



Return to:
Upside LLC
250 NW Franklin Ave. #402
Bend, OR 97701

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**This Document Supersedes and replaces the document recorded in
Book 2003 Page 75517 on October 30, 2003**

**PLANNED COMMUNITY SUBDIVISION DECLARATION
FOR
WESTSIDE MEADOWS
PHASE II**

THIS DECLARATION is made on the day and year hereinafter written by Upside LLC, developer of Westside Meadows Phase II, City of Bend, Deschutes County, Oregon, herein after called "Declarant."

RECITALS

A. Declarant is the owner of the real property located in the City of Bend, County of Deschutes, State of Oregon, more particularly described as lots 1 thru 19 Westside Meadows Phase II, which property, together with all improvements and structures now or hereafter constructed thereon are referred to herein as the "Property."

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

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

ARTICLE I. DEFINITIONS

CITY

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

COUNTY

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

DECLARANT

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

DECLARATION

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

DWELLING; RESIDENCE

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

MAP

"Map" shall mean and refer to that certain Subdivision Map filed in Office of the County Recorder of Deschutes County, as more particularly described as lots 1 thru 19 Westside Meadows Phase II.

OWNER

"Owner" shall mean and refer to the recorded Owner, whether one or more persons or entities, or a Residential Lot. The term "Owner" shall include a seller under an executory contract of sale, but shall exclude Mortgagees.

PARTY WALL

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

PROJECT

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

PROPERTY

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

RESIDENTIAL LOT

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

ARTICLE 2 CONSTRUCTION STANDARDS

FENCES & WALLS

Any fence or wall constructed on a Lot shall match with the design specifications of the fence the Declarant installed on Shevlin Park Road excluding the "X" detail. At the time of construction, all rear yards shall be surrounded with a fence. There shall be no fencing allowed that extends past the front of the house. In the event an Owner wishes to park any trailer, boat, motor home or other vehicle along the side of the Dwelling, the Owner shall first install a fence to screen it from the adjoining neighbors and the street. Under no circumstance shall any chain-link or barbed wire fences be erected, except for security purposes in connection with construction or reconstruction of a Dwelling. All fences shall be maintained in good condition and repair. (Fences placed on retaining walls shall be measured from the bottom of the retaining wall unless the top of the wall does not exceed by more than six inches the height of the finished grade of the soil being retained, measured at a distance of three feet laterally from the outside of the finished retaining wall prior to the installation of the retaining wall.) The foregoing restriction, however, shall not apply to any fencing installed by Declarant.

REASONABLE CONSTRUCTION TIME FRAME

All work of construction being performed on a Residential Lot shall be prosecuted diligently and continually from the time of commencement of construction until the same shall be fully completed and shall not exceed more than 12 months in time, excepting therefrom causes beyond the control of the Lot Owner, such as strikes, Acts of God, etc. The Owner of a Lot where a building structure has been damaged or destroyed by fire or other calamity shall cause such structure to be repaired or restored within a reasonable time, commencing within four months after the damage occurs and be completed within one year thereafter, unless prevented by causes beyond Owner's reasonable control. This obligation shall not extend to the installation of furniture or the like, but shall be for the purpose of preventing unsightliness caused by such damage or destruction and any resultant health or safety problems to other Owners or occupants within the Property or neighborhood.

DWELLING AND SIZE

The floor area of each dwelling, exclusive of open porches, patios and garages shall not be less than 1,500 square feet in size. No manufactured house may be erected on any lot. No recreational vehicles, trailers, basement, tent, shack, garage, or other outbuildings, or any other structure of a temporary character shall be used as a residence on the premises during construction or any other time. A construction contractor may use a "job shack" during construction as may be permitted by Local Land Use Ordinances, but may not exceed 6 months in length.

GARAGES; PARKING

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

EXTERIOR LIGHTING

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

PATIOS, WALKWAYS AND DRIVEWAYS

All patios and walkways shall be made of a stamped concrete, pavers, or similar material or shall be covered in with stone, tile or slate materials. All driveways shall be concrete or a matching material of the patios and or walkways. All driveways shall drain toward the street (no reverse driveways) except for a underground garage (basement garage).

ROOFS

All roofs must have a minimum roof pitch of 5 1/2/ 12 for a single level home or a minimum of a 4/12 for a two story home. All dwellings must be roofed with a minimum of a 25-year architectural grade roof. No metal roofs are acceptable.

SIDING

No structure is allowed to have plain T1-11 style siding. T1-11 style siding is allowed if it is batted on a minimum of 16 inch on center, on all side of the structure. Although not required it is highly recommended that all dwellings have some stone accents on the front.

ARTICLE 3 - USE RESTRICTIONS

SINGLE FAMILY USE ONLY

Each Residential Lot shall be improved, used and occupied for private, single-family dwelling purposes only, except for lots 1, 2, 3, 4, 5, and 19, which may be used for duplexes subject to local jurisdiction.

BUSINESS OR COMMERCIAL ACTIVITY

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

LEASE OF DWELLING

Each Owner shall have the right to lease his Dwelling, provided that such lease is in writing and provides that the tenant shall be bound by and obligated to the provisions of this Declaration, and the failure to comply with the provisions of this Declaration shall be a default under the lease.

SIGNS

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

- (a) Such signs as may be required by legal proceedings;
- (b) One sign of customary and reasonable dimensions, not exceeding 4 square feet in area, advertising the dwelling or Residential Lot on which such sign is located "for sale" or "for rent;"
- (c) One sign, staked in the yard area, not to exceed twelve square inches in size, advertising or noticing the existence of a security system for the Lot on which such sign is located, and any number of security system window signs not to exceed six square in size, each. No such security signs shall be attached to the outside of a Dwelling or fence;
- (d) Reasonable window dressings placed in observance of national or religious holidays;
- (e) An exception to all sign prohibitions shall be the addresses which must be incorporated onto the entrance of each lot as per code..

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

ANTENNAS, SATELLITE DISHES, ETC.

No "Citizens Band" (C.B.), "ham" radio, microwave transmission antennas or other similar electronic receiving or broadcasting devices shall be installed or maintained on a Residential Lot unless the same are fully concealed from the view of any person on a neighboring Lot or public right of way. A single satellite dish shall be

permitted on a Residential Lot, provided, however, that it: is either mounted on the roof of the Dwelling or is ground mounted, in which case it may not exceed a height of five feet or a diameter of two feet, and shall be of black, green or other inconspicuous color.

PETS; ANIMALS

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

VEHICLE RESTRICTIONS

Owners and occupants may keep and maintain such vehicles on their Lots, and on the street in front of the Lots, as may be permitted in accordance with the codes, ordinances and statutes of the City. No vehicles shall be permitted to remain upon any front yard area of a Lot, or on the street in front of the Lot, except for paved areas leading to a garage, or within a paved parking area other than a driveway that is located on the side of the Dwelling, and concealed by fencing as required above, for any period in excess of four days. No Owner may engage in any vehicle restoration or maintenance work beyond any continuous period of forty-eight (48) hours, unless such work is performed within an enclosed garage. The foregoing shall not be deemed to prevent the washing or polishing of motor vehicles together with those activities normally incident to such activity. Anything herein to the contrary notwithstanding, trailers or temporary structures for use incidental to the actual construction or reconstruction of a Dwelling on a Residential Lot may be erected, but no such temporary structure shall remain on any Residential Lot for a longer period of time than is customarily required to construct like or similar Dwellings. Declarant, however, may maintain trailers or temporary structures within the Project which are incidental to the completion of the Project. No such trailer shall be used as a residence by any Owner during construction of a Dwelling.

LANDSCAPING

Landscaping is required for each Residence to the curb boundaries. A portion of the landscaping shall include lawn or grasses. Front yard landscaping shall be installed prior to the issuance of a certificate of occupancy on each Residence, except when landscaping cannot be installed due to winter weather. The rear and side yards of each Residence shall be fully landscaped prior to the expiration of six months after occupancy by the Owner or the first Tenant. All Lots shall be maintained to present a neat and pleasing appearance to the surrounding property.

Landscaping that is added must include automatic irrigation system installation. A back flow prevention device is required and must be maintained according to State of Oregon standards. Maintenance of the landscaping in an attractive condition is required. Landscaping must include deciduous trees place between the sidewalk and the curb on any side of a lot that borders a street, the trees must be spaced between 20 and 30 feet apart and be at least 15 feet in height at planting.

Owners of lots that adjoin Shevlin Park Road will be responsible for the installation and maintenance of landscaping between the curb and the sidewalk along Shevlin Park Road.

WINDOWS

No window shall ever be covered with paint or aluminum foil, provided, however, non-reflective solar films are permitted. Any window coverings must be neat and pleasing appearance to the surrounding property, no sheets, blankets or other makeshift coverings are permitted.

GARBAGE AND REFUSE DISPOSAL

All rubbish, trash and garbage shall be regularly removed from Property and shall not be allowed to

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

OFFENSIVE ACTIVITIES AND CONDITIONS

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

ARTICLE 4 - RESPONSIBILITY FOR MAINTENANCE

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

ARTICLE 5 - PARTY WALLS

GENERAL

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

DAMAGE BY ONE OWNER

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

SHARING OF MAINTENANCE

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

DAMAGE BY OTHER CAUSE

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

ALTERATIONS

In addition to meeting the other requirements of this Declaration and of any building code or similar regulation or ordinance, any Owners proposing to modify, make additions to or rebuild his Dwelling in any manner which requires the extension or other alteration of any party wall shall first obtain the written consent of the adjoining Owner.

WEATHERPROOFING

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

ARBITRATION

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

ARTICLE 6 - EASEMENTS

EASEMENTS TO DECLARANT

Easements over and under the Project for the installation, repair, and maintenance of electric, telephone, water, gas, and sanitary sewer lines and facilities, cable or master television antenna lines, drainage facilities, walkways, roads, curbs, gutters and such other facilities as may be shown on the map, and as may be hereafter required or needed to service, improve and construct the Project, are hereby reserved by Declarant and its successors and assigns, together with the right to grant and transfer the same. The foregoing notwithstanding, there is hereby reserved to Declarant, or its duly authorized agents and representatives, such easements as are necessary to perform the duties and obligations set forth in this Declaration.

EASEMENTS FOR MAINTENANCE OF ENCROACHMENTS

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

DRAINAGE & SLOPES; LANDSCAPED AREAS

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

UTILITY EASEMENTS

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

Whenever utility facilities are installed within the Project which serve more than one Lot, the Owner of each

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

ARTICLE 7 - ENFORCEMENT

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

RIGHT TO ENFORCE

Any Owner, the Declarant, or any successors in interest of the Declarant shall have the right to enforce, by any proceeding, at law or in equity, all restrictions, conditions, reservations, liens or charges now or hereafter imposed by this Declaration.

FAILURE TO ENFORCE

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

ARBITRATION OR LITIGATION

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

VIOLATION OF LAW

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

GOVERNING LAW

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

ARTICLE 8 - GENERAL PROVISIONS

EXTENSION OF DECLARATION

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

OTHER COMPLIANCE WITH DECLARATION

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

ARTICLE 9 - BINDING ARBITRATION

ARBITRATION OF DISPUTES

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

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

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

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

ARBITRATION PROCEDURES AND RULES

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

WAIVER OF ARBITRATION

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

EXCEPTIONS

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

OWNERS CLAIMS

In any arbitration of a dispute, controversy or claim by an Owner or Owners against Declarant, its successors and assigns, and/or any contractor, subcontractor, architect, materialman, consultant, or other person or entity involved in the planning, development or construction of the Project or any component part thereof,

pertaining to the planning, development or construction of the Project or any component part thereof, not less than ninety percent (90%) of the amount actually awarded, if any, as a result of such arbitration must be utilized by the Owner or Owners, solely and exclusively, for the construction, reconstruction, repair or replacement of such Owner or Owners' property. In such proceeding, there shall be no award in excess of the total costs of such repair, improvement or replacement, save the prevailing party's attorneys fees and costs of suit.

AMENDMENTS

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

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

Each such amendment shall become effective upon such recording.

DECLARANT'S APPROVAL

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

APPROVAL BY FHA OR VA

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

SEVERABILITY

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

SINGULAR INCLUDES PLURAL

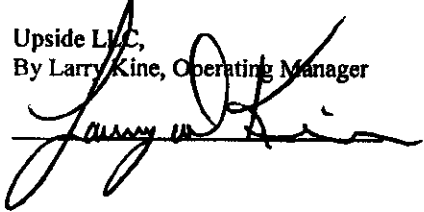
Whenever the context or this Declaration requires, the singular shall include the plural and the masculine shall include the feminine.

LIBERAL CONSTRUCTION

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

IN WITNESS WHEREOF, the undersigned, being Declarant herein, has executed this instrument on October 30, 2003.

Upside LLC,
By Larry Kine, Operating Manager

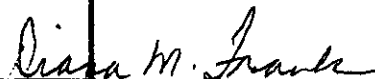


STATE OF OREGON)

COUNTY OF DESCHUTES)

The foregoing instrument was acknowledged before me on this 30 day of October 2003, by Larry D. Kine.




NOTARY PUBLIC FOR OREGON
My Commission Expires April 2, 2007