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DESCHUTES COUNTY CLERK

CERTIFICATE PAGE



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Stephen Robertson
Pennbrook Homes, Inc
869 NW Wall St Ste 204
Bend, OR 97701

**AMENDED AND RESTATED
DECLARATION OF PLANNED COMMUNITY
DEVELOPMENT FOR SUMMER CREEK**

CODES, COVENANTS AND RESTRICTIONS

A "55 AND OVER" COMMUNITY

THIS DECLARATION is made this 12th day of June 2002, by Summer Creek Associates, L.L.C., an Oregon limited liability company ("Declarant"). This amended and restated Declaration of Planned Community Development Summer Creek shall replace the original Declaration recorded on November 14, 2001 in Volume 2001 Page 56238, Deschutes County Official Records.

OBJECTIVES

Declarant owns property located in the City of Redmond, in Deschutes County, Oregon. Declarant proposes to develop portions of this property as a residential development to be known as Summer Creek.

The plat of Summer Creek has been recorded in the plat records of Deschutes County, Oregon. Declarant desires to subject the property described in such plat to the covenants, conditions, restrictions, and charges set forth herein for the benefit of such property and its present and subsequent owners.

NOW, THEREFORE, Declarant hereby declares that the property covered in the plat of Summer Creek, more particularly described on Exhibit A attached hereto shall be held, sold, and conveyed subject to the following easements, covenants, conditions, restrictions, and charges, 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 "Architectural Review Committee" means the Architectural Review Committee appointed pursuant to this Declaration.

1.2 "Association" means the nonprofit corporation to be formed to serve as the association of Owners (as hereinafter defined) as provided in Article 8 hereof and its successors and assigns.

1.3 "Clubhouse" means the building to be built on Lot 40 of Summer Creek, which will be conveyed, to the Association pursuant to Section 4.2.

1.4 “Common Areas” means the Clubhouse (including, without limitation, Lot 40) and all areas designated as Common Areas or as “open space” or “private way” on the plat of Summer Creek, including any Common Areas designated as such in any Supplemental Declaration.

1.5 “Declarant” means Summer Creek Associates, L.L.C., an Oregon limited liability company, any person who succeeds to any special Declarant right and to whom all of the Declarant’s ownership interest in Summer Creek is transferred, or any person, other than Owners, to whom the Declarant has transferred, for purposes of resale, all of Declarant’s ownership interest in Summer Creek.

1.6 “Declaration” means all of the easements, covenants, restrictions and charges set forth in the Declaration, together with any Policies and Procedures promulgated hereunder, as the same may be amended or supplemented from time to time in accordance with the provisions hereof, including the provisions of any Supplemental Declaration annexing property to Summer Creek.

1.7 “Improvement” means every temporary or permanent structure or improvement of any kind, including but not limited to a house, fence, wall, driveway, swimming pool, storage shelter or other product of construction efforts on or in respect to any property within Summer Creek, including landscaping, and every alteration, painting or reconstruction thereof.

1.8 “Living Unit” means 24 single family homes situated on Lots 1 through 16 and Lots 41 through 48 Summer Creek, together with any units designated for separate residential occupancy annexed pursuant to Section 2.2.

1.9 “Lot” means a platted or legally partitioned lot, within Summer Creek, including any Lot covered by any Supplemental Declaration recorded in accordance with Section 2.2.

1.10 “Manager” means the person with whom the Association contracts to provide management services pursuant to Section 9.4.

1.11 “Mortgage” means a mortgage, trust deed, or land sales contract; “mortgagee” means a mortgagee, beneficiary of a trust deed, or vendor under a land sales contract; and “mortgagor” means a mortgagor, grantor of a trust deed, or vendee under a land sales contract.

1.12 “Owner” means the person or persons, including Declarant, owning any Living Unit, including any vendee under a recorded land sales contract to whom possession has passed, but does not include a tenant or holder of a leasehold interest or a person holding only a security interest in a Living Unit, including any vendor under a recorded land sales contract who has given up possession. The rights, obligations, and other status of being an Owner commence upon acquisition of the ownership of a Living Unit and terminate upon disposition of such ownership, but termination of ownership shall not discharge an Owner from obligations incurred prior to termination.

1.13 “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.

1.14 "Private Way" means any area, which is designated as such in the plat of Summer Creek or in any Supplemental Declaration.

1.15 "Summer Creek" means the property designated in Section 2.1 of this Declaration and any property covered by any Supplemental Declaration recorded in accordance with Section 2.2.

1.16 "Supplemental Declaration" means an instrument annexing additional real property to Summer Creek.

ARTICLE 2

PROPERTY SUBJECT TO THIS DECLARATION

2.1 Initial Development. Declarant hereby declares that all of the real property described on Exhibit A attached hereto is owned and shall be owned, conveyed, hypothecated, encumbered, used, occupied, and improved subject to this Declaration. The initial development includes 24 Living Units.

2.2 Annexation of Additional Property. Declarant may from time to time and in its sole discretion annex to Summer Creek any portion of the property described on Exhibit B attached hereto. Annexation of such property shall be accomplished as follows:

(a) Supplemental Declaration. Declarant shall record a Supplemental Declaration which shall be executed by or bear the approval of Declarant and shall, among other things, describe the real property to be annexed, establish any additional limitations, uses, restrictions, covenants, and conditions which are intended to be applicable to such property, and declare that such property is held and shall be held, conveyed, hypothecated, encumbered, used, occupied, and improved subject to this Declaration.

(b) Effect of Annexation. The property included in any such annexation shall thereby become a part of Summer Creek and subject to this Declaration, and the Declarant and the Association shall have and shall accept and exercise administration of this Declaration with respect to such property.

(c) Voting Rights. Upon annexation, additional Living Units so annexed shall be entitled to voting rights as set forth in Section 8.3 below.

(d) Adjustment of Association Expenses. The formula to be used for reallocating the common expenses if additional Living Units are annexed and the manner of reapportioning the common expenses if additional Living Units are annexed during a fiscal year are set forth in Section 10.5 below.

2.3 Declarant Improvements. Declarant agrees to build all improvements necessary for the Clubhouse. Declarant does not agree to build any additional improvements but does not choose to limit Declarant's rights to add improvements not described in this Declaration.

2.4 No Limitation on Annexation. There is no limitation on the number of Living Units, which Declarant may create or annex to Summer Creek. There is no limitation on the right of Declarant to annex Common Areas.

ARTICLE 3

INSURANCE

The Association, through the Board of Directors, shall obtain and maintain at all times and shall pay for out of operating assessments the following insurance covering the Common Areas:

(i) Property insurance including, but not limited to, fire, extended coverage, vandalism, and malicious mischief, and

(ii) Insurance covering the legal liability of the Association, the Owners individually and the manager, including but not limited to, the Association Board of Directors, the public and the Owners and their invitees or tenants, incident to ownership, supervision, control or use of the Property. There may be excluded from the policy required under this subsection, coverage of an Owner, other than coverage as a member of the Association or Board of Directors, for liability arising out of acts or omissions of that Owner and liability incident to the ownership or use of the part of the Property as to which that Owner has the exclusive use or occupancy. Liability insurance required under this subsection shall be issued on a comprehensive liability basis and shall provide a cross liability endorsement providing that the rights of a named insured under the policy shall not prejudice any action against another named insured.

ARTICLE 4

PROPERTY RIGHTS IN COMMON AREAS

4.1 Owners' Easements of Enjoyment. Subject to provisions of this Declaration, every Owner and such Owner's invitees shall have a right and easement of enjoyment in and to the Common Areas including, without limitation, the Clubhouse.

4.2 Title to Common Areas. Fee title to the Common Areas shall be conveyed by Declarant to, and must be accepted by, the Association free and clear of liens and encumbrances other than those created pursuant to this Declaration.

4.3 Extent of Owners' 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) Association's and Owners' Easements. Declarant grants to the Association for the benefit of the Association and all Owners of Living Units within Summer Creek the following easements over, under, and upon the Common Areas:

(i) An easement for installation and maintenance of power, gas, electric, water, and other utility and communication lines and services installed by Declarant or

with the approval of the Board of Directors of the Association and any such easement shown on any plat of property included in Summer Creek.

(ii) An easement for construction, maintenance, repair, and use of the Common Areas and common facilities thereon, including, but not limited to, the Clubhouse walkways, fences, landscaping, irrigation systems, entry way structures, decorative ornamentation, and signs, and for any purposes and uses adopted by the Association for the benefit of the Association and the Owners.

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

(b) Declarant's Easements. So long as Declarant owns any Lot, and in addition to any other easements to which Declarant may be entitled, Declarant reserves an easement over, under, and across the Common Areas in order to carry out development, construction, and sales activities necessary or convenient for the development of Summer Creek and the sale of Living Units and for such other purposes as may be necessary or convenient for the development of Summer Creek and the sale of Living Units and for such other purposes as may be necessary or convenient for discharging Declarant's obligations or for exercising any of Declarant's rights hereunder.

(c) Utility Easements. Declarant or the Association may (and, to the extent required by law, shall) grant or assign easements to Declarant, municipalities, communication companies, or other utilities over Common Areas performing utility services, 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 Summer Creek.

(d) Use of the Common Areas. Except as otherwise provided in this Declaration, including without limitation the provisions in Section 4.3(f), 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. Nothing herein shall prevent the placing of a sign or signs upon the Common Areas for the purpose of identifying Summer Creek, provided such signs are approved by Declarant or the Architectural Review Committee.

(e) Alienation of the Common Areas. The Association may not by act or omission seek to abandon, partition, subdivide, encumber, cause the Common Area to be subject to any security interest, sell, or transfer the Common Areas owned directly or indirectly by the Association for the benefit of the Owners unless the holders of at least 80 percent of the Class A voting rights (as described in Section 8.3(b) below) and the Class B member (as defined in Section 8.3(b) below), if any, have given their prior written approval. This provision shall not apply to the easements described in this Section 4.3. A sale, transfer, or encumbrance of the Common Area or any portion of the Common Area in accordance with this Section 4.3(e) may provide that the Common Area so conveyed shall be released from any restriction imposed on such Common Area by this Declaration. No sale, transfer, or encumbrance, may, however, deprive any Owner of such Owner's right of access or support without the written consent of the Owner.

(f) Owner Easements. Declarant hereby reserves for each Owner an easement for driveway and underground utility purposes across any Common Area lying between such Owner's Lot and the Private Way providing access to such Lot.

4.4 Delegation of Use. Any Owner may delegate, in accordance with the Bylaws of the Association, such Owner's right of enjoyment of the Common Areas to the members of such Owner's family or tenants who reside in the Living Unit.

ARTICLE 5

PROPERTY RIGHTS IN LIVING UNITS

5.1 Use and Occupancy. Except as otherwise expressly provided in this Declaration the Owner of a Living Unit in Summer Creek shall be entitled to the exclusive use and benefit of such Living Unit.

5.2 Easements Reserved. In addition to any easements shown on the recorded plats, Declarant hereby reserves the following easements for the benefit of Declarant, the Owners, and the Association:

(a) Exterior and Landscaping Maintenance. The Association, its managers, and contractors shall have the right to enter upon each Lot and Living Unit to the extent reasonably necessary for maintenance and repair of landscaping on the Lots and for maintenance and repair of exterior portions of the Living Units pursuant to Section 11.2.

(b) Right of Entry. Declarant, the Architectural Review Committee, and any representative of the Association authorized by it 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.

5.3 Restriction on Transfer. There shall be no inter vivos transfer, either directly or indirectly, of any interest in a Living Unit which would result in any person owning, either directly or indirectly through a corporation or a partnership, less than a twenty percent (20%) interest in such Living Unit without the prior written consent of Declarant.

ARTICLE 6

RESTRICTIONS ON USE OF LIVING UNITS

6.1 Occupancy. No Owner shall occupy, use, or permit his Lot or Living Unit, or any part thereof, to be used for any purpose other than a private residence for the Owner, his family or his guests, including home occupations as defined in applicable land use ordinances, except that each Owner shall be permitted to rent the Unit for periods of no shorter duration than 30 days when he is not in occupancy. Nothing in this section shall be deemed to prohibit (a) activities relating to the sale of Living Units, or (b) the right of Declarant or any contractor or homebuilder to construct Living Units on any Lot, to store construction materials and equipment on Lots in the normal course of construction. Declarant may use any Living Unit as a sales office or model.

6.2 Maintenance. Each Lot shall be maintained in a clean and attractive condition, in good repair, and in such a fashion as not to create a fire hazard. All garbage, trash, cuttings,

refuse, clothes drying apparatus, and other service facilities located on each Lot shall be screened from view in a manner approved by Declarant. Garbage and refuse containers shall be stored in garages. In view of the size of the Lots and the close proximity of the Living Units, exterior maintenance of landscaping and Improvements is of paramount importance to the Owners. The Association Board of Directors shall prepare detailed regulations regarding exterior maintenance in addition to the Association rules and regulations referred to in Section 8.9.

6.3 Construction and Alteration. Nothing shall be altered or constructed in or removed from or placed on a Lot except with the prior written consent of Declarant or the Architectural Review Committee.

6.4 Offensive or Commercial Activity. No offensive or commercial activity shall be carried on, nor shall anything be done on any Lot, which may be or become an annoyance or nuisance to the other Owners.

6.5 Signs. No signs shall be erected or maintained on any Lot except signs which are approved as to appearance and location by Declarant. The restrictions contained in this paragraph shall not apply to (a) directional signs, (b) the placement by the Declarant or Declarant's agent of one or more signs identifying the name of the Declarant and/or the location of a sales office or model home, or (c) the temporary placement of not more than one "For Sale" sign on any Lot meeting the guidelines of Declarant or the Architectural Review Committee and facing the street providing access to such Lot.

6.6 Antennas and Satellite Dishes. Exterior satellite receivers in excess of 24 inches in diameter, transmission dishes, exterior antennas, or other sending or receiving devices shall not be permitted to be placed upon any Lot except as approved by Declarant or the Architectural Review Committee.

6.7 Prohibited Structures. Except for trailers related to construction activities within Summer Creek, no house trailer, mobile home, manufactured home assembled off site, tent, shack, barn, or other similar outbuilding or structure, whether permanent or temporary, shall be erected or placed on any Lot.

6.8 View. The height of vegetation and trees on a Lot shall not materially restrict the view of other Owners. The Board of Directors of the Association shall be the sole judge of the suitability of such heights. This section is not to be read as justification to create views not present when the Living Unit was originally purchased.

6.9 Parking. No house trailer, travel trailer, boat trailer, camper, incapacitated motor vehicle, snowmobile, motor home, or off-road vehicle shall be parked or stored on any Lot, Common Area, or street within Summer Creek except as provided in the Association's rules and regulations or the architectural guidelines which shall, among other things, permit temporary parking of recreational vehicles and boat trailers in designated areas.

6.10 Shared Driveway Homes. For homes located on lots 41 and 42, which may share driveways and turn-around space between the homes, the following rules shall apply:

(a) No vehicles, trailers, boats or recreational toys shall be parked on the driveway or in front of either garage when unattended;

(b) Owners, and their children and invitees shall refrain from leaving toys, tools or any other objects on the driveway when not in use. In the event an Owner, the Owner's children or invitees are using the driveway at any time, and the adjoining Owner or invitee desires to access the garage along the driveway, the persons using the driveway shall temporarily cease their activities and allow other persons access along the driveway to the garage;

(c) Since the owners of both homes will need to back their vehicles out, across the adjoining property in front of the opposing garage, all asphalt areas shall be maintained free and clear of any obstruction, whether temporary or permanent;

(d) Adjoining Owners shall share equally in the cost of any snow removal, repair or maintenance of the driveway. In the event either Owner refuses to agree to perform reasonable maintenance or repairs, the other Owner (the "repairing Owner") shall have the right to perform such maintenance or repair and to seek reimbursement from the non-participating Owner. The repairing Owner shall have the right to reimbursement of one-half of the cost of the work, including the reasonable value of any services or work performed by the repairing Owner, plus interest at the rate of 18% from the date of payment. In the event, within thirty days of written demand from the repairing Owner, the non-repairing Owner fails to pay the amount due, the repairing Owner shall have the right to petition the Association to enforce the payment obligation. Upon a finding by the Association as to the amount due from the non-participating Owner to the repairing owner, the Association shall be authorized to record a lien against the non-participating Owner's Lot for the amount due as of the date of the lien, plus interest at the rate of 18% upon the full amount due as of the recording date until paid; and

(e) The Association shall have the right to enforce all of the provisions of the reciprocal easement effecting the homes sharing driveways.

6.11 Domestic Animals. No domestic animals shall be kept or raised on any Lot or within or in any Living Unit except for household pets which may be kept and raised only in accordance with regulations adopted by the Association Board of Directors. The Association Board of Directors shall have the right to prohibit pets, which are regarded as dangerous.

6.12 Fencing. Except for fencing initially installed by Declarant and necessary replacement of such fencing, no Owner is entitled to put up fencing except for a service yard fence that shall be (a) attached to the rear of the Living Unit, (b) be no larger than 10 feet by 12 feet, (c) constructed of lap or board siding similar to that used on the Living Unit, (d) be painted the same color as the body of the Living Unit, and (e) be no taller than 4 feet. The installation of any service yard fencing shall require approval of the Architectural Review Committee.

ARTICLE 7

ARCHITECTURAL REVIEW

7.1 Approval Required. No Improvement, as defined in Section 1.6 above, shall be erected, placed, altered, maintained, or permitted to remain on any land subject to this Declaration until final plans and specifications have been submitted to and approved in writing by Declarant or the Architectural Review Committee.

7.2 Procedure. Any Owner proposing to construct any Improvements within Summer Creek (including any exterior alteration, addition, destruction, or modification to any such Improvements) shall follow the procedures and shall be subject to the approvals required by this Article 7. Failure to follow such procedures or obtain such approvals shall be deemed a breach of this Declaration.

7.3 Required Documents. Any Owner proposing to utilize, improve, or develop real property within Summer Creek shall submit the following items for review:

(a) A site plan showing the location, size, configuration, and layout of any building, structure, or Improvement (or, where applicable, any alteration, addition, modification, or destruction thereto), including appurtenant facilities for parking, storage, fences, and vehicular and pedestrian traffic and circulation.

(b) Architectural plans and drawings showing the nature, style, and dimensions of any building, structure, fence, wall, barrier, or deck (or, where applicable, any alteration, addition, modification, or destruction thereof), including the exterior material types, colors, and appearance. The scale of plans shall be 1 inch = 20 feet or larger.

(c) A landscape plan showing the nature, type, size, location, and layout of all landscaping, vegetation ground cover, landscape and site lighting, walks, major existing vegetation and irrigation systems proposed to be planted or installed (or, where applicable, removed or destroyed).

7.4 Review. All plans and drawings identified in Section 7.3 above shall be submitted to Declarant for review prior to the performance of any proposed work. Such plans and drawings shall be accompanied by a check to cover the review fee payable to Declarant in an amount of not less than \$250 as determined by Declarant from time to time. No plans shall be reviewed until the architectural review fee is paid in full and all items specified in this section are submitted. Within 30 days following receipt of such plans and drawings, and the full amount of the architectural review fee, Declarant shall review the plans and shall inform the Owner in writing whether the plans conform to the development concept for Summer Creek. In the event the Owner is not notified as to the conformity of the plans within the 30-day review period, the plans are conclusively presumed to be approved as submitted. In the event any of the plans do not conform to the Summer Creek development concept, the Owner shall resubmit those nonconforming portions of the plans for review in accordance with the procedures outlined in Section 7.3 above and this paragraph. No work may be performed relating to any Improvement unless and until all aspects of all plans required under Section 7.3 above have been approved by Declarant. Any site plans, construction plans, or similar plans and drawings submitted to the city of Redmond in connection with the construction of any Improvement in Summer Creek must bear the prior written approval of Declarant.

7.5 Architectural Guidelines. The development concept for Summer Creek shall be determined by Declarant in accordance with applicable statutes, ordinances, regulations, zoning, and other governmental land use controls. Architectural guidelines setting forth various aspects of the development concept, in addition to this Declaration, may be published from time to time by Declarant, but Declarant shall not be required to do so. Declarant shall have the right to alter, rescind, or amend any published guidelines without prior notice to any party; provided, however, that once approval has been given pursuant to Section 7.4 above, work may proceed in

accordance with the approved plans and drawings, notwithstanding any changes in the development concept. All such guidelines shall be in general conformity with this Declaration.

7.6 Inspection. All work related to any building, structure, or Improvement or any landscaping, vegetation, ground cover, or other Improvements within Summer Creek shall be performed in strict conformity with the plans and drawings approved under Section 7.4 above. Declarant shall have the right to inspect any such work to determine its conformity with the approved plans and drawings and reserves the right to order a stop to all work if, in good faith, it believes that any such work is nonconforming. In the event that it is determined in good faith by Declarant that certain work is nonconforming, 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. Continued work without correction of any such nonconforming items shall be deemed a breach of this Declaration. Neither Declarant nor any officer, director, employee, agent, or servant of Declarant shall be responsible for any damages, loss, delay, cost, or legal expense occasioned through a stop work notice given in good faith, even if it is ultimately determined that such work was in conformity with the approved plans and drawings.

7.7 Waiver. Any condition or provision of Sections 7.2 through 7.6 above may be waived by Declarant in its exclusive discretion. Any waiver shall be in general conformity with the development concept and development standards for Summer Creek. Any such waiver shall not be deemed a general waiver of any aspect of the development concept or the required procedures and approvals specified under Sections 7.2 through 7.6. The granting of a waiver as to one Owner shall not automatically 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 Declarant, and delivered by certified mail to the party claiming the benefit of such waiver.

7.8 Architectural Review Committee. At such time as Declarant shall no longer desire to exercise its rights of approval under Article 6 and Article 7, or at such time as Declarant no longer owns any Lots in Summer Creek, such approval rights shall be exercised by an Architectural Review Committee. The termination of Declarant's approval rights shall be evidenced by the recording of an instrument in the official records of Deschutes County, Oregon. The Board of Directors shall have responsibility for appointment and removal of members of the Architectural Review Committee. The Architectural Review Committee shall consist of as many persons, but not less than three, as the Board of Directors may from time to time appoint. If the Board of Directors fails to appoint the members of the Architectural Review Committee, the Board of Directors shall itself serve as the Architectural Review Committee.

7.9 Majority Action. Except as otherwise provided herein, a majority of the members of the Architectural Review Committee shall have the power to act on behalf of the Architectural Review Committee, without the necessity of a meeting and without the necessity of consulting or notifying the remaining members of the Architectural Review Committee. The Architectural Review Committee may render its decision only by written instrument setting forth the action taken by the members consenting thereto.

7.10 Liability. The scope of Declarant's or the Architectural Review Committee's review is not intended to include any review or analysis of structural, geophysical, engineering, building or zoning code compliance, or other similar considerations. Neither Declarant nor the Architectural Review Committee nor any member thereof shall be liable to any Owner,

Class B. The Class B member shall be Declarant and shall be entitled to three times the voting rights computed under Section 9.3(a) for each Living Unit or unimproved 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 earlier:

- (i) When Living Units on seventy-five percent (75%) 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) Upon the expiration of seven years from the date hereof.

9.4 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.

9.5 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.

9.6 Interim Board; Turnover Meeting. Declarant 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 Declarant 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 Declarant's Class B membership pursuant to Section 9.3, Declarant shall call a meeting for the purpose of turning over administrative responsibility for Summer Creek to the Association. Declarant shall give notice of the meeting to each Owner as provided for in the Bylaws of the Association. If Declarant does not call a meeting required by this Section within the required time, the Transitional Advisory Committee described in Section 9.7 below or any Owner may call a meeting and give notice as required in this Section. At the

occupant, builder, or developer for any damage, loss, or prejudice suffered or claimed on account of any action or failure to act of the Architectural Review Committee or a member thereof, provided only that Declarant or the Architectural Review Committee has, or the member has, in accordance with the actual knowledge possessed by Declarant or the Architectural Review Committee or by such member, acted in good faith.

7.11 Effective Period of Consent. Declarant's and the Architectural Review Committee's consent to any proposed Improvement shall automatically be revoked one year after issuance unless construction of the Improvement has been commenced or the Owner has applied for and received an extension of time from the party granting consent.

7.12 Construction by Declarant. Improvements constructed by Declarant on any property owned by Declarant are not subject to the requirements of this Article 7.

ARTICLE 8

LIMITATIONS ON AGE OF RESIDENTS

8.1 Age 55 or Older. Summer Creek is intended as an adult only community. At least one occupant residing in a Living Unit must be 55 years of age or older, except during temporary periods approved by the Board of Directors of the Association, based upon hardship in accordance with the guidelines described in this Article 8.

8.2 Minimum Standard. No more than 20% of the Living Units in Summer Creek may be subject to a hardship waiver at any one time. In addition, no child under the age of 19 may reside in a Living Unit other than on a temporary, visiting basis as established below.

8.3 Age Verification Procedures. Prior to a transfer, sale, gift, lease, assignment, grant, purchase, rental or occupancy of any Living Unit, the Owner or any subsequent prospective purchaser or lessee shall provide, in writing, to the Association Board of Directors the name, address and ages of the prospective purchaser or lessee and all prospective residents of the Living Unit. The Board of Directors has a right to obtain verification of the age of all proposed residents of the Living Unit, which may consist of copies of driver's licenses, birth certificates, or similar recognized documents.

8.4 Temporary Occupancy by Children. Visitation by children under the age of 19 years who are family members or guests of the permanent residents are permitted for up to a period of twenty-nine (29) consecutive days. Further, all permitted visitations shall not exceed a total of sixty (60) days in any calendar year. A permanent resident is a person who resides in a Living Unit for thirty (30) consecutive days.

8.5 Procedures for Hardship Requests. In the event that an owner of a Living Unit dies, testate or intestate, leaving as heirs one or more persons who do not qualify as "Permitted Resident," these procedures are not intended to restrict the ownership of the Living Unit by the heirs. However, the surviving Owner must submit an application for residency under these hardship guidelines. The application shall include the names and ages of permanent residents in the Living Unit and an estimate of the time period intended for continued residency at the Living Unit. It is the intent that surviving cohabitants shall, to the extent permitted by the Fair Housing Act as to 55 or Over Housing, be permitted to continue to occupy such Living Unit subsequent to

the death of all qualified cohabitants for a reasonable period of time. However, the Association must consider if approval of the application would cause or threaten to cause the community to have less than the required 80% of it's Living Units occupied by at least one person over the age of 55 years, or would otherwise threaten the qualification of Summer Creek for the 55 or Over Housing for older persons exemption under the Fair Housing Act. In addition, hardship applications will be considered regarding handicapped dependents under the age of 19 years to the extent such dependents are protected by the Fair Housing Act.

8.6 Declarant's Responsibility. Prior to the formation of the Association, the Declarant shall exercise all of the responsibilities allocated to the Association set forth in this Article 8.

ARTICLE 9

ASSOCIATION

Declarant shall organize an Association of all of the Owners within Summer Creek. Such Association, its successors, and assigns, shall be organized under the name "Summer Creek Homeowners Association, Inc.," or such similar name as Declarant shall designate, and shall have such property, powers, and obligations as are set forth in this Declaration for the benefit of Summer Creek and all Owners of property located therein.

9.1 Organization. Declarant shall, before the first Living Unit is conveyed to an Owner, organize the Association as a nonprofit mutual benefit corporation under the Oregon Nonprofit Corporation Act.

9.2 Membership. Every Owner of one or more Living Units shall, immediately upon creation of the Association and thereafter during the entire period of such Owner's ownership of one or more Living Units, 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.

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

(a) Living Units. Except as provided in Section 9.3(b) with respect to the Class B member, Living Units shall be allocated one vote per Living Unit.

(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 Declarant (except that beginning on the date on which the Class B membership is converted to Class A membership, and thereafter, Class A members shall be all Owners including the Declarant). Class A members shall be entitled to voting rights for each Living Unit owned computed in accordance with Section 9.3(a) above. When more than one person holds an interest in any Living Unit, all such persons shall be members. The vote for such Living Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Living Unit.

turnover meeting the interim directors shall resign and their successors shall be elected by the Owners and Declarant as provided in this Declaration and the Bylaws of the Association.

9.7 Transitional Advisory Committee. Declarant or Owners shall form a transitional advisory committee (the "Transitional Advisory Committee") to provide for the transition from administrative responsibility by Declarant of Summer Creek to administrative responsibility by the Association. Not later than the sixtieth (60th) day after the later of (a) Declarant has conveyed to Owners, other than a successor Declarant, Living Units on fifty percent (50%) of the Lots in the first phase of Summer Creek, or (b) the date that Declarant has conveyed ten (10) Lots in Summer Creek to Owners, other than a successor Declarant. Declarant 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 Declarant, shall select two or more members. Declarant may select no more than one member.

(a) Declarant Failure to Call Meeting. An Owner may call a meeting of Owners to select the Transitional Advisory Committee if the Declarant fails to do so as provided above.

(b) Owners' Failure to Select Members. Notwithstanding the foregoing, if the Owners do not select members for the Transitional Advisory Committee as described above, Declarant 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 9.6 above has been held.

9.8 Declarant Control After Turnover. After the turnover meeting described in Section 9.6 above, Declarant shall continue to have the voting rights described in Section 9.3(b) above. In addition, a majority of the Board of Directors of the Association shall be elected by Declarant, as Class B member, with the balance of the Board of Directors elected by the Class A members. After termination of Class B membership, all directors shall be elected by the Class A members.

9.9 Association Policies and Procedures. In addition to the regulations adopted pursuant to Section 6.2, the Association from time to time may adopt, modify, or revoke such 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 within Summer Creek. A copy of the rules and regulations, upon adoption, and a copy of each amendment, modification or revocation thereof, shall be delivered by the Association Board of Directors promptly to each Owner and shall be binding upon all Owners and Occupants of all Living Units upon the date of delivery. The method of adoption of such rules shall be as provided in the Bylaws of the Association.

ARTICLE 10

MAINTENANCE, UTILITIES, AND MANAGEMENT SERVICES

10.1 Maintenance and Lighting of Common Areas. The Association shall perform all maintenance upon, and where the Association deems appropriate provide exterior lighting for,

the Common Areas and all improvements situated thereon, including, without limitation, the Clubhouse and recreational facilities, provided that any such lighting shall require prior written consent of Declarant; provided further that, Owners shall be responsible for the cost of any repairs necessitated by the negligence or intentional misconduct of such Owner or such Owner's guests or invitees.

10.2 Maintenance of Utilities. The Association shall perform or contract to perform maintenance of all private utilities within Common Areas, if any, such as sanitary sewer service lines and lift station, domestic water service lines, storm water detention facilities, and storm drainage lines, except to the extent such maintenance is performed by the utilities furnishing such services.

10.3 Maintenance of Landscaping. Maintenance of the landscaping on the Lots shall be the responsibility of the Association except that Owners shall be responsible for landscaping on patios and decks. The cost of landscaping maintenance on the Lots shall be assessed against the various types of Living Units in proportion to the relative cost of landscaping maintenance for each type of Living Unit as determined by the Association Board of Directors in its reasonable judgment. The determination of the Board of Directors regarding the assessment for landscaping shall be binding on all Owners absent manifest error.

10.4 Management. The Association 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 Association Board of Directors deems appropriate.

ARTICLE 11

ASSESSMENTS

11.1 Annual Operating Budgets. The Association Board of Directors shall on or before December 1 of each year prepare an operating budget for the Association for the ensuing year, taking into account the current costs of insurance premiums, maintenance, and services and future needs of the Association, any previous overassessment and any common profits of the Association. The budget shall provide for such reserve or contingency funds as the Board deems necessary or desirable or as may be required by law.

11.2 Operating Assessments. Subject to the provisions of Section 9.3, all Living Units shall be assessed equally for operating costs other than the cost of landscaping on the Lots. The amount of the assessment per Living Unit for such operating costs shall be determined by dividing the annual budget by the total number of Living Units. Assessments for landscaping costs on the Lots shall be determined in accordance with Section 9.3. Declarant shall receive credit against assessments on Living Units owned by Declarant for expenses previously incurred by Declarant in maintenance of Common Areas.

11.3 Special Purpose Assessments. In the event that the Association Board of Directors deems it to be the advantage of the Owners to impose a special purpose assessment to provide funds for a particular capital improvement, capital expenditure, or recreational facility; it may impose such a special assessment, provided that the amount of the assessment and the terms upon which it will be imposed have been approved by the vote or written consent of the Class B member, if any, and by not less than seventy-five percent (75%) of the votes of the Class A

members who are voting in person, by absentee ballot or by proxy at a meeting duly called for the purpose of approving the Special Purpose Assessment.

11.4 Property Reserve Account. Declarant shall establish a reserve account, which shall be, called the "Property Reserve Account," and which need not be kept separate and apart from all other funds of the Association. The Property Reserve Account shall be used exclusively for replacement of items of common property which will normally require replacement, in whole or in part, in more than three and less than thirty years, and not for regular or periodic maintenance expenses. Included as a line item in each operating assessment, shall be an amount to be added to the Property Reserve Account which amount shall take into account the current replacement cost of each item of common property which has an estimated life of greater than three but less than thirty years and the estimated remaining life for such items of common property. Declarant shall not be required to pay any amount under this Section 11.4 assessed to a Living Unit owned by Declarant until such date as the Living Unit is occupied as a residence. At least annually, the Association Board of Directors shall conduct a reserve study or review and update an existing study of the common property to determine the reserve account requirements in accordance with ORS 94.595. At any time after the second year after the turnover meeting described in Section 8.6 above, future assessments for the Property Reserve Account may be increased or reduced by the Association Board of Directors provided that any such action by the Association Board of Directors may be modified by vote of not less than seventy-five percent (75%) of the Owners.

11.5 Reallocation Upon Annexation of Property. When additional Living Units are completed or if additional property is annexed to Summer Creek, the Association shall, within 90 days of the completion or annexation, recompute the budget in accordance with Section 11.1 based upon the additional Living Units and Common Areas and recompute assessments for each Living Unit based upon the formula set forth in Section 11.2. Newly completed or annexed Living Units shall be subject to assessment from the time of completion or annexation of such Living Units to Summer Creek, in accordance with the provisions of Section 11.2. The Association shall send notice of the assessment to the Owners of newly annexed Living Units not later than 90 days after the completion or annexation or with the next occurring completion or annual assessment, whichever is sooner. Assessments shall be due and payable on or before a date set forth in the notice which shall be not less than 30 days from the date that notice is mailed or at such other time or times set in accordance with this Declaration or the Bylaws as the Association may specify in the notice. To the extent that any adjustment results in a credit for an Owner, such credit shall be applied towards the next occurring payment or payments on the annual assessment.

11.6 Payment of Assessments. The Association shall, on or about the 25th day of each month provide notice to the Owner of each Living Unit of the amount of the assessments for such Living Unit for the ensuing month. Assessments shall be due and payable on or before a date set forth in the notice which shall be not less than 15 days from the date the notice is mailed or at such other time or times set in accordance with this Declaration or the Bylaws as the Association may specify in the notice. The Board shall have the right to give discounts for advance payment of assessments.

11.7 Creation of Lien; and Personal Obligation of Assessments. Declarant, for each Living Unit owned by it within Summer Creek does hereby covenant, and each Owner of any Living Unit 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 attorney fees imposed pursuant to Section 11.6, shall be a charge on the land and a continuing lien upon the Living Unit 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 Living Unit 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.

11.8 Annual Accounting Each calendar year the Association Board of Directors shall render to each Owner an accounting which shall set forth the amount and source of all income received in the maintenance fund and all disbursements from the fund during the previous calendar year, together with a statement of the assets of and liabilities of the maintenance fund at the close of the last calendar year. The Association Board of Directors shall maintain records of all amounts received into the maintenance fund and of all disbursements therefrom, which records shall be open to inspection by any Owner at any reasonable time during the normal business hours.

ARTICLE 12

ENFORCEMENT

12.1 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, Living Units, or Common Areas, 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) suspend the Owner's voting rights and right to use the Common Areas for the period that the violations remain unabated, or for any period not to exceed sixty (60) days for any infraction of its rules and regulations, (b) bring suit or action against such Owner to enforce this Declaration, or (c) impose fines as provided in Section 12.7. Nothing in this section, however, shall give the Association the right to deprive any Owner of access to and from such Owner's Living Unit.

12.2 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 or rules adopted pursuant to Section 6.2 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 12.7.

12.3 Default in Payment of Assessments; Enforcement of Lien. If an assessment, fine, 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 until paid at the legal rate of interest and, 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 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 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) Lien. The Association shall have a lien against each Lot and Living Unit for any assessment levied against the Lot and Living Unit and any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Living Unit from the date on which the assessment, fine or charge is due. The provisions regarding the attachment, notice, recordation, and duration of liens established on real property under ORS 87.352 to 87.386 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 and Living Unit at such foreclosure sale, and may acquire and hold, lease, mortgage, and convey the Lot and Living Unit. If any assessment is payable in installments, the full amount of the assessment is a lien from the date the first installment of the assessment becomes due.

(c) Suit or Action. The Association may bring an action to recover a money judgment for unpaid assessments and charges under this Declaration without foreclosing or waiving the lien described in paragraph 12.3(b) above. Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.

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

12.4 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.

12.5 Subordination of Lien to First Mortgages. The lien of the assessments or charges provided for in this Declaration shall be subordinate to the lien of any first mortgage on such Lot and Living Unit 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 and Living Unit shall not affect the assessment lien, provided however, that if a first mortgagee acquires a Lot and Living Unit by foreclosure or deed in lieu of foreclosure, such mortgagee and a subsequent purchaser (other than the Owner liable for payment of the assessment covered by the lien) shall not be liable for any of the common expenses chargeable to the Lot and Living Unit which became due before the mortgagee or purchaser acquired title to the Lot and Living Unit by foreclosure or deed in lieu of foreclosure. Such sale or transfer, however, shall not release the Lot and Living Unit from liability for any assessments or charges thereafter becoming due or from the lien of such assessments or charges.

12.6 Late Charge, Expenses, and Attorney Fees. 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 10 percent of such assessment. In the event the Association shall file a notice of lien, the lien amount shall also include the recording fees associated with filing the notice, and a fee for preparing the notice of lien established from time to time by resolution of the Board of Directors of the Association. In the event the Association shall bring any suit or action to enforce this Declaration, or to collect any money due hereunder 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 attorney fees at trial and upon any appeal or petition for review thereof or in any bankruptcy proceeding.

12.7 Fines. The Board of Directors may establish a schedule of fines applicable to violations of this Declaration or rules and regulations established pursuant to 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.

12.8 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 13

MISCELLANEOUS PROVISIONS

13.1 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 special Declarant rights without Declarant's 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.

13.2 Regulatory Amendments. Notwithstanding the provisions of Section 13.1 above, until termination of the Class B membership, Declarant shall have the right to amend this Declaration or the Bylaws of the Association in order to comply with the requirements of any applicable statute, ordinance, or regulation or of the Federal Housing Administration, the Veterans Administration, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage 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 which insures, guarantees or provides financing for a planned community or lots in a planned community.

13.3 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 Summer Creek 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 in Summer Creek 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 resolution approved not less than six (6) months prior to the intended termination date by the vote or written consent of Owners owning not less than seventy-five percent (75%) of the Class A votes and the written consent of the Class B member, if any, and the written approval of the holders of mortgages on Living Units in the project to the extent required by Section 13.4. Any such termination shall become effective only if prior to the intended termination date a certificate of the president or secretary of the Association, certifying that termination as of a specified termination date has been approved in the manner required herein, is duly acknowledged and recorded in the Deed Records of Deschutes County, Oregon. Such termination shall not have the effect of denying any Owner access to such Owner's Lot unless such Owner and any mortgagee of such Lot have consented in writing to the termination.

13.4 Right of Mortgagees Relating to Maintenance. At any time that the Common Areas, including the Private Ways, the landscaping or the exterior of the Buildings 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 record mortgagee, upon giving written notice as hereinafter provided, 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 13.4 and shall be sent postage prepaid by certified United States mail, return receipt requested, to the Owner with a copy by regular mail to the Association at the last known address of each.

13.5 Joint Owners. In any case in which two or more persons share the ownership of any Living Unit, 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.

13.6 Lessees and Other Invitees. Lessees, invitees, contractors, family members, and other persons entering Summer Creek under rights derived from an Owner shall comply with all of the provisions of this Declaration restricting or regulating the Owner's use, improvement, or enjoyment of such Owner's Lot, Living Unit, and other areas within Summer Creek. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner.

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

13.8 Construction; Severability. This Declaration and any Supplemental Declaration shall be liberally construed as one document to accomplish the purposes stated in the introductory paragraphs hereof. Nevertheless, each provision of this Declaration and any Supplemental Declarations 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.

13.9 Claims Against Declarant. Except as expressly provided herein or by law, any dispute, controversy or claim by the Association or any Owners, (collectively "Claim") against Declarant, its principals, successors, assigns, agents or brokers, and/or any contractor, subcontractor, architect, materialman, or other person or entity involved in the planning, development or construction of Summer Creek, or any component part thereof, shall be handled as follows:

(a) The Association or Owners, as the case may be, shall deliver written notice of the nature of such Claim to Declarant and any other involved person or entity within one (1) year of becoming aware of the existence of such Claim, or the facts giving rise to such Claim. For purposes of this Section, knowledge of such Claim shall be deemed to exist, without limitation, upon the identification of such Claim or facts relating thereto, in (i) a written report prepared following an inspection in accordance with the inspection provisions contained herein, (ii) a writing by an Owner to Declarant, or (iii) upon the discovery of such Claim.

(b) If Declarant or another involved party requests, within one hundred twenty (120) days of the date of receipt of such written notice of a Claim, it shall be provided with access to the Property and a reasonable opportunity and time period to cure or otherwise resolve such Claim.

(c) Any such Claim, if not otherwise resolved, shall be submitted to and settled by binding arbitration in accordance with the rules of the American Arbitration Association. Such arbitration shall constitute the sole and exclusive remedy for the resolution of any such Claim.

(d) Any arbitration instituted pursuant to this Declaration shall be conducted in accordance with the Commercial Arbitration Rules or the American Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The decisions of the arbitrator, including the determination of the amount of any damages suffered, if any, shall be conclusive, final and binding upon all the parties, their heirs, executors, administrators, successors, assigns, officers, directors and shareholders, as applicable. On the demand of the arbitrator or any party to an arbitration initiated hereunder, and after reasonable opportunity to join in and become a party to such arbitration, all of the parties to such arbitration and such concerned parties shall be bound by such arbitration proceeding. If any party refuses or neglects to appear at or participate in such arbitration proceeding, the arbitrator is empowered to decide the controversy in accordance with whatever evidence is presented by the party or parties who do participate. The arbitrator is authorized to award any party or parties such sums as it considers proper for the time, expense and trouble of arbitration, including arbitrator fees and attorneys' fees.

(e) In any arbitration of a dispute, controversy or claim by the Association or any Owner or Owners against Declarant, its successors and assigns, and/or any contractor, subcontractor, architect, materialman, consultant, or other person or entity involved in the planning, development or construction of the Summer Creek or any component part thereof, pertaining to the planning, development or construction of the Summer Creek or any component part thereof, not less than ninety percent (90%) of the amount actually awarded, if any, as a result of such arbitration (excluding an award of attorneys fees and costs of suit) must be utilized by the Association, Owner or Owners, solely and exclusively, for the construction, reconstruction, repair or replacement of the Associations or Owners' property. In such proceeding, there shall be no award in excess of the total costs of such repair, improvement or replacement, save the prevailing party's attorneys fees and costs of suit.

13.10 Notices and Other Documents. All notices and other communications under this Declaration shall be in writing and shall be deemed to have been given on the day of delivery when delivered by personal service and to have been given three business days after delivery to the United States mails certified or registered mail, return receipt requested, addressed to the party to which such notice is directed at its address determined as provided in this Section 13.10.

(a) Addresses. All notices and other communications under this Declaration shall be given to the parties hereto at the following addresses:

(i) If to an Owner, then to the last address for such Owner shown in the Association's records.

(ii) If to Declarant or to the Association, then to Declarant or the Association at:

Summer Creek Associates, L.L.C.
869 N.W. Wall Street, Suite 204
Bend, Oregon 97701
Attn: Steve Robertson

(b) Change of Address. Any party hereto may change the address to which notices shall be directed by giving ten days' written notice of such change delivered as provided herein.

IN WITNESS WHEREOF, Declarant has executed this Declaration the date first above written.

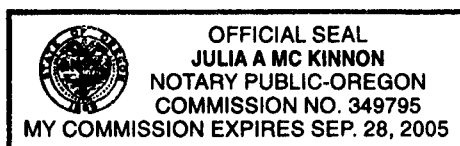
SUMMER CREEK ASSOCIATES, L.L.C

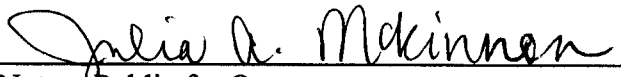
PENNBROOK HOMES, INC., Manager

By 
Stephen John Robertson, President

STATE OF OREGON)
COUNTY OF Deschutes) SS

This instrument was acknowledged before me on June 12, 2002, by Stephen John Robertson, President of Pennbrook Homes, Inc., Manager of Summer Creek Associates, L.L.C.




Notary Public for Oregon
My commission expires: 9.28.05