

RETURN TO: *TIM NEZIE*  
*90 PENNBROOK HOMES INC*  
*250 ALW-FRANZBLAU # 204*  
*BEND, OR 97701*

**DECLARATION OF  
CODES, COVENANTS AND RESTRICTIONS**

**TERRANGO GLEN SOUTH**

THIS DECLARATION is made on the day and year hereinafter written by Pennbrook Homes, Inc., developer of Terrango Glen South, City of Bend, Deschutes County, Oregon, herein after called "Declarant."

**RECITALS**

A. Declarant is the owner of the real property located in the City of Bend, County of Deschutes, State of Oregon, more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof, which property, together with all improvements and structures now or hereafter constructed thereon are referred to herein as the "Property."

B. Before selling or conveying any additional portions of the Property, Declarant desires to subject said Property in accordance with a general plan to certain conditions and restrictions for the benefit of Declarant and any and all present and future owners of said Property.

NOW, THEREFORE, Declarant hereby certifies and declares and does hereby establish the following general plan for the protection and benefit of all of the real property described, and has fixed and does hereby fix the following protective ownership interest in the Property described above, under which each ownership interest in the Property shall be hereafter held, used, occupied, leased, sold, encumbered, conveyed and/or transferred. Each and all of said conditions and restrictions are for the purpose of protecting the value and desirability of, and shall inure to the benefit of all of the real property described above, and shall run with and be binding upon and pass with the Property, and each and every ownership interest therein, and shall inure to the benefit of, apply to, and bind the respective successors in title or interest of Declarant.

**ARTICLE 1. DEFINITIONS**

**CITY**

"City" shall mean and refer to "City of Bend".

**COUNTY**

"County" shall mean and refer to the County of Deschutes, State of Oregon.

**DECLARANT**

"Declarant" shall mean and refer to Pennbrook Homes, Inc., its successors and assigns, if such successors or assigns acquire any or all of the Declarant's interest in the Property for the purpose of development or sale. A successor Declarant shall also be deemed to include the beneficiary under any deed of trust securing an obligation from a then existing Declarant encumbering all or any portion of the Property, which beneficiary has acquired any such property by foreclosure, power of sale or deed in lieu of such foreclosure or sale.

**DECLARATION**

"Declaration" shall mean and refer to this Declaration, recorded with the Office of the County Recorder of Deschutes County, Oregon, covering the Property, including such amendments thereto as may from time to time be recorded.

**DESCHUTES COUNTY OFFICIAL RECORDS  
NANCY BLANKENSHIP, COUNTY CLERK**

**2003-09655**



**\$95.00**

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### **DWELLING; RESIDENCE**

"Dwelling" or "Residence" shall mean a residential structure or structures, including enclosed yard, balconies, patio areas and garages located on a Residential Lot.

### **MAP**

"Map" shall mean and refer to that certain Subdivision Map filed in Office of the County Recorder of Deschutes County, as more particularly described in Exhibit "A".

### **OWNER**

"Owner" shall mean and refer to the recorded Owner, whether one (1) or more persons or entities, or a Residential Lot. The term "Owner" shall include a seller under an executory contract of sale, but shall exclude Mortgagees. For purposes of enforcement only, the term "Owner" shall include any person owning property within the property generally known as Terrango Glen South.

### **PARTY WALL**

"Party Wall" shall mean and refer to any wall or fence that is located on or at the division line between adjoining Residential Lots, and used or intended to be used by the Owners of the adjoining Residential Lots in the maintenance of improvements on their respective Lots. For purposes of this Declaration, any walls or fences located on or at the division line between Residential Lots shall be treated as Party Walls.

### **PROJECT**

"Project" shall mean and refer to the entire parcel of real property described in Exhibit "A" herein. Declarant may, from time to time, add to the definition of Project such contiguous land as may be developed in concert with the Property.

### **PROPERTY**

"Property" shall mean and refer to that certain real property located in the County of Deschutes, Oregon, more particularly described in Exhibit "A" herein. Declarant may, from time to time, add to the definition of Property such contiguous land as may be developed in concert with the Property.

### **RESIDENTIAL LOT**

"Residential Lot" or "Lot" means any of the lots located within the Project, including all improvements now or hereafter thereon.

### **SUBDIVISION**

"Subdivision" means the residential community of which the Property is a part, and with which the Property shares a common name, regardless of whether the entire community was developed by Declarant or by others, or in combination with others.

## **ARTICLE 2 CONSTRUCTION STANDARDS**

### **FENCES & WALLS**

Any fence or wall constructed in any setback area on a Residential Lot shall be no higher than six feet. The height of the fence shall be measured from the finished grade along the bottom of the fence. Fences placed on retaining walls shall be measured from the bottom of the retaining wall unless the top of the wall does not exceed by more than six inches the height of the finished grade of the soil being retained, measured at a distance of three feet laterally from the outside of the finished retaining wall prior to the installation of the retaining wall. (Remember, whenever installing a wall or fence along one's property line, it is good practice to consult with the adjoining Lot Owners in advance.) Any fence or wall constructed in front of the Dwelling shall be no higher than three feet. Under no circumstance shall any chain-link or barbed wire fences be erected, except for security purposes in

connection with construction or reconstruction of a Dwelling. All fences shall be maintained in good condition and repair. The foregoing restriction, however, shall not apply to any fencing installed by Declarant.

Fencing erected by an Owner or the Declarant along the side or rear of any lot which faces onto any public street shall be maintained in good condition by the Owner of the Lot. No such Owner shall allow the boards or masonry of such fence to become broken or dilapidated. In the event the fencing along any street is in need or painting or staining, the Owners of the fencing along such street shall have the right, upon an affirmative vote of a majority of those Owners owning Lots on which the fence is located, to have the entire length of the fencing painted or stained. The costs of such painting or staining shall be allocated among the Owners in proportion to the linear footage of fence owned by each. In the event one or more Owners fails to pay that Owner's pro rata share, the other Owners shall have a right to recover such pro rata share, plus interest at 18% per annum, plus attorneys fees, from the non-paying Owner or Owner(s) pursuant to the provisions of Article 9, hereof.

### **OUTBUILDINGS**

The construction of any outbuilding, shed or shop on any Lot shall be permitted so long as the following conditions are met:

1. The Owner first obtains a building permit from the City of Bend, if such permit is required;
2. The materials of the exterior of the outbuilding are the same as those used on the Dwelling (metal sheds are not allowed, except in side yards where fully screened by fencing);
3. The outbuilding is painted the same color as the Dwelling;
4. The outbuilding does not exceed eight feet in height and 300 SF in total dimension, measured along the perimeter of the outbuilding;
5. The perimeter of the outbuilding is set back at least five feet from any property line; and
6. No outbuilding shall be permitted between the street and the front of any Dwelling.

No dog run or dog kennel shall be built unless it is fully screened by perimeter fencing as provided in Article 2, hereof, and is no taller than six feet.

### **REASONABLE CONSTRUCTION TIME FRAME**

All work of construction being performed on a Residential Lot shall be prosecuted diligently and continually from the time of commencement of construction until the same shall be fully completed, excepting therefrom causes beyond the control of the Lot Owner, such as strikes, Acts of God, etc. The Owner of a Lot where a building structure has been damaged or destroyed by fire or other calamity shall cause such structure to be repaired or restored within a reasonable time, commencing within four months after the damage occurs and be completed within one year thereafter, unless prevented by causes beyond Owner's reasonable control. This obligation shall not extend to the installation of furniture or the like, but shall be for the purpose of preventing unsightliness caused by such damage or destruction and any resultant health or safety problems to other Owners or occupants within the Property or neighborhood.

### **DECLARANT CONTROL**

Until all of the Residential Lots for sale in the Project by Declarant have been sold, no Dwelling, building, fence or other improvement or structure of any kind shall be commenced, erected, placed, altered or painted until the same has been approved in writing by Declarant, which approval shall not be unreasonably withheld. Complete plans and specifications showing the nature, kind, shape, color, size, height and materials and location of such improvements, alterations, etc., shall have been submitted to Declarant for approval as to quality of workmanship and design and harmony of external design with existing structures, and as to location in relation to surrounding Project structures, topography, and finish grade elevation. No permission or approval shall be required to repaint in accordance with Declarant's original color scheme (as of the time of the original sale by Declarant to Owner, or Owner's predecessor), or to rebuild in accordance with plans and specifications previously approved Declarant. Nothing contained herein shall be construed to limit the right of an Owner to remodel or repaint the interior of a

residence.

### **ARTICLE 3 - USE RESTRICTIONS**

#### **SINGLE FAMILY USE ONLY**

Each Residential Lot shall be improved, used and occupied for private, single-family dwelling purposes only.

#### **BUSINESS OR COMMERCIAL ACTIVITY**

No commercial business shall be permitted or conducted on any of the Residential Lots. Owners may, however, without external evidence, (i) maintain their personal professional library, (ii) keep personal business or professional records, (iii) handle his or her professional and personal business, calls or correspondence from said premises, or (iv) provide music, educational or professional services to students, clients or customers, so long as the students, clients or customers do not, at any one time, exceed two persons at the Dwelling and the business is conducted wholly within the home in a manner that is not disruptive to the neighborhood. The foregoing notwithstanding, Declarant may use any of the Lots owned or leased by Declarant as model homes and sales offices during the period of time commencing when the Residential Lots in the Project are first sold or offered for sale to the public, and ending when all such Lots are sold and conveyed by Declarant to separate Owners thereof.

#### **LEASE OF DWELLING**

Each Owner shall have the right to lease his Dwelling, provided that such lease is in writing and provides that the tenant shall be bound by and obligated to the provisions of this Declaration, and the failure to comply with the provisions of this Declaration shall be a default under the lease. No lease shall have a term of less than 30 days.

#### **EXTERIOR LIGHTING**

Any exterior lighting installed on any Lot shall either be indirect or of such controlled focus and intensity as not to unreasonably disturb other occupants or other Residential Lots.

#### **SIGNS**

No signs, placards, decals or other similar objects, visible from neighboring property or streets, shall be erected, or displayed on any Residential Lot; provided however, the following signs shall be permitted, all of which shall conform with applicable local governmental ordinances:

- (a) Such signs as may be required by legal proceedings;
- (b) One sign of customary and reasonable dimensions, not exceeding 4 square feet in area, advertising the dwelling or Residential Lot on which such sign is located "for sale" or "for rent;"
- (c) One sign, staked in the yard area, not to exceed twelve square inches in size, advertising or noticing the existence of a security system for the Lot on which such sign is located, and any number of security system window signs not to exceed six square in size, each. No such security signs shall be attached to the outside of a Dwelling or fence;
- (d) Reasonable window dressings placed in observance of national or religious holidays;
- (e) During the time of construction of any Residence or other improvement, job identification signs having a maximum face area of six square feet per sign and of the type usually employed by architects, contractors, subcontractors, tradesmen and lenders;
- (f) An exception to all sign prohibitions shall be the addresses which must be incorporated onto the

entrance of each lot as per code..

Anything contained in this Declaration to the contrary notwithstanding, until all of the Residential Lots for sale in the Project by Declarant have been sold, Declarant shall have the right to install and maintain such signs, poles and advertisements as it deems appropriate in connection with its sales, financing, or construction program for the sale to the public or Residential Lots, provided such signs shall comply with the local zoning ordinances, that all County or other governmental approvals therefore shall be obtained and that they do not unusually interfere with the right of use and quiet enjoyment of the Owners and occupants.

Any monument sign erected by Declarant at the entrance to the Property, or to the Subdivision, shall be maintained by the Declarant so long as it owns any Lot within the Subdivision. However, upon the sale of the last Lot owned by Declarant within the subdivision, the responsibility for maintenance of any monument sign shall pass to the Owners. The Owners may elect to maintain the monument sign, or to remove it, in cooperation with the Owner of the Lot on which said sign is placed. The Owner of the Lot on which the sign is placed, however, shall only have the right to remove the sign upon the written approval of a majority of the Owners within the Subdivision.

#### **ANTENNAS, SATELLITE DISHES, ETC.**

No "Citizens Band" (C.B.), "ham" radio, microwave transmission antennas or other similar electronic receiving or broadcasting devices shall be installed or maintained on a Residential Lot unless the same are fully concealed from the view of any person on a neighboring Lot or public right of way. A single satellite dish shall be permitted on a Residential Lot, provided, however, that it is an earth-tone or grey tone in color. Such satellite dish may be visible from adjoining property so long as it does not exceed two feet in diameter.

#### **PETS; ANIMALS**

An Owner may keep and maintain in his Dwelling domesticated pets such as dogs, cats, or other usual and ordinary household pet, provided that they are not kept, maintained or bred for any commercial purposes. The foregoing notwithstanding, no pets may be kept on the premises which result in an annoyance or are obnoxious to other Owner or occupants. Declarant or any Owner may cause any unleashed dog and or any other such animal found within the Project to be removed by Declarant (or any Owner) to an animal shelter under the jurisdiction of the City of Bend, or the County of Deschutes by calling the appropriate authorities, whereupon the Owner may upon payment of all expenses connected therewith, repossess the dog or other such animal. No dog whose barking disturbs other Owners or occupants shall be permitted to remain on the Property. Owners shall prevent their pets from soiling all portions of the City street areas where other persons customarily walk and shall promptly clean up any mess left by their pets. Owners and occupants may keep and maintain such pets as may be permitted by County zoning ordinances.

#### **VEHICLE RESTRICTIONS**

Owners and occupants may keep and maintain such vehicles on their Residential Lots as may be permitted in accordance with the codes, ordinances and statutes of the City. No vehicles shall be permitted to remain parked on the street or any front yard area of a Residential Lot, except for paved driveway leading to a garage, or within a paved parking area other than a driveway that is located adjacent to the Dwelling, for any period in excess of four days. Extended parking of boats, campers, trailers or other recreational vehicles (in excess of four days) shall be permitted only behind the front fence and along the side of the home. If any vehicle or trailer is parked along the side of the house for more than four days, it shall be screened by a fence of no less than five feet across the front and along the length of the vehicle or trailer. No Owner may engage in any vehicle restoration or maintenance work beyond any continuous period of forty-eight (48) hours, unless such work is performed within an enclosed garage. The foregoing shall not be deemed to prevent the washing or polishing of motor vehicles together with those activities normally incident to such activity. Anything herein to the contrary notwithstanding, trailers or temporary structures for use incidental to the actual construction or reconstruction of a Dwelling on a Residential Lot may be erected, but no such temporary structure shall remain on any Residential Lot for a longer period of time than is

customarily required to construct like or similar Dwellings. Declarant, however, may maintain trailers or temporary structures within the Project which are incidental to the completion of the Project. No such trailer shall be used as a residence by any Owner during construction of a Dwelling.

#### **GARAGES; PARKING**

Garages shall be used only for the purpose of parking automobiles and other vehicles and equipment and storing an Owner's household goods; provided, however, that all such uses shall be accomplished so that garage doors can be closed. Garages shall not be converted into any use (such as a recreational room or for storage) that would prevent its use as parking space for the number of vehicles the garage was designed to contain. Except for purposes of ingress or egress, all garage doors shall remain closed. Parking of vehicles on Residential Lots shall be conducted on paved surfaces only. There shall be no parking of vehicles on unpaved surfaces, such as lawns or dirt surfaces. Garage doors shall not exceed nine feet in height.

#### **TREES; LANDSCAPING**

All trees or other landscaping material, shall be kept trimmed by the owner of the Lot upon which they are located. Shrubs shall be trimmed so that they are no greater than five feet in diameter for a height of 20 feet above ground level.

#### **WINDOWS**

No window shall ever be covered with paint or aluminum foil, provided, however, non-reflective solar films are permitted.

#### **GARBAGE AND REFUSE DISPOSAL**

All rubbish, trash and garbage shall be regularly removed from Property and shall not be allowed to accumulate thereon. Trash, garbage and other waste shall be kept except in sanitary containers designed for such purpose. All equipment for storage or disposal of such materials shall be kept in a clean and sanitary condition. All equipment, trash bins or cans shall be kept screened and concealed from view of other Lots and from the streets. Owners are encouraged to contract with the local refuse removal company for routine garbage disposal.

#### **OFFENSIVE ACTIVITIES AND CONDITIONS**

No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done therein which may be or become an annoyance or nuisance to the other Owners other than construction or repair of improvements as may be permitted by law. No Residential Lot or Dwelling shall be used in such manner as to obstruct or interfere with the enjoyment of occupants of other such areas, nor shall any illegal activity be committed or permitted to occur on any Residential Lot.

### **ARTICLE 4 - RESPONSIBILITY FOR MAINTENANCE**

Each such Owner shall, at his sole cost and expense, maintain and repair Owner's Lot. Maintenance shall, at a minimum, include irrigation of the landscaping, including landscaping between the sidewalk and curb in front of the Dwelling, if any, repair and replacement of plant materials and irrigation systems as necessary, and general cleanup of the landscaped areas and of all slope banks comprising property adjacent to any private road or drive where such adjoins each Owners' Lot, regular painting of the exterior surfaces of the Dwelling, and maintenance and replacement of the roofing. The cost of maintenance and repair of any Party Wall shall be shared by the respective Lot Owners. "Maintenance" shall include, without limitation, the painting, weather-proofing and cleaning of the items set forth above to keep a clean, safe and sanitary condition necessary to preserve the attractive appearance of each Lot and Dwelling and to protect the values of the entire Property. The standards of such maintenance shall be, at a minimum, in conformance with maintenance standards for similar Dwellings in the area. No rubbish or debris of any kind shall be placed or permitted by an Owner to accumulate upon or adjacent to any

Lot, or slope, so as to render such property or portion thereof unsanitary, unsightly, offensive or detrimental to other residents.

## **ARTICLE 5 - PARTY WALLS**

### **GENERAL**

Each of the adjoining Owners of a Party Wall shall assume the burdens and be entitled to the benefits of this Declaration, and to the extent not inconsistent with this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall be applied thereto.

### **DAMAGE BY ONE OWNER**

In the event any such party wall is damaged or destroyed through the act of one adjoining Owner or any of his agents, guests, invitees, tenants or members of his family (whether or not such act is negligent or otherwise culpable) so as to deprive any person of the full use and enjoyment of such wall, then such Owner shall forthwith proceed to rebuild and repair the same to as good a condition as formerly existed, without cost to the other adjoining Owner.

### **SHARING OF MAINTENANCE**

The cost of reasonable maintenance of a party wall shall be shared by the owners who make use of the wall in proportion to such use.

### **DAMAGE BY OTHER CAUSE**

In the event any such party wall is damaged or destroyed by some cause (including ordinary wear and tear and deterioration from lapse of time), other than the act of one of the adjoining Owners, his tenants, guests or family, both such adjoining owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly existed, at their joint expense.

### **ALTERATIONS**

In addition to meeting the other requirements of this Declaration and of any building code or similar regulation or ordinance, any Owners proposing to modify, make additions to or rebuild his Dwelling in any manner which requires the extension or other alteration of any party wall shall first obtain the written consent of the adjoining Owner. In addition, so long as the Declarant owns any Residential Lot within the Project, the Owner shall first obtain Declarant's written approval of the proposed alteration. The owner shall provide the Declarant with three copies of a drawing showing the proposed alteration to the Dwelling. Declarant shall have thirty days within which to provide written notification of approval or disapproval of the alteration. If written notification is not provided within that time frame, the Owner shall be free to construct the alteration as proposed.

### **WEATHERPROOFING**

Any other provisions of this Article 5 notwithstanding, any Owner, who by his negligent or willful act causes the party wall to be unusually exposed to the elements shall bear the whole cost of replacement of that portion so exposed.

### **ARBITRATION**

In the event of a dispute between Owners with respect to the party wall, or under the provisions of this Article, the matter shall be submitted to arbitration under the rules of the American Arbitration Association.

## **ARTICLE 6 - EASEMENTS**

### **EASEMENTS TO DECLARANT**

Easements over and under the Project for the installation, repair, and maintenance of electric, telephone, water, gas, and sanitary sewer lines and facilities, cable or master television antenna lines, drainage facilities,

walkways, roads, curbs, gutters and such other facilities as may be shown on the map, and as may be hereafter required or needed to service, improve and construct the Project, are hereby reserved by Declarant and its successors and assigns, together with the right to grant and transfer the same. The foregoing notwithstanding, there is hereby reserved to Declarant, or its duly authorized agents and representatives, such easements as are necessary to perform the duties and obligations set forth in this Declaration.

#### **EASEMENTS FOR MAINTENANCE OF ENCROACHMENTS**

None of the rights and obligations of the Owners created herein shall be altered in any way by encroachment due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of such encroachments over contiguous Lots upon which the encroachments exists so long as they shall exist; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful conduct of said Owner or Owners. In the event a structure on a Residential Lot is partially or totally destroyed and then rebuilt, or repaired, the Owners of such Residential Lots agree that minor encroachments over adjoining Lots shall be permitted during reconstruction and there shall be easements for maintenance of such encroachment so long as they shall exist.

#### **DRAINAGE & SLOPES; LANDSCAPED AREAS**

There shall be no interference with or obstruction of the established surface drainage pattern over any Lot within the Project, unless an adequate alternative provision is made for proper drainage and is first approved in writing by the Declarant and the Engineering Department of the City. Any alteration of the established drainage patterns must at all times comply with all applicable government ordinances. Each Owner shall maintain, repair replace, and keep free from debris or obstructions the drainage system and devices, if any, located on their respective Lot. Water from any Lot may drain into adjacent streets but shall not drain onto adjacent Lots unless an easement for such purposes is granted herein, in the subdivision map for the Real Property, or in any other grant of easement. Declarant hereby reserves for itself and its successive owners, over all areas of the Project, easements for drainage from slope areas and drainage ways constructed by Declarant.

#### **UTILITY EASEMENTS**

Each Owner agrees, by acceptance of deed, that his or her Residential Lot is granted subject to an easement for utility installations and maintenance. Whenever utility facilities installed within the Project, or any portion thereof, lie in or upon a Lot owned by Other than the Owner of a Lot served by said utility facilities, the Owners of any Lots served by said utility facilities shall have the right of reasonable access for themselves or for utility companies, the City, or the County of Deschutes County to repair, replace and generally maintain said utility facilities as and when the same may be necessary.

Whenever utility facilities are installed within the Project which serve more than one Lot, the Owner of each Lot served by the utility facilities shall be entitled to the full use and enjoyment of such portions of the utility facilities as service his Lot. In the event of a dispute between Owners with respect to the repair or rebuilding of the utility facilities, or with respect to the sharing of the cost thereof, then, upon written request to the other Owner or Owners by one Owner, the matter shall be submitted to arbitration within sixty days, pursuant to the rules of the American Arbitration Association, and the decision of the Arbitrator shall be final, conclusive and binding on the parties.

#### **COI CANAL EASEMENT**

All lots bordering on the Central Oregon Irrigation District (COI) Canal along the western boundary of the Property are subject to the terms of the access easement held by COI. COI is requiring a small fence be installed on each lot along the easement line. This fence shall be at least two feet tall and be made of wood or metal posts and rails. The fence shall be installed within sixty days of the issuance of a certificate of occupancy on of each home (whether the home is constructed by the Declarant or the Owner or Owner's representative). Each Owner, thereafter, shall be responsible for the maintenance of the fence and be further responsible to observe all of the



requirements of the COI easement. As an alternative to the two-foot high fence, an Owner shall be permitted to construct a fence in conformance with Article 2 of these CC&Rs along the COI easement line, so long as the fence does not encroach upon the COI easement.

#### **ARTICLE 7 - ENFORCEMENT**

Except for those instances herein contained which call for an arbitration of disputes or other matters, enforcement of this Declaration shall be as follows:

##### **RIGHT TO ENFORCE**

Any Owner (including for the purposes of enforcement any person owning property within the subdivision generally known as Terrango Glen South), the Declarant, or any successors in interest of the Declarant shall have the right to enforce, by any proceeding, at law or in equity, all restrictions, conditions, reservations, liens or charges now or hereafter imposed by this Declaration. Nothing in these CC&Rs imposes a duty upon any Owner, or the Declarant, to enforce any provision of these CC&Rs. Moreover, upon the sale of all Lots within the Property, Declarant will discontinue any enforcement actions under these CC&Rs.

##### **FAILURE TO ENFORCE**

Failure by the Declarant or any Owner to enforce any provisions of this Declaration shall in no event be deemed a waiver of the right to do so thereafter. Each remedy provided by this Declaration shall be cumulative and not exclusive.

##### **ARBITRATION OR LITIGATION**

In the event the Declarant, or any Owner shall commence arbitration or litigation to enforce any of the conditions or restrictions herein contained, the prevailing party in such litigation shall be entitled to costs of suit and such attorney's fees as the court or arbitrator may adjudge reasonable and proper. The "Prevailing Party" shall be the party who is entitled to recover his costs of suit pursuant to rules of the court or arbitrator, whether or not the suit proceeds to final judgment. A party not entitled to recover his costs shall not recover attorney's fees .

##### **VIOLATION OF LAW**

Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any Lot within the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures herein set forth.

##### **GOVERNING LAW**

This Declaration shall be governed by and construed under the laws of the City of Bend, State of Oregon and the County of Deschutes.

#### **ARTICLE 8 - GENERAL PROVISIONS**

##### **EXTENSION OF DECLARATION**

Each and all of these covenants, conditions and restrictions shall terminate on December 31, 2050, after which date they shall automatically be extended for successive periods of ten years, unless all Owners have executed and recorded at any time within six months prior to December 31, 2050, or within six months prior to the end of any such ten year period, in the manner required for the conveyance or real property, a writing in which it is agreed that said restrictions shall terminate on December 31, 2050, or at the end of any such ten year period.

##### **OTHER COMPLIANCE WITH DECLARATION**

Each Owner, tenant or occupant of a Residential Lot shall comply with the provisions of this Declaration as lawfully amended from time to time and failure to comply with its provision shall be grounds for an action to

recover sums due for damages or for injunctive relief.

#### **NON-INTERFERENCE WITH DECLARANT CONSTRUCTION EFFORT**

Declarant and its successors are undertaking the work of construction of Residential Lots and Dwellings thereon and incidental improvements in the Project. The completion of that work and the sale, rental and other disposition of said Residential Lots and the Dwellings thereon is essential to the establishment and welfare of the Project as a residential community. In order that said work may be completed and said Project be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to prevent Declarant or its successors and their contractors or subcontractors:

- (a) From doing in the Project whatever is reasonably necessary or advisable in connection with the completion of said work;
- (b) From erecting, constructing and maintaining on any part or parts of the Project such structures as may be reasonable and necessary for the conduct of its business of completing said work and establishing said Project as a residential community and disposing of the same in parcels by sale, lease or otherwise;
- (c) From conducting on any part of the Project its business of completing said work, and or establishing a plan of Residential Lot ownership and of disposing of said Residential Lots by sale, lease or otherwise; or
- (d) From maintaining such signs, or signs on any of the Residential Lots, or on any portion of the Project as may be necessary.

#### **ARTICLE 9 - BINDING ARBITRATION**

##### **ARBITRATION OF DISPUTES**

Except as expressly provided herein or by law, any dispute, controversy or claim by any Owner(s), (collectively "Claim") against Declarant, its 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 the Project or any component part thereof, shall be handled as follows:

(a) The Owner 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.

##### **ARBITRATION PROCEDURES AND RULES**

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.

#### **WAIVER OF ARBITRATION**

In the event any legal action or proceeding is instituted by a party (which is subject to this Section) in connection with any matter for which arbitration under this Section may be required, such party conclusively shall be deemed to have waived its right to require arbitration hereunder. Any party (which is also subject to this Section) named in such action or proceeding may, at any time within thirty (30) days after being served by proper service of process with respect to such action or proceeding, may require by written notice delivered to the first mentioned party that such matter be determined by arbitration pursuant to this Article, and such requirement shall be binding on all such parties. A party's failure to require such arbitration within said thirty (30) day period will constitute waiver by such party of its right to require arbitration under this Section.

#### **EXCEPTIONS**

Notwithstanding anything contained in this Article to the contrary, the filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction or other provisional remedies, shall not constitute a waiver of the right to arbitrate under this Article.

#### **OWNERS CLAIMS**

In any arbitration of a dispute, controversy or claim by an 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 Project or any component part thereof, pertaining to the planning, development or construction of the Project or any component part thereof, not less than ninety percent (90%) of the amount actually awarded, if any, as a result of such arbitration must be utilized by the Owner or Owners, solely and exclusively, for the construction, reconstruction, repair or replacement of such Owner 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.

#### **AMENDMENTS**

Except as provided in the following section entitled "Declarant's Approval", this Declaration may be amended by written instrument (or counterparts thereof):

- (i) Signed and acknowledged by the Owners of at least seventy-five percent (75%) of the Lots; and
- (ii) For so long as Declarant owns a Residential Lot in the Project, approved in writing by Declarant;
- (iii) Filed for record in the Office of the Recorder of Deschutes County.

Each such amendment shall be come effective upon such recording.

#### **DECLARANT'S APPROVAL**

Notwithstanding anything contained in this Declaration to the contrary, for a period of five years from the date of conveyance by Declarant of the last Residential Lot in the Project to a purchaser, amendment of the Section of this Declaration entitled "Binding Arbitration," shall require the written approval of the Declarant.

#### **APPROVAL BY FHA OR VA**

In the event the Project has been approved by the US Department of Veterans Affairs ("VA") or the

Federal Housing Association ("FHA"), and provided that either VA or FHA Insurer guarantees a loan on a Residential Lot, any amendment of this Declaration shall require the approval of either the VA or FHA. However, the failure of VA or FHA to approve in advance any such amendment shall not invalidate the amendment as to the Property, the Declarant or any Owner.

**SEVERABILITY**

Should any of the restrictions contained in this Declaration be void or become unenforceable in law or in equity, the remaining portions of this Declaration shall, nevertheless, be and remain in full force and effect.

**SINGULAR INCLUDES PLURAL**

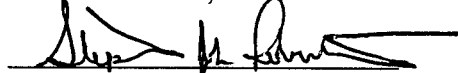
Whenever the context or this Declaration requires, the singular shall include the plural and the masculine shall include the feminine.

**LIBERAL CONSTRUCTION**

The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of the Project. The titles or headings of the Articles or Sections of this Declaration have been inserted for convenience and reference only and shall not be considered or referred to in resolving questions or interpretation or construction.

IN WITNESS WHEREOF, the undersigned, being Declarant herein, has executed this instrument on \_\_\_\_\_, 2003.

Pennbrook Homes, Inc.



Stephen John Robertson, President

STATE OF OREGON            )

COUNTY OF DESCHUTES    )

The foregoing instrument was acknowledged before me on this 24 day of January 2003, by Stephen John Robertson.



*Laura L. Gordon*  
NOTARY PUBLIC FOR OREGON  
My Commission Expires Sept. 23, 2006

**EXHIBIT "A"**

Terrango Glen South