, netting or electric fences for the protection of any part of the landscaped area, individual beds or along property perimeters is strictly prohibited. Inconspicuous fencing may be permitted with ARC approval around individual plants or shrubs. Dog runs may exceed the 60-inch height if attached to a structure. See Landscape guidelines for approved fencing materials, design and construction.

3.14 Firewood: Firewood storage must be screened from the view of the public and other Lots by storing the firewood in the garage or the service yard. When a service yard is used, the addition of gates will typically be required to screen firewood adequately. Also, the service area should be high enough (not more than 4') and large enough to accommodate one cord of wood.

3.15 Garages and Carports: Garage/carports shall reflect and relate to the design of the residence. Carports shall be enclosed to provide screening of autos from neighboring views and roadways. Carports are not to be used for storage of boats, firewood, recreational vehicles, trashcans or other personal belongings. When the garage stalls face the street, and there are more than two stalls, the additional stalls must be recessed back at least 3 feet.

3.16 Garbage and Trash: Owners are responsible for their own garbage and trash removal during and after construction. Lots must be kept clean from trash and debris at all times during construction. After construction of the main home is substantially complete, trashcans must be stored in an area that is not visible from the street, alleyway or adjoining Lots. Burning or dumping of garbage, landscape debris or trash in any phase of Shevlin Ridge or on the Property is prohibited.

3.17 Grading: To the maximum extent feasible, all grading shall conform to existing lot grades and must be approved by the ARC, and be in compliance with City rules and regulations.

3.18 Gutters and Downspouts: All gutters and downspouts shall be designed as a continuous architectural design feature. Exposed gutters and downspouts shall be colored or painted to blend in with the surface to which they are attached.

3.19 Heating and Cooling Systems: All exterior elements of heating and/or cooling systems must be screened from the view of neighboring property and roadways and, where applicable, must be acoustically insulated to reduce noise transmission to acceptable levels at adjoining properties. Specifically, heat pumps must be screened with a fence and acoustically insulated.

3.20 Landscaping: As described in Section 5.6(a)(ii), a landscaping plan for review and approval by the ARC must be submitted together with the original plan submittal and before a substantial change in the landscaping on any Lot. Extensive formal landscaping is not required on any Lot. All Lots, however, shall be landscaped and maintained in such a way as to present a neat and pleasing appearance to all off-property vantage points (roadways and other Lots), to minimize fire danger in the area, maximize weed control, be harmonious with the natural course of groundwater in the area and to moderate the problem of wind-blown dust. If a Lot Owner chooses to maintain the natural appearance of his or her Lot, steps must be taken to restore unsightly scarred areas due to construction activity and/or other damage. In addition, the Owner must remove dead plant material and refuse from the Lot in a timely manner.

Areas of individual Lots exposed to other Lots and roadways should be treated in a natural, fluid manner so as to integrate comfortably with the natural setting. Lawn edges shall be undulating rather than straight and square cornered. Shrubs, trees and other plant materials should be arranged in groupings, not in straight rows. All trees planted on a Lot must be at least 3" caliper and all shrubs must be at least 5 gallons. Initial landscaping must be completed within one year of substantial completion of the exterior of the home.



In some situations the ARC may require an owner to plant trees and/or add contouring to a Lot to screen onsite elements from off-site vantage points.

3.21 Mailboxes, Newspaper Receptacles and Street Addresses: Individual mailboxes are prohibited. Group mailboxes, located on designed rights-of-way will be installed by the Declarants.

3.22 Maintenance: Each Owner is required to keep his or her land, landscaping and all improvements in good repair and attractive condition. This includes keeping the unlandscaped areas of your property free of weeds, excess building materials, household items and other debris. Commercial newspaper boxes are prohibited.

3.23 Masonry: When masonry is used on the front of a home and it extends to any front corner, the masonry must extend at least two feet around the adjoining side elevation.

3.24 Metals and Plastics: All exterior metals or plastics (vents, flashing, etc.) must be painted to blend in with surrounding material. The exception would be approved metals used as a decorative feature, such as copper.

3.25 Nuisance: The Owner shall not allow any condition to persist on his or her property that a reasonable person would consider offensive, including but not limited to excessive noise, dust, litter, debris, and odor.

3.26 Outdoor Play Equipment: Location of permanently placed outdoor play equipment such as swing sets, basketball backboards, trampolines and other such items must be approved by the ARC before they are placed or erected. Colors and textures of outdoor play equipment must be approved by the ARC, and shall be harmonious with the surrounding area. No large, brightly colored plastic play equipment will be permitted to be left in permanent view of any neighboring Lot. If possible, outdoor equipment must be maintained and screened away from the view of other Lots and roadways. Lots having backyards which are exceptionally exposed may require additional landscaping or screening. No skateboard ramps will be permitted on any Lot or within the Property.

3.27 Parking and Screening: Motor homes, trucks, campers, boats, canoes, kayaks, trailers of any sort and cars under repair, etc. must be parked so as to be completely concealed from view of roadways and alleys and/or neighboring Lots. If it is necessary for one of the above vehicles to be parked on a Lot in view of roadways or neighboring Lot, such items may be parked on the Owner's Lot (not on the street or alleyways) for no longer than one night.

If an Owner has a guest who arrive with a recreational vehicle, the vehicle must be parked on the Owner's Lot (not on the roadways, alleys, or cul-de-sacs) and may be there no longer than seven nights.

Vehicles which are "for sale" must be parked on the Owner's property or directly in front of the Owner's Lot, and not on neighborhood streets or alleyways.

3.28 Roofs: Acceptable roofing materials are slate and concrete tile, concrete and wood-simulated shakes, and layered fiberglass or composition roofing (arch 80 or comparable). All materials must have at least a 30 year warranty. Textured metal with a matte finish may be considered by the ARC. Wood shakes and wood roof shingles are discouraged. All roofing materials, whether used during original construction, maintenance, or remodeling, must be reviewed and approved by the ARC, and will be considered on an individual Lot basis. Even though a product is approved, some colors may not be permitted on homes within the Property. A minimum of a 5/12-pitched roof is encouraged. Lesser-sloped roofs are subject to approval.

3.29 Satellite Dishes and Antennas: Any satellite dish or antenna is subject to review and approval by the ARC. The ARC's review will focus on the location and visibility of the satellite dish or antenna. No satellite

dish or antenna larger than 18" in diameter will be approved, and the color of any satellite dish or antenna must blend with the home.

3.30 Service Yards: When not provided by other structures, each residence shall have screened service yard enclosing garbage and trash containers, firewood, clothes drying apparatus, bicycles, landscape debris and outdoor maintenance equipment. Service yards must be attached to the home or garage and gated to screen the areas from view from other Lots and roadways.

3.31 Setbacks: All home setbacks shall conform to City of Bend standards and be compatible with neighboring uses.

3.32 Sidewalks: The sidewalks, curbs and streets are owned by the City of Bend. It is, however, the responsibility of each Owner to clear the sidewalks adjacent to his or her Lot of snow and cinders in the winter and to keep debris and weeds off them during the summer. The Owner shall also maintain the adjoining planter strips, including seasonal watering, fertilization, mowing, pruning and weeding of plant material which meet good horticultural practice. Removal or addition of plant material shall be approved by the ARC prior to work.

The Owner shall also maintain any block or rock wall on the Lot. Wall maintenance includes regular sealing of block, repair of broken or damaged material, cleaning resulting from acts of vandalism and general upkeep.

3.33 Signage Information: All signage must conform to City of Bend Standards, and be compatible with neighboring uses. No signs shall be displayed in the windows of homes (except approved block home stickers or alarm system stickers) or be nailed to trees. No information tubes or "handout" containers are permitted. Any signs which, in the sole judgment of the ARC, are deemed to be non-conforming will be removed and held by the ARC for 14 days for retrieval by owner, after which time they will be destroyed. Political signage will be allowed on a Lot, subject to compatibility standards for aesthetics and placement only, without regard to content.

3.34 Skylights and Solar Devices: All glass, plastic or other transparent skylight or solar devices shall be treated to eliminate reflective glare. Clear, bronze or gray glazing is preferred over white translucent. Flat skylights are preferable to domes. Solar collectors are permitted; however, the collectors must be flat on the roof. In addition, the majority of the mechanical portion of the system must be contained within the structure and not positioned on the roof. ARC approval is required for all solar collection systems.

3.35 Solar Encroachment: Any planting or construction practices which interfere with the use of solar energy on an adjacent property is prohibited.

3.36 Solar Heating System: Any solar heating system must be reviewed on an individual basis and requires the approval of the ARC.

3.37 Staging Area: Each construction approval submittal must designate at least one staging area for a home site, subject to approval by the ARC. Each staging and construction area must be kept clear of trash, debris, dust, and odor-causing items or substances.

3.38 Street Addresses: Street addresses shall be located on "front" elevations facing the adjacent right-of-way subject to ARC approval.

3.39 Tarps and Other Weather Protective Materials: Tarps used for covering firewood or other usage and which are visible from roadways and other Lots must be brown in color. Green or blue tarps will not be permitted.

3.40 Tree Removal and Trimming: The removal of any tree larger than 6 inches in diameter (19 inches in circumference), without the approval of the ARC, is prohibited. Trees less than 6 inches in diameter may be removed. Any tree may be trimmed up six feet from ground level for fire safety. Any dead limbs above this height may be removed. All guidelines contained herein are subject to compliance with City standards.

3.41 Utility Meters: All utility meters (gas and electric) shall be installed according to the guidelines available from the utility companies. The gas meter and the electric meter housing must be painted the body color of the home or be masked from public view in the service area.

All connections from trunk lines to individual structures must be underground; exposed plumbing and electrical lines are not allowed. Materials and installations must conform to Electrical and Plumbing Codes. Water and sewer hookups must be approved by the appropriate inspectors. All areas of excavation for site utility work must be restored.

3.42 View Preservation: Construction or installation of improvements and/or growth of Owner-planted vegetation on a Lot shall not materially impair the view of other Lot Owners. The ARC shall be the sole judge of such impairment. If an Owner perceives that his or her view is being impaired by vegetation on an adjoining Lot, whether by native vegetation or vegetation placed by the Owner of that Lot, the Owner's exclusive remedy is to submit a written complaint and request for review to the ARC. If the ARC concludes in its sole discretion that the Owner's view is unreasonably impaired, the ARC may require the removal of the vegetation impeding the Owner's view. Vegetation impeding a view will not be removed, however, if doing so would be violation of a rule or ordinance of the City of Bend. Furthermore, in all cases the Owner being benefited by the removal will pay for all costs of removal and disposal in advance of the removal.

#### **ARTICLE 4** **ASSOCIATION**

Declarants shall organize an Association of all of the Owners. Such Association, its successors, and assigns, shall be organized under the name "Shevlin Ridge Phase 4 Homeowners Association, Inc.," or such similar name as Declarants shall designate, and shall have such property rights, powers, and obligations as are set forth in this Declaration for the benefit of the Owners and the Property.

4.1 Organization: Declarants shall organize the Association as a nonprofit mutual benefit corporation under the Oregon Nonprofit Corporation Act. Declarants shall, on behalf of the Association, adopt the initial Bylaws to govern the Property. The Bylaws shall be recorded in the Deschutes County Recording office.

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

4.3 Voting Rights: The Association will initially have two classes of voting membership, which shall have the following voting rights:

Class A: Class A members shall be all Owners with the exception of the Declarants prior to termination of their status as Class B members. Class A members shall be entitled to one vote per Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members of the Association. The vote for such Lot shall be exercised by those holding an interest in the Lot as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B: The Class B member shall be Declarants, and they shall be entitled to three votes for each Lot owned by Declarants. The three votes for each Lot shall be exercised as determined by the Declarants,



however, in no event shall more than three votes be cast with respect to any Lot. Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

- (i) When seventy-five percent (75%) of the Lots have been sold and conveyed to Owners other than Declarants; or
- (ii) At such earlier time as Declarants may elect in writing to terminate Class B membership; or
- (iii) Upon the expiration of seven years from the date hereof.

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

- (a) Declaration: The powers, duties and obligations granted to the Association by this Declaration.
- (b) Statutory Powers: The powers, duties and obligations of a mutual benefit nonprofit corporation pursuant to the Oregon Nonprofit Corporation Act as it may be amended from time to time.
- (c) General: Any additional or different powers, duties and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to this Declaration.

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

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

4.6 Interim Board; Turnover Meeting: Declarants shall have the right to appoint an interim board of three directors or more, who shall serve as the Board of Directors of the Association until replaced by Declarants or their successors have been elected by the Owners at the turnover meeting described in this Section. Not later than ninety (90) days after the expiration of the period of Declarants' Class B membership pursuant to Section 4.3, Declarants shall call a meeting for the purpose of turning over administrative responsibility for the Property to the Association. Declarants shall give notice of the meeting to each Owner as provided for in the Bylaws of the Association. If Declarants do not call the meeting required by this Section within the required time, the Transitional Advisory Committee described in Section 4.7 or any Owner may call a meeting and give notice as required in this Section. At the turnover meeting the interim directors shall resign and their successors shall be elected by the Owners and Declarants as provided in this Declaration and the Bylaws of the Association.

4.7 Transitional Advisory Committee: Declarants or Owners shall form a transitional advisory committee (the "Transitional Advisory Committee") to provide for the transition from administrative responsibility by Declarants to administrative responsibility by the Association. Not later than the sixtieth (60<sup>th</sup>) day after Declarants have conveyed to Owners, other than a successor Declarant, fifty percent (50%) of the Lots in the Property, Declarants shall call a meeting of Owners for the purpose of selecting the Transitional Advisory Committee. The Transitional Advisory Committee shall consist of three or more members. The Owners, other than Declarants, shall select two or more members. Declarants may select no more than one member.

(a) Declarant Failure to Call Meeting: If the Declarants fail to call a meeting to select members of the Transitional Advisory Committee, an Owner may call a meeting of Owners to select the Transitional Advisory Committee.

(b) Owners' Failure to Select Members: Notwithstanding the foregoing, if the Owners do not select members for the Transitional Advisory Committee as described above, Declarants shall have no further obligation to form the Transitional Advisory Committee.

(c) Turnover Meeting: The requirement for formation of a Transitional Advisory Committee shall not apply once the turnover meeting specified in Section 4.6 has been held.

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

## ARTICLE 5 SHEVLIN RIDGE ARCHITECTURAL REVIEW BOARD (ARC) STANDARDS AND PROCEDURES

5.1 Approval Required: No improvement shall be constructed, erected, placed, altered, maintained, or permitted to remain on any Lot subject to this Declaration until final plans and specifications have been submitted to and approved in writing by the Architecture Review Committee ("ARC").

5.2 Architecture Review Committee: The ARC shall have three members appointed by the Board of Directors. At all times at least one member of the ARC shall be an Owner, but otherwise ARC members do not have to be Owners. Each member of the ARC shall serve a term of one year, unless the member resigns or is removed by a majority vote of the Board of Directors before the end of the member's term. A member of the ARC may serve more than one term. All decisions of the ARC shall be taken by majority vote, and no decision of the ARC is effective unless it is in writing.

5.3 ARC Meetings: The ARC shall have the discretion to act in a meeting after notice as provided for in the Bylaws, or to act upon unanimous consent without meeting. If any action is taken without meeting, any Owner or Owner's contractor may make a written request for a meeting with the ARC to review the basis for the ARC's action and to request that the ARC change its decision. A meeting will be held within 10 days following receipt by the ARC of a written request; however, the ARC will not be required to meet more than once on any topic if, in its sole discretion, the ARC concludes that additional meetings would not be productive.

5.4 Review: Before construction activity is started on any Lot, the Owner must submit all of the plans and specifications described in Section 5.7 to the ARC together with a \$250 nonrefundable review fee. The ARC will not review any plans or specifications until all required documents are submitted and the review fee is paid. Within 15 days following receipt of such plans and specifications and the review fee, the ARC shall review the plans and specifications and shall inform the Owner in writing whether the plans and specifications are approved. If the ARC does not respond within the 15 day review period, the plans and specifications are conclusively presumed to be approved as submitted. If the plans and specifications are not approved, the Owner shall resubmit those nonconforming portions of the plans and specifications for review. No work may be performed relating to any Improvement unless and until all aspects of all plans and specifications have been approved by the ARC.

5.5 Deposit: Once the plans and specifications are approved, and before construction is commenced, the Owner will pay a \$1,750 deposit to the ARC. The ARC need not keep the deposit in a separate account, and the deposit will not accrue interest, but the ARC will maintain records regarding the amount of the deposit and make those records available to the Owner upon request. In addition to other remedies available to the ARC under these Declarations and otherwise available at law or in equity, the ARC has the discretion to fine the Owner

\$250 for the first violation of these Declarations, and \$500 for each violation thereafter. If fines cause the deposit to drop below \$1,000, the ARC may in its discretion demand that the Owner make an additional payment to restore the deposit to \$1,750. Prior to levying any fine, the ARC shall send a 10 day written notice to the Owner at his or her last known address stating the reason for the proposed fine and offering an opportunity to cure within the 10 day period. A copy of the notice will be sent to the Owner's contractor, if any, at the address the contractor uses for purposes of its Construction Contractors Board registration. After construction is completed, any portion of the deposit not used to pay fines will be returned to the Owner.

5.6 Inspection. All work related to any building, structure, or Improvement or any landscaping, vegetation, ground cover shall be performed in strict conformity with the plans and specifications approved under Section 5.3. The ARC shall have the right to inspect any such work to determine its conformity with the approved plans and specifications. The ARC shall also have the right to order a stop to all work if, in good faith, the ARC believes that any such work is nonconforming. In the event that the ARC determines in good faith that certain work is nonconforming with the plans and specifications or nonconforming with these Declarations, a stop work notice may be issued, without necessity of court order, which shall require the Owner to correct all nonconforming work specified in the notice before the remainder of the proposed work may be completed. Continuing to work without correcting any such nonconforming items shall be deemed a breach of this Declaration. The ARC may also issue an order for the Owner to correct completed work. The Declarants, the Association, the Board of Directors, and the ARC will not be responsible for any damages, loss, delay, cost, or legal expense occasioned through a stop work or correction notice given in good faith, even if it is ultimately determined that such work was in conformity with the approved plans and specifications or these Declarations.

5.7 Procedure: Any Owner proposing to construct any Improvements on his or her Lot (including any exterior alteration, addition, destruction, or modification to any such Improvements) shall follow these procedures and shall be subject to the approvals required by this Article and these Declarations. Failure to follow such procedures or obtain such approvals shall be deemed a breach of this Declaration.

(a) New Construction Documents: Any Owner proposing to construct any new Improvement on his or her Lot shall submit **two sets** (one marked up set will be returned following review) the following plans and specifications for review:

(i) Site Plan: The Site Plan shall be professionally prepared and at a minimum scale of 1" = 10'. The site plan shall include the property boundaries and property line fences, if any, the topography of the Lot, the dimensional location of the proposed buildings, walkways and decks, foundations, existing trees and rock outcroppings, driveways, parking areas, proposed utility lines, corner locations of homes on adjoining lots, and the trees which are planned for removal. The site plan shall also show how all storm water is collected from any improvements and contained on site.

(ii) Landscaping Plan: Landscaping plans must be drawn at a minimum scale of 1" = 10'. They must show the location of existing trees with greater than 6" trunk diameter measured 12" above the ground, note the trees proposed for removal, illustrate change in contour related to the landscaping work, note walk and other outdoor "floor" surface and planting bed materials, and list names, quantities and size of plant materials. In addition, the plans must locate all exterior light fixtures to be incorporated into the landscaping. The landscape plan shall include a lighting legend that calls out the proposed fixture type, fixture manufacturer, lamp type, lamp wattage and total quantity of fixtures proposed. Legible 8 1/2" x 11" photocopies of pictures of all proposed landscape lighting fixtures shall be submitted with the landscape plan. The ARC reserves the right to request actual fixtures to be submitted for review and approval.

(iii) Building Elevations: Four elevations at a scale of 1/4" = 1' shall be provided showing the elevations of the proposed Improvement(s) as situated on the Owner's Lot. The elevations shall include finished floor elevations and ridge heights above finished grade. In addition, the location, style and type of doors and windows shall be shown as well as the siding type to indicate finish grade and include finish grade of decks, fencing and other structures as shown in the evaluation.

(iv) Floor Plans: Floor plans for construction shall be submitted at a scale of 1/4" = 1'. The square footage of each floor shall be designated as well as the total square footage of the proposed plan. Include the dimensions of all exterior walls and building jogs and the perimeter of all buildings, decks, and privacy screens.

(v) Building Sections: Two longitudinal building sections, at a minimum scale of 1/4" = 1', shall be submitted showing the proposed improvements cut through the highest point of the building. The building sections shall note existing grades, finished grades, finished floor elevations and top of ridge elevations above finished grade. The building sections shall be cut with a 90 degree difference in orientation from each other.

(vi) Staking and Stringing: The Owner shall be responsible for providing a string layout on the Lot of the property lines, the proposed improvement(s), the driveway, and any other on-site parking, exterior decks, grade level patios and walkways. In doing so, all pins must be located or a survey conducted to confirm property lines. In addition, any and all trees with a trunk diameter greater than 6" measured 12" above grade and shrubs measuring over 6' in height that are proposed for removal must be flagged using an alternate color tape tied to the limb and/or area of trimming. Staking and stringing shall be completed on site when requested by the ARC. Failure to professionally stake and string the proposed submittal will result in a delay of the review process.

(vii) Exterior Paint Colors: The Owner shall include stained/painted samples showing the actual colors proposed, and be of the same material, finish grade and grain as the proposed siding material. The sample size shall be a minimum of 8-1/2" x 11". All proposed exterior colors must be submitted, including, but not limited to, siding, trim doors, windows, garage doors, decks and deck rails. A sample of the siding material proposed for use may be requested.

(ix) Exterior Lighting Plan: A plan locating all exterior light fixtures to be incorporated into the building exterior shall be submitted at a scale of 1/4" = 1'. The exterior lighting plan shall include a legend that calls out the proposed fixture type, fixture manufacturer, lamp type, lamp wattage and total quantity of fixtures proposed. Legible, 8-1/2" x 11" photocopies of all proposed exterior light fixtures shall be submitted with the exterior lighting plan. The ARC reserves the right to request actual fixtures to be submitted for review and approval.

(b) Remodeling Construction Documents: Before the Owner starts work on any remodeling of the house or any other structure on the Lot that will be visible to the outside of the home, or a substantial change in the landscaping, the Owner must submit a plan as described above that will accurately and fully describe the proposed construction. Alteration requests may require the submittal of additional information at the sole discretion of the ARC.

5.8 Utilities: As of the date of this Declaration, the following utilities are available to each Lot within the Property:

- Electric power: Pacific Power and Light
- Natural gas: Cascade Natural Gas
- Telephone: Qwest
- TV cable: Bend Cable Communications
- Sewer and water services: City of Bend
- Service connections have been extended to the property boundaries of each home site for electricity, gas, cable, phone, water and sewer



5.9 Review, Response, and Appeal Procedure. At the time a completed application is received, the ARC will notify contiguous Owners and Owners whose property, in the sole discretion of the ARC, likely will be impacted by the applicant's construction.

(a) Approved with Conditions: If the plan application is "Approved-with Conditions" the applicant must respond to the ARC review comments in writing prior to any excavation work being done on the site regarding conditional compliance. If there are specific areas of concern, the applicant may be required to provide further information to the ARC to discuss any issues prior to beginning construction.

(b) Appeal: If the ARC's decision is unacceptable to the applicant, the applicant may appeal the ARC's decision to the Board of Directors, in writing, within 14 days after the ARC's issuance of a written decision. The Board will consider the appeal by reviewing all information submitted to the ARC prior to ARC's decision issuance. No new material may be considered by the Board of Directors in deciding the appeal. The Board of Directors' decision will be issued in writing and not subject to further appeals.

(c) Construction: Construction may begin after all issues (if any) are resolved and the owner's written response has been received and reviewed.

(d) Additional Review: Outstanding issues or items which are missing from the original submittal (paint colors, drawings or catalog cuts of light fixtures, etc.) must be provided for review by the ARC.

(e) Completion: If the Owner does not commence construction within 6 months after receiving approval, the ARC may in its sole discretion revoke the approval of the plans. Landscaping shall be completed within one year of occupying the house.

5.10 Waiver. Any condition or provision of Sections 5.1 through 5.9 may be waived by Declarants, the Board of Directors, or the ARC in their exclusive discretion. Any such waiver shall not be deemed a general waiver of any aspect of these Declarations. The granting of a waiver as to one Owner shall not entitle any other Owner to the waiver of the same or similar conditions or provisions. No waiver shall be valid unless it is in writing, signed by an authorized representative of the Declarants, the Board of Directors, or the ARC.

5.11 Liability: Neither the ARC or members of the ARC shall be liable to any Owner for any damage, loss or prejudice suffered or claimed on account of any action or failure to act by the ARC or any member of its members, provided only that the ARC officer or its members have acted in good faith in accordance with the actual knowledge possessed by him or her.

## **ARTICLE 6** **ENFORCEMENT**

6.1 Remedies: In the event any Owner or the invitee of any Owner shall violate any provision of this Declaration, the Bylaws of the Association or any rules or regulations adopted by the Association governing the use of Lots, then the Association, acting through its Board of Directors, may notify the Owner in writing that the violations exist and that such Owner is responsible for them, and may, after reasonable notice and opportunity to be heard, do any or all of the following: (a) bring suit or action against such Owner to enforce this Declaration, or (b) impose fines as provided in Section 6.7. Nothing in this section, however, shall give the Association the right to deprive any Owner of access to and from such Owner's Lot.

6.2 Non-qualifying Improvements and Violation of General Protective Covenants: In the event any Owner constructs or permits to be constructed on such Owner's Lot an Improvement contrary to the provisions of this Declaration, or causes or permits any Improvement, activity, condition or nuisance contrary to the provisions of this Declaration to remain uncorrected or unabated on such Owner's Lot, then the Association acting through its Board of Directors may notify the Owner in writing of any such specific violations of this Declaration and may require the Owner to remedy or abate the same in order to bring the Owner's Lot, the Improvements thereon, and



the Owner's use thereof, into conformance with this Declaration. If the Owner is unable, unwilling, or refuses to comply with the Association's specific directives or remedy or abatement, or the Owner and the Association cannot agree to a mutually acceptable solution within the framework and intent of this Declaration, after notice and opportunity to be heard and within sixty (60) days of written notice to the Owner, or fifteen (15) days in the event of a violation involving landscape maintenance, then the Association acting through its Board of Directors, shall have, in addition to any other rights or remedies provided in this Declaration, at law or in equity, the right to do any or all of the following:

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

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

(c) Fines: Impose one or more fines as provided in Section 6.6.

6.3 Default in Payment: If a fine, or other charge levied under this Declaration is not paid within thirty (30) days of its due date, such fine or other charge shall become delinquent and shall bear interest from the due date until paid at the legal rate of 9% per annum, in addition, the Association may exercise any or all of the following remedies:

(a) Suspension of Rights; Acceleration: The Association may suspend such Owner's voting rights until such amounts, plus other charges under this Declaration, are paid in full and may declare all remaining periodic installment of any annual assessment or any other amounts owed by such Owner to the Association immediately due and payable. In no event, however, shall the Association deprive any Owner of access to and from such Owner's Lot.

(b) Suit or Action: The Association may bring an action to recover a money judgment for unpaid charges and fines under this Declaration.

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

6.4 Notification of First Mortgagee: The Board of Directors may notify any first mortgagee of any Living Unit of any default in performance of this Declaration by the Living Unit Owner, which is not cured within sixty (60) days.

6.5 Late Charge, Expenses and Attorney Fees: In the event the Association shall bring any suit or action to enforce this Declaration, or to collect any money due hereunder, the prevailing party in such suit or action shall recover such amount as the Court may determine to be reasonable as attorney fees at trial and upon any appeal or petition for review thereof or in any bankruptcy proceeding.

6.6 Fines: The Board of Directors may establish a schedule of fines applicable to violations of this Declaration. Fines may be imposed by the Board of Directors after giving the alleged violator notice of the proposed fine and an opportunity to be heard. Fines shall be payable within ten days after receipt of written notice of the imposition of the fine. All fines shall be deposited in the Association's operating account.

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

**ARTICLE 7  
MISCELLANEOUS**

7.1 Nonwaiver: Consent by the Board of Directors or the ARC to any matter proposed to it, or within its jurisdiction, or failure by the Board of Directors or the ARC to enforce any violation of the Rules, shall not be deemed to constitute a precedent or waiver impairing the Board of Directors or the ARC's right to withhold approval as to any similar matter thereafter proposed or submitted to it for consent or to enforce any subsequent or similar violation of these Rules.

7.2 Severability: If any section, subsection, paragraph, sentence, clause, or phrase of this Declaration is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this Declaration.

7.3 Notice: All notices and other communications to an Owner under these Declarations shall be mailed to Owner at the common address Owner's Lot. All notices and other communications to Declarants must be mailed to the following address:

Declarants  
McClain Investments, LLC  
c/o Hurley, Lynch & Re, P.C.  
747 SW Mill View Way  
Bend, OR 97702  
Facsimile No.: (541) 382-4367

Notice will be deemed to have been given on the day of personally delivery or three days after being sent by one of the following methods: facsimile (with confirmation), mailed by certified mail return receipt requested, or by delivered by an overnight delivery service (with confirmation).

7.4 Amendment and Repeal: This Declaration, or any provision hereof, may be amended or repealed by the vote or written consent of Owners holding not less than seventy-five percent (75%) of the Class A votes, together with the written consent of the Class B member, if such membership has not been terminated as provided herein. Any such amendment or repeal shall become effective only upon recordation in the Deed Records of Deschutes County, Oregon, of a certificate of the president or secretary of the Association setting forth in full the amendment, amendments or repeal so approved and certifying that such amendment, amendments or repeal have been approved in the manner required by this Declaration. In no event shall an amendment under this section create, limit or diminish Declarants' rights without Declarants' written consent, or change the boundaries of any Lot or any uses to which any Lot is restricted unless the Owners of the affected Lots unanimously consent to the amendment.

IN WITNESS WHEREOF, the undersigned Declarants have caused the execution of this Declaration on the date first above written.

McCLAIN INVESTMENTS, LLC

  
Patrick K. McClain, Manager

McCLAIN INVESTMENTS, LLC

  
Kimberly A. McClain, Member

TRANSCEND EKISTICS, LLC

  
Steve Gist, Member

TRANSCEND EKISTICS, LLC

  
Regina M. Gist, Member

STATE OF OREGON           )  
COUNTY OF DESCHUTES   ) ss.

The foregoing instrument was acknowledged before me this 5 day of May 2005, by Patrick K. McClain as Manager of McClain Investments, LLC.



  
Notary Public for Oregon

STATE OF OREGON           )  
COUNTY OF DESCHUTES   ) ss.

The foregoing instrument was acknowledged before me this 5 day of May 2005, by Kimberly A. McClain as Member of McClain Investments, LLC.

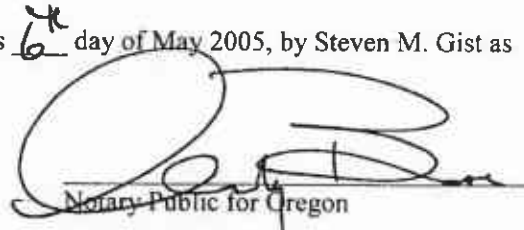


  
Notary Public for Oregon

STATE OF OREGON           )  
COUNTY OF DESCHUTES   ) ss.

The foregoing instrument was acknowledged before me this 6 day of May 2005, by Steven M. Gist as Member of Transcend Ekistics, LLC.



  
Notary Public for Oregon

STATE OF OREGON           )  
COUNTY OF DESCHUTES   ) ss.

The foregoing instrument was acknowledged before me this 5 day of May 2005, by Regina M. Gist as Member of Transcend Ekistics, LLC.



  
Notary Public for Oregon