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**DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS, AND RESTRICTIONS FOR  
VILLAGE AT COLD SPRINGS**

*Hayden Homes LLC, Declarant*

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## TABLE OF CONTENTS

<b>ARTICLE I - DEFINITIONS.....</b>	<b>1</b>
Section 1.1    "Association" .....	1
Section 1.2    "Board" .....	1
Section 1.3    "Bylaws" .....	2
Section 1.4    "City" .....	2
Section 1.5    "Common Areas" .....	2
Section 1.6    "Common Maintenance Areas" .....	2
Section 1.7    "Condominium" .....	2
Section 1.8    "Condominium Association" .....	2
Section 1.9    "Condominium Declaration" .....	2
Section 1.10   "Condominium Unit" .....	2
Section 1.11   "Conversion Date" .....	3
Section 1.12   "County" .....	3
Section 1.13   "Declarant" .....	3
Section 1.14   "Declaration" .....	3
Section 1.15   "Directors" .....	3
Section 1.16   "Improvement" .....	3
Section 1.17   "Lot" .....	3
Section 1.18   "Owner" .....	4
Section 1.19   "Plat" .....	4
Section 1.20   "Private Utilities" .....	4
Section 1.21   "Property" .....	4
Section 1.22   "Sub-Association" .....	4
Section 1.23   "Tract" .....	4
Section 1.24   "Turnover Meeting" .....	4
Section 1.25   "Unit" .....	5
<b>ARTICLE II - VILLAGE AT COLD SPRINGS HOMEOWNERS' ASSOCIATION, INC.5</b>	<b>5</b>
Section 2.1    Membership .....	5
Section 2.2    Voting Rights .....	5
Section 2.3    Suspension .....	5
Section 2.4    The Association Board of Directors .....	6
Section 2.5    Turnover Meeting .....	6
Section 2.6    Immunity of the Board .....	6
Section 2.7    Clarification of Role of Association .....	6
<b>ARTICLE III - COMMON MAINTENANCE AREAS/ASSESSMENTS .....</b>	<b>6</b>
Section 3.1    Funding .....	6
Section 3.2    Annual Assessment or Charge on Lots Owned by Class A Members.....	7
Section 3.3    Units on Lots Owned by Declarant.....	7
Section 3.4    Purposes of Maintenance Fund.....	7
Section 3.5    Reserve Funds .....	8

Section 3.6	Limited Assessments .....	9
Section 3.7	Additional Assessments .....	10
Section 3.8	Non-payment of Assessments: Remedies of the Association.....	10
Section 3.9	Subordinated Lien to Secure Payment.....	10
Section 3.10	Reallocation Upon Annexation of Property.....	11
<b>ARTICLE IV - GENERAL POWERS AND DUTIES OF BOARD OF DIRECTORS.....</b>		<b>11</b>
Section 4.1	Interim Board .....	11
Section 4.2	Purpose of Maintenance Fund .....	11
Section 4.3	Powers and Duties of Board .....	12
Section 4.4	Board Powers Exclusive .....	13
Section 4.5	Maintenance Contracts.....	13
<b>ARTICLE V - COMMON MAINTENANCE AREAS .....</b>		<b>13</b>
Section 5.1	Conveyance.....	13
Section 5.2	Liability Insurance; Casualty Insurance.....	14
Section 5.3	Condemnation .....	14
Section 5.4	Maintenance of Common Maintenance Areas.....	14
Section 5.5	Prohibited Activities .....	15
<b>ARTICLE VI - ARCHITECTURAL REVIEW .....</b>		<b>15</b>
Section 6.1	Architectural Control Committee .....	15
Section 6.2	Design Guidelines.....	16
Section 6.3	Scope of Review .....	16
Section 6.4	Submission of Plans.....	16
Section 6.5	Plan Review .....	17
Section 6.6	Non-conforming Structures .....	17
Section 6.7	Immunity of ACC Members .....	17
Section 6.8	Limited Review.....	17
Section 6.9	Address for Notice .....	17
<b>ARTICLE VII - EASEMENTS .....</b>		<b>18</b>
Section 7.1	Utility Easements .....	18
Section 7.2	Declarant's Easement to Correct Drainage.....	18
Section 7.3	Entry Easement .....	18
Section 7.4	Reserved Easements.....	18
Section 7.5	Temporary Completion Easement .....	19
Section 7.6	Perimeter Fence Easement.....	19
Section 7.7	Maintenance Easements.....	19
Section 7.8	Plat Easements .....	19
<b>ARTICLE VIII - USE, OCCUPANCY, CASUALTY, AND INSURANCE .....</b>		<b>19</b>
Section 8.1	Residential Use .....	19
Section 8.2	Commercial, Institutional, or Other Non-Residential Uses .....	19
Section 8.3	Garage Sales.....	20
Section 8.4	Declarant Use.....	20

Section 8.5	Owner Insurance .....	20
Section 8.6	Casualty.....	20
<b>ARTICLE IX - PROPERTY RIGHTS.....</b>		<b>21</b>
Section 9.1	Owner's Use and Occupancy.....	21
Section 9.2	Common Areas; Rights of Association .....	21
Section 9.3	Effect of Declaration.....	21
Section 9.4	Rezoning Prohibited.....	22
Section 9.5	Lot Consolidation and Division.....	22
Section 9.6	Drainage Alteration Prohibited.....	22
Section 9.7	Damage or Destruction By Owner.....	22
<b>ARTICLE X - USE RESTRICTIONS .....</b>		<b>22</b>
Section 10.1	Nuisances .....	22
Section 10.2	Development Activity.....	23
Section 10.3	Temporary Structures.....	23
Section 10.4	Signs.....	23
Section 10.5	Campers, Boats, Recreational Vehicles, Commercial Vehicles, and other Non-Passenger Vehicles .....	24
Section 10.6	Pets, Livestock and Poultry.....	25
Section 10.7	Garbage and Refuse Disposal .....	25
Section 10.8	Parking.....	25
Section 10.9	Detached Buildings.....	26
Section 10.10	Fences and Hedges.....	26
Section 10.11	General Landscaping and Exterior Maintenance.....	27
Section 10.12	Antennae, Satellite Dishes and Solar Collectors.....	27
Section 10.13	Clothes Hanging Devices.....	28
Section 10.14	Window Treatment .....	28
Section 10.15	Oil and Mining Operations .....	28
Section 10.16	Mailboxes.....	28
Section 10.17	Garages .....	28
Section 10.18	Setback Lines .....	29
Section 10.19	Athletic and Recreational Facilities .....	29
Section 10.20	Water and Sewage Systems .....	29
Section 10.21	Exterior Holiday Decorations .....	29
Section 10.22	Construction Activities .....	29
Section 10.23	Unit Height.....	30
Section 10.24	Retaining Walls.....	30
Section 10.25	Exterior Finish .....	30
Section 10.26	Limitation on Square Feet.....	30
Section 10.27	Prohibited Plants .....	31
Section 10.28	Household Chemicals .....	31
Section 10.29	Soakage Trenches .....	31
Section 10.30	Soils Disclosure .....	31
<b>ARTICLE XI - ANNEXATION .....</b>		<b>32</b>

Section 11.1	Annexation by Declarant .....	32
Section 11.2	Annexation by Action of Members.....	33
Section 11.3	No Duty to Annex .....	33
<b>ARTICLE XII - GENERAL .....</b>		<b>33</b>
Section 12.1	Remedies.....	33
Section 12.2	Fines Imposed by the Association .....	34
Section 12.3	Term and Amendments.....	34
Section 12.4	Regulatory Amendments .....	35
Section 12.5	Severability .....	35
Section 12.6	Rights and Obligations.....	35
Section 12.7	Miscellaneous Provisions.....	35
Section 12.8	Personal Pronouns.....	37
Section 12.9	Headings .....	37
Section 12.10	Conflicts.....	37
Section 12.11	Partial Invalidity.....	37

**DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS AND RESTRICTIONS  
VILLAGE AT COLD SPRINGS**

THIS DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR VILLAGE AT COLD SPRINGS (this "Declaration"), to be effective upon its recording in Deschutes County, Oregon, is made and executed on the date hereinafter set forth by HAYDEN HOMES, LLC, an Oregon limited liability company, hereinafter referred to as the "Declarant".

**WITNESSETH**

Declarant is the owner of certain real property in the City of Sisters, Deschutes County, Oregon, described on Exhibit "A" attached hereto and incorporated herein by reference; and

Declarant desires to create a Class I planned community known as Village at Cold Springs on the land described on Exhibit "A" as shown on the duly recorded plat of VILLAGE AT COLD SPRINGS and on such other land as may be added thereto pursuant to the terms and provisions of this Declaration. The community shall be subject to ORS 94.550 to 94.783.

NOW THEREFORE, the Declarant declares that the real property described on attached Exhibit "A" shall be held, sold, hypothecated, and conveyed subject to the covenants, conditions, and restrictions declared below, which shall be deemed to be covenants running with the land and imposed on and intended to benefit and burden each Lot and other portions of the Property in order to maintain within the Property a community of high standards. Such covenants shall be binding on all parties having any right, title or interest therein or any part thereof, their respective heirs, personal representatives, successors and assigns, and shall inure to the benefit of each Owner thereof.

**ARTICLE I - DEFINITIONS**

**Section 1.1**    **"Association"**

"Association" shall mean the Village at Cold Springs Homeowners' Association, Inc., an Oregon nonprofit corporation established for the purposes set forth herein.

**Section 1.2**    **"Board"**

"Board" shall mean the Board of Directors of the Village at Cold Springs Homeowners' Association, Inc.

**Section 1.3    "Bylaws"**

"Bylaws" shall mean the Bylaws of the Association, as amended from time to time. The Bylaws shall be adopted pursuant to ORS 94.625 and recorded in the Deed Records of Deschutes County, Oregon.

**Section 1.4    "City"**

"City" shall mean the City of Sisters, Oregon.

**Section 1.5    "Common Areas"**

"Common Areas" as used herein, shall mean only that portion of the Property, if any, that is established for the common benefit of Village at Cold Springs that is owned by the Association for the use and benefit of the Owners. The legal description of the Common Areas is set forth on Exhibit "B" attached hereto.

**Section 1.6    "Common Maintenance Areas"**

"Common Maintenance Areas" shall mean the Common Areas, and also shall mean any areas within public rights-of-way, Tracts, easements (public or private) or other property that the Board is required to maintain pursuant to this Declaration or that the Board deems necessary or appropriate to maintain for the common benefit of the members, including without limitation, those areas described in Sections 5.4 and 5.5.

**Section 1.7    "Condominium"**

"Condominium" shall mean any property submitted to the Oregon Condominium Act (ORS Chapter 100, or any successor to such chapter) located within Village at Cold Springs.

**Section 1.8    "Condominium Association"**

"Condominium Association" shall mean the condominium owners' association to be formed with respect to the Condominium pursuant to the Oregon Condominium Act.

**Section 1.9    "Condominium Declaration"**

"Condominium Declaration" shall mean the declaration of easements, covenants, conditions and restrictions establishing the plan of condominium ownership for the condominiums within the Property, which declaration shall have been executed by or bear the written approval of Declarant or an affiliate or subsidiary of Declarant.

**Section 1.10    "Condominium Unit"**

"Condominium Unit" shall mean each condominium unit of the Condominium.

**Section 1.11 "Conversion Date"**

"Conversion Date" shall be the date upon which Class "B" membership shall cease and be converted to Class "A" membership. Such date shall be the date which is the earlier of (i) the date at which seventy-five percent (75%) of the total Lots anticipated to be created within the subdivision have been conveyed to Class "A" members; (ii) ten (10) years after conveyance of the first Lot to a Class "A" member; or (iii) upon election in writing by Declarant.

**Section 1.12 "County"**

"County" shall mean Deschutes County, Oregon.

**Section 1.13 "Declarant"**

"Declarant" shall mean Hayden Homes, LLC, its successors and assigns, who are designated as such in writing by Declarant, and who consent in writing to assume the duties and obligations of the Declarant with respect to the Lots acquired by such successor or assign.

**Section 1.14 "Declaration"**

"Declaration" shall mean this Declaration of Protective Covenants, Conditions, and Restrictions for Village at Cold Springs and any amendments and supplements thereto made in accordance with its terms.

**Section 1.15 "Directors"**

"Directors" shall mean the Board of Directors of the Association.

**Section 1.16 "Improvement"**

"Improvement" shall mean every structure or improvement of any kind, including, but not limited to, a Unit, landscaping, fences, wall, driveways, fixtures, shelters, or other product of construction efforts (including painting, alterations, and reconstruction) on or with respect to the Village at Cold Springs.

**Section 1.17 "Lot"**

"Lot" shall mean any of the plots of land indicated upon the recorded subdivision map of the Property or any part thereof creating single-family home sites, with the exception of the Common Areas, Tracts and areas deeded to a governmental authority or utility, together with all improvements thereon.



Section 1.18 "Owner"

"Owner" shall mean the record owner, whether one or more persons or entities, of a fee simple title to any Lot or Condominium Unit, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.

Section 1.19 "Plat"

"Plat" shall mean the duly recorded plat of Village at Cold Springs, recorded in the Plat Records of Deschutes County, Oregon contemporaneously herewith.

Section 1.20 "Private Utilities"

"Private Utilities" shall mean utilities including but not limited to gas, electric, water, sewer, storm water, cable, and telecommunication service lines that are not public utilities.

Section 1.21 "Property"

"Property" shall mean the real property described on the attached Exhibit "A", and such additions thereto as may be brought within the jurisdiction of the Association and be made subject to this Declaration.

Section 1.22 "Sub-Association"

"Sub-Association" shall mean any sub-association created from time to time by Declarant to govern the administration of any subset of Lots that are subject to this Declaration, including, without limitation, a Condominium Association. Each Sub-Association shall be subject to a separate declaration of covenants, conditions and restrictions and such other documents as may be established by Declarant or its subsidiaries or affiliates in their sole discretion; provided, however, the terms of such documents shall remain subordinate to and subject to the terms of this Declaration and the Articles of Incorporation and Bylaws of the Association. A Sub-Association shall have the right to levy assessments separate from and in addition to the assessments levied hereunder by the Association. Any private roads or common area solely within a Sub-Association will be maintained by such Sub-Association and not by the Association.

Section 1.23 "Tract"

"Tract" shall mean a parcel of land, if any, shown on the Plat and denoted by the word "Tract."

Section 1.24 "Turnover Meeting"

"Turnover Meeting" shall be the meeting of the Owners called by the Declarant pursuant to the Bylaws, to turn over control of the Association to the Class A members.

**Section 1.25 "Unit"**

"Unit" shall mean any residential dwelling situated upon any Lot, including, without limitation, a townhome or Condominium Unit.

**ARTICLE II - VILLAGE AT COLD SPRINGS HOMEOWNERS' ASSOCIATION, INC.**

**Section 2.1 Membership**

The Declarant and every Owner of a Lot by virtue of ownership of such Lot shall be a member of the Association. Membership shall be appurtenant to and shall not be separated from ownership of any Lot. There shall be two (2) classes of membership, Class A and Class B as described in Section 2.2.

**Section 2.2 Voting Rights**

The Association shall have two (2) classes of voting membership:

**2.2.1 Class A**

Class A members shall be all Owners with the exception of Declarant (except that beginning on the date on which Class B membership is converted to Class A membership, and thereafter, Class A members shall be all Owners, including Declarant) and shall be entitled to one (1) vote for each Lot or Condominium Unit owned. When one or more Lots are made subject to a Condominium Declaration, the votes of such Lot(s) shall be reallocated to equal one vote per Condominium Unit. When more than one (1) person holds an interest in any Lot or Condominium Unit, all such persons shall be members, but the vote for such Lot or Condominium Unit shall be exercised as they among themselves determine, and in no event shall more than one (1) vote be cast with respect to any Lot or Condominium Unit. If the co-Owners of a Lot or Condominium Unit cannot agree upon the vote, the vote of the Lot or Condominium Unit shall be disregarded in determining the proportion of votes with respect to the particular matter at issue.

**2.2.2 Class B**

The Class B member shall be the Declarant, who shall be entitled to three (3) votes for each Lot or Condominium Unit it owns. The Class B membership shall terminate on the Conversion Date.

**Section 2.3 Suspension**

All voting rights of an Owner shall be suspended during any period in which such Owner is delinquent in the payment of any assessment duly established pursuant to Article III or is otherwise in default under this Declaration, the Bylaws or the Rules and Regulations of the Association.

Section 2.4    The Association Board of Directors

The Association's Board of Directors shall be elected as provided in the Bylaws.

Section 2.5    Turnover Meeting

The Declarant shall call the Turnover Meeting within ninety (90) days following the Conversion Date for the purposes of turning over control of the Association to the Owners. The Turnover Meeting shall be conducted in accordance with the Bylaws.

Section 2.6    Immunity of the Board

No individual member of the Board shall have any personal liability to any Owner or any other person for the acts or omissions of the Board if such acts or omissions were committed in good faith and without malice. The Association shall defend any action brought against the Association, the Board or any member thereof arising from such acts or omissions.

Section 2.7    Clarification of Role of Association

The Association shall have the general powers and duties of a nonprofit corporation pursuant to the Oregon Nonprofit Corporations Act, and of a homeowners' association pursuant to the Oregon Planned Community Act, as well as the specific powers and duties set forth in the provisions of this Article and the other provisions of this Declaration that expressly relate to the Association, as well as pursuant to the Articles of Incorporation of the Association ("Articles") and the Bylaws. However, unless expressly set forth herein or in the Articles or the Bylaws, the Association shall not act in the capacity of settling disputes between Owners or resolving problems that Owners may experience. Disputes or problems experienced by Owners to which the Association has no express authority or role as set forth in this Declaration shall be resolved by private, lawful means chosen by the affected Owners and there shall be no recourse to the Association.

**ARTICLE III- COMMON MAINTENANCE AREAS/ASSESSMENTS**

Section 3.1    Funding

Subject to the terms of this Article III, the Declarant for each Lot owned within the Property hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association: (i) annual or periodic assessments or charges; and (ii) special assessments for capital improvements to the Common Areas and Common Maintenance Areas, such assessments to be established and collected as hereinafter provided. The annual or periodic assessments shall include any reserve assessments necessary to establish and maintain any reserve funds created under Section 3.5. Such assessments will remain effective for the full term (and extended term, if applicable) of the within covenants. The annual and special and other assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot and Condominium Unit against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees shall

also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to the successors in title of such Owner unless expressly assumed by them, in writing.

### Section 3.2     Annual Assessment or Charge on Lots Owned by Class A Members

Subject to the terms of this Article, each improved Lot and Condominium Unit is hereby subject to an initial assessment in an amount not to exceed an amount determined by the Board (until such assessment charge shall be modified as provided in the Bylaws of the Association), for the purpose of creating a fund to be designated and known as the "maintenance fund" for matters described under Section 3.4, the "Reserve Fund" for matters described under Section 3.5, as well as any other funds contemplated under this Declaration, such as funds for assessments and charges: (i) on public access areas, as well as (ii) a fund established to hold funds from Limited Assessments (defined below), or any other fund called for by this Declaration or a Declaration of Annexation. Charges and assessments for funding such funds will be paid by the Owner or Owners of each such Lot and Condominium Unit in advance in monthly, quarterly or annual installments, commencing as to all Lots and Condominium Unit upon the recordation of this Declaration (provided Reserve Fund assessments shall commence when provided in Section 3.5). The rate at which each Lot and Condominium Unit will be assessed, and whether such assessment shall be payable monthly, quarterly or annually, will be determined by the Board at least thirty (30) days in advance of each assessment period. To the extent Lots are developed as townhouse or Condominium Units, such Lots' proportionate share of expenses may be less than that allocated to single-family detached Lots and shall be determined by the Association in its reasonable discretion. Said rate may be adjusted within the limit permitted by the Bylaws from time to time by the Board as the needs of the Association may, in the judgment of the Board, require. Assessments shall be assessed equally as between Lots that benefit from the services or Improvements giving rise to the assessment, except where expressly provided in this Declaration or any Declaration of Annexation for Village at Cold Springs or as determined by the Board in accordance with Section 3.10. The Association shall, upon written demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether or not the assessment has been paid for the assessment period.

### Section 3.3     Units on Lots Owned by Declarant

The Declarant owning unimproved Lots or Units that are not occupied shall pay assessments at the same rate as the annual assessment charged to Owners so long as there is a Class B membership as set forth in Section 2.2.

### Section 3.4     Purposes of Maintenance Fund

The Association shall establish a maintenance fund composed of annual maintenance assessments and shall use the proceeds of such fund in providing for normal, recurring maintenance charges for the Common Maintenance Areas for the benefit of all members of the Association. Such uses and benefits to be provided by the Association may include, by way of clarification and not limitation, any and all of the following: (i) normal, recurring maintenance of the Common Maintenance Areas (including, but not limited to,

mowing, edging, watering, clipping, sweeping, pruning, raking, and otherwise caring for landscaping) and the improvements to such Common Maintenance Areas, such as sprinkler systems, provided that the Association shall have no obligation (except as expressly provided hereinafter) to make capital improvements to the Common Maintenance Areas; (ii) perpetual maintenance, repair, and enhancement for any fences, sidewalks, walls, grounds, landscaping, lights, irrigation systems, stormwater drainage easement areas, and entry monuments in the Common Maintenance Areas, including, without limitation, maintenance of private streets and public access easement areas; (iii) payment of all legal and other expenses incurred in connection with the enforcement of all recorded covenants, restrictions and conditions affecting the property to which the maintenance fund applies; (iv) payment of all reasonable and necessary expenses in connection with the collection and administration of the maintenance charge and assessment; and (v) all other activities necessary or desirable in the opinion of the Board to keep the Property neat and in good order, or which is considered of general benefit to the Owners or occupants of the Property, it being understood that the judgment of the Board in the expenditure of said funds and the determination of what constitutes normal, recurring maintenance shall be final and conclusive so long as such judgment is exercised in good faith.

### Section 3.5    Reserve Funds

#### 3.5.1    Reserve Fund for Replacing Common Maintenance Areas.

Declarant shall in addition establish a reserve fund account in the name of the Association for replacement, in whole or in part, of the Common Maintenance Area and any improvements located in, on, or under the Common Maintenance Area for which the Association is responsible pursuant to this Declaration, that will normally require replacement in more than three (3) and fewer than thirty (30) years ("Reserve Fund"). The Reserve Fund need not include those items that could reasonably be funded from the maintenance fund or for which one or more Owners are responsible for maintenance and replacement under this Declaration or the Bylaws. Assessments for the Reserve Fund under this Section shall begin accruing from the date the first Lot assessed is conveyed. Declarant may elect to defer payment of the amounts due for the Reserve Fund on Lots it owns until the date of the conveyance of the Lot to an Owner. However, the Declarant may not defer such payment beyond the date of the Turnover Meeting, or if no Turnover Meeting is held, the date on which administration of the Association is turned over to the Class A Members. The book and records of the Association shall reflect the amount owing from the Declarant for all Reserve Fund assessments.

For purposes of funding the Reserve Fund, Declarant initially, and thereafter the Association, shall impose an assessment to be called the "Reserve Fund Assessment" against each Lot, which assessment shall be spread equally over the Lots, except as otherwise determined by the Board pursuant to Section 3.10 and except for reserve items for which only Limited Assessments are levied. The Reserve Fund Assessment determined by Declarant shall be based upon the reserve study described below, and other sources of reliable information. Nothing in this Section 3.5 shall limit the authority of Declarant or the Association to establish other separate or unrelated reserve funds that are funded by assessments. The Reserve Fund shall be kept separate from other funds and may be used only for the purposes for which reserves have been established as specified in this Section. However, after the Turnover Meeting, the Board

may borrow funds from the Reserve Fund to meet high seasonal demands on the regular operating funds or to meet other unexpected increases in expenses. Funds borrowed under this Section shall be repaid from regular annual or special assessments if the Board has adopted a resolution, which may be an annual continuing resolution, authorizing the borrowing of funds. Not later than the adoption of the budget for the following year, the Board shall adopt by resolution a written payment plan providing for repayment of the borrowed funds within a reasonable period. The Association shall administer the Reserve Fund and may adjust the amount of the periodic payments into it to reflect changes in current replacement costs over time as indicated by the reserve study or update (as discussed in Section 3.5.2 below), and may provide for other reserve items that the Board, in its discretion, deems appropriate. Following the second year after the Turnover Meeting, future assessments for the Reserve Fund may be reduced or increased by an affirmative vote of Owners of at least seventy-five percent (75%) of the Lots. Any funds established for any of the purposes mentioned in this Section shall be deemed to be for the Reserve Fund notwithstanding that it may not be so designated by the Board. The amount of the Reserve Fund shall constitute an asset of the Association and shall not be refunded or distributed to any Owner.

#### 3.5.2 Reserve Study.

Declarant initially, and thereafter the Board annually, shall conduct a reserve study, or review and update an existing study, of the Common Maintenance Area components to determine the requirements of the Reserve Fund described in Section 3.5.1 above. The reserve study shall include (a) identification of all items for which reserves are required to be established; (b) the estimated remaining useful life of each item as of the date of the reserve study; (c) the estimated cost of maintenance, repair, or replacement of each item at the end of its useful life; and (d) a thirty (30) year plan for the maintenance, repair and replacement of the Common Maintenance Area components with regular and adequate contributions, adjusted by estimated inflation and interest earned on the reserve fund, to meet the maintenance, repair, replacement and repainting schedule. The 30-year plan shall be appropriate for the size and complexity of the Common Maintenance Area components and shall address issues that include, but are not limited to, warranties and useful life of Common Maintenance Area components. The Board and Declarant, as applicable, shall, within thirty (30) days after conducting the reserve study, provide to every Owner a written summary of the reserve study and of any revisions to the 30-year plan adopted by the Board or Declarant, as applicable, in response to the reserve study results.

#### Section 3.6 Limited Assessments

In addition to the other assessments set forth herein, the Association shall have the authority to levy assessments to satisfy the common expenses of a particular project or effort undertaken by the Association that benefits some, but less than all, of the Lots (such assessments, "Limited Assessments"). Limited Assessments shall be levied against the Owners of those Lots that benefit from the project or effort undertaken by the Association. An example, for illustrative purposes only and not as a limitation, of a project or effort giving rise to a Limited Assessment, is maintenance or repair of a tract of property that benefits and serves certain Lots, but not other Lots. In the event the Association elects to maintain the landscaping in the sidewalk strips and

front yards of single-family detached Lots, it shall levy a Limited Assessments against only the single-family detached Lots and not against any Lots with townhomes or Condominium Units located thereon.

### Section 3.7 Additional Assessments

In addition to the periodic assessments described in this Article III, the Association shall have the authority to assess an Owner for costs and expenses incurred by the Association for corrective action which is required as a result of the willful or negligent actions or omissions of such Owner or such Owner's family members, tenants, guests, contractors or invitees. Each such additional assessment, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land, a continuing lien upon the Lot, and the personal obligation of the Owner in the manner described in Section 3.1 for annual and special assessments.

### Section 3.8 Non-payment of Assessments: Remedies of the Association

Any assessment not paid within ten (10) days after the due date shall bear interest from the due date at the highest rate of interest allowed by Oregon law at the time of the non-payment. The Association shall have the authority to impose late charges to compensate for the administrative and processing costs of late payments on such terms as it may establish by duly adopted resolutions and the Association may bring an action at law against the Owner personally obligated to pay the same. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Maintenance Area or abandonment of the Owner's property.

### Section 3.9 Subordinated Lien to Secure Payment

To secure the payment of the maintenance charge and assessment established hereby and to be levied on individual Lots as provided in this Article III and the payment of interest, late charges, attorney fees or other charges against Owners provided for in this Declaration or the Bylaws, there is hereby reserved a lien for the benefit of the Association, said lien to be enforceable through appropriate proceedings at law or in equity by such beneficiary; provided, however, that each such lien shall be specifically made secondary, subordinate and inferior to all liens, present and future, given, granted, and created by or at the instance and request of the Owner of any such Lot to secure the payment of monies advanced or to be advanced on account of the purchase price and/or the improvement of any such Lot; and further provided that as a condition precedent to any proceeding to enforce such lien upon any Lot upon which there is an outstanding valid and subsisting first mortgage lien, the Association shall give the holder of such first mortgage lien sixty (60) days written notice of such proposed action, such notice, which shall be sent to the nearest office of such first mortgage lienholder by prepaid U.S. registered mail, to contain the statement of the delinquent maintenance charges upon which the proposed action is based. Upon the request of any such first mortgage lienholder, the Association shall acknowledge in writing its obligation to give the foregoing notice with respect to the particular property covered by such first mortgage lien to the holder thereof. The provisions regarding the attachment, notice, recordation, and duration of liens established on real

property under ORS 94.709 shall apply to the Association's lien. Sale or transfer of a Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure shall extinguish the lien of such assessment as to payments which became due before such sale or transfer. No sale, foreclosure or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. The Association shall have the right to file notices of liens in favor of such Association in the Official Public Records of Deschutes County, Oregon.

#### Section 3.10 Reallocation Upon Annexation of Property

When additional property is annexed to the Property, the Association shall, within sixty (60) days after the annexation, recompute the budget based upon the additional Lots and Common Areas and Common Maintenance Areas and recompute all applicable assessments for each Lot. To the extent annexed Lots are developed as townhouse or Condominium Units, such Lots' proportionate share of expenses may be less than that allocated to single-family detached Lots and shall be determined by the Association in its reasonable discretion. Newly annexed Lots shall be subject to assessment from the time of annexation of such Lots to the Property. The Association shall send notice of any applicable assessment to the Owners of newly annexed Lots not later than sixty (60) days after the annexation or with the next occurring 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 thirty (30) days after the date the notice is mailed or at such other time or times as the Association may specify in the notice in accordance with this Declaration or the Bylaws. If additional property is annexed to the Property during the Association's fiscal year, the Association shall send notice of and shall collect adjustments to assessments for Lots which were within the Property prior to the annexation. Notice of the adjustment in the assessments shall be sent to such Owners not later than sixty (60) days after the annexation or with the next occurring annual assessment, whichever is sooner. To the extent that any adjustment results in a credit with respect to assessments payable by an Owner, such credit shall be applied toward the next occurring payment or payments of the applicable assessment.

### **ARTICLE IV - GENERAL POWERS AND DUTIES OF BOARD OF DIRECTORS**

#### Section 4.1 Interim Board

Declarant shall have the right to appoint an interim board of from one (1) to three (3) directors, who shall serve as the Board until replaced by Declarant or until their successors have been elected by the Owners at the Turnover Meeting.

#### Section 4.2 Purpose of Maintenance Fund

The Board, for the benefit of the Owners, shall provide and shall pay for out of the maintenance fund provided for in Article III above the following:

4.2.1 Taxes and assessments and other liens and encumbrances which shall properly be assessed or charged against the Common Areas rather than against the individual Owners, if any.



4.2.2 Maintenance, repairs, and enhancement of the Common Maintenance Areas and any improvements therein.

4.2.3 The services of a professional person or management firm to manage the Association or any separate portion thereof to the extent deemed advisable by the Board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by the manager; provided that a management agreement entered into prior to the Turnover Meeting shall not have a term in excess of three (3) years and shall be terminable without penalty if the Board gives not less than thirty (30) days written notice of termination to the other party not later than sixty (60) days after the Turnover Meeting.

4.2.4 Legal and accounting services.

4.2.5 A policy or policies of insurance insuring the Association and/or its Board and officers against any liability to the public or to the Owners (and/or invitees or tenants) incident to the operation of the Association in any amount or amounts as determined by the Board, including a policy or policies of insurance as provided herein in Article V.

4.2.6 Workers compensation insurance to the extent necessary to comply with any applicable laws.

4.2.7 Such fidelity bonds as may be required by the Bylaws or as the Board may determine to be advisable.

4.2.8 Any other materials, supplies, insurance, furniture, labor, services, maintenance, repairs, structural alterations, taxes or assessments (including taxes or assessments assessed against an individual Owner) which the Board is required to obtain or pay for pursuant to the terms of this Declaration or by law or which in its opinion shall be necessary or proper for the enforcement of this Declaration.

#### Section 4.3 Powers and Duties of Board

The Board, on behalf of the Association for the benefit of the Owners, shall have the following general powers and duties, in addition to the specific powers and duties provided for herein and in the Articles of Incorporation (the "Articles") and the Bylaws of the Association and the powers and duties of a nonprofit corporation pursuant to the Oregon Nonprofit Corporation Act and a homeowners' association pursuant to ORS 94.630:

4.3.1 To execute all declarations of ownership for tax assessment purposes with regard to the Common Areas, if any, on behalf of all Owners.

4.3.2 To borrow funds to pay costs of operation secured by assignment or pledge of rights against delinquent Owners if the Board sees fit.

4.3.3 To enter into contracts, maintain one (1) or more bank accounts, and generally to have all the power necessary or incidental to the operation and management of the Association.

4.3.4 To protect or defend the Common Areas from loss or damage by suit or otherwise and to provide adequate reserves for replacements.

4.3.5 To make reasonable rules and regulations for the operation of the Property and to amend them from time to time; provided that, any rule or regulation may be amended or repealed by an instrument in writing signed by a majority of the Owners, or with respect to a rule applicable to less than all of the Property, by the Owners in the portions affected.

4.3.6 To make available for inspection by Owners within sixty (60) days after the end of each year an annual report and to make all books and records of the Association available for inspection by Owners at reasonable times and intervals.

4.3.7 To adjust the amount, collect and use any insurance proceeds to repair damage or replace lost property, and if proceeds are insufficient to repair damage or replace lost property, to assess the Owners in proportionate amounts to cover the deficiency.

4.3.8 To enforce the provisions of any rules made hereunder and to enjoin and seek damages from any Owner for violation of such provisions or rules.

4.3.9 To collect all assessments and enforce all penalties for non-payment including the filing of liens and institution of legal proceedings.

#### Section 4.4 Board Powers Exclusive

The Board shall have the exclusive right to contract for all goods, services and insurance, payment of which is to be made from the maintenance fund and the exclusive right and obligation to perform the functions of the Board except as otherwise provided herein.

#### Section 4.5 Maintenance Contracts

The Board, on behalf of the Association, shall have full power and authority to contract with any Owner or other person or entity for the performance by the Association of services which the Board is not otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interest of the Association.

### **ARTICLE V- COMMON MAINTENANCE AREAS**

#### Section 5.1 Conveyance

Declarant shall convey the Common Areas, to the Association, free and clear of financial liens and encumbrances upon recording of the Plat. The Association shall own all Common Areas in fee simple and assume all maintenance obligations with respect to any

Common Areas, which may be hereafter established. Nothing contained herein shall create an obligation on the part of Declarant to establish any Common Area. Following the conveyance of the Common Areas to the Association, the dedication, mortgage, or conveyance of any Common Areas shall require the affirmative vote of at least seventy five percent (75%) of the outstanding votes.

#### Section 5.2    Liability Insurance; Casualty Insurance

From, on and after the date on which title to or responsibility for any Common Area vests in the Association, the Association shall purchase and carry a general comprehensive public liability insurance policy for the benefit of the Association and its members, covering occurrences on the Common Areas and in the Common Maintenance Areas. The policy limits shall be as determined by the Board of the Association, but shall include public liability insurance of at least One Million Dollars (\$1,000,000.00) per occurrence. The Association shall use its best efforts to see that such policy shall contain, if available, cross-liability endorsements or other appropriate provisions for the benefit of the Board, the Owners and other insureds, as their interests may be determined by the Board, ensuring all against liability to each other insured as well as third parties. Any proceeds of insurance policies owned by the Association shall be received, held in a segregated account and distributed to all interested parties, as their interests may be determined. In addition, from and after the date on which the Common Area vests in the Association, the Board shall obtain in the Common Areas and in the Common Maintenance Areas, insurance for all insurable improvements against loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief.

#### Section 5.3    Condemnation

If there is a condemnation or a sale in lieu thereof of all or any portion of the Common Areas or Common Maintenance Areas owned by the Owners, the Association shall represent the Owners in negotiations with the condemning authority. The funds payable with respect thereto shall be payable to the Association and shall be used by the Association to purchase additional Common Areas or Common Maintenance Areas to replace that which has been condemned or to take whatever steps it deems reasonably necessary to repair or correct any damage suffered as a result of the condemnation. If the Association determines that the funds cannot be used in such a manner due to the lack of available land for additional Common Areas or Common Maintenance Areas or for whatever reason, any remaining funds may be distributed to each Owner based on an equal amount per Lot.

#### Section 5.4    Maintenance of Common Maintenance Areas

Without limitation to the Association's overall maintenance and other obligations, the Association will permanently maintain and repair the following Common Maintenance Areas as necessary:

5.4.1    Tract D, to be maintained as a private street;

5.4.2    Tracts A, B and C, to be maintained as open space;

5.4.3 Storm drainage easement and public access easements, including improvements located on and related to such easements, whether located on Lots or Tracts;

5.4.4 Front yards of Lots from the front façade of the Unit to the private street; and

5.4.5 Any other area determined by the Board to be in the interest of the Association to maintain.

#### Section 5.5 Prohibited Activities

The following activities are expressly prohibited within any Common Maintenance Area or Common Area: (i) the removal of any tree greater than six (6) inches diameter breast height without the written consent of the Board, the written consent of the City, and the written opinion of a certified arborist that the tree is diseased and will not survive, or the tree poses a substantial threat of property damage or personal injury or needs to be removed for the health of other trees and fire protection; (ii) the removal, alteration or enhancement of any other vegetation without the written consent of the Board and the City, (iii) the disposal or placement of any debris, refuse, soil, rock, landscape debris or other deleterious materials; (iv) parking, storage, repair, or disposal of any motor vehicle; and (v) motor vehicle access, except as may be necessary for planting, repairs or maintenance approved by the Board or in conjunction with maintenance of public or private utilities. In addition to the foregoing restrictions, significant trees located on Common Maintenance Areas may not be trimmed or removed without the prior approval of the City. Prior to trimming or removing any tree from the Common Maintenance Area, the Association shall inquire determine whether the tree is a "significant tree" subject to the foregoing requirement of City approval. The Association shall maintain information identifying all "significant trees", as required by conditions of approval for the master plan of Village at Cold Springs issued by the Sisters Area Planning Commission on September 6, 2005 (the "Master Plan Approval"). Pursuant to Condition No. 26 of the Master Plan Approval, if the Association removes a significant tree from a Common Maintenance Area without obtaining the approval of the City, the Association shall replace the tree that has been removed with a tree or trees for which the total height equals the height of the tree that was improperly removed. If the height of the tree that was removed cannot be determined, it shall be assumed to be eighty (80) feet high. The Association shall obtain the prior approval of the location of the replacement tree(s) from the City prior to installation. Owners shall not install or alter any landscaping in the planter strips between the sidewalks and curbs throughout the Property or swales along private streets. In no event shall an Owner be allowed to remove any trees or vegetation from Common Maintenance Areas.

### **ARTICLE VI - ARCHITECTURAL REVIEW**

#### Section 6.1 Architectural Control Committee

A committee to be known as the Architectural Control Committee (the "ACC") shall be established consisting of the number of members as determined by the Board, except that the ACC shall consist of not less than three (3) members.

6.1.1 The members of the ACC shall be appointed, terminated and/or replaced by the Declarant so long as there is Class B membership. Thereafter the Board shall appoint the members of the ACC. Members of the ACC may be terminated and/or replaced by the Board with or without cause.

6.1.2 The purpose of the ACC is to enforce the architectural standards of the community and to approve or disapprove plans for improvements proposed for the Lots.

6.1.3 The ACC shall act by simple majority vote, and shall have the authority to delegate its duties or to retain the services of a professional engineer, architect, designer, inspector or other person to assist in the performance of its duties.

#### Section 6.2    Design Guidelines

The Board may adopt, and from time to time, amend modify, or revise Design Guidelines. Adoption of the Design Guidelines may occur without the consent of anyone prior to conveyance of the first Lot to an Owner other than the Declarant. Amendments, modifications, or revisions to the Design Guidelines may be made by the Declarant, without the consent of anyone prior to conveyance of the first Lot to an Owner other than the Declarant. Thereafter the ACC shall have the right to amend, modify, or revise the Design Guidelines, subject to the approval of the Board. No such amendments, modifications, or revisions shall affect any prior ACC approval.

#### Section 6.3    Scope of Review

Buildings, fences, walls, patios, decks, outbuildings, landscapings, pools, athletic facilities or other structure or improvement may be erected, altered, added onto or repaired upon any portion of the Property only with the prior written consent of the ACC, provided however, that improvements erected, altered, added onto or repaired by Declarant shall be exempt from the provisions of this Article VI.

#### Section 6.4    Submission of Plans

Before the initiation of construction upon any Lot, the Owner thereof shall first submit to the ACC a complete set of plans and specifications for the proposed improvements, including site plans, grading plans, landscape plans, floor plans depicting room sizes and layouts, exterior elevations, specifications of materials and exterior colors, and any other information deemed necessary by the ACC for the performance of its function pursuant to the procedure outlined in the Design Guidelines (if any). In addition, the Owner shall submit the identity of the individual or company intended to perform the work and projected commencement and completion dates. In the event an Owner submits plans or specifications to the ACC that are not adequate to permit the ACC to make an informed determination under this Article, the Board shall have the authority to require the Owner submitting the inadequate plans or specifications to retain, at the Owner's expense, the services of a professional engineer, architect, designer, inspector or other person to assist in the preparation of a sufficient submittal to the ACC.

#### Section 6.5 Plan Review

Upon receipt by the ACC of all of the information required by this Article VI, it shall have thirty (30) days in which to review said plans. The proposed improvements will be approved if, in the sole opinion of the ACC: (i) the improvements will be of an architectural style and material that are compatible with the other structures in the Property; (ii) the improvements will not violate any restrictive covenant or encroach upon any easement or cross building set back lines; (iii) the improvements will not result in the reduction in property value, use or enjoyment of any of the Property; (iv) the individual or company intended to perform the work is acceptable to the ACC; and (v) the improvements will be substantially completed, including all cleanup, within three (3) months of the date of commencement (six (6) months for the construction of a complete house). If the ACC fails to issue its written approval, or rejection, within thirty (30) days of its receipt of the last of the materials or documents required to complete the Owner's submission, the ACC's approval shall be deemed to have been granted without further action.

#### Section 6.6 Non-conforming Structures

If there shall be a material deviation from the approved plans in the completed improvements, such improvements shall be in violation of this Article VI to the same extent as if erected without prior approval of the ACC. The ACC, the Association or any Owner may maintain an action at law or in equity for the removal or correction of the non-conforming structure and, if successful, shall recover from the Owner in violation all costs, expenses and fees incurred in the prosecution thereof.

#### Section 6.7 Immunity of ACC Members

No individual member of the ACC shall have any personal liability to any Owner or any other person for the acts or omissions of the ACC if such acts or omissions were committed in good faith and without malice. The Association shall defend any action brought against the ACC or any member thereof arising from acts or omissions of the ACC committed in good faith and without malice.

#### Section 6.8 Limited Review

Any review and approval made by the ACC is limited to compliance with the intent of the architectural standards of the neighborhood as may from time to time be established by the Board and/or the Design Guidelines. The review and approval made by the ACC is not to be construed as superseding, replacing, or modifying any review, approval, or permit required by any local, state or federal jurisdictional agencies. It is the applicant's responsibility to obtain and comply with any permits that may be required by any local, state, or federal jurisdictional agency.

#### Section 6.9 Address for Notice

Requests for ACC approval or correspondence with the ACC shall be addressed to Village at Cold Springs Architectural Control Committee, c/o Hayden Homes, LLC, 2464 SW

Glacier Place, Suite 110, Redmond, OR 97756 or such other address as may be designated from time to time by the ACC. No correspondence or request for approval shall be deemed to have been received until actually received by the ACC in a form satisfactory to the ACC.

## **ARTICLE VII - EASEMENTS**

### **Section 7.1    Utility Easements**

As long as the Declarant owns a Lot, the Declarant hereby reserves the right to grant perpetual, nonexclusive easements for the benefit of Declarant or its designees, upon, across, over, through and under any portion of the Common Area for ingress, egress, installation, replacement, repair, maintenance, use and operation of all utility and service lines and service systems, public and private, including, without limitation, cable television. Declarant, for itself and its designees, reserves the right to retain title to any and all pipes, lines, cables or other improvements installed on or in such easements. The Association shall also have the right to grant the easements described herein, subject to the approval of the Declarant so long as Declarant owns a Lot.

### **Section 7.2    Declarant's Easement to Correct Drainage**

Declarant hereby reserves for the benefit of Declarant a blanket easement on, over and under the ground within the Property to maintain and correct drainage of surface waters and other erosion controls in order to maintain reasonable standards of health, safety and appearance and shall be entitled to remove trees or vegetation, without liability for replacement or damages, as may be necessary to provide adequate drainage facilities. Notwithstanding the foregoing, nothing herein shall be interpreted to impose any duty upon Declarant to correct or maintain any drainage facilities within the Property.

### **Section 7.3    Entry Easement**

If the Owner of any Lot fails to maintain the Lot as required herein, or if there is an emergency, the Association shall have the right to enter upon the Lot to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of the Property. Entry upon the Lot as provided herein shall not be deemed a trespass, and the Association shall not be liable for any damage so created unless such damage is caused by the Association's willful misconduct or gross negligence.

### **Section 7.4    Reserved Easements**

Easements for installation and maintenance of utility and storm water retention/detention ponds are reserved as may be shown on the recorded Plat. Within these easement areas, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may hinder or change the direction of flow of drainage channels or slopes in the easements. The easement area of each Lot and all improvements contained therein shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority, utility company or the Association is responsible.

#### Section 7.5 Temporary Completion Easement

All Lots shall be subject to an easement of ingress and egress for the benefit of the Declarant, its employees, subcontractors, successors and assigns, over and upon the front, side and rear yards of the Lots as may be expedient or necessary for the construction, servicing and completion of dwellings and landscaping upon adjacent Lots within the Property, provided that such easement shall terminate twenty-four (24) months after the date such Lot is conveyed to the Owner by the Declarant.

#### Section 7.6 Perimeter Fence Easement

An easement is hereby declared for the benefit of the Declarant, its employees, subcontractors, successors and assigns as may be expedient or necessary for the construction of fencing along the perimeter of the Property. Declarant is not obligated to construct any perimeter fencing.

#### Section 7.7 Maintenance Easements

An easement is hereby granted and reserved in favor of the Association and its successors, assigns, contractors, property managers, agents and employees over, across, upon, and under the Common Areas and any Common Maintenance Areas, whether on Lots or Tracts, or other areas of the Property necessary or appropriate for purposes of accomplishing the maintenance, repair, and replacement by the Association of Improvements or the other obligations of the Association hereunder.

#### Section 7.8 Plat Easements

The Property shall be subject to all easements delineated on the Plat.

### **ARTICLE VIII- USE, OCCUPANCY, CASUALTY, AND INSURANCE**

#### Section 8.1 Residential Use

All Lots and Units shall be kept and maintained primarily for single family residential purposes.

#### Section 8.2 Commercial, Institutional, or Other Non-Residential Uses

Commercial, institutional, or other non-residential uses (including residential day care facilities) may be conducted on a Lot only with the prior written approval of the Board. The Board shall not unreasonably withhold consent to a non-residential use if only normal residential activities would be observable outside of the Unit and the activities would not be in violation of applicable ordinances nor create additional traffic or the need for additional parking. The Board shall not allow a use that diminishes the residential character of the Lot or neighborhood or imposes a nuisance on the neighborhood. Any such use must comply with all the use restrictions of this Declaration and all applicable law, including, without limitation, zoning requirements. Any Owner wishing to conduct any commercial, institutional, or other non-residential uses on



any Lot shall first apply to the Board for approval of such use and shall provide to the Board any information deemed necessary by the Board to evaluate the impacts of such use on the neighborhood. The decision of the Board shall be final and conclusive. The Board may review, and repeal, any such approval from time to time at the discretion of the Board if, in the opinion of the Board, the use has changed or increased to a level not consistent with the original approval. In no event shall the decision of the Board as to permissibility of a requested non-residential use be construed as a representation of the legal permissibility of such use. This Section 8.2 does not restrict the right of an Owner to maintain Owner's professional personal library, keep Owner's personal business or professional records or accounts or handle Owner's personal business or professional telephone calls in Owner's Unit.

### Section 8.3    Garage Sales

The provisions of this Article shall not apply to garage sales conducted entirely on an Owner's Lot in accordance with the guidelines (if any) established by the Association, provided that no Owner shall conduct more than three (3) garage sales of no more than three (3) days duration during any three (3) month period.

### Section 8.4    Declarant Use

The provisions of this Article shall not apply to the use of any Lot or Unit by the Declarant as i) a model home, sales office, or construction office; or ii) the use of any Lot as a site for a sales office trailer or construction office trailer.

### Section 8.5    Owner Insurance

Each Owner of a Lot is encouraged to obtain, and maintain in effect, from a reputable insurance company authorized to do business in the State of Oregon, public liability and property damage insurance with respect to such Lot, and fire and extended coverage casualty insurance with respect to the Owner's Unit in an amount equal to one hundred (100) percent of the replacement cost thereof. Each Owner shall also be responsible for obtaining fire and extended coverage casualty insurance with respect to that Owner's personal property. No Owner shall be obligated to obtain any of the insurance coverages described herein or in Section 5.2, nor shall any insurance coverage obtained by an Owner (or such Owner's mortgagee) be brought into contribution with insurance obtained by the Association.

### Section 8.6    Casualty

In the event of damage to or destruction of a Unit, the Owner of the Unit shall repair, reconstruct, and rebuild the damaged or destroyed portions of the Unit to substantially the same condition that existed prior to the damage or destruction. All repair, reconstruction, or rebuilding shall begin within six (6) months following the damage or destruction, and shall be diligently pursued to completion within twelve (12) months following the damage or destruction, unless work is delayed by causes beyond the reasonable control of the Owner.

## **ARTICLE IX- PROPERTY RIGHTS**

### **Section 9.1    Owner's Use and Occupancy**

Subject to any easements affecting an Owner's Lot, each Owner of a Lot shall be entitled to the exclusive use and benefit of such Lot. As such rights of an Owner of a Lot with respect to the Unit on such Owner's Lot is subject to the rights of the Association under this Declaration, Declarant, the ACC and any representative of the Association authorized by the Association 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, conversion, or otherwise create any right of action in the Owner of such Lot.

### **Section 9.2    Common Areas; Rights of Association**

If not otherwise prohibited on the Plat or the Plat annexing the Common Areas to the Property, every Owner shall have a right and easement in and to the Common Areas, if any, and a right and easement of ingress and egress to, from and through said Common Areas, and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

9.2.1    The right of the Association to establish and publish rules and regulations governing the use of the Property affecting the welfare of Association members.

9.2.2    The right of the Association to suspend the right of use of the Common Areas and the voting rights of an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

9.2.3    The right of the Association, subject to the provisions hereof, and applicable law, to dedicate or transfer all or any part of the Common Areas, if any, to any public agency, authority or utility for public right-of-way purposes. Any other transfer or mortgage of Common Areas requires the consent of at least seventy-five percent (75%) of the votes outstanding, and the consent of the Declarant so long as Declarant owns a Lot.

9.2.4    All easements herein described are easements appurtenant to and running with the land; they shall at all times inure to the benefit of and be binding upon the undersigned, all of their grantees, and their respective heirs, successors, personal representatives and assigns, perpetually and in full force.

### **Section 9.3    Effect of Declaration**

Reference in any deed, mortgage, trust deed or any other recorded documents to the easements, restrictions and covenants herein described or to this Declaration shall be sufficient to create and reserve such easements and covenants to the respective grantees,

mortgagees, or trustees of said parcels as fully and completely as if those easements, restrictions and covenants were fully related and set forth in their entirety in said documents.

#### Section 9.4    Rezoning Prohibited

No Lot shall be rezoned to any classification allowing commercial, institutional or other non-residential use without the prior written consent of the Board and Declarant so long as Declarant owns a Lot, which may be withheld in the Board's or Declarant's sole discretion, as applicable. Declarant or the Board may enforce this covenant by obtaining an injunction against any non-approved rezoning at the expense of the enjoined party.

#### Section 9.5    Lot Consolidation and Division

No Lot may be consolidated with another Lot and no Lot may be subdivided.

#### Section 9.6    Drainage Alteration Prohibited

The surface water drainage contours of each Lot shall conform to the approved grading plan established by the Declarant. No Owner shall fill or alter any drainage swale established by the Declarant, nor shall any Owner install landscaping or other improvements that divert surface water runoff from the drainage patterns, swales and easements established by the Declarant without the prior, written approval of the ACC.

#### Section 9.7    Damage or Destruction By Owner

If damage to any Common Area or Common Maintenance Area is directly attributable to an Owner or the family members, invitees, licensee, or guest of an Owner, then that Owner shall repair such damage or destruction as soon as reasonably practicable, but in no event later than fifteen (15) days after the date the damage occurred, at his or her sole expense and without a right of reimbursement. If an Owner fails to repair such damage timely, the Association shall have all rights of enforcement and remedies set forth under this Declaration. Nothing in this Section 9.7 shall relieve an Owner of the responsibility to repair damage or destruction by the Owner or the family members, invitees, licensees, or guests of an Owner to Improvements that constitute common elements required by the state building code as defined in ORS 455.010.

### **ARTICLE X- USE RESTRICTIONS**

#### Section 10.1    Nuisances

No noxious or offensive activity shall be carried out upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. The Board shall have the sole authority to determine nuisances and their decision shall be final and conclusive.

## Section 10.2 Development Activity

Notwithstanding any other provision herein, Declarant and its successors and assigns, shall be entitled to conduct on the Property all activities normally associated with and convenient to the development of the Property and the construction and sale of dwelling units on the Property.

## Section 10.3 Temporary Structures

No structure of a temporary character, including, without limiting the generality thereof, any trailer, tent, shack, garage, barn, motor home or mobile home or other outbuilding, and no prefabricated or relocated structure shall be used on any Lot at any time as a residence, either temporarily or permanently. This restriction shall not be interpreted to limit the right of Declarant to use trailers or outbuildings as sales offices, construction offices, material storage facilities, or sanitation facilities.

## Section 10.4 Signs

No sign of any kind may be kept or placed upon any Lot or mounted, painted or attached to any Unit, fence or other improvement upon such Lot so as to be visible from public view or mounted on any vehicle or trailer parked or driven in the subdivision or carried by any person or by any other means displayed within the subdivision except as provided below:

### 10.4.1 "For Sale" Signs

An Owner may erect one (1) sign not exceeding two (2) feet by three (3) feet in dimension, fastened only to a stake in the ground and extending not more than three (3) feet above the surface of the ground advertising the property for sale.

### 10.4.2 "For Rent" Signs

An Owner may erect one (1) sign not exceeding three (3) square feet in area advertising the property for rent. Such signs shall be visible from the front of the Unit only, and shall be displayed from within the Unit. No such sign shall be erected within a lawn or landscape area on any Lot, or attached to the outside of the Unit.

### 10.4.3 Declarant's Signs

Signs or billboards may be erected by the Declarant and are exempt from the provisions of this Section.

### 10.4.4 Political Signs

Political signs may be erected upon a Lot by the Owner of such Lot advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal provided that such signs shall not be erected more than ninety (90) days in advance of the election to which they pertain and are removed within fifteen (15) days after the election.

#### 10.4.5 Subdivision Identification Signs

Signs, monumentation or billboards may be erected by the Declarant or the Association to identify the subdivision, with approval from the local jurisdictional authority, if applicable.

#### 10.4.6 Commercial Vehicle Emblems

Vehicles displaying commercial emblems may be kept or parked on any Lot only as provided in Section 10.5. The foregoing restrictions shall not be deemed to prohibit the display of the flag of the United States by an Owner or occupant of a Lot if the flag is displayed in a manner consistent with federal flag display law, 4 U.S.C. § 1 *et seq.* The Board may adopt reasonable rules and regulations consistent with federal flag display law regarding the placement and manner of display of such flag and the location and size of the flagpole.

#### Section 10.5 Campers, Boats, Recreational Vehicles, Commercial Vehicles, and other Non-Passenger Vehicles

Campers, boats, boat trailers, recreational vehicles, commercial vehicles, or other types of non-passenger vehicles, equipment, implements, or accessories may be kept or stored on any Lot only (i) with the Board's approval, and (ii) as provided below:

10.5.1 Campers, boats, boat trailers, recreational vehicles, recreational trailers, and other non-passenger vehicles, equipment, implements, or accessories should be stored or kept on the side of the Unit or the Lot, fully enclosed within the garage located on such Lot, or screened from view by a screening structure or fencing approved by the Board. The foregoing vehicles and items may be temporarily placed at the front of a Lot for purposes of maintenance or preparation for use.

10.5.2 Commercial vehicles bearing commercial insignia or names may be kept or stored on any Lot only with the approval of the Board. Commercial vehicles bearing commercial insignia or names that are (i) temporarily parked on any Lot for the sole purpose of serving such Lot, or (ii) kept within an Owner's garage at all times are exempt from this restriction. The Board, as designated in this Declaration, shall have the absolute authority to grant approval for storing or keeping a commercial vehicle on a Lot. Notwithstanding the foregoing, the Board shall not unreasonably withhold consent to keep a commercial vehicle bearing insignia or names where such vehicle is driven by an Owner pursuant to Owner's primary job. Any Owner wishing to keep a commercial vehicle on any Lot shall apply for approval to the Board, and shall provide such information as the Board, in their sole authority, may require. The Board may from time to time in their sole discretion review the approval to keep a commercial vehicle on any Lot to determine if the vehicle complies with the intent of the original approval. Upon an adverse determination by the Board, any commercial vehicle shall be removed and/or otherwise brought into compliance with the requirements of this section.

10.5.3 No disabled vehicles, campers, boats, boat trailers, recreational vehicles, recreational trailers, or other types of non-passenger vehicles, equipment, implements, or

accessories may be kept or stored on any street within the Property for any period in excess of forty-eight (48) hours.

10.5.4 The Board, as designated in this Declaration, shall have the absolute authority to determine from time to time whether a vehicle and/or accessory is operable and adequately screened from public view. Upon an adverse determination by said Board, the vehicle and/or accessory shall be removed and/or otherwise brought into compliance with this section.

10.5.5 No dismantling or assembling of motor vehicles, boats, trailers, recreational vehicles, or other machinery or equipment shall be permitted in the streets within the Property, or in any driveway or yard adjacent to a street, or that is not screened from view.

#### Section 10.6 Pets, Livestock and Poultry

No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except for cats, dogs or other generally recognized household pets of a reasonable number, provided that they are not kept, bred, or maintained for any commercial purpose; and provided further, than no more than four (4) adult animals may be kept on a single Lot. All such animals shall be kept in strict accordance with all local laws and ordinances (including leash laws) and in accordance with all rules established by the Association. Owners shall be responsible for cleaning up after their pets' waste in the Village at Cold Springs. Enclosed areas for pets which must be clean, sanitary, and reasonably free of refuse, insects and waste at all times. Such enclosed area shall be constructed in accordance with plans approved by the Board, shall be of reasonable design and construction to adequately contain such animals in accordance with the provisions hereof, and shall be screened so as not to be visible from any other portion of the Property.

#### Section 10.7 Garbage and Refuse Disposal

No Lot, Tract, or Common Area shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept, or disposed of, on any Lot or Common Area except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. No cans, bags, containers or receptacles for the storing or disposal of trash, garbage, refuse, rubble, debris, or recyclable materials shall be stored, kept, placed or maintained on any Lot where visible from any street except solely on a day designated for removal of garbage, rubbish, or recyclable materials, and on which days only such cans, bags, containers, and receptacles may be placed in front of a residence and beside a street for removal, but shall be removed from view before the following day.

#### Section 10.8 Parking

Vehicles, trailers, implements or apparatus may not be driven or parked in the Common Areas and/or Common Maintenance Areas, or on any easement unless in use for maintaining such Common Maintenance Areas. This restriction shall not apply to driveways, streets or paved areas intended for vehicular use. Notwithstanding anything in this Section 10.8,

parking of vehicles is prohibited on any public or private street or alley within the Property that is signed or otherwise marked for "No Parking" by a governmental authority. In addition, parking along private streets less than thirty (30) feet in width shall be restricted to one side of the street from December 1<sup>st</sup> through March 31<sup>st</sup> to allow emergency vehicle access. Vehicles parked in violation of the foregoing restrictions may be removed by the Association and the cost and risk of such removal shall be borne by the owner of the vehicle. The Owner of each Lot shall maintain off-street parking on its Lot (inclusive of its garage and driveway) able to accommodate at least three (3) automobiles.

#### Section 10.9 Detached Buildings

Detached accessory buildings, including, but not limited to, detached garages and storage buildings, may be erected, placed or constructed upon any Lot only with the prior written approval of the ACC, pursuant to Article VI and the Design Guidelines. Every such outbuilding, inclusive of such structures as storage buildings, greenhouses, doghouses, or children's playhouses, shall be compatible with the dwelling to which it is appurtenant in terms of its design and material composition. Outbuildings shall be of a one (1) story design and not exceed ten (10) feet in height measured from existing grade or have total floor area in excess of one hundred (100) square feet.

#### Section 10.10 Fences and Hedges

Fences, walls or hedges may be erected or maintained on any Lot in the front yard, subject to local laws regarding setbacks and compliance with the Design Guidelines. In no event shall fencing be taller than four feet (4') in the front yard. Side yard and rear yard fences may be erected along the property line of the Lots. All fences shall be constructed of one of the pre-approved designs specified by the ACC, or as may otherwise be approved in advance by the ACC, except for fences erected by the Declarant in conjunction with model homes, sales offices, subdivision entry walls and fencing, monumentation and landscaping, and except as otherwise provided in this Section. The height of all fences in areas other than the front yard shall be a subject to compliance with the Design Guidelines except fences for sales offices, model homes, subdivision entry walls and fencing, monumentation and landscaping or as otherwise approved by the ACC. No chain-link, metal cloth or agricultural fences may be built or maintained on any Lot, except as required by governmental authority; provided however, that chain link fences may be installed, with the prior approval of the ACC, for domestic pet runs. Notwithstanding the foregoing, the ACC shall have the right and authority to approve variances for reasonable cause or to alleviate hardship as determined in the sole judgment of the ACC; provided however, the ACC may not approve a variance which contradicts the zoning and/or subdivision ordinances of the local governmental jurisdictional authority unless the jurisdictional authority has previously approved the variance. Unless otherwise agreed between Owners, side and rear yard fences that separate adjacent lots shall be owned and maintained by the Owner on whose Lot the fence exists, or if the location is indefinite, such fence will be maintained by the Owners whose Lots are involved jointly, with expenses being shared equally. Fence locations, height and types may be further restricted as outlined in the Design Guidelines.

#### Section 10.11 General Landscaping and Exterior Maintenance

Decorative ground cover consisting of bark dust/mulch or rock in the front and side yard may not exceed twenty-five percent (25) percent of the total area of the front, side and rear yards, excluding side yards, decks, patios, or sidewalks, unless otherwise approved by the ACC or designated by the Declarant, the Board or a governmental authority. The remainder of the yard shall be lawn or sod. Growth of grasses in lawns must be properly maintained not to exceed six (6) inches in height. All landscaping located on any Lot not maintained by the Association pursuant to this Declaration shall be properly maintained at all times by the Lot Owner. Each Lot Owner shall keep all shrubs, trees, grass, and plantings of every kind on his or her Lot cultivated, pruned, free of trash, and other unsightly material. All improvements upon any Lot not maintained by the Association pursuant to this Declaration shall at all times be kept in good condition and repair and adequately painted or otherwise maintained by the Lot Owner. Declarant, the Association, and the ACC shall have the right at any reasonable time to enter upon any Lot to replace, maintain, and cultivate shrubs, trees, grass, or other plantings as deemed necessary; and to paint, repair, or otherwise maintain any improvements in need thereof, and to charge the cost thereof to the Lot Owner. Notwithstanding the foregoing, significant trees located on Lots may not be trimmed or removed without the prior approval of the ACC and the City. Prior to trimming or removing any tree from a Lot, an Owner shall inquire of the Association whether the tree is a "significant tree" subject to the foregoing requirement of City and ACC approval. The Association shall maintain information identifying all "significant trees", as required by the Master Plan Approval. Pursuant to Condition No. 26 of the Master Plan Approval, an Owner of a significant tree that is removed without obtaining the approval of the ACC and City, as required, shall replace the tree that has been removed with a tree or trees for which the total height equals the height of the tree that was improperly removed. If the height of the tree that was removed cannot be determined, it shall be assumed to be eighty (80) feet high. The Owner shall obtain the prior approval of the location of the replacement tree(s) from the City and the ACC prior to installation. Each Owner of a Lot shall also be responsible for the removal of snow and ice from that portion of the Owner's Lot not maintained by the Association.

#### Section 10.12 Antennae, Satellite Dishes and Solar Collectors

Owners may erect or maintain a television or radio receiving or transmitting antenna, satellite dish or similar implement or apparatus, or solar collector panels or equipment upon any Lot if such apparatus is erected and maintained in such a way that it is screened from public view along the public street right-of-way directly in front (and side, in the case of a corner Lot) of the house erected on such Lot; and such apparatus shall be erected only in compliance with the Design Guidelines and only with the prior written consent of the ACC pursuant to Article VI. The ACC, as designated in this Declaration, shall have the absolute authority to determine whether an accessory is adequately screened from public view. The foregoing restriction and the authority of the ACC in this matter shall be subject to any regulations issued by the Federal Communications Commission ("FCC") or any other applicable governmental authority.



#### Section 10.13 Clothes Hanging Devices

Clothes hanging devices exterior to a dwelling shall be temporary, unaffixed structures not exceed six (6) feet in height and shall not be placed nearer to any street abutting the Lot than the side yard setback line or the back of the Unit constructed on the Lot. Clothes hanging devices shall be screened from public view by a fence approved by the ACC, pursuant to Article VI and subject to the Design Guidelines.

#### Section 10.14 Window Treatment

Aluminum foil, reflective film, newspapers or similar treatments shall not be placed on windows or glass doors.

#### Section 10.15 Oil and Mining Operations

No oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot. No tank for the storage of oil or other fluids may be maintained on any of the Lots above the surface of the ground.

#### Section 10.16 Mailboxes

Mailboxes shall be erected and maintained upon areas determined by the U.S. Postal Service in accordance with the current postal authority standards. Street access to mail boxes shall be continuously maintained between 8:00 a.m. and 5:00 p.m.

#### Section 10.17 Garages

Lots must have an enclosed garage able to accommodate at least one automobile. The openings of such garages must be situated within the setback lines set out in Section 10.18 below. Garages may be used as Declarant's sales offices before permanent occupancy of the main structure, however, sales offices must be converted to garages before permanent occupancy. With the exception of periods when garages are used by the Declarant as sales offices, a garage shall be maintained solely for the storage of automobiles, and no garage may be enclosed or otherwise used for habitation, nor may any garage door be removed except when necessary to repair or replace a garage door with the same type of garage door. Residences constructed with garage space greater than one automobile in size providing storage space and/or parking of a second automobile may be enclosed or otherwise used for habitation in all or part of this additional garage space only in compliance with the Design Guidelines and with the prior written approval of the ACC pursuant to Article VI. In no case shall a doorway, other than overhead garage door, be located in such space, which faces a front yard.

#### Section 10.18 Setback Lines

All buildings or other structures (including fences), permanent or temporary, habitable or uninhabitable, must be constructed, placed and maintained in conformity with setback standards imposed by the local governmental jurisdictional authority.

#### Section 10.19 Athletic and Recreational Facilities

Outdoor athletic and recreational facilities such as basketball goals, swing sets and sport courts of a permanent nature shall not be placed on any Lot in the subdivision between the street right-of-way and the front of a Unit; placement of these facilities of a permanent nature elsewhere on the Lot must be approved in advance by the ACC pursuant to Article VI and subject to the Design Guidelines. Temporary facilities including outdoor athletic and recreational facilities such as basketball goals may be placed on any Lot between the street and front of a Unit, utilized and removed from view from the street during the course of a day. Temporary facilities including outdoor athletic and recreational facilities such as basketball goals, hockey goals, etc. shall not be placed within any street on the Property.

#### Section 10.20 Water and Sewage Systems

No individual water supply system or sewage disposal system shall be permitted on any Lot, including but not limited to water wells, cesspools or septic tanks.

#### Section 10.21 Exterior Holiday Decorations

Lights or decorations may be erected on the exterior of Units in commemoration or celebration of publicly observed holidays provided that such lights or decorations do not unreasonably disturb the peaceful enjoyment of adjacent Owners by illuminating bedrooms, creating noise or attracting sight-seers. Holiday decorations or lights for any publicly observed holiday between December 1 and December 31 of any year, may not be displayed before November 15<sup>th</sup> of any year. For other holidays, decorations or lights may not be displayed more than two (2) weeks in advance of the holiday.

All lights and decorations that are not permanent fixtures of the Unit which are part of the original construction or have been properly approved as permanent improvements by the ACC shall be removed within thirty (30) days after the holiday has ended. Lights and decorations are subject to such additional restrictions as may be set forth in the Design Guidelines. In addition, exterior lighting must meet the City's "Dark Skies" ordinance, including, without limitation, review and approval of the specifications of all exterior lighting prior to installation.

#### Section 10.22 Construction Activities

This Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction or remodeling of or making of additions to improvements by a Lot Owner (including Declarant) upon any Lot within the Property. Specifically, no such construction activities shall be deemed to constitute a nuisance or

a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with diligence and conforms to usual construction practices in the area and any rules promulgated by the ACC and the Design Guidelines. The ACC shall have the right to promulgate reasonable rules and restrictions regulating such construction activities; provided that Declarant shall be exempt therefrom. In the event that construction upon any Lot does not conform to any ACC rule or the usual construction practices in the area as determined by the ACC in its sole good faith judgment, the ACC shall have the authority to obtain an injunction to stop such construction. In addition, if during the course of construction upon any Lot there is excessive accumulation of debris of any kind which is offensive, or detrimental to it or any other portion of the Property, then the ACC may contract for or cause such debris to be removed, and the Lot Owner shall be liable for all expenses incurred in connection therewith.

#### Section 10.23 Unit Height

All residential building units shall be limited to a maximum of three (3) stories in height and the highest point of any structure shall not violate any height restrictions imposed by the zoning ordinances of the local governmental jurisdictional authority. The ACC, in its sole discretion, shall determine whether a Unit meets the criteria of a three-story building. Units built by Declarant shall be exempt from this Section. The height of improvements may be further restricted in the Design Guidelines.

#### Section 10.24 Retaining Walls

Retaining walls may be constructed on a Lot only if in compliance with the Design Guidelines and only if approved in advance by the ACC. Retaining walls may extend into the required front, side or rear setback lines of a Lot. The ACC may require any retaining wall which exceeds two (2) feet in height be designed by a qualified Professional Engineer licensed to practice engineering in the State of Oregon. Retaining walls constructed by the Declarant shall be exempt from this Section.

#### Section 10.25 Exterior Finish

All exterior walls of all dwellings, garages and approved accessory buildings shall be completely finished with wood, vinyl, stucco, brick, stone, paneling or other material acceptable to the Board. Notwithstanding the foregoing, the ACC is empowered to waive this if allowed by the Design Guidelines. In its sole discretion, such waiver is advisable in order to accommodate a unique or advanced building concept, design, or material, and the resulting structure will not detract from the general appearance of the neighborhood.

#### Section 10.26 Limitation on Square Feet

The minimum square footage area of Units erected on the Lots, exclusive of open porches and/or garages, shall be not less than one thousand (1,000) square feet.

#### Section 10.27 Prohibited Plants

Owners shall be prohibited from planting the following species of plants on the Lots:

- (a) *Cystisus scoparius*, commonly known as Scotch broom;
- (b) *Hedera helix*, commonly known as English ivy;
- (c) *Lythrum salicaria*, commonly known as purple loosestrife;
- (d) *Phalaris arundinacea*, commonly known as reed canarygrass; and
- (e) *Rubus discolor*, commonly known as Himalayan blackberry.

#### Section 10.28 Household Chemicals

Owners shall be prohibited from dumping or otherwise disposing of household chemicals within the Property, including, but not limited to cleaning agents, automotive fluids, paint, solvents and other toxic chemicals.

#### Section 10.29 Soakage Trenches

Each Owner shall maintain in good condition the soakage trench or swales located around their Unit for drainage of rainwater from roof drains.

#### Section 10.30 Soils Disclosure

Under the oversight of the Oregon Department of Environmental Quality ("DEQ"), Declarant deposited soils on Tract A, Lot 8 and on portions of Lots 7 and 9 of the Village at Cold Springs, a plat recorded in the Official Records of Deschutes County, Oregon, as shown on the attached Exhibit C. Those soils contain heavy oil petroleum hydrocarbons in concentrations acceptable under current law for residential soils at the time this Declaration is recorded. The soils were deposited on Tract A at an approximate depth of between three (3) feet and fifteen (15) feet below the final development site grades. The soils were deposited on Lots 7, 8 and 9 between the approximate depths of three (3) and seventeen (17) feet below final development site grades. DEQ reviewed the placement of the soils as specified herein and concurred that such placement does not represent a risk to human health or the environment.

Declarant intends to request a no further action letter pertaining to the soil deposits noted in this Section 10.30. If the no further action letter is issued by DEQ, the Association will be required to comply with any conditions regarding the use of Tract A required by DEQ in the no further action letter.

## ARTICLE XI- ANNEXATION

### Section 11.1 Annexation by Declarant

At any time during the initial term of this Declaration, the Declarant may, at its sole option, annex additional property into the Association to be subject to the terms hereof to the same extent as if originally included herein and subject to such other terms, covenants, conditions, easements and restrictions as may be imposed thereon by Declarant. Declarant currently anticipates that there will be a total of approximately 92 Lots and up to an additional 322 Units of attached housing in the subdivision, including the Lots shown on the Plat, and Lots expected to be created in property to be annexed to the subdivision, but this number may be adjusted at the sole discretion of Declarant. Declarant shall have no obligation of any kind to annex any additional property to the Property.

#### 11.1.1 Eligible Property

Any or all of certain real property in Deschutes County included on the Plat or located adjacent to ("adjacent" property shall include property on the other side of a street) or contiguous with the Property shall be eligible for annexation. There is no limitation on the number of Lots which Declarant may annex to the Property, or the right of Declarant to annex common property, except as may be established by applicable ordinances, agreements, or land use approvals.

#### 11.1.2 Consent or Joinder Not Required

No consent or joinder of any Class A member or other party except the record owner of the land being annexed shall be necessary to effect any annexation made pursuant to this Section.

#### 11.1.3 Declaration of Annexation

Annexation shall be evidenced by a written Declaration of Annexation executed by the Declarant, or (in the case of an annexation by action of members) by the Board and the owners of the property being annexed, setting forth the legal description of the property being annexed and any additional covenants, conditions and restrictions to be applied to such annexed property. Notwithstanding any provision apparently to the contrary, a declaration with respect to any annexed property may:

(a) establish such new land classifications and such limitations, uses, restrictions, covenants and conditions with respect thereto as Declarant may deem to be appropriate for the development of the annexed property;

(b) with respect to existing land classifications, establish additional or different limitations, uses, restrictions, covenants and conditions with respect thereto as Declarant may deem to be appropriate for the development of such annexed property; and/or

(c) contain provisions necessary or appropriate to comply with any condition, requirement, or imposition of any governmental or regulatory authority.

#### 11.1.4 Voting Rights; Allocation of Assessments

Upon annexation, additional Lots so annexed shall be entitled to the voting rights as set forth in Section 2.2, and assessments shall be reallocated and reapportioned in the manner set forth in Section 3.10.

#### Section 11.2 Annexation by Action of Members

At any time the Board may request approval of the membership for the annexation of additional property into the Association to be subject to all of the terms of this Declaration to the same extent as if originally included herein. No such annexation shall be effective unless approved by at least seventy-five percent (75%) of the outstanding votes and by Declarant so long as Declarant owns at least one (1) Lot. Any property that is contiguous to existing property subject to this Declaration may be annexed hereto according to the foregoing requirements, provided however, that no such annexation shall be effective without the consent and joinder of the owners of the property to be annexed. Such annexation must be evidenced by a Declaration of Annexation as set forth in Subsection 11.1.3 above executed by the parties herein described.

#### Section 11.3 No Duty to Annex

Nothing herein contained shall establish any duty or obligation on the part of the Declarant or any member to annex any property into the Association and no owner of property excluded from the Association shall have any right to have such property annexed thereto.

### **ARTICLE XII - GENERAL**

#### Section 12.1 Remedies

If any default by any Owner under the provisions of the Declaration, Bylaws or rules and regulations of the Association shall occur, the Association and any Owner shall have each and all of the rights and remedies which may be provided for in this Declaration, the Bylaws and said rules and regulations, and those which may be available at law or in equity, and may prosecute any action or other proceedings against such defaulting Owner and/or others for enforcement of any lien, statutory or otherwise, including foreclosure of such lien and the appointment of a receiver for the Lot and ownership interest of such Owner, or for damages or injunction, or specific performance, or for judgment for payment of money and collection thereof, or for any combination of remedies, or for any other relief, but in all cases subject to the limitations and requirements of the Oregon Planned Community Act. To the extent allowed by law, notwithstanding any other provision of this Declaration or the Bylaws, the Association shall not expend in excess of \$5,000 for attorney fees and costs for any reason unless such expenditure is first approved by at least 75% of the outstanding votes of the Owners. The foregoing limitation shall not apply to actions for delinquent assessments or other charges under this Declaration, the Bylaws or Rules and Regulations, actions to appoint a receiver; actions to

summarily abate, enjoin and remove a structure or condition that violates this Declaration or the Bylaws; or for the defense of the Association of an action or proceeding brought against the Association (except for non-mandatory counterclaims). No remedies herein provided or available at law or in equity shall be deemed mutually exclusive of any other such remedy. All expenses of the Association in connection with any such actions or proceedings, including court costs and attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the maximum rate permitted by law but, with reference to any Lots financed by FHA insured loans, not in excess of the maximum rate of FHA loans at the time of delinquency, from the due date until paid, shall be charged to and assessed against such defaulting Owner, and shall be added to and deemed part of his respective maintenance assessment (to the same extent as the lien provided herein for unpaid assessments), upon the Lot and upon all of his additions and improvements thereto, and upon all of his personal property upon the Lot. Any and all of such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Association or any Owner.

#### Section 12.2 Fines Imposed by the Association

In addition to any other remedies available to the Association hereunder and subject to the requirements of ORS 94.630(1)(n), the Association shall have the right to impose reasonable fines upon an Owner who violates the Declaration, Bylaws and any rules or regulations of the Association, in the manner and amount the Board deems appropriate in relation to the violation.

#### Section 12.3 Term and Amendments

The covenants and restrictions of this Declaration shall run with and bind the land for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years each, unless a signed petition containing the signatures of at least seventy-five percent (75%) of the votes outstanding is presented to the Board or other duly appointed and authorized persons, which shall authorize the Board, or other duly appointed and authorized persons, to execute and properly record a notice of termination of this Declaration in the Deed Records of Deschutes County, Oregon. This Declaration may be amended at any time during the first thirty (30) year period or any extension thereof, by a signed petition containing the signatures of at least seventy-five percent (75%) of the votes outstanding, and the consent of the Declarant so long as the Declarant is a Class B member. Notwithstanding the foregoing, no amendment to this Declaration shall change the boundaries of any Lot or any uses to which any Lot or Unit is restricted or change the method of determining liability for common expenses, the method of determining the right to common profits or the method of determining voting rights of any Lot unless the Owners of affected Lots or Units unanimously consent to the amendment. Upon approval of an amendment as provided herein, the president and secretary shall execute an instrument amending this Declaration and certifying that the amendment was adopted in accordance with this Declaration and ORS 94.590, which certification shall be properly acknowledged in the manner of acknowledgment of deeds, and the Board, or other duly appointed and authorized persons, shall record the instrument amending this Declaration. For purposes of voting on an amendment to this Declaration pursuant to this Section 12.3, Declarant shall be treated as a Class A member with one (1) vote

per Lot owned, except as otherwise provided by ORS 94.585. Subject to the provisions of Section 12.4, notwithstanding any provisions hereof to the contrary, the Declarant may, at its sole discretion and without consent being required of anyone, modify, amend or repeal this Declaration at any time before the closing of the sale on the first Lot, provided said amendment, modification, or repeal is in writing and properly recorded in the Deed Records of Deschutes County, Oregon. In no event shall an amendment pursuant to this Section create, limit, or diminish Declarant's special rights without Declarant's written consent or change the boundaries of any Lot or any use to which any Lot is restricted unless the Owners of the affected Lots consent to the amendment.

#### Section 12.4 Regulatory Amendments

Notwithstanding the provisions of Section 12.3, until the Turnover Meeting described in the Bylaws, Declarant shall have the right to amend this Declaration or the Bylaws in order to comply with the requirements of any applicable statute, ordinance, regulation or guideline 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 that insures, guarantees or provides financing for a planned community or lots in a planned community or to comply with the Oregon Planned Community Act.

#### Section 12.5 Severability

Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions that shall remain in full force and effect.

#### Section 12.6 Rights and Obligations

The provisions of this Declaration and the Articles of Incorporation and Bylaws and the rights and obligations established thereby shall be deemed to be covenants running with the land and shall inure to the benefit of, and be binding upon, each and all of the Owners and their respective heirs, representatives, successors, assigns, purchasers, grantees and mortgagees. By the recording or the acceptance of a deed conveying a Lot or any ownership interest in the Lot whatsoever, the person to whom such Lot or interest is conveyed shall be deemed to accept and agree to be bound by and subject to all of the provisions of this Declaration and the Articles of Incorporation and Bylaws, whether or not mention thereof is made in said deed.

#### Section 12.7 Miscellaneous Provisions

Any provision of the within Declaration or of the Articles of Incorporation and Bylaws to the contrary notwithstanding, the following provisions shall control:



#### 12.7.1 Notice to Institutional Holders of First Mortgage Liens

The following actions will require notice to all institutional holders of first mortgage liens: (i) abandonment or termination of the Association; or (ii) material amendment to the Declaration.

#### 12.7.2 Notice to Institutional Holders of First Mortgage of Default or Liens

Upon the request of any first mortgagee of a dwelling on a Lot, the Association shall furnish to such mortgagee a written notice of any default by the Owner of such dwelling in the performance of such Owner's obligations under the within Declaration or the Bylaws or Association rules or regulations which is not cured within thirty (30) days. Any first mortgagee of a dwelling who comes into possession of the said dwelling pursuant to the remedies provided in the mortgage, a foreclosure of the mortgage, or deed (or assignment) in lieu of foreclosure, shall take such property free of any claims for unpaid assessments or charges in favor of the Association against the mortgaged dwelling which accrued before the time such holder comes into possession of the dwelling.

#### 12.7.3 Consent of Institutional Holders of First Mortgage Liens

Unless at least seventy-five percent (75%) of the first mortgagees (based upon one (1) vote per Lot for each mortgage) have given their prior written approval, neither the Association nor the Owners shall be entitled to:

(a) by act or omission seek to abandon, partition, encumber, or transfer the Common Areas, if any, or any portion thereof or interest therein except for the purpose of dedication for public right of way. (The granting of easements for public utilities or other public purposes consistent with the intended use of such property shall not be deemed a transfer within the meaning of this clause.);

(b) substantially change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner by the Association;

(c) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance of the Units or maintenance of the Units or Lots;

(d) fail to maintain liability and extended coverage insurance on insurable property comprising a part of the Common Areas on a current replacement cost basis in an amount not less than one hundred (100) percent of the insurable value (based on current replacement costs).

**Section 12.8 Personal Pronouns**

All personal pronouns used in this Declaration, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa.

**Section 12.9 Headings**

The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration.

**Section 12.10 Conflicts**

If there is a conflict between the terms of this Declaration and any Bylaws, rules, regulations or Articles of Incorporation of the Association, this Declaration shall control.

**Section 12.11 Partial Invalidity**

The invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed on its behalf, attested and its corporate seal to be hereunto affixed as of this 17 day of November, 2006.

DECLARANT:

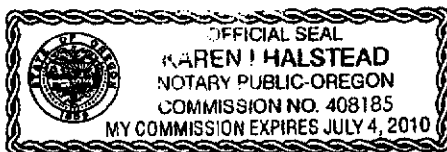
HAYDEN HOMES, LLC, an Oregon limited liability company

By: [Signature]

Its: manager

STATE OF OREGON       )  
                                  ) ss.  
County of Deschutes    )

The foregoing instrument was acknowledged before me the 17 day of November, 2006, by Hayden Watson, the Manager of Hayden Homes, LLC, an Oregon limited liability company, on behalf of said company.



[Signature]  
Notary Public, State of Oregon  
My Commission Expires: July 4, 2010

**EXHIBIT "A"**

**PROPERTY SUBJECT TO DECLARATION**

The property known as Village at Cold Springs is Lots 1 through 48 and Tracts A, B, C and D, as shown on the duly recorded plat of Village at Cold Springs, located in the City of Sisters, Deschutes County, Oregon, according to the plat recorded in the Plat Records of Deschutes County, Oregon, contemporaneously herewith.

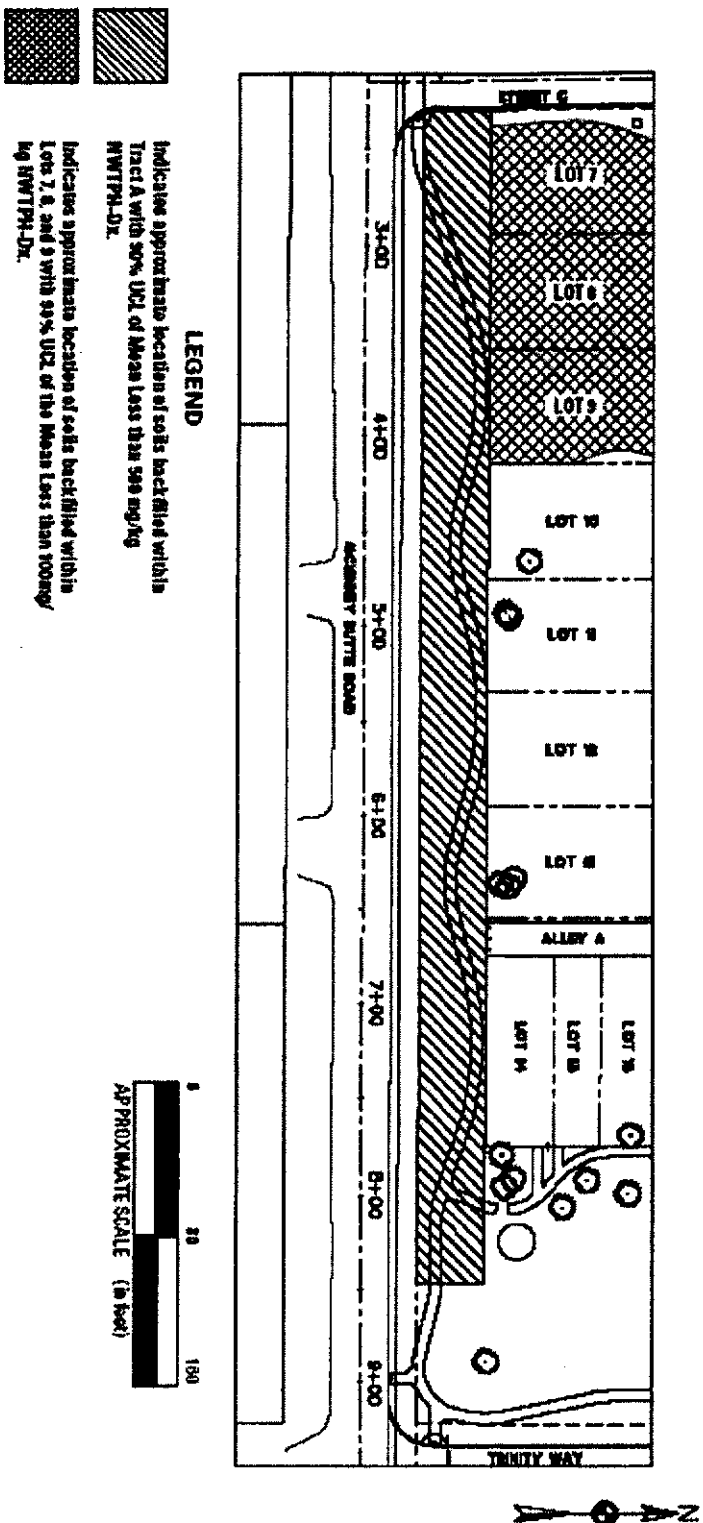
**EXHIBIT "B"**

**COMMON AREA LEGAL DESCRIPTION**

Tracts A, B, C and D of the duly recorded plat of the Village at Cold Springs, located in the City of Sisters, Deschutes County, Oregon, according to the plat recorded on the plat records of Deschutes County, Oregon contemporaneously herewith.

EXHIBIT "C"

DEPICTION OF LOCATION OF SOILS ON TRACT A AND LOTS 7-9





After recording return to:  
Hayden Enterprises, Inc.  
2464 SW Glacier Place Ste 110  
Redmond, OR 97756

### AFFIDAVIT OF CONSENT TO DECLARATION

**KeyBank National Association** hereby consents to the subdividing of the following described parcel of land situate in a portion of the Southwest  $\frac{1}{4}$  of Section 5, Township 15 South, Range 10 East, Willamette Meridian, City of Sisters, Deschutes County, Oregon:

Village at Cold Springs - ~~Phase I~~

and to the Declaration of "Village at Cold Springs - Phase I" located in the City of Sisters, Deschutes County, Oregon.

Trust Deed Holder's interest in this property arises from that certain Deed of Trust dated Nov. 17, 2006, and recorded Dec. 1, 2006, in Vol. 2006, Page 78952, Deschutes County Official Records.

This Affidavit of Consent to Declaration is being recorded pursuant to Oregon Revised Statue 92.075 (4).

Dated this 4<sup>th</sup> day of December, 2006.

By: Amy J. Ahse  
Amy J. Ahse  
KeyBank National Association

STATE OF Oregon )  
 )ss.  
County of Multnomah )

On this 4<sup>th</sup> day of December 2006 before me personally appeared Amy J. Ahse, being first sworn did say that she is the AVP of KeyBank National Association; and acknowledged said instrument to be its voluntary act and deed.

Before me

Tammy L. Ando  
Notary Public for Oregon  
My Commission expires: 1-13-07

