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AFTER RECORDING, RETURN TO:

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DESCHUTES COUNTY OFFICIAL RECORDS
NANCY BLANKENSHIP, COUNTY CLERK

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
THE RESERVE AT BROKEN TOP**

This DECLARATION is made this 25 day of October, 2004 by PORTER-JAMES DEVELOPMENT GROUP, LLC, an Oregon limited liability company, ("Declarant").

RECITALS

A. Porter-James Development Group, LLC, is the owner and developer of certain real property located in Deschutes County, State of Oregon, commonly known as a portion of Skyliner Summit Phase 11 and substantially as described on the attached Exhibit "A" and as shown on the attached Exhibit "B" (the "Property"). The Property is comprised of 41 subdivided lots (numbered as Lots 266-306) to be sold and developed as residential living units, plus adjacent common area tracts.

B. Declarant has received permission from Skyliner Summit Limited Partnership to market the Property under the name of "The Reserve at Broken Top." Henceforth, the Property will be known as "The Reserve at Broken Top."

C. Declarant desires to subject the Property to the terms of this Declaration for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property, for the benefit of such property and its present and subsequent owners.

NOW, THEREFORE, Declarant hereby declares that The Reserve at Broken Top shall be held, sold, and conveyed subject to the terms of this Declaration, which shall run with such property and shall be binding upon all parties having or acquiring any right, title, or interest in such property or any part thereof and shall inure to the benefit of each Owner thereof.

**ARTICLE 1
DEFINITIONS**

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

1.1 "Areas of Common Responsibility" means those areas for which the Association has maintenance, insurance, operating and other responsibility under this Declaration, as amended or supplemented from time to time.

1.2 "Assessments" means all assessments and other charges, fines and fees imposed by the Association on an Owner in accordance with this Declaration, including, without

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limitation, Annual Assessments, Special Assessments, and Individual Assessments as described in Article 10 below.

1.3 **“Association”** means the nonprofit mutual benefit corporation formed to serve as the Owners’ association and known as “The Reserve at Broken Top Community Association, Inc.”

1.4 **“Board”** shall mean the Board of Directors of the Association as elected by the members pursuant to the provisions of the Bylaws.

1.5 **“Building”** shall mean any structure located on a Lot within the Property.

1.6 **“Bylaws”** means the bylaws of the Association as such bylaws may be amended from time to time.

1.7 **“Common Areas”** means those lots or tracts designated as such on any plat of the Property or in this Declaration including any Improvements thereon, but excluding those areas designated as public streets and public right-of-ways, if any. Common Areas will also include Common Easement Areas and Public Areas.

1.8 **“Common Easement Areas”** means those easements established for the benefit of all property within The Reserve at Broken Top pursuant to any plat of the Property.

1.9 **“Community-Wide Standards”** means the standards of conduct, maintenance, or other activity generally prevailing throughout the Property. Such standards may be more specifically determined by the Association from time to time during the term of this Declaration, as may be extended by the terms hereof.

1.10 **“Declarant”** shall mean Porter-James Development Group, LLC, an Oregon limited liability company, and its successors and assigns if a recorded instrument executed by Declarant assigns to the transferee all of Declarant’s rights under this Declaration.

1.11 **“Declaration”** shall mean the Declaration of Covenants, Conditions and Restrictions for The Reserve at Broken Top, as amended or supplemented from time to time.

1.12 **“Design Review Committee”** shall mean the group of individuals responsible for implementing, interpreting, and enforcing the Design Guidelines and certain provisions of this Declaration.

1.13 **“Design Guidelines”** shall mean the initial design and development guidelines and application and review procedures which shall apply to all construction activities within the Property. The Design Guidelines may contain general provisions applicable to all of the Lots, as well as specific provisions which vary from one portion of the Property to another depending upon the location, unique characteristics, and intended use.

1.14 **“Development Period”** means the period of time between the date this Declaration is recorded in the official records of Deschutes County, Oregon and the earliest of (a) when fifteen (15) of the Lots have been conveyed to persons other than Declarant or an

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affiliate; (b) when, in its discretion, Declarant so determines, as evidenced by a document executed by Declarant to that effect and recorded in the official records of Deschutes County, Oregon; or (c) ten (10) years from the date this Declaration is recorded in the official records of Deschutes County, Oregon.

1.15 **“Improvement”** shall mean every temporary or permanent structure of any kind, including, but not limited to any buildings, outbuildings, private roads, driveways, parking areas, walkways, fences and barriers, retaining walls, stairs, decks, hedges, windbreaks, planting, planted trees and shrubs, park strip (if any), signs, storage areas and all other structures or exterior landscaping, vegetation or ground cover of every type and every kind above the land surface.

1.16 **“Living Unit”** shall mean any portion of a structure situated upon the Property designed and intended for use and occupancy as a residence by a single family.

1.17 **“Lot”** shall mean each platted or legally partitioned lot within the Property. Lot does not include Common Areas or Public Areas.

1.18 **“Master Plan”** means the development approval issued by Deschutes County for Skyliner Summit Phase 11, as the same may hereafter be amended.

1.19 **“Owner”** shall mean the record Owner, including Declarant, whether one or more persons or entities, of the fee simple title to any Lot or a purchaser in possession under a land sale contract, except as otherwise provided for herein, in the Articles of Incorporation or the Bylaws. The foregoing does not include persons or entities who hold an interest in any Lot merely as security for the performance of an obligation or a tenant or holder of a leasehold interest, except as otherwise provided for herein, in the Articles of Incorporation or the Bylaws. The rights, obligations, and other status of being an Owner commence upon acquisition of the ownership of a Lot and terminate upon disposition of such ownership, but termination of ownership shall not discharge an Owner from obligations incurred prior to termination.

1.20 **“Policies and Procedures”** means those policies, procedures, rules and regulations adopted by the Association pursuant to the authority granted in this Declaration, as the same may be amended from time to time.

1.21 **“Property”** shall mean the property described on Exhibit “A” and shown on Exhibit “B” attached hereto.

1.22 **“Public Areas”** means areas dedicated to the public or established for public use in any plat of the Property, or so designated in this Declaration.

1.23 **“The Reserve at Broken Top”** means the Property described on Exhibit “A” and shown on Exhibit “B” attached hereto, and recorded as “Skyliner Summit Phase 11” in Deschutes County Records.

ARTICLE 2
PROPERTY SUBJECT TO THIS DECLARATION

2.1 **Initial Development.** Declarant hereby declares that all the real property described on Exhibit "A" and shown on Exhibit "B" attached hereto will henceforth be referred to as The Reserve at Broken Top, a planned development under the Oregon Planned Community Act, and is owned and shall be owned, conveyed, encumbered, used, occupied and improved subject to this Declaration.

A copy of the final plat for the subdivision, namely Lots 266 through 306, plus adjacent common area tracts, is attached as Exhibit "B", and incorporated herein by this reference.

ARTICLE 3
DESCRIPTION OF PROPERTY AND CONVERSION
AND CONSOLIDATION OF LOTS

3.1 **Number of Lots.** The Property consists of 41 Lots.

3.2 **Land Classifications.** All land within the Property is included in one or another of the following land classifications: Lots, Common Areas, Common Easement Areas and Public Areas.

3.3 **Contemplated Improvements.** Declarant does not choose to limit its rights to add improvements not described in this Declaration.

ARTICLE 4
PROPERTY RIGHTS IN COMMON AREAS

4.1 **Owner's Easements of Enjoyment.** Subject to the provisions of this Article, every Owner and his invitees shall have a right and easement of enjoyment in and to the Common Areas, which easement shall be appurtenant to and shall pass with the title to every Lot.

4.2 **Title to the Common Areas.** Title to the Common Areas, except Common Easement Areas and Public Areas if applicable, shall be conveyed to the Association by Declarant free and clear of monetary liens and encumbrances prior to the date on which Class B membership in the Association ceases and is converted to Class A membership as described in Section 8.4(b).

4.3 **Common Easement Areas.** Common Easement Areas, if any, shall be granted or reserved as signage and visual landscape features, or as otherwise provided in this Declaration, a supplemental declaration, or the plat establishing the Common Easement Area. Such areas are to be maintained by the Association and no changes in landscaping will be permitted without written authorization by the Association. No building, wall, fence, paving, landscaping or construction of any type shall be erected or maintained by any Owner so as to trespass or encroach upon the Common Easement Areas. In the event any Common Easement Area is conveyed to the Association, such Common Easement Area shall then become a Common Area.

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4.4 Extent of Owner's Rights. The rights and easements of enjoyment in the Common Areas created hereby shall be subject to the following and all other provisions of this Declaration:

(a) **Easements.** Declarant reserves for itself and grants to the Association for the benefit of Declarant and the Association and all Owners of Lots within the Property the following easements over, under and upon the Common Areas, including the Common Easement Areas:

(i) An easement on all Common Areas for underground installation and maintenance of power, gas, electric, water and other utility and communication lines and services installed by or with the consent of Declarant during the Development Period or the Association thereafter, and any such easement shown on any plat of the Property.

(ii) An easement for construction, maintenance, repair and use of Common Areas, including common facilities thereon.

(iii) An easement for the purpose of making repairs to any Improvements on Common Areas.

Declarant or the Association may (and, to the extent required by law, shall) grant or assign such easements to governmental entities or other utilities performing utility services and to communication companies, and the Association may grant free access thereon to police, fire, and other public officials and to employees of utility companies and communications companies serving the Property.

(b) **Use of the Common Areas.** The Common Areas shall not be partitioned or otherwise divided into parcels for residential use. Except as otherwise provided in this Declaration, the Common Areas shall be reserved for the use and enjoyment of all Owners and no private use may be made of the Common Areas, including Common Easement Areas. Nothing in this Declaration shall prevent the placing of a sign or signs upon the Common Areas identifying the Property or identifying trails or identifying items of interest, including directional signs, provided such signs are approved by the Association and comply with any applicable sign ordinances or recorded restrictions. The Board of Directors of the Association shall have authority to abate any trespass or encroachment upon the Common Area at any time, by any reasonable means and with or without having to bring legal proceedings.

(c) **Alienation of the Common Areas.** The Association may not encumber, sell or transfer the Common Areas owned directly or indirectly by the Association for the benefit of the Lots unless such encumbrance, sale or transfer has been approved by two-thirds of the voting rights in the Association. This requirement shall not apply to the easements described in Section 4.4(a) above.

(d) **Limitation on Use.** Use of the Common Areas by the Owners, their family members, guests, tenants and contract purchasers, shall be subject to the provisions of this Declaration and to the following:

(i) The right of the Association to suspend such use by any Owner and the Owner's members, guests, tenants and contract purchasers to the extent provided in Article 11 below.

(ii) The right of the Association to adopt, amend and repeal Policies and Procedures in accordance with this Declaration.

4.5 Delegation of Use. Any Owner may delegate, in accordance with any applicable provisions of the Bylaws of the Association, the Owner's right of enjoyment of the Common Areas to the members of the Owner's family and tenants or contract purchasers who reside on the Property, whose use of the Common Areas shall be subject to this Declaration and the Policies and Procedures adopted under this Declaration.

4.6 Easements Retained by Declarant. So long as Declarant owns any Lot, Declarant shall retain an easement under, over and across the Common Areas in order to carry out sales and development activities necessary or convenient for the sale and development of Lots or Living Units. Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under and across the Common Areas and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the Improvements on the Property or other real property owned by Declarant; provided, however, that no such rights shall be exercised by Declarant in such a way as to unreasonably interfere with the occupancy, use, enjoyment or access to an Owner's Lot by the Owner or the Owner's family, tenants, guests or invitees.

ARTICLE 5 PROPERTY RIGHTS IN LOTS

5.1 Use and Occupancy. The Owner of a Lot in the Property shall be entitled to the exclusive use and benefit of such Lot, except as otherwise expressly provided in this Declaration, but the Lot shall be bound by and the Owner shall comply with the restrictions made applicable to such Lot by this Declaration.

5.2 Easements Granted. In addition to any easements shown on the recorded plats and as set forth elsewhere herein, Declarant hereby reserves for itself and Declarant and Current Owners each grant to the Association the following easements for the benefit of Declarant and the Association:

(a) **Adjacent Common Area.** The Owner of any Lot which blends together visually with any Common Area shall, if the Association elects from time to time to so require, permit the Association to enter upon the Lot to perform the maintenance of such Common Area.

(b) **Right of Entry at Reasonable Hours.** For the purpose of performing the maintenance provided for in this Declaration, the Association, through its duly authorized agents or employees, shall have the right after reasonable notice to the Owner, to enter upon any Lot at reasonable hours. The Association shall have a right of entry for purposes of effecting emergency repairs or to prevent imminent damage or injury to the Living Unit, other

Living Units, to other Owners and their guests or invitees, or to the Common Areas. In such instances, the Association shall give notice by telephone if reasonably possible prior to entry.

(c) **Utility Easements.** Easements for installation and maintenance of utilities and drainage facilities may be reserved over portions of certain Lots, as shown on or described in the recorded plat. Within the easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities, or which may change the direction or flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority, utility company or the Association is responsible. Notwithstanding the provisions of this paragraph, no such easements shall exist along adjoining side lot lines on which a party wall exists.

ARTICLE 6 PROPERTY USE RESTRICTIONS

6.1 **Structures Permitted.** No structures shall be erected or permitted to remain on any Lot except structures containing Living Units and structures normally accessory thereto the location of which is in conformity with the applicable governmental regulations, is compatible in design with the dwelling structure constructed on such Lot, and has been approved by the Declarant during the Development Period, or the Design Review Committee thereafter. All structures must be constructed in strict conformance with the Design Guidelines.

6.2 **Residential Use.** All Lots and Living Units shall be used for single-family residential purposes only. Each residence shall contain a minimum of 2,000 square feet (exclusive of garage, storage and accessory dwellings). Except as provided for herein, no commercial, retail or industrial use shall be allowed on any Lot. Except with the consent of the Declarant during the Development Period or the Association thereafter, no trade, craft, business, profession, commercial or similar activity of any kind shall be conducted on any Lot, nor shall any goods, equipment, vehicles, materials or supplies used in connection with any trade or business be kept or stored on any Lot. Nothing in this paragraph shall be deemed to prohibit (a) activities relating to the sale of Living Units, (b) the right of Declarant or its approved contractor or homebuilder to construct Living Units on any Lot, to store construction materials and equipment on such Lots in the normal course of construction, and to use any Living Unit as a sales or rental office or model home or apartment for purposes of sales in The Reserve at Broken Top, and (c) the right of the Owner of a Lot to maintain his professional personal library, keep his personal business or professional records or accounts, handle his personal business or professional telephone calls or confer with business or professional associates, clients or customers, in his Living Unit. Commercial use in a residence may be allowed; provided that, only normal residential activities will be observable outside the Living Unit and the activities will not be in violation of applicable governmental ordinances.

6.3 **Antennas.** Only standard TV antennas and satellite dishes shall be permitted on a Lot. All over-the-air reception devices shall comply with the restrictions imposed by Declarant

during the Development Period, or the Design Review Committee thereafter, pertaining to the size, means, method and location of TV antenna and satellite dish installation.

6.4 **Appearance.** All garbage, trash, cuttings, refuse, garbage and refuse containers, heat pumps, air conditioners, and other service facilities located on the Lot shall be screened from view of neighboring lots and streets in a manner approved by the Declarant during the Development Period or the Design Review Committee thereafter.

6.5 **Damage or Destruction.** If any Living Unit or other Improvement within the Property is destroyed and the Owner thereof elects not to rebuild, the affected Lot shall be cleared of debris and a Living Unit or other Improvement of an alternate design may be constructed subject to approval of Declarant during the Development Period or the Design Review Committee thereafter.

6.6 **Leasing of Living Units.** There is no restriction on the right of any Owner to lease or rent such Owner's Living Unit to the extent allowed by the applicable City of Bend zoning code or other ordinances, regulations and statutes. Any tenancy upon any Lot or in any Living Unit shall be governed by the terms and provisions of the Declaration, Bylaws and Association Policies and Procedures.

6.7 **Livestock, Poultry and Pets.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except that a reasonable number of dogs, cats or other common domesticated household pets may be kept, provided that they are not kept, bred or maintained for any commercial purposes and do not constitute a nuisance.

6.8 **Maintenance of Improvements and Grounds.** Each Lot within the Property shall be maintained in a clean and attractive condition, in good repair and in such a fashion as not to create a fire hazard. In addition, each Owner shall keep all areas of the Lot free of trash, excess building materials, household items, and other unsightly material. Unsightly rear storage is prohibited.

6.9 **Offensive or Unlawful Activities.** No noxious or offensive activity shall be carried on upon any Lot therein nor shall anything be done or placed thereon which interferes with or jeopardizes the enjoyment of the Common Areas, or which is a source of annoyance to residents. No unlawful use shall be made of a Lot nor any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.

6.10 **Outside Fixtures.** No recreational equipment, including but not limited to, basketball hoops or play structures, are allowed in any street located within The Reserve at Broken Top. Other accessory structures or equipment, including but not limited to, tool sheds, play equipment and dog houses are allowed only in locations and with screening as approved by the Declarant during the Development Period or Design Review Committee thereafter.

6.11 **Outside Storage.** Woodpiles, storage areas, machinery and equipment shall be prohibited upon any Lot, unless obscured from view of neighboring property and streets by a fence or appropriate screen approved by the Declarant during the Development Period or Design Review Committee thereafter.

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6.12 Parking, Prohibited Vehicles, and Lot Appearance. Boats, trailers, buses, motor homes, commercial vehicles, flat bed pick-up trucks, recreational vehicles, (including campers), disabled vehicles or other similar vehicles shall not be parked or stored on any Lot other than inside an enclosed garage, screened from view in a manner approved by the Declarant during the Development Period or Design Review Committee thereafter, or on a temporary basis as allowed in the Association Policies and Procedures which may be amended from time to time. No vehicle shall be parked in the street, except on a temporary basis as allowed in the Association Policies and Procedures which may be amended from time and time, and at no time may vehicles in disrepair be parked on driveways, on the street or on sidewalks within the Property. No major or extended vehicle repairs shall be performed unless inside an enclosed garage. Any vehicle found in violation of these restrictions is subject to towing by the Association at the Owner's expense, which cost may be assessed as an Individual Assessment as provided in Article 10.

6.13 Rubbish and Trash. Each Owner shall keep garbage in covered containers, and shall keep such containers screened from the view of the neighboring Lots and from the streets. Sight-obscuring enclosures shall be incorporated into the original design of all Living Units. Compost piles shall be kept neat and well-controlled. Burn barrels and other forms of open burning shall not be allowed.

6.14 Signs. No sign of any kind shall be displayed to public view on or from any Lot without the Design Review Committee's prior written consent; provided, however, that an Owner may display not more than one (1) "for sale" sign per Lot. Said signs shall be limited in size to not more than four (4) square feet. The color, size and placement of such signs will be specified by the Declarant during the Development Period or the Design Review Committee thereafter. No "for rent" signs are allowed on a Lot at any time.

6.15 Utility Easements. Easements for installation and maintenance of utilities may be reserved over portions of certain Lots, as shown on the recorded plat. Within the easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities. The easement area of each Lot and all Improvements in it shall be maintained continuously by the Owner of the Lot, except for those Improvements for which a public authority, utility company, or Association is responsible.

6.16 Windows, Decks, Porches, Outside Walls and Yards. In order to preserve the attractive appearance of The Reserve at Broken Top, the Declarant during the Development Period and the Design Review Committee thereafter, may regulate the nature of items which may be placed in or on windows, decks, entry porches, outside walls and yards so as to be visible from outside of the Lot. Garments, rugs, laundry and other similar items may not be hung from windows, facades, porches or decks.

6.17 External Fire Suppression. The Property is located in a geographic region where there is a high risk of wildfire. In order to protect the Property from the risk of wildfire, each Owner shall install and maintain external fire suppression equipment designed to allow a homeowner to protect individual structures from the threat of wildfire and to prevent wildfires from spreading within the subdivision. Acceptable systems shall consist of free-standing fire fighting equipment and employ either water, foam or other synthetic fire suppression materials;

provided, however, that if water is used, it must be supplied by a source other than municipal water supply (i.e., storage tanks or reservoirs). Storage of such equipment shall be in the Owner's garage or in an attached structure approved by the Declarant during the Development Period, or by the Design Review Committee thereafter. If an attached storage structure is used, it must match the exterior design and materials of the residence to which it is attached.

ARTICLE 7 BUILDING STANDARDS

7.1 Completion. Any structure shall be completed within twelve (12) months from the beginning of construction, so as to present a finished appearance when viewed from any angle. In the event of undue hardship due to weather or any other unanticipated and unavoidable occurrence, that period may be extended upon the written approval of Declarant during the Development Period, or the Design Review Committee thereafter. The building area and surrounding streets and sidewalks shall be kept reasonably clean and in workmanlike order during the construction period.

7.2 Exterior Materials and Finishes. Exterior materials and paint colors must be approved by the Declarant during the Development Period, and by the Design Review Committee thereafter. Samples submitted for approval may be standard manufacturer's paint chip samples. Use of muted, earth-related tones such as brown, green, dark red, blue or yellow which are appropriate for the natural surroundings are encouraged. All siding material must be a minimum of hardy plank or equivalent with maximum six inch (6") reveal (when used in a horizontal design), or board and batt. Stone material must be natural stone veneer. All exposed exterior metals, PVC vents and plumbing pipes must be painted to match or blend with exterior house colors and roofing.

Prohibited materials include: T-111 plywood; any material designated as prohibited by the Design Guidelines

7.3 Roofs. Roofing material shall be restricted to a minimum of 50-year architectural composition or concrete tile. No other types of roofing will be allowed.

7.4 Garages. Unless otherwise agreed to in writing by the Declarant during the Development Period or by the Design Review Committee thereafter, the garage of each Living Unit must have a minimum capacity of three (3) cars.

7.5 Driveways and walkways. Allowed materials for driveways and walkways include concrete, asphalt, brick and masonry. All driveways shall be finished prior to occupancy. Exceptions may be allowed with specific written approval from Declarant during the Development Period and the Design Review Committee thereafter.

7.6 Landscaping. Each Lot shall be fully landscaped within 60 days from the completion of the Living Unit constructed on such Lot. In the event of undue hardship due to weather conditions, this period may be extended for a reasonable length of time upon written approval by Declarant during the Development Period or the Design Review Committee thereafter. All exterior landscape installations and plantings visible from the public streets must

be approved by the Declarant during the Development Period or the Design Review Committee thereafter.

7.7 Grades, Slopes and Drainage. Each Owner of a Lot shall accept the burden of, and shall not in any manner alter, modify or interfere with, the established drainage pattern and grades, slopes and courses related thereto over any Lot or Common Area without the express written permission of the Declarant during the Development Period or the Association thereafter and then only to the extent and in the manner specifically approved. No structure, plantings or other materials shall be placed or permitted to remain on or within any grades, slopes, or courses, nor shall any other activities be undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow, or obstruct or retard the flow of water through drainage channels.

7.8 Fences. All fences must be approved by the Design Review Committee. Declarant desires to maximize a feeling of open community in The Reserve at Broken Top and to this end, perimeter lot line fences are prohibited. Well-constructed wood courtyard or other fences, designed as part of the landscaping for privacy, pet control and for screening objectionable views, may be approved by the Design Review Committee if such fencing does not detract from the appearance of the subdivision. Any fence approved by the Design Review Committee shall not exceed five (5) feet in height.

7.9 Exterior Lighting. No Owner shall place on any Lot bright exterior lighting, except that indirect or shielded exterior lighting may be allowed, subject to review and approval by Declarant during the Development Period and the Design Review Committee thereafter.

7.10 Height Restrictions. No structure shall exceed 30 feet (30') in height as measured from the existing elevation of the lot at the time of plat recording to the highest point of the roof.

7.9 New Technology. New materials may be developed from time to time which warrant a change in the foregoing specifications. Upon request, the Design Review Committee may approve the use of a new material, but only upon a substantial showing that the material is consistent with the visual and aesthetic integrity of the Property.

ARTICLE 8 ASSOCIATION

Declarant shall organize an association of all of the Owners within The Reserve at Broken Top. Such association, its successors and assigns, shall be organized under the name "The Reserve at Broken Top Community Association, Inc." and shall have such property, powers and obligations as are set forth in this Declaration for the benefit of the Property and all Owners of property located therein.

8.1 Organization. Declarant shall organize the Association as a nonprofit mutual benefit corporation under the general nonprofit corporation laws of the State of Oregon. The Articles of Incorporation of the Association shall provide for its perpetual existence, but in the event the Association is at any time dissolved, whether inadvertently or deliberately, it shall automatically be succeeded by an unincorporated association of the same name. In that event all

of the property, powers and obligations of the Association existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated association, and such vesting shall thereafter be confirmed as evidenced by appropriate conveyances and assignments by the Association. To the greatest extent possible, any successor unincorporated association shall be governed by the Articles of Incorporation and Bylaws of the Association as if they had been made to constitute the governing documents of the unincorporated association.

8.2 **Bylaws.** Declarant shall adopt, on behalf of the Association, the initial bylaws required under ORS 94.635 to govern the administration of The Reserve at Broken Top. Declarant shall record the Bylaws in the official records of Deschutes County, Oregon.

8.3 **Membership.** Every Owner of one or more Lots within the Property shall, immediately upon creation of the Association and thereafter during the entire period of such Owner's membership of one or more Lots within the Property, 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.

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

(a) **Lots.** Lots shall be allocated one Voting Unit per Lot. A single-family residential Lot shall be allocated one vote regardless whether the Living Unit has been constructed on such Lot.

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

Class A. Class A members shall be all Owners with the exception of the Class B member and shall be entitled to Voting Units for each Lot owned computed in accordance with Section 8.4(a) above. When more than one person holds an interest in any Lot, all such persons shall be members and the vote for such Lot shall be exercised as they among themselves determine. In the event that such co-owners cannot agree with respect to any vote, the vote of the Lot owned by the co-owners shall be disregarded completely in determining the proportion of votes given with respect to such matter. In no event, shall more Voting Units be cast with respect to any Lot than as set forth in Section 8.4(a) above.

Class B. The Class B member shall be the Declarant and shall be entitled to three votes for each Lot owned by Declarant. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs first:

(i) When Declarant has completed development of all Lots and Common Areas permitted under the Master Plan, and fifteen (15) of the Lots have been sold and conveyed to Owners other than Declarant; or

(ii) At such earlier time as Declarant may elect in writing to terminate Class B membership; or

(iii) Ten (10) years from the date this Declaration is recorded in the official records of Deschutes County, Oregon.

8.5 **Special Declarant Rights.** Declarant reserves to itself the following special rights to:

- (a) Control the Association during the Development Period as provided in this Declaration;
- (b) Reserve for itself and grant easements as provided in this Declaration;
- (c) Approve the design, construction, alteration or installation of any Improvements to the Property during the Development Period as provided in this Declaration;
- (d) Construct Living Units on any Lot, store construction materials and equipment on such Lots in the normal course of construction, and use any Living Unit as a sales or rental office or model home or apartment for purposes of sales or rental in The Reserve at Broken Top;
- (e) Appoint an interim Board of Directors; and
- (f) All other rights as set forth in this Declaration.

8.6 **General Powers and Obligations.** The Association shall have, exercise and perform all of the following powers, duties and obligations:

- (a) The powers, duties and obligations granted to the Association by this Declaration.
- (b) The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Oregon.
- (c) The powers, duties and obligations of a homeowners' association pursuant to the Oregon Planned Community Act, whether or not such Act is applicable to the Association.
- (d) 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 or otherwise promoting the general benefit of the Owners within the Property.

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 nonprofit corporation laws of the State of Oregon.

8.7 **Specific Powers and Duties.** The powers and duties of the Association shall include, without limitation, the following:

(a) **Maintenance and Services.** The Association shall provide maintenance and services for the Property as provided in Article 10 and other provisions of this Declaration.

(b) **Insurance.** For the benefit of the Association and the Owners, the Board of Directors shall obtain and maintain at all times, and shall pay for out of the Operations Fund, the following insurance:

(i) **Property Damage Insurance.** The Association shall maintain a policy or policies of insurance covering loss or damage from fire, with standard extended coverage and "all risk" endorsements, and such other coverages as the Association may deem desirable.

The amount of the coverage shall be for not less than one hundred percent (100%) of the current replacement cost of the structural improvements on the Common Areas (exclusive of land, foundation, excavation and other items normally excluded from coverage), subject to a reasonable deductible as determined by the Board of Directors of the Association.

The policy or policies shall include all fixtures and building service equipment to the extent that they are part of the Common Areas and all personal property and supplies belonging to the Association.

(ii) **Liability Insurance.** The Association shall maintain comprehensive general liability insurance coverage insuring the Declarant, the Association, the Board of Directors, the Design Review Committee, and the managing agent, if any, against liability to the public or to Owners and their invitees or tenants, incident to the operation, maintenance, ownership or use of the Common Areas, including legal liability arising out of lawsuits related to employment contracts of the Association. There may be excluded from such policy or policies coverage of an Owner (other than as a member of the Association or Board of Directors) for liability arising out of acts or omission of such Owner and liability incident to the ownership and/or use of the part of the property as to which such Owner has the exclusive use or occupancy.

Limits of liability under such insurance shall not be less than One Million Dollars (\$1,000,000) on a combined single-limit basis.

Such policy or policies shall be issued on a comprehensive liability basis and shall provide a cross liability endorsement wherein the rights of named insureds under the policy or policies shall not be prejudiced as respects his, her or their action against another named insured.

(iii) **Workers' Compensation Insurance.** The Association shall maintain workers' compensation insurance to the extent necessary to comply with any applicable laws.

(iv) **Fidelity Bonds or Insurance.** The Board of Directors may cause the Association to maintain blanket fidelity bonds or insurance for all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of, or administered by, the Association. In the event the Association has retained a management agent, the Board of Directors may require such agent to maintain fidelity bonds or insurance for its officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association. The cost of such insurance, if any, may be borne by the Association.

The total amount of fidelity coverage required shall be based upon the best business judgment of the Board of Directors.

Such fidelity bond or insurance shall name the Association as obligee and shall contain waivers by the bond issuers or the insurer of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. The bonds or insurance shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium,) without at least 10 days' prior written notice to the Association.

(v) **Insurance by Lot Owners.** Each Owner shall be responsible for obtaining, at his or her own expense, homeowner's insurance covering the Improvements and personal property on the Owner's Lot to the extent not covered by the Association policy, and liability resulting from use or ownership of the Lot, unless the Association agrees otherwise. The insurance coverage maintained by the Association shall not be brought into contribution with the insurance obtained under this Section by the Owners.

(vi) **Planned Community Act Requirements.** The insurance maintained by the Association shall comply with the requirements of the Oregon Planned Community Act, ORS 94.550 to 94.780.

(c) **Rulemaking.** The Association, through the Board of Directors, shall have the right to make, establish, promulgate, amend and repeal from time to time any Policies and Procedures governing the conduct of persons and the operation and use of Lots, Living Units and the Common Areas as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Property. A copy of the Policies and Procedures, upon adoption, and a copy of each amendment or modification shall be furnished to each Owner and shall be binding upon all Owners and occupants of all Lots upon the date of delivery. The method of adoption of such Policies and Procedures shall be as provided in the Bylaws of the Association.

(d) **Enforcement.** Subject to the provisions of Article 12, the Association shall perform such acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce the provisions of this Declaration and the Policies and Procedures adopted by the Association.

(e) **Employment of Agents, Advisers and Contractors.** The Association, through its Board of Directors, may employ the services of any person or corporation as managers, hire employees to manage, conduct and perform the business,

obligations and duties of the Association, employ professional counsel and obtain advice from such persons or firms or corporations such as, but not limited to, landscape architects, architects, planners, attorneys and accountants, and contract for or otherwise provide for all services necessary or convenient for the management, maintenance and operation of the Property.

(f) **Borrow Money, Hold Title and Make Conveyances.** The Association may borrow and repay moneys for the purpose of maintaining and improving the Common Areas, subject to Section 4.4 above, and encumber the Common Areas as security for the repayment of such borrowed money. The Association may acquire, hold title to and convey, with or without consideration, real and personal property and interests therein, including but not limited to easements across all or any portion of the Common Area, and shall accept any real or personal property, leasehold or other property interest within the property conveyed to the Association by Declarant.

(g) **Transfer, Dedication and Encumbrance of Common Area.** Except as otherwise provided in Section 4.4 above, the Association may sell, transfer or encumber all or any portion of the Common Area to a person, firm or entity, whether public or private, and dedicate or transfer all or any portion of the Common Area to any public agency, authority, or utility for public purposes.

(h) **Joint Use and Maintenance Agreements.** The Association through its Board of Directors may enter into joint use and maintenance agreements with other associations, entities or persons relating to the joint use and maintenance of the Common Areas or other facilities.

8.8 **Liability.** A member of the Board of Directors or an officer of the Association shall not be liable to the Association or any member of the Association for any damage, loss or prejudice suffered or claimed on account of any action or failure to act in the performance of his or her duties, except for acts of gross negligence or intentional acts. In the event any member of the Board of Directors or any officer of the Association is made a party to any proceeding because the individual is or was a director or officer of the Association, the Association shall indemnify such individual against liability and expenses incurred to the maximum extent permitted by law.

8.9 **Interim Board.** Declarant shall have the right to appoint an interim board of three directors, who shall serve as the Board of Directors of the Association until replaced by Declarant or until their successors take office at the next annual meeting following termination of Class B membership. At such meeting, the interim directors shall resign and be replaced by their successors, who shall be designated as provided in this Declaration and the Bylaws of the Association.

8.10 **Turnover Meeting.** Declarant shall call a meeting of the Association for the purpose of turning over administrative responsibility for the Property to the Association not later than ninety (90) days after fifteen (15) Lots have been sold and conveyed to Owners other than Declarant. If the Declarant fails to call the turnover meeting as required by this section, any Owner or mortgagee of a Lot may call the meeting by giving notice as provided in the Bylaws.

8.11 **Appointment of Directors.** Effective as of the next annual meeting following termination of Class B membership, the Board of Directors of the Association will be composed of three (3) directors, all of whom shall be elected by the Owners pursuant to the terms hereof and the Bylaws (as applicable).

ARTICLE 9 DESIGN REVIEW

9.1 **General.** No structure shall be placed, erected, or installed upon any Lot, and no improvements (including staking, clearing, excavation, grading and other site work, exterior alteration of existing improvements, planting or removal of landscaping materials, and installation or removal of an irrigation system) shall take place except in compliance with the Design Guidelines and this Declaration. In the event of an inconsistency between the Design Guidelines and this Declaration, the terms of this Declaration shall control, unless otherwise agreed to in writing by Declarant during the Development Period or the Design Review Committee thereafter.

9.2 **Declarant and Association Exempt.** This Article shall not apply to the activities of the Declarant, nor to improvements to the Common Areas by or on behalf of the Association.

9.3 **Alterations.** Owners are expressly prohibited from materially changing the exterior of any Living Unit or other structure without written permission of the Declarant during the Development Period or the Design Review Committee thereafter; except that an Owner may repaint or rebuild a Living Unit in accordance with the Design Guidelines or with the originally approved color scheme and the originally approved plans and specifications. No structure may be installed outside of the Living Unit except structures, including without limitation fences, installed with written approval of the Declarant during the Development Period or the Design Review Committee thereafter.

9.4 **Design Review.** Responsibility for administration of the Design Guidelines and review of all applications for construction and modifications under this Article shall be handled by the Design Review Committee. The members of the Design Review Committee need not be members of the Association or representatives of members of the Association, and may, but need not, include architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board of Directors for the Association. The Board of Directors may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review.

9.5 **Design Review Committee.** The Design Review Committee shall consist of at least three, but no more than five, persons. So long as Declarant, or any affiliate of Declarant, owns any Lot primarily for development and/or sale, Declarant retains the right to appoint all members of the Design Review Committee, who shall serve at the discretion of Declarant. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon surrender of such right, the Board of Directors of the Association may appoint the members of the Design Review Committee, who shall serve and may be removed at the discretion of the Board of Directors, or it may dissolve the Design Review Committee, in its discretion, and transfer all of its jurisdiction to the Association.

9.6 Design Guidelines. The Design Review Committee shall adopt the Design Guidelines at its initial organizational meeting and thereafter shall have sole and full authority to amend them. Any amendments to the Design Guidelines shall apply to construction and modifications commenced after the date of such amendment only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. Declarant and the Design Review Committee shall make the Design Guidelines available to Owners who seek to engage in development or construction within the Property and all such persons shall conduct their activities in accordance with them. In the Declarant's discretion, such Design Guidelines may be recorded in the office of the County Clerk.

9.7 Plans and Specifications.

(a) No construction or improvements shall be commenced, erected, placed or maintained on any Lot, nor shall any exterior addition, change or alteration be made thereto, until the plans and specifications ("Plans") showing site layout, structural design, exterior elevations, exterior materials and colors, signs, landscaping, drainage, lighting, irrigation, utility facilities layout and screening therefor shall have been submitted to and approved by the Design Review Committee. The Design Guidelines shall set forth the procedures for submission of the Plans.

(b) In reviewing each submission, the Design Review Committee may consider visual and environmental impacts, ecological compatibility, natural platforms and finish grade elevation, harmony of external design with surrounding structures and environment, and location in relation to surrounding structures and plant life

(c) The Design Review Committee shall, within 45 days after each submission of the Plans, advise the party submitting the same, in writing of the (i) the approval of the Plans; or (ii) the segments or features of the Plans which are deemed to be inconsistent or not in conformity with this Declaration and the Design Guidelines, the reasons for such finding, and suggestions for the curing of such objections. In the event the Design Review Committee fails to advise the party by written notice within the time set forth above of either the approval or disapproval of the Plans, approval shall be deemed to have been given. Notice shall be deemed to have been given at the time it is personally delivered, or mailed by depositing the envelope containing such notice, properly addressed, and postage prepaid, with the U.S. Postal Service, registered or certified mail, return receipt requested. Notification by fax, email, overnight courier service or other means will be acceptable as long as the receiving party acknowledges receipt.

9.8 No Waiver of Future Approvals. Each Owner acknowledges that the members of the Design Review Committee will change from time to time and that interpretation, application and enforcement of the Design Guidelines may vary accordingly. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval

9.9 **Variance.** The Design Review Committee may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variations may only be granted, however, when unique circumstances dictate, and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; and (c) estop the Design Review Committee from denying a variance in other circumstances. For purposes of this section, the inability to obtain approval of any governmental agency, the issuance of any permit, the cost of compliance, or the terms of any financing shall not be considered a hardship warranting a variance.

9.10 **Limitation of Liability.** Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only, and neither the Design Review Committee, nor its members, shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board of Directors, any committee or any member of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modification to any Lot.

9.11 **Enforcement.** Any structure or improvement placed or made in violation of this Declaration shall be deemed to be nonconforming. Either the Design Review Committee, the Association or Declarant may enforce this Article and the Design Guidelines pursuant to the enforcement procedures in Article 12.

ARTICLE 10 MAINTENANCE, UTILITIES AND SERVICES

10.1 **Maintenance of Common Areas.** Declarant, during the Development Period, and the Association thereafter, shall be responsible for the performance of all maintenance upon the Common Areas, Common Easement Areas, and landscaping within dedicated rights of way, including but not limited to grass, trees, entrance signs, streets, street lighting and signs, parking areas, walkways and trails, unless the maintenance thereof is assumed by a public body. Such areas shall be maintained in a good and workmanlike manner such as to carry out the purpose for which such areas are intended. The Association shall further maintain and keep in good repair the Area of Common Responsibility. Each Owner is responsible for repairing, restoring or rebuilding any damage that would be insured against by the insurance the Owner is required to carry under Section 8.7(b). All such damage shall be restored as promptly as possible to its original appearance. Any change to such appearance must be approved by the Declarant during the Development Period and the Association thereafter.

10.2 **Maintenance of Utilities.** The Declarant, during the Development Period, and the Association thereafter shall perform or contract to perform maintenance of all private utilities within Common Areas, such as sanitary sewer service lines, domestic water service lines and storm drainage lines, except to the extent such maintenance is performed by the utilities furnishing such services. Each Owner shall be responsible for maintaining utility lines within his Lot.

10.3 **Services.** The Association may provide or contract for such services as the Board may reasonably deem to be of benefit to the Property, including without limitation, garbage removal, and street cleaning.

ARTICLE 11 ASSESSMENTS

11.1 **Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners and occupants of The Reserve at Broken Top and for the improvement, operation and maintenance of the Common Area and Areas of Common Responsibility.

11.2 **Types of Assessments.** The Association may levy Annual Assessments, Special Assessments and Individual Assessments, all as more particularly described below.

11.3 **Apportionment of Assessments.** All Lots shall be subject to assessment and shall pay an equal share of the Annual Assessments and Special Assessments commencing upon the date such Lots are made subject to this Declaration. The pro rata share shall be based upon the total amount of each such Assessment divided by the total number of Lots subject to Assessment. Notwithstanding the provisions of this section, however, Declarant may elect to delay collection of Annual Assessments against all Lots, but in such case shall pay all common expenses of the Association until such Assessments commence.

11.4 **Annual Assessments.** The Board of Directors of the Association shall from time to time and at least annually prepare an operating budget for the Association, taking into account the current costs of maintenance and services and future needs of the Association, any previous over assessment and any common profits of the Association. The budget shall take into account the number of Lots as of the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to assessment during the fiscal year. The budget may be based upon a greater number of Lots than those reasonably anticipated to be subject to assessment during the fiscal year if the Declarant agrees to subsidize the Association for any shortfall in the Operations Fund until the assumed number of Lots is subject to assessment. The budget shall provide for such reserve or contingency funds as the Board deems necessary or as may be required by law, but not less than the reserves required by Section 10.8 below. Annual Assessments for such operating expenses and reserves ("Annual Assessments") shall then be apportioned among the Lots as provided in Section 10.3 above. The method of adoption of the budget and the manner of billing and collection of Assessments shall be as provided in the Bylaws.

11.5 **Special Assessments.** In addition to the Annual Assessment authorized above, the Board of Directors may levy during any fiscal year a Special Assessment ("Special Assessment"), applicable to that year only, for the purpose of paying all or any part of the cost of any construction or reconstruction, unexpected repair, or acquisition or replacement of a described capital improvement, or for any other one-time expenditure not to be paid for out of Annual Assessments. Special Assessments which in the aggregate in any fiscal year exceed an amount equal to twenty (20%) percent of the budgeted gross expenses of the Association for the fiscal year may be levied only if approved by a majority of the voting rights as provided in the

Bylaws. Special Assessments shall be apportioned as provided in Section 10.3 above and may be payable in lump sum or in installments, with or without interest or discount, as determined by the Association through its Board of Directors.

11.6 Individual Assessments. Individual Assessments include, without limitations, charges for services provided under this Declaration. Individual Assessments shall also include default assessments levied against any Lot to reimburse the Association for costs incurred in bringing such Lot or its Owner into compliance with the provisions of this Declaration or the Policies and Procedures of the Association and for fines or other charges imposed pursuant to this Declaration for violation thereof. Unless otherwise provided by the Board of Directors, Individual Assessments shall be due 30 days after the Board of Directors has given written notice thereof to the Owners subject to Individual Assessments.

11.7 Operations Fund. The Association shall keep all funds received by it as Assessments, other than reserves described in Section 10.8, separate and apart from its other funds, in an account to be known as the "Operations Fund." The Association shall use such fund exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents within the Property and in particular for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas and of the Lots situated on the Property, including but not limited to:

- (a) Payment of the cost of maintenance, utilities and services as described in Article 9.
- (b) Payment of the cost of insurance as described in Section 8.5 herein.
- (c) Payment of taxes assessed against the Common Areas and any improvements thereon.
- (d) Payment of the cost of other services which the Association deems to be of general benefit to the Owners, including but not limited to accounting, legal and secretarial services.

11.8 Reserve Fund. The Declarant shall establish a reserve fund for replacement of those items to be maintained by the Association all or a part of which will normally require replacement in more than three (3) and less than thirty (30) years ("Reserve Fund"). Such Reserve Fund shall be funded by Assessments against the individual Lots assessed for maintenance of the items for which the Reserve Fund is being established. The amount assessed shall take into account the estimated remaining life of the items for which the reserve is created and the current replacement cost of such items. The Reserve Fund shall be established in the name of the Association and shall be adjusted at regular intervals to recognize changes in current replacement cost over time. The Reserve Fund shall be used only for replacement of common property as determined by the Board of Directors and shall be kept separate from the Operations Fund. Any interest earned on funds deposited in the Reserve Fund, however, may either be accumulated in the Reserve Fund or deposited in the Operations Fund. The Board of Directors may borrow funds from the Reserve Fund to meet high seasonal demands on the regular

operating funds or to meet other temporary expenses which will later be paid from Annual Assessments or Special Assessments. Nothing in this section shall prohibit prudent investment of the reserve account. Assessments paid into the Reserve Fund are the property of the Association and are not refundable to sellers or Owners of Lots. Sellers of the Lots, however, may treat their outstanding share of the Reserve Fund as a separate item in any sales agreement.

11.9 Creation of Lien and Personal Obligation of Assessments. Declarant, for each Lot owned by Declarant within the Property, hereby covenants, and each Owner of any Lot by acceptance of a conveyance thereof, whether or not so expressed in any such conveyance, shall be deemed to covenant to pay to the Association all Assessments or other charges as may be fixed, established and collected from time to time in the manner provided in this Declaration or the Association Bylaws. Such Assessments and charges, together with any interest, expenses or attorneys' fees imposed pursuant to Section 12.2, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment or charge is made. Such Assessments, charges and other costs shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment or charge fell due. Such liens and personal obligations shall be enforced in the manner set forth in Article 11 below.

ARTICLE 12 ENFORCEMENT

12.1 Remedies. This Declaration shall be specifically enforceable by Declarant, the Design Review Committee, or by any Owner of any Lot. Any breach of this Declaration shall subject the breaching party to any and all legal remedies, including damages or the destruction, removal, or enjoining of any offending Improvements or condition.

12.2 Nonwaiver. Failure by the Declarant, the Design Review Committee, the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

12.3 Nonqualifying Improvements and Violation of General Protective Covenants. In the event any Owner constructs or permits to be constructed on his Lot an Improvement contrary to the provisions of this Declaration or to the Design Guidelines, or causes or permits any Improvement, activity, condition or nuisance contrary to the provisions of this Declaration or the Design Guidelines to remain uncorrected or unabated on the Owner's Lot, then the Design Review Committee, or the Association acting through its Board of Directors, shall notify the Owner in writing of any such specific violations and shall require the Owner to remedy or abate the same in order to bring his Lot, the Improvements thereon and the use thereof, into conformance with this Declaration and the Design Guidelines. If the Owner is unable, unwilling or refuses to comply with the Design Review Committee's or the Association's specific directives for 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 thirty (30) days of written notice to the Owner, the Association, acting through its Board of Directors, or the Design Review Committee, shall have the right to do any or all of the following.

(a) Assess fines against such Owner in the manner and amount the Board deems appropriate in relation to the violation, which fines shall constitute Individual Assessments for purposes of this Declaration;

(b) Enter the offending Lot and remove the cause of such violation, or alter, repair or change the item which is in violation of this 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 including administrative costs as determined by the Board of Directors, which amount shall be payable to the Operations Fund as an Individual Assessment, provided that no items of construction shall be altered or demolished in the absence of judicial proceedings, or;

(c) Bring suit or action against the Owner on behalf of the Association and other Owners to enforce this Declaration. In no event shall the Association commence any suit or action under this section unless and until the Association has complied with the notice requirements of ORS 94.662.

12.4 Default in Payment of Assessments; Enforcement of Lien. If an Assessment or other charge levied under this Declaration is not paid within thirty (30) days of its due date, such Assessment or charge shall become delinquent and shall bear interest from the due date at the rate set forth below. In such event, the Association may exercise any or all of the following remedies:

(a) The Association may suspend such Owner's voting rights and right to use the Common Areas until such amounts, plus other charges under this Declaration, are paid in full and may declare all remaining periodic installments of any Annual Assessment immediately due and payable. In no event, however, shall the Association deprive any Owner of access to and from the Owner's Lot.

(b) The Association shall have a lien against each Lot for any Assessment levied against the Lot, including any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Lot from the date on which the Assessment is due. The provisions regarding the attachment, notice, recordation and duration of liens established on real property under ORS 94.704 to 94.716, as the same may be amended, shall apply to the Association's lien. The lien shall be foreclosed in accordance with the provisions regarding the foreclosure of liens under ORS Chapter 88. The Association, through its duly authorized agents, may bid on the Lot at such foreclosure sale, and may acquire and hold, lease, mortgage and convey the Lot.

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

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

12.5 Notification of First Mortgagee. The Board of Directors shall notify any first mortgagee of any individual Lot of any default in performance of this Declaration by the Lot Owner which is not cured within sixty (60) days after notice of default to the Owner.

12.6 Subordination of Lien to Mortgages. The lien of the Assessments or charges provided for in this Declaration shall be subordinate to the lien of any mortgage or deed of trust on such Lot which was made in good faith and for value and which was recorded prior to the recordation of the notice of lien. Sale or transfer of any Lot shall not affect the Assessment lien, but the sale or transfer of any Lot which is subject to any mortgage or deed of trust pursuant to a decree of foreclosure or nonjudicial sale thereunder shall extinguish any lien of an Assessment notice of which was recorded after the recording of the mortgage or trust deed. Such sale or transfer, however, shall not release the Lot from liability for any Assessments or charges thereafter becoming due or from the lien of such Assessments or charges.

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

12.8 Assignment of Rents. As security for the payment of all liens arising pursuant to this Article 11, each Owner hereby gives to and confers upon the Association the right, power and authority, during the continuance of such ownership, to collect the rents, issues and profits of the Owner's Lot, reserving unto the Owner the right, prior to any default by such Owner in performance of that Owner's obligation under this Declaration or the Bylaws, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, the Association may, at any time after ten (10) days written notice to such Owner, either in person, by agent or by a receiver to be appointed by a court of competent jurisdiction, and without regard to the adequacy of any security for such indebtedness, enter upon and take possession of such Owner's Lot or any part thereof, in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, in payment of any indebtedness to the Association or in performance of any agreement hereunder, and in such order, as the Association may determine. Such action shall not cure nor waive any default hereunder or invalidate any act done pursuant to this Declaration. The assignment of rents and powers

described in the foregoing paragraph shall not affect, and shall in all respects be subordinate to, the rights and powers of the holder of any first or second mortgage on any Lot, or any part thereof, to do the same or similar acts.

12.9 Nonexclusiveness and Accumulation 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 under this Declaration. The remedies provided in this Declaration are not exclusive but shall be in addition to all other remedies, including actions for damages and suits for injunctions and specific performance, available under applicable law to the Association. In addition, any aggrieved Owner may bring an action against another Owner or the Association to recover damages or to enjoin, abate or remedy any violation of this Declaration by appropriate legal proceedings.

ARTICLE 13 DISPUTE RESOLUTION

13.1 Mediation.

(a) Except as otherwise provided in this section, before initiating litigation or an administrative proceeding in which the Association and an Owner have an adversarial relationship, the party that intends to initiate litigation or an administrative proceeding shall offer to use any dispute resolution program available within Deschutes County, Oregon, that is in substantial compliance with the standards and guidelines adopted under ORS 36.175. The written offer must be hand-delivered or mailed by certified mail, return receipt requested, to the address, contained in the records of the Association, for the other party.

(b) If the party receiving the offer does not accept the offer within ten (10) days after receipt of the offer, such acceptance to be made by written notice, hand-delivered or mailed by certified mail, return receipt requested, to the address, contained in the records of the Association, for the other party, the initiating party may commence the litigation or administrative proceeding. The notice of acceptance of the offer to participate in the program must contain the name, address and telephone number of the body administering the dispute resolution program.

(c) If a qualified dispute resolution program exists within Deschutes County, Oregon and an offer to use the program is not made as required under paragraph (a) of this section, then litigation or an administrative proceeding may be stayed for thirty (30) days upon a motion of the noninitiating party. If the litigation or administrative action is stayed under this paragraph, both parties shall participate in the dispute resolution process.

(d) Unless a stay has been granted under paragraph (c) of this section, if the dispute resolution process is not completed within thirty (30) days after receipt of the initial offer, the initiating party may commence litigation or an administrative proceeding without regard to whether the dispute resolution is completed.

(e) Once made, the decision of the court or administrative body arising from litigation or an administrative proceeding may not be set aside on the grounds that an offer to use a dispute resolution program was not made.

(f) The requirements of this section do not apply to circumstances in which irreparable harm to a party will occur due to delay or to litigation or an administrative proceeding initiated to collect Assessments, other than Assessments attributable to fines.

13.2 Costs and Attorneys' Fees. The fees of any mediator and the costs of mediation shall be divided and paid equally by the parties. Each party shall pay its own attorneys' fees and costs in connection with any mediation.

13.3 Survival. The mediation agreement set forth in this section shall survive the transfer by any party of its interest or involvement in the Property and any Lot or Living Unit therein and the termination of this Declaration.

ARTICLE 14 DECLARANT'S IMMUNITY

The Declarant has a non-exclusive right and power to enforce the covenants, conditions, and restrictions contained in this Declaration, but the Declarant has no legal obligation to enforce or attempt to enforce the provisions hereof. In the event Declarant refuses, neglects, fails or is negligent in enforcing or attempting to enforce the Declaration, there shall not exist or be created any cause of action or claim against Declarant, and each Owner or any person or entity claiming by, through or from said Owner hereby releases Declarant from and against any claim arising in connection with the development of the Property or related to Declarant's acts or omissions in preparing, filing or enforcing this Declaration and shall be stopped from making or enforcing any such claim.

ARTICLE 15 MORTGAGEES

15.1 Reimbursement of First Mortgagees. First mortgagees of Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy, for such Common Area. First mortgagees making such payments shall be owed immediate reimbursement therefore from the Association.

15.2 Right of First Mortgagees Relating to Maintenance. At any time that the Common Areas are not maintained or repaired by the Association to the extent reasonably necessary to protect and preserve the value of the Property for security purposes, then the first mortgagee, upon giving written notice as provided in this section, shall be entitled to exercise the rights of the Owner of the Lot as a member of the Association to vote at all regular and special meetings of the members of the Association for a period of one year following the date of such notice. During this one-year period, the Association shall give notice of all regular and special meetings to both the Owner and the mortgagee, and the Owner may attend such meetings as an observer. Notice from the mortgagee under this section shall quote this Section 14.2 and shall be sent postage prepaid by certified U.S. mail, return receipt requested, to the Owner with a copy by regular mail to the Association at the last known address of each.

15.3 **Subordination.** Current Mortgagees hereby consent to subject the Property to the terms of this Declaration and to subordinate their interests in the Mortgaged Lots as provided for in, and limited by, this Declaration.

ARTICLE 16 MISCELLANEOUS PROVISIONS

16.1 **Duration.** This Declaration shall run with the land and shall be and remain in full force and effect at all times with respect to all property included in the Property and the Owners thereof for an initial period of thirty (30) years commencing with the date on which this document is recorded. Thereafter, this Declaration shall continue to run with the land and be and remain in full force and effect at all times with respect to all Property and the Owners thereof for successive additional periods of ten (10) years each. The continuation from the initial or any additional period into the next subsequent period shall be automatic and without the necessity of any notice, consent, or other action whatsoever; provided, however, that this Declaration may be terminated at the end of the initial or any additional period by an affirmative vote or written consent, not less than six (6) months prior to the intended termination date, of the Owners representing at least seventy-five percent (75%) of the total votes permitted to be cast and, as long as Declarant owns any of the Lots, the written approval of Declarant.

16.2 **Amendment.** This Declaration or any provision thereof may be terminated, extended, modified or amended as to the whole of said Property, or any part thereof, by the vote or agreement of the Owners representing at least seventy-five percent (75%) of the total votes permitted to be cast and, as long as Declarant owns any of the Lots, the written approval of Declarant. Notwithstanding the provisions of Section 8.2 herein, for purposes of this Section 15.2 only, all Owners will be deemed to be Class A voting members and therefore entitled to one vote for each Lot owned. Any such approved amendment must be certified by the President and Secretary of the Association as being adopted in accordance with the Declaration as provided in ORS 94.590. Notwithstanding the foregoing, until the Turnover Meeting has occurred, Declarant shall have the right to amend this Declaration in order to comply with the requirements of the Federal Housing Administration, the United States Department of Veterans Affairs, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Mortgage Loan Corporation, any department, bureau, board, commission or agency of the United States or the State of Oregon, or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon that insures, guarantees or provides financing for a planned community or lots in a planned community. After the Turnover Meeting, any such amendment shall require the approval of at least seventy-five percent (75%) of the voting rights of the Lots in the Property.

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

disregarded completely in determining the proportion of votes or consents given with respect to such matter.

16.4 Notice of Sale or Transfer of Title. Any Owner selling or otherwise transferring title to his or her Lot shall give the Association written notice within seven (7) days after such transfer of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Association may reasonably require. The transferor shall continue to be jointly and severally responsible with the Transferee for all obligations of the Owner of the Lot, including assessment obligations, until the date upon which such notice is received by the Association, notwithstanding the transfer of title.

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

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

16.7 Terminology and Captions. As used in this Declaration, the singular shall include the plural and the plural the singular, and 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 this Declaration.

16.8 Notices and Other Documents. Any notice or other document permitted or required by this Declaration may be delivered either personally or by mail. Delivery by mail shall be deemed made twenty-four (24) hours after having been deposited in the United States mail as certified or registered mail, with postage prepaid, addressed as follows: If to Declarant or the Association, to 170 S.W. Scalehouse Loop, Bend, OR 97702; if to an Owner, at the address of that Owner's Lot. The address of a party may be changed at any time by notice in writing delivered as provided in this section.

16.9 Recording. Any amendment, deletion or repeal of this Declaration shall not become effective until recorded in the official records of Deschutes County, Oregon.

16.10 Time of the Essence. Time is of the essence with respect to each and every duty and obligation of the Owners set forth herein.

[signature and acknowledgement page to follow]

IN WITNESS WHEREOF, Declarant has executed this Declaration this 25th day of October, 2004.

DECLARANT:

PORTER-JAMES DEVELOPMENT GROUP,
LLC, an Oregon limited liability company

By: [Signature]
James Yozamp, President

STATE OF OREGON)
) ss.
County of Deschutes)

The foregoing instrument was acknowledged before me on October 25, 2004
by James Yozamp, as President, for PORTER-JAMES DEVELOPMENT GROUP, LLC, an
Oregon limited liability company, on behalf of the company.

[Signature]
Notary Public for Oregon
My commission expires: July 30, 2007

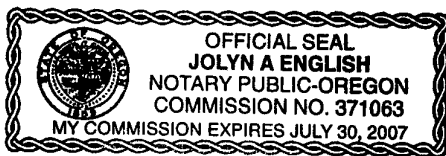


Exhibit A

All that portion of Skyliner Summit at Broken Top –Phase 11 in the City of Bend and Deschutes County, Oregon, as per the official plat thereof, recorded August 12, 2004, in Volume 2004, page 48218, official records of Deschutes County, more particularly described as follows:

Lots 266 through 306 inclusive, Tract 'A', Tract 'B', Tract 'C', Tract 'H', and Tract 'I' of said Skyliner Summit at Broken Top –Phase 11.

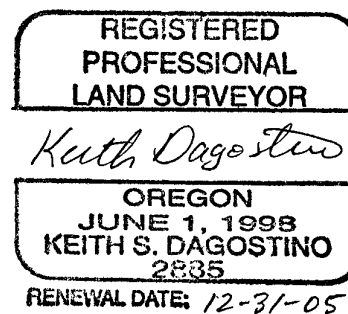


EXHIBIT "B"
 THE RESERVE AT BROKEN TOP
 SKYLINE SUMMIT AT BROKEN TOP - PHASE 11
 OCTOBER 20, 2004

