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AMENDED AND RESTATED
DECLARATION
OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
QUAIL RUN CLUSTER SUBDIVISION
QUAIL RUN - PHASE I

6418AUG.19'98H01REC 195.00
6418AUG.19'98H01PFUND 10.00
6418AUG.19'98H01N S FEE 20.00

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AMENDED AND RESTATED
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
QUAIL RUN CLUSTER SUBDIVISION

ARTICLE I - RECITALS

- 1.1 Name. Declarant is the Owner of the real property described in Exhibit A attached to this Declaration ("Property"), located in Eugene, Lane County, Oregon, and desires to create therein a residential community known as "Quail Run Cluster Subdivision."
- 1.2 Purpose. Declarant desires to provide for the preservation of values and amenities on the Property and, to that end, wishes to subject the Property to the covenants, conditions, restrictions, reservations, easements, charges and liens hereinafter set forth in this Declaration, each of which is for the benefit of the Property, its Owners, and residents, and will convey the Property subject to the Declaration.
- 1.3 Common Area. Declarant has deemed it desirable for the access roads and other common areas to be owned by an association of the homeowners on the Property.
- 1.4 Other Associated Property. Declarant declares that there are adjoining parcels that may become associated with the Property and be made subject to this Declaration.
- 1.5 Declaration. Declarant declares that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, reservations, easements, charges and liens hereinafter set forth, and that this Declaration shall supersede, replace, amend and restate in its entirety the original Declaration of Covenants, Conditions and Restrictions for Quail Run Cluster Subdivision ("Original Declaration"), recorded September 13, 1996, Reception No. 9662144, Lane County Official Records.

ARTICLE II - DEFINITIONS

- 2.1 "Annual Assessment" means and refers to an Assessment against all Lots in the Development which is levied pursuant to Section 8.3.
- 2.2 "Architecture Control Committee" means and refers to those persons appointed to review and approve or reject proposed additions and/or alternatives to the Development, as specified in Article VI herein.
- 2.3 "Articles" mean and refer to the Articles of Incorporation of Quail Run Homeowners Association, as amended from time to time.
- 2.4 "Assessment" means that portion of the cost of maintaining, improving, repairing, operating and managing the Development, which is to be paid by each Lot Owner in accordance with this Declaration.

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- 2.5 **"Association"** means "Quail Run Homeowners Association, Inc.," a nonprofit corporation, organized under the laws of the State of Oregon, and its successors and assigns.
- 2.6 **"Board"** means the duly elected board of directors of the Association.
- 2.7 **"Bylaws"** means the Bylaws of the Association, as amended from time to time.
- 2.8 **"Common Area"** means all real property, appurtenances thereto, and interests therein, now or hereafter owned by Declarant or the Association for the common use and enjoyment of the Members of the Association, which is designated "Common Area" on the Plat described in Section 2.24 or pursuant to the General Plan described in Section 3.2. Common Area shall include, without limitation, all of the following elements in areas designated as Common Area on the Plat or General Plan: bicycle and pedestrian paths; electronic automobile, bike path and other gates; garden plots; irrigation system; street and front yard landscaping and plants; recreational vehicle parking/storage areas; recreation building; park and play areas; perimeter fencing; sidewalks; storage sheds; street lights; streets; sound walls; and the cedar trees along the east boundary of the Property.
- 2.9 **"Declarant"** means the undersigned and its successors and assigns, if such successors or assigns acquire more than one undeveloped Lot from the Declarant for the purpose of development.
- 2.10 **"Declaration"** means this Amended and Restated Declaration of Covenants, Conditions and Restrictions, and any amendments thereto.
- 2.11 **"Development"** means the Property and all improvements on the Property.
- 2.12 **"Development Period"** means the period that Declarant requires to sell all of the Lots, or 10 years after recordation of this Declaration, whichever event occurs first.
- 2.13 **"Dwelling Unit"** means that portion or any part of any structure located on a Lot and intended to be occupied by one family as a dwelling, together with any attached or detached garage or carport, and the patios, fences (excluding any perimeter fences described in Section 2.4), porches, decks or steps annexed thereto.
- 2.14 **"General Plan"** means the general plan of development of the Property and of proposed Phase 2 and Phase 3 additions to the Property, described below in Section 3.2, attached hereto as Exhibit B.
- 2.15 **"Governing Instruments"** means and refers to this Declaration, the Articles, the Bylaws, the Rules, and any other instruments governing the affairs of the Association, as any of the same may be amended from time to time.
- 2.16 **"Improvement"** means every structure or improvement of any kind, including but not limited to a fence, wall, driveway, storage, shelter, patio, deck or other product of construction efforts on, or in respect to, a Lot.
- 2.17 **"Lot"** means any parcel of land separately designated on the Plat, including any improvements thereon, but excluding any Common Area.
- 2.18 **"Member"** means every Person who holds membership in the Association under Section 4.1 of this Declaration.

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- 2.19 "Owner" means the record owner, whether one or more Persons, of all or any part of a Lot, including contract sellers, but excluding those having such interest merely as security for the performance of obligations.
- 2.20 "Party Fence" means and refers to each certain vinyl fence which forms a de facto boundary between two (2) abutting Lots. Each Owner of a Lot upon which a Party Fence is situated shall occupy to the center of the Party Fence.
- 2.21 "Party Mailbox" means and refers to that certain multiple mail receptacle as designated on the Private Improvement Plan submitted by Declarant to the City of Eugene and which is to be for the benefit of the Owners.
- 2.22 "Perimeter Fence" means all fencing surrounding Common Area and the perimeter boundaries of the Property. The Perimeter Fence is sometimes referred to as the Perimeter Wall, and includes the sound wall along the east boundary of the Property.
- 2.23 "Person" means an individual, trust, estate, general or limited partnership, limited liability company, corporation or any other incorporated or unincorporated organization permitted to own real property under the laws of the State of Oregon.
- 2.24 "Plat" means the final subdivision plat of the Property creating the Lots.
- 2.25 "Property" means the real property described in Exhibit A (sometimes referred to below as "Initial Property") and any additional property made subject to this Declaration pursuant to Article III.
- 2.26 "Reserve Account" means an account in the name of the Association as required by Oregon Revised Statutes ("ORS") 94.595 for replacing Common Area elements, which shall be funded by Assessments against the Lots in accordance with Article VIII.
- 2.27 "Rules" means any and all rules and regulations that the Association may adopt, amend, modify, or revoke from time to time in accordance with Section 4.8.
- 2.28 "Special Assessment" means an Assessment against all Lots in the Development which is levied pursuant to Section 8.4.

ARTICLE III - PROPERTIES SUBJECT TO THIS DECLARATION

- 3.1 Initial Property Subject to this Declaration. The Property shall be held, transferred, sold, conveyed, and occupied subject to this Declaration.
- 3.2 General Plan of Development.
- 3.2.1 The General Plan shows the Lots and Common Area elements that are a part of the Initial Property, and the general scope and area of the additional properties that may be made subject to this Declaration. The General Plan sets forth a general indication of the size, location and proposed uses of the Initial Property and of the proposed Phase 2 and Phase 3 additions to the Property, and the general major proposed Common Area elements. The proposed additions, if made, may become subject to assessment for their share of Association expenses. Unless otherwise stated therein, the General Plan shall not bind Declarant to make the proposed additions or develop such property. The General Plan shows that the Initial Property shall include 25 Lots (Phase 1) and that if subsequent phases (Phases 2 and

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3) are made subject to this Declaration pursuant to Sections 3.3 and 3.4, the Property shall consist of up to 103 Lots.

3.2.2 Declarant contemplates the construction of Common Area elements described in Section 2.8 above. However, Declarant is not limited to the Common Area elements described in Section 2.8 or shown on the General Plan, and may add elements to or eliminate elements from those described in Section 2.8 or shown on the General Plan at any time, and from time to time, during the Development Period.

3.3 Supplemental Declaration. Declarant shall have the right to make subject to this Declaration additional properties in the future, consisting of other properties not a part of the Initial Property but which abut it or which abut property abutting it, which has been or will be brought within the terms of this Declaration; provided, however, that such additions are described in and made in accordance with the General Plan.

3.4 Additions to Initial Property.

3.4.1 Additions by Declarant. The additions of other property authorized by this Article III shall be made by recording a supplemental declaration as described in Section 3.3, containing such necessary modifications and amendments of provisions contained in this Declaration as may be needed to reflect the different character, if any, of the additional property.

3.4.2 Additions by Others. Upon approval in writing of Declarant or, after formation of the Association, upon approval by the Association as provided in its articles of incorporation, or bylaws, the owner of any other real property who desires to subject it to the jurisdiction of declaration which by its terms expressly extends the provisions contained in this Declaration to such other real property.

3.4.3 Voting Rights. The voting rights of the Owners shall be adjusted at the time such additional properties are added only to the extent that the total number of votes is increased by the number of Lots added and the percentage which one vote bears to the total is thus diminished.

3.4.4 Assessments. Any property added to the Initial Property shall be assessed and the Owner or Owners thereof shall contribute to the Reserve Account as provided in Section 8.5. The Assessments for all Owners will be reallocated after the additional property is added. For additions made during the fiscal year of the Association, Assessments shall be prorated as to any monthly, yearly, or other assessments. Within 60 days after the addition of such property, any budget prepared pursuant to this Declaration shall be revised to include such additional or modified property assessments.

ARTICLE IV - THE ASSOCIATION

4.1 Creation and Membership. Declarant may create and establish the Association at any time during the Development Period when, in the opinion of Declarant, the establishment of the Association is necessary to provide for the maintenance of the Common Area or some element that is part of the Common Area. Every Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Ownership of a Lot shall be the sole qualification for membership, and

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membership shall automatically commence upon a Person becoming an Owner and shall automatically terminate when the Person ceases to be an Owner.

- 4.2 Organization of the Association. The Association is or shall be incorporated under the name of Quail Run Homeowners Association, a nonprofit corporation organized under the laws of the State of Oregon.
- 4.3 Transferred Membership. Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale, conveyance, judicial sale, or other voluntary or involuntary transfer of the Lot to which it is appurtenant, and then only to the purchaser in the case of a sale, or to the transferee in the case of a transfer. Any attempt to make a prohibited transfer is void.
- 4.4 Powers. The Association shall have, exercise, and perform all of the powers, duties, and obligations:
 - 4.4.1 Granted to the Association by this Declaration;
 - 4.4.2 Of a nonprofit corporation pursuant to the Oregon Nonprofit Corporation Act (ORS Chapter 65) and of a homeowners' association of a planned community pursuant to the Oregon Planned Community Act (ORS 94.550 to 94.783), as either or both may be amended from time to time; and
 - 4.4.3 Otherwise necessary or desirable for the purpose of carrying out the functions of the Association or otherwise promoting the general benefit of the Owners within the Property.
- 4.5 Membership Classes and Voting Rights. The Association shall have two classes of voting membership with respect to Lots in the Initial Property and Lots in each additional phase described in the General Plan:
 - 4.5.1 Class A: Class A Members shall be all the Owners with the exception of Declarant, and shall be entitled to one vote or right of consent for each Lot owned. When more than one Person holds an interest in any Lot, all such Persons shall be Members. The vote or right of consent for any such Lot shall be exercised in accordance with the Bylaws and as they among themselves determine, but in no event shall more than one vote be cast or right of consent be exercised with respect to any Lot. The vote applicable to any lot being sold under a recorded contract, or memorandum of contract, of purchase shall be exercised by the contract vendee unless the contract expressly provides otherwise.
 - 4.5.2 Class B: Class B Members shall be Declarant, who shall be entitled to three votes or rights of consent for each Lot owned. Declarant may designate individuals to exercise the rights available to it as a Member of the Association. The Class B membership shall cease and be irreversibly converted to Class A membership on the happening of whichever of the following events first occurs: (i) the total outstanding votes held by Class A Members equal the total outstanding votes held by Declarant; or (ii) on the tenth anniversary of the recordation of the Original Declaration. Notwithstanding anything to the contrary herein, any action for which the Governing Instruments require the approval of a majority of Members of the Association other than Declarant, shall (a) require the vote or written consent of a majority of the Class B voting power as well as the vote or written consent of a majority of the Class A voting power, or (b) upon the conversion of Class B to Class A membership, the vote or written consent of a majority of the total voting

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power of the Association as well as the vote or written consent of a majority of the total voting power of Members other than Declarant.

- 4.6 General Duties and Powers. In addition to other duties and powers enumerated in the Articles and Bylaws, or elsewhere provided for at law or herein, and subject to any limitations on the powers of the Board and Association enumerated elsewhere herein or in the Bylaws, the Association shall:
- a. Except as otherwise set forth hereinbelow, maintain in good condition and appearance, repair, and replace, restore, operate and manage all of the Common Area and all facilities, improvements, street poles and lamps, paving, curbs, sidewalks, and landscaping thereon, the Perimeter Wall, the Party Mailboxes, all storm drainage, the main sanitary sewer line, the curbs, gutters, and storm drains located on a Lot, the landscaped areas, fences, and gates, and all property that may be acquired by the Association, and keep the Common Area free of litter, debris and weeds.
 - b. Acquire, provide and pay for water, sewer, electrical, and other necessary utility services for the Common Area.
 - c. Maintain such policy or policies of insurance as are required by this Declaration or as the Board deems necessary or desirable in protecting the interests of the Association and its Members.
 - d. Prepare and distribute to Members financial documentation in accordance with the Bylaws.
 - e. Have the authority to employ a Manager or other persons and to contract with the independent contractors or managing agents to perform all or any part of the duties or responsibilities of the Association except the initiation and execution of disciplinary proceedings against Members in accordance with the procedures set forth in the Bylaws; provided that, except as otherwise provided by resolution of the Board, any contract with a firm or person appointed as a Manager or managing agent shall not exceed a one year term and shall provide for the right of the Association to terminate the same at the annual meeting of the Members of the Association, and to terminate the same at any time upon 30 days written notice with cause and 60 days written notice without cause, both without payment of a termination fee.
 - f. Discharge by payment, if necessary, any obligation which, in the opinion of the Board, may become a lien against the Common Area, or any portion thereof, and specially assess the costs thereof against the Owner(s) responsible for the existence of said obligation, as determined by the Board after notice and a hearing, pursuant to Section 8.6.
 - g. Adopt reasonable Rules not inconsistent with this Declaration for the use of the Common Area, and all improvements and facilities now or hereafter located thereon, and the conduct of Owners and their tenants and guests with respect to the Development and other Owners.
 - h. Defend, prosecute, and settle, as deemed necessary, all lawsuits, arbitrations, mediations, and administrative proceedings involving the Association in the Association's own name as the real party and without joining with it the individual owners. However, the Association and/or the Board shall not undertake to

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prosecute any claim, complaint, cross-complaint or counterclaim, by means of litigation, arbitration, or otherwise, in excess of \$100,000.00 as adjusted by a fraction whose numerator is the Consumer Price Index (1982/84=100) for all Urban Consumers, All Items, published by the United States Department of Labor, Bureau of Labor Statistics for the Western Region, or any successor thereof ("CPI") last published as of the date the Association first considers pursuing litigation or arbitration, and whose denominator is the CPI last published as of the date of recordation of this Declaration, without the vote or written consent of 66-2/3% of the entire voting power of Members of the Association, given during or after a special Owners meeting called and held pursuant to the procedures set forth in the Bylaws, and in which at the time notice of said meeting is given, the following information shall be presented to each Member (including Declarant, so long as Declarant owns any Lots) in writing:

1. proposed causes of action or claims for relief;
 2. proposed defendants;
 3. underlying facts supporting such causes of action or claims for relief;
 4. names and addresses of proposed legal counsel;
 5. proposed fee arrangement with counsel;
 6. anticipated court, appeal and other costs and expert fees, if any;
 7. availability of Association funds (revenues, Annual Assessments, and/or Special Assessments) to cover anticipated legal fees, court, appeal and other costs, and expert fees;
 8. suggested information that should be disclosed to third parties, such as prospective purchasers and lenders;
 9. counsel's opinion of the likelihood of success; and
 10. counsel's opinion of anticipated time for final resolution of the matter.
- i. Assume obligations, enter into contracts, including contracts of guarantee or suretyship, incur liabilities, borrow or lend money or otherwise use its credit, and secure any of its obligations, contracts or liabilities by mortgage, pledge or other encumbrance of all or any part of its property or income.
 - j. Participate with others in any partnership, joint venture or other association, transaction or arrangement of any kind, whether or not such participation involves sharing or delegation of control with or to others.
 - k. Fill a vacancy on the Board, except for a vacancy created by the removal of a Board member.
 - l. Maintain, repair, and replace decorative pavers in the courts, which may be damaged pursuant to any repair or replacement of any water transmission line by Eugene Water and Electric Board, or any successor thereto.



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- m. Establish Rules for the storage and pick-up of trash and recycling containers that, among other things, may designate the day of the weekly pick-up and/or require containers to be hidden from view at all times other than the night before and day of the weekly pick-up date. During pick-up, all containers shall be placed in an area that will facilitate the disposal of trash in a quick and sanitary manner. Any change in the location where trash and recycling containers are placed and the system utilized for the placement and retrieval of said containers for weekly pick-up by the disposal agency shall be subject to review and approval by the Association.
 - n. Establish and maintain separate, restrictive accounts into which only Annual and Special Assessments for reserves shall be deposited. Approval of the Board shall be obtained prior to the expenditure of such reserves.
- 4.7 Power of Attorney. To expedite the completion of the Development of the Property, each Owner hereby nominates and appoints Declarant to be his, her, or its true and lawful attorney for them, and, in their respective names and steads, to execute and record supplemental Declarations pursuant to Section 3.3. Because of the interest of Declarant in the Property, the power of attorney hereby granted is coupled with an interest and is irrevocable until the completion of all phases shown in the General Plan or the filing of a final declaration of completion by Declarant, at which time the power of attorney granted pursuant to this Section 4.7 shall terminate.
- 4.8 Rules and Regulations. The Declarant or, after the turnover meeting referred to in Section 4.11 has occurred, the Association from time to time may adopt, amend, modify, or revoke such rules and regulations ("Rules") governing the conduct of persons and the operation and use of the Lots, Dwelling Units and Common Area as it may deem necessary or appropriate to assure the peaceful, safe and orderly use and enjoyment of the Property and to preserve and protect the character, desirability, and value of the Property, without unduly infringing upon an Owner's privacy or enjoyment of the Owner's Lot. Without limiting the generality of the foregoing, the Association shall have administrative authority over the Common Area, which may be exercised from time to time by the adoption, modification, or revocation of Rules pertaining to the Common Area. Upon adoption, a copy of the Rules and a copy of each amendment, modification or revocation thereof shall be promptly delivered by the Board to each Owner and shall be binding upon all Owners and occupants of all Lots upon the date of delivery. The method of adoption of the Rules shall be as provided in the Bylaws.
- 4.9 Liability. Neither the Association nor any director, officer, or member of the Board shall be liable to any Owner for any damage, loss, or prejudice suffered or claimed on account of any action or failure to act by the Association or any of its directors, officers, or members of the Board, excepting only gross negligence or intentional misconduct by the Association, director, officer, or Board member, as the case may be.
- 4.10 Transitional Advisory Committee. The Declarant or the Owners shall form a transitional advisory committee (the "Transitional Advisory Committee") to provide for the transfer of administrative responsibility for the Property from the Declarant to the Association. Not later than the 60th day after the Declarant has conveyed the Lots to Owners (other than the Lots conveyed to the Declarant) representing 50% of the votes, as computed in accordance with Section 4.5, the Declarant shall call a meeting of Owners for the purpose of selecting the Transitional Advisory Committee. The Transitional Advisory Committee shall consist of three or more Members. The Owners, other than the Declarant, shall select two or more Members. The Declarant may select no more than one Member. The Transitional Advisory Committee shall have reasonable access to all information and documents that the Declarant is required to turn over to the Association, or its successor, under ORS 94.616.

Any Owner may call a meeting of Owners to select the Transitional Advisory Committee if the Declarant fails to do so as provided for in this Section 4.10. Notwithstanding the foregoing, if the Owners do not select Members for the Transitional Advisory Committee as described above, the Declarant shall have no further obligation to form the Transitional Advisory Committee. The requirement for formation of a Transitional Advisory Committee shall not apply once the turnover meeting specified in Section 4.11 has been held.

- 4.11 Turnover Meeting. Not later than 120 days after Lots representing 75% of the votes as computed in accordance with Section 4.5, have been sold and conveyed to Owners other than the Declarant, the Declarant shall call a meeting by giving notice to each Owner, as provided in the Bylaws, for the purpose of turning over administrative responsibility for the Property to the Association. If the Declarant does not, within this required period, call the meeting required by this Section 4.11, the Transitional Advisory Committee described in Section 4.10 or any Owner may call such a meeting and give notice as required by this Section 4.11. At the turnover meeting, the Association shall resign and their successors shall be elected by the Owners (including the Declarant), as provided in this Declaration and the Bylaws. At the turnover meeting, the Declarant shall also deliver to the Association those items specified in ORS 94.616(3), or its successor. After the turnover meeting, the Declarant or the Declarant's representative shall be available to meet with the Board, as provided under ORS 94.616(4), or its successor. In accordance with ORS 94.621, the Declarant may continue to hold the special declarant rights set forth herein, if following the turnover meeting, the Declarant has not completed development of Lots or Common Areas.
- 4.12 Maintenance - Association and Owner Responsibilities. As provided above in Section 4.6a, the Association shall maintain the Common Area, and shall provide maintenance, repair, and replacement of all Common Area elements, including but not limited to recreation, storage and maintenance buildings; Perimeter Wall; Party Mailboxes; storm drains; sanitary sewer lines; electronic automobile, bike path and other gates; sound walls; the cedar trees along the east boundary of the Property and other physical facilities or improvements which lie in or under the Common Area. The Association shall maintain the vegetation, landscaping and irrigation system in the Common Area and shall maintain the vegetation, landscaping and any irrigation system on each Lot in the area designated, if any, in the General Plan or in the Private Improvement Plan submitted by Declarant to the City of Eugene or the plot plan for the Lot (which shall be made a part of the General Plan). Pursuant to ORS 94.704(3), (4) and (5) and Sections 8.4 and 8.6, the Lots may each have different maintenance and repair requirements and as such may be specially assessed on an individual basis.

Each Owner shall be responsible for maintaining and keeping in good order and repair the exterior of the Owner's Dwelling Unit and the other portions of the Owner's Lot, including but not limited to the interior yard and landscaping. The Architectural Control Committee has the right to settle disputes concerning repair and maintenance of common fence lines, and the Committee's decision shall be final and binding unless one of the parties requests arbitration within thirty (30) days of the date on which the Committee notifies the parties of the Committee's decision. The Committee has the right to require an Owner to maintain or repair the Owner's Lot if any part of it falls into a state of disrepair in violation of this Declaration, the Bylaws or the Rules. Each Owner gives the Association an easement over, upon, under and across the Owner's Lot for the purpose of maintaining the vegetation, landscaping and any irrigation system on each Lot in the area designated, if any, in the General Plan or in the plot plan for the Lot (which shall be made a part of the General Plan).

ARTICLE V - DAMAGE OR DESTRUCTION

- 5.1 Duty to Restore and Replace. If any of the improvements in the Common Area and/or the Perimeter Wall are destroyed or damaged, the Association shall restore and replace them, using the proceeds of insurance maintained pursuant to Article XI of this Declaration, subject to the provisions of this Article V. If any residential structure, or part thereof, is destroyed or damaged, the Owner shall within a reasonable time, either (i) restore and replace it (using the proceeds of insurance maintained pursuant to Section 11.11, subject to the provisions of this Declaration, (ii) shall remove all improvements, including foundations, and shall restore the Lot in a clean and safe condition.
- 5.2 Proceeds Justifying Automatic Restoration and Repair of the Common Area. If the proceeds of any insurance maintained pursuant to Article XI of this Declaration and any appropriate reserves are equal to at least 85% of the estimated cost of restoration and repair of the Common Area and Perimeter Wall, the Board shall use the insurance proceeds and reserves for that purpose, shall levy a Special Assessment to provide the necessary additional funds, and shall have the improvements promptly rebuilt, unless the Owners by the vote or written consent of not less than 75% of the total voting power of each class of Owners object to the restoration or repair work within 30 days of the damage or destruction.
- 5.3 Approval by Owners of Special Assessment for Certain Restorations and Repairs of the Common Area. If the proceeds of any insurance maintained pursuant to Article XI of this Declaration and any appropriate reserves are less than 85% of the estimated cost of the restoration and repair of the Common Area and/or Perimeter Wall, any restoration and repair work shall be authorized by the vote or written consent of Owners representing at least 51% of the total voting power of each class of Owners and at least 51% of the First Mortgagees (as defined in Article X). This authorization must be given within 60 days of the damage or destruction and must authorize the Board to levy a Special Assessment to provide the necessary funds over and above the amount of any insurance proceeds available for the work. Failure of the Owners and First Mortgagees to authorize such restoration and repair work shall require the Board to undertake repair pursuant to Section 5.4.
- 5.4 Ordering Restoration or Repair. If restoration or repair work of the Common Area and/or Perimeter Wall is to take place pursuant to this Article V, the Board shall take the following steps:
- (a) Prepare the necessary documents, including an executed and acknowledged certificate stating that damage has occurred, describing it, identifying the improvement suffering the damage, the name of any insurer against whom claim is made, and the name of any insurance trustee, stating (if applicable) that the consent described in Section 5.3 has been obtained, and reciting that the certificate was or will be recorded with the Recorder of Lane County within 30 days from the date of the damage or destruction.
 - (b) Obtain firm bids (including the obligation to obtain a performance bond) from two or more responsible contractors to rebuild the Common Area and/or Perimeter Wall in accordance with its original plans and specifications and, as soon as possible thereafter, call a special meeting of the voting Owners to consider the bids. If the Board fails to do so within 60 days after the casualty occurs, any Owner may obtain the bids and call and conduct the special meeting in the manner required by this subsection. At the meeting, Owners representing at least 75% of the total voting power may elect to reject all of the bids, or Owners representing at least 67% of the total voting power may elect to reject all bids requiring amounts exceeding the

available insurance proceeds and appropriate reserves by more than \$25,000.00, as adjusted by a fraction whose numerator is the CPI (as defined in Section 4.6h) last published as of the date of damage, and whose denominator is the CPI last published as of the date of recordation of this Declaration. Unless all bids are rejected, the Board shall accept the bid it considers most favorable.

- (c) If a bid is accepted, the Board shall enter into a the contract with the successful bidder and distribute the insurance proceeds and appropriate reserves to the contractor as required by the contract.
- (d) Levy a Special Assessment pursuant to Section 8.4 to make up any deficiency between the total insurance proceeds plus the appropriate reserves and the contract price for the restoration or repair, with the Assessment, insurance proceeds and appropriate reserves, whether or not subject to liens of Mortgagees, to be used solely for the restoration or repair.

5.5 Minor Restoration and Repair Work. The Board may order restoration or repair work without complying with the other provisions of this Article V whenever the estimated cost of the work does not exceed \$25,000.00, as adjusted by a fraction whose numerator is the CPI last published as of the date of the damage or destruction, and whose denominator is the CPI last published as of the date of recordation of this Declaration. If insurance proceeds and applicable reserves are unavailable or insufficient, the Board shall cause the Association to levy a Special Assessment for the cost of the work, in the manner described in Section 8.4 of this Declaration.

5.6 Failure to Restore or Repair Common Area. In the event the Owners vote, pursuant to Section 5.2 or Section 5.4(b), not to restore or repair the Common Area, the Association shall remove all improvements, including foundations, restore the parcel to a clean and safe condition, and distribute the proceeds of insurance (after deducting the costs of removal and restoration) equally among the Owners and their respective First Mortgagees (as defined in Article X) as their interests may appear.

ARTICLE VI - ARCHITECTURE CONTROL COMMITTEE

- 6.1 Architecture Control. An Architecture Control Committee ("Committee") may be established by Declarant or by the Board.
- 6.2 Composition. The original members of the Committee shall be appointed by Declarant or, if the turnover meeting described in Section 4.11 has occurred, by the Board. The original members of the Committee shall serve for three years. Thereafter, the Board shall elect five new members from among the Owners. Two of the new members shall each serve a one year term, two of the new members shall each serve a two year term, and one new member shall serve a three year term. In each subsequent year, the Board shall appoint such replacement members from among the Owners as are required to fill Committee positions for three year terms. If any member of the Committee is unable or unwilling to act or serve the entire term, the Board shall select a successor from among the Owners to serve the unexpired term. All actions of the Committee shall be governed by a majority vote of the members. The Committee shall meet at such times and places as it shall designate. Meetings of the Committee shall be open to all Members of the Association. No member of the Committee shall be entitled to any compensation for serving as a member, provided that a Committee member shall be entitled to be reimbursed by the Committee for any expenses incurred by the member in performing his or her duties, if the member

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received prior authorization for the incurrence of the expense. Board members may serve on the Committee.

- 6.3 Approval. Unless expressly permitted by the Declaration to be undertaken without approval of the Committee, none of the following actions shall take place anywhere within the Development without the prior written approval of the Committee:
- (a) Construction, installation, repair (including exterior painting), replacement, alteration or removal of any building, outbuilding, structure, wall, fence, sign, garage, trash enclosure, storage area, beams, utilities (gas, electricity, telephone, water or otherwise) or other improvements;
 - (b) Grading, excavation, alteration of slope or contour of a lot, site preparation; or
 - (c) Placement or storage of building materials or temporary structures (including trailers, tents, mobile homes, offices or vehicles).

Approval shall require the applicant to submit to the Committee plans and specifications in a manner and form satisfactory to the Committee. All plans and specifications shall conform with any guidelines established by the Committee. Plans shall adequately describe the proposed Improvements; plot layout; all exterior elevations; materials and colors; signs, landscaping plans (including the type of sodding, seeding, trees, hedges, shrubs and irrigation); number, size and layout of parking; storage areas; trash enclosure; grading and excavation plans; easements and utility locations; proposed fencing; construction schedule; and such other information as the Committee shall require. The Committee, in its sole discretion, may grant variances or exceptions from any guidelines it has established for approving plans and specifications, which variance or exceptions may contain such conditions and time limitations as the Committee deems appropriate. If the Committee fails to approve or disapprove any plans or specifications within 60 days of receipt of the plans and specifications in writing to the Committee, the application will be deemed to have been approved. The burden shall be on the applicant to establish that the Committee did receive the plans and specifications to establish the date of receipt.

- 6.4 Committee Enforcement. Notwithstanding any prior approval, if a condition exists or changes have occurred on a Lot as a result of an event or the passage of time that, in the opinion of the majority of the Committee, must be remedied, corrected, altered, modified, or eliminated, then the Committee shall so notify the Owner thereof and the Owner shall comply with such notice. If the Owner refuses or delays in so complying with the notice, then the Association shall have the right to perform the work specified in the Committee's notice to the Owner, to levy a Special Assessment against the Owner for such work pursuant to Article VIII and to suspend the voting rights of the Owner pending completion of the work or payment of the Special Assessment for the work. Such Special Assessment, if unpaid, shall be a personal obligation of the Owner and a continuing lien upon the Owner's Lot, in accordance with Article VIII.
- 6.5 Completion of Work. On receipt of approval, the Owner shall obtain all necessary governmental permits, licenses and approvals, shall commence the work as soon as reasonably practicable thereafter, and shall diligently pursue the completion of the work. If the work is not commenced within 60 days after receipt of approval and completed within 120 days, or such later date as the Committee may approve, the approval automatically shall be deemed revoked and no further work shall be done without again obtaining the written approval of the Committee as described herein. The work shall be done in strict compliance with the approved plans and specifications, except for minor non-material changes as may be necessary during the course of construction, and in strict compliance

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with all necessary governmental permits, licenses and approvals and all applicable building codes and ordinances and other laws, codes, ordinances, rules and regulations. Any change in the work from the approved plans specifications that affects the exterior appearance of any improvement shall be presumed conclusively to be a material change and shall require the prior written approval of the Committee.

- 6.6 Non-Liability. The Association, the Committee, Declarant, or the other Lot Owners, or their respective successors or assigns, shall not be liable to any Person submitting plans to the Committee for approval or to any other Lot Owners or occupants by reason of any act or omission arising out of or in connection with the approval or disapproval of any plans or specifications. Approval shall not constitute any warranty or representation by the Committee or its members that the plans satisfy any applicable governmental law, ordinance, or regulation or that any improvement constructed in accordance with the plans shall be fit for the use for which it was intended, or that it is safe for use and occupancy. Applicants shall make their own independent verifications of the foregoing and shall not rely on the Committee or its members in any manner in this regard.
- 6.7 Board's Authority. If for any reason the Committee is not established or not active, the Board shall perform the duties and shall have the rights of the Committee as described in Article XII.
- 6.8 Governmental Approval. Before commencement of any alteration or improvement approved by the Committee, the Owner shall comply with all the appropriate governmental laws and regulations. Approval by the Committee does not satisfy the appropriate approvals that may be required from any governmental entity with appropriate jurisdiction.
- 6.9 Declarant Exemption. During the Development Period, Declarant shall not be subject to the approval requirements of this Article VI in connection with the construction or alteration of any improvement or landscaping within the Development.

ARTICLE VII - USE RESTRICTIONS AND COVENANTS; PROPERTY RIGHTS

- 7.1 General Common Area Authority. The Association has jurisdiction over activities permitted in the Common Area. Except as herein provided, all Owners, as Members of the Association, are entitled to an equal share in the rights, interests, privileges and obligations of membership in the Association, and all Owners have the right to use the Common Area, subject to the Rules and subject to the provisions of this Declaration (including, without limitation, the restrictions on use specified in Article V and this Article VII). If a particular situation or issue is not covered by the following restrictions, by other provisions of this Declaration, by the Bylaws, or by Rules, then the codes and regulations of the City of Eugene shall apply. Where this Declaration, the Bylaws and/or the Rules, codes or regulations conflict, the strictest shall apply, as determined by the Board.
- 7.2 Common Area Use Restrictions. In exercising the right to occupy or use a Lot or the Common Area and its improvements, the Owner and the Owner's family, guests, employees, tenants, and invitees shall not do any of the following:
 - a. Attempt to further subdivide a Lot without obtaining the prior approval of the Association.
 - b. Occupy or use a Lot, or permit all or any part of a Lot to be occupied or used, for any purpose other than as a private residence.

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- c. Permit anything to obstruct the Common Area or store anything in the Common Area without the prior consent of the Board, except as otherwise provided in the Governing Instruments.
- d. Perform any act or keep anything on or in any Lot or in the Common Area that will increase the rate of insurance on the Common Area without the Board's prior written consent. Further, no Owner shall permit anything to be done or kept in his or her Lot or in the Common Area that would result in the cancellation of insurance on any Lot or any part of the Common Area or that would violate any law.
- e. Store gasoline, kerosene, cleaning solvents, or other flammable liquids in the Common Area or on any Lot; provided, however, that reasonable amounts of these liquids may be placed in metal containers and stored in the enclosed parking areas on the Lots.
- f. Display any sign to the public view on or from any Lot or the Common Area without the prior written consent of the Board, except one sign advertising the property for sale, lease or exchange, or advertising directions to the property of not more than five square feet in size.
- g. Raise, breed or keep any animals (including but not limited to mammals, reptiles and birds) in any Lot or any portion of the Property except usual and ordinary household pets such as dogs or cats and provided they are not kept, bred or maintained for commercial purposes. Any pet found in the Common Area may be removed to a pound or animal shelter under the jurisdiction of Lane County, by calling the appropriate authorities, whereupon the Owner (upon payment of all expenses connected therewith) may repossess the pet. No pet that seriously disturbs other Owners shall be permitted to remain on the Property. Any decision regarding the conduct of a pet shall be made only after notice to the Owner and the opportunity to be heard before the Board. All Owners are responsible when pets are walked in any portion of the Common Areas including the landscaped areas. Owners must immediately clean up after their pets. No dog(s) shall be allowed in the Common Area unless under the control of a responsible adult by leash or other means capable of controlling the animal(s) at all times.
- h. Create, allow or suffer any offensive or noxious condition, conduct or activity, or anything that may be or become an annoyance or a nuisance to the neighborhood (including without limitation excessive noise from radios, stereos, musical instruments, pets, engines, or any other sources) or illegal conditions, conduct or activity, shall be permitted on any Lot or the Common Area.
- i. Alter, construct or remove anything on or from the Common Area, except upon the written consent of the Association.
- j. Park or store boats, trailers, trailer homes, mobile homes, motor homes, motorcycles, cars, trucks, tents, campers and like vehicles and/or equipment on any part of the Lots or on any Common Area (including, without limitation, the street, pathway, bicycle path or other public way), except within the confines of the garage. No portion of any of the foregoing vehicles and/or equipment may project beyond the garage except under such circumstances, if any, as may be prescribed by written permit approved by the Committee. All other parking or storage of such vehicles and/or equipment shall be prohibited except in any Common Area that may be specifically designated by the General Plan or in the Rules for long term parking or storage, or as may be approved in writing by the Committee. The General Plan

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demand for such parking or storage, the configuration and dimensions of, and the rights of use of and access to and from such parking or storage spaces, will be subject to reasonable Rules as determined from time to time by Declarant or the Board. No repair or other work, other than routine cleaning and maintenance, may be performed on vehicles or equipment in any area of the Development, and then only if the area is cleaned up after such routine cleaning or maintenance work is completed. Guest parking shall be permitted only in the parking areas of an Owner's Lot, for no longer than 48 hours or as otherwise permitted by the Rules. No repair of vehicles and/or equipment described in this Section 7.2 shall be permitted outside enclosed garages. No Owner shall permit any vehicle and/or equipment that is in a state of disrepair to be abandoned or to remain parked or stored upon any Lot or on the Common Area for a period in excess of 48 hours. A vehicle and/or equipment shall be deemed to be in a "state of disrepair" when the Board determines that its presence reasonably offends Owners or occupants of the Lots. Should any Owner fail to remove such vehicle and/or equipment within five days following the date on which notice is mailed to such Owner by the Association, the Association may have the vehicle and/or equipment removed from the Property and charge the expense of such removal and storage of the vehicle and/or equipment to the Owner. Any such charge shall constitute a Special Assessment levied against the Owner, shall be a personal obligation of the Owner, and shall be a continuing lien upon the Owner's Lot as a Special Assessment pursuant to Article VIII.

- k. Notwithstanding anything stated in Section 7.2j, store any item which interferes with continuous utilization of the enclosed parking area on a Lot as a two-car garage.
- l. Store any item of personal property on any street, court or front yard of any Lot, unless permitted by the prior written approval of the Board, nor store any gasoline, kerosene, cleaning solvents or other flammable or hazardous materials in any part of the Common Area (or on the Owner's Lot unless such items are of a common household nature, are kept in appropriate containers in the enclosed parking area of a Lot, and are handled, used, kept and disposed of in accordance with all applicable Rules, laws, ordinances and regulations relating to same).
- m. Mar, deface, or cause any writing or graffiti to be placed on any Party Mailbox or Party Fence, any fence between the Party Fence and a residential structure, any gate which acts as an entrance to a Lot, or any interior and exterior surface of the Perimeter Wall.
- n. Use or maintain any part of the Property as a dumping ground for rubbish, trash, garbage or other waste. All rubbish, trash, garbage or other waste generated on the Lots shall be stored or disposed of in a sanitary container of a size and type intended for residential household use, and kept in a clean and sanitary condition. Rubbish, trash, garbage and other waste generated on or from Common Area shall be stored or disposed of in sanitary containers appropriate for the purpose and kept in a clean and sanitary condition.
- o. Use any trailer, trailer home, mobile home, motor home, car, truck, tent, camper, boat, barn, shack, or other vehicle, equipment or outbuilding at any time as a residence, temporarily or permanently, on any part of the Property.

- p. Perform any act or create, allow or suffer any condition on an Owner's Lot that would increase the rate of insurance or cause a cancellation of insurance required to be maintained by the Association.
- q. Install or place on any part of a Lot or any improvement thereon any external antennae, satellite dishes or other electronic signal receivers. During the Development Period, Declarant shall provide television cable hook-up capability for each Dwelling Unit. No external antennae, satellite dishes or other electronic signal receivers shall be permitted on a Lot or any improvement thereon for any purpose without prior written authorization by the Committee; provided, however, the Committee shall allow exterior antennae, satellite dishes or other electronic signal receivers if they are unobtrusive and would not detract from the appearance, character, safety or value of the Lot, surrounding Lots or Common Area.
- r. No clothesline, clothes rack, or other apparatus on which clothes, rugs or similar items are exposed for the purpose of drying or airing shall be located on any Lot except in an area adequately concealed from view of other Owner and the public.
- s. Lease, rent or otherwise permit the Owner's Lot to be used for anything other than a residence; lease less than the entire Lot; lease any part of a Lot for less than 60 days; lease a Lot without obtaining the written acknowledgment from the lessee that the lessee's rights under the lease are subject to the Governing Instruments and that a breach of the Governing Instruments is a breach of the lease (but a failure to obtain such acknowledgment shall not alter the fact that the lease and the lessee's rights are subject to the terms, covenants, conditions and provisions of this Declaration and the Governing Instruments); fail to enforce breaches of the lease or of the Governing Instruments applicable to the lessee. In no event may a Lot be used as a hotel, motel, boarding house or the like.

7.3 Construction or Alteration. No building, storage shed, fence, wall, obstruction, deck, awning, sidewalk entrance, improvement, or structure of any kind shall be commenced, erected, painted or maintained upon the Development, nor shall any alteration or improvement of any kind be made thereto unless the same conforms to the ordinances and building codes of the City of Eugene at the time the work commences, all necessary permits have been received by or on behalf of the Owner, there is no interference with the drainage system (including, but not limited to, the original surface flow, Lot area drains, underground piping, and the roof gutter system and downspouts which are directly connected to the Development's storm drainage system) and the Association's access to any component of the drainage system, and it does not result in the construction of the any structure above the height of the Party Fences. Any contemplated construction or alteration which fails to comply with the restrictions set forth in this Section 7.3 shall require the prior written approval of the Architecture Control Committee, a the failure to do so shall make any Owner subject to disciplinary actions pursuant to the provisions contained in the Governing Instruments. In the event the Board finds that an Owner has violated this Section 7.3, it may order any construction or alteration to be removed, and if the Owner fails to do so, the Board may perform the work and specially assess the Owner for the costs therefor pursuant to Section 8.4. Further, notwithstanding anything to the contrary stated in this Declaration, if work performed by the Association to the Perimeter Wall, Party Fence, or on any Lot pursuant to this Declaration requires the removal of any structure or improvement installed by an Owner, the Owner shall immediately remove it at Owner's sole expense.

7.4 Modification of Landscaping on a Lot. No modification of the landscaping originally installed by Declarant on those areas in Lots required to be maintained by the Association

(pursuant to Sections 4.5a and 4.12) shall be undertaken by an Owner without first obtaining the prior written approval of the Architecture Control Committee, and the failure to do so shall make the Owner subject to disciplinary actions pursuant to the provisions of the Governing Instruments. Unless a landscape modification interferes with the drainage system, an Owner may landscape or modify existing landscaping of the remaining areas of Owner's Lot and yard area appurtenant thereto without prior approval of the Architecture Control Committee.

- 7.5 Maintenance, Repair and Replacement of Party Fences. The Owners of Lots which share a Party Fence shall at all times maintain, repair and replace, at their equal expense, the Party Fence in a first class manner. Under all circumstances, the replacement of any Party Fence shall be equal to or greater than the grade of the then most recent installation, and shall be the same color scheme originally provided by Declarant or otherwise approved by the Architecture Control Committee. If Owners fail to maintain a Party Fence as set forth herein, the Board may perform the work and shall specially assess appropriate Owners pursuant to Section 8.4.
- 7.6 Damage Liability. Notwithstanding anything state elsewhere in this Declaration, to the extent not covered by insurance obtained by the Association, each Owner shall be liable to the Association for all damage to the Common Area or other Association property that is sustained by reason of the negligence or willful misconduct of that Owner or that Owner's family, guests, employees, tenants, and invitees.
- 7.7 Exemption. During the Development Period, Declarant shall be exempt from the restrictions of Sections 7.2 and 7.3 to the extent necessary to complete any construction work, sales activities, or additions to or affecting the Development. This exemption includes, but is not limited to, maintaining Lots as model homes, placing advertising signs on Development property, and generally using Lots and the Common Area to carry on construction activity.
- 7.8 Equitable Servitudes. The covenants and restrictions set forth in this Declaration shall be enforceable as equitable servitudes, shall run with the land, and shall inure to the benefit of and bind all Owners. These servitudes may be enforced by any Owner or by the Association.
- 7.9 Easements of Enjoyment. Subject to the provisions of this Declaration (and, where applicable, the other Governing Instruments), every Member of the Association shall be entitled to the exclusive use and enjoyment of the Member's Lot and Dwelling Unit, and, as an Owner, every Member of the Association shall also have a right and easement of enjoyment in and to the Common Areas, and such easements shall be appurtenant to and shall pass with the title to every assessed Lot, subject to the other provisions of Article VII and subject to the following provisions (which may be the subject of certain Rules):
- a. The right of the Association to limit the number of guests of Members permitted to use the Common Areas;
 - b. The right of the Association to determine the manner in which Members are permitted to use, and to prescribe reasonable limitations and rules on Members' access to, and use of, the Common Areas in accordance with the Bylaws or the Rules (which may include, without limitation, Rules restricting persons under or over designated ages from using certain portions of the Common Area during certain times, and Rules regarding parking).

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- c. The right of the Association to charge reasonable admission or use fees for the use of the Common Areas;
 - d. The right of the Association, in accordance with the Articles and Bylaws, to borrow money for the purpose of improving the Common Area, and in aid thereof, to mortgage or subject all or any portion of the Common Area to a security interest for such purposes, with the rights of any mortgagee in said properties shall be subordinate to the rights of the Owners hereunder;
 - e. The right of the Association to suspend any Member's voting rights and/or right to use any of the Common Areas for any period during which any assessment against the Member's Lot remains unpaid, and for a period not to exceed thirty (30) days for each infraction of the Rules;
 - f. The right of the Association to sell, convey, dedicate, transfer, or subject to a security interest all or any part of the Common Area to any public agency, authority, utility, or other party subject to such conditions as may be agreed to by the Members. The proceeds from a sale, conveyance, dedication or transfer of Common Area property shall be an asset of the Association. No such dedication or transfer shall be effective unless Members entitled to cast 75% of the votes of the Class A membership and 75% of the votes of the Class B membership, if any, have voted in favor of such sale, conveyance, dedication or transfer; and
 - g. An easement, hereby granted to and in favor of the Association, for the benefit of Owners, over, upon, under and across all parts of the Property to the extent reasonably required by the Association to perform maintenance or as the Association determines to be reasonably necessary or advisable to protect or preserve the value of the Property, the Dwelling Units and otherwise to perform the Association's obligations under this Declaration, the Bylaws, or as required by law.
 - h. If the Declarant provides for two adjacent Lots ("Adjacent Lots") to share a common driveway, each of the Owners of the Adjacent Lots shall have a reciprocal easement over, upon, under and across all parts of the common driveway located on the other Owner's Adjacent Lot and the Owners of each of the Adjacent Lots shall each bear one-half (1/2) of the costs of maintenance, repair and replacement of the common driveway.
 - i. If the Declarant provides for two Adjacent Lots to share a common gate in the sound wall or other Common Area fence, each of the Owners of the Adjacent Lots shall have a reciprocal easement over, upon, under and across such portion of the other Owner's Adjacent Lot as is reasonably necessary to permit each of the Owners of the Adjacent Lots to use the common gate.
- 7.10 Encroachments and Other Easements. If any portion of a party wall or part of a Dwelling Unit, building, or structure now or hereafter constructed on the Property encroaches upon any part of the Common Area or upon the Lot or Lots used or designated for use by another Owner, such encroachment shall be made known to the Architecture Control Committee, which shall investigate the origin, length of time and extent of the encroachment. If the Committee finds that it would be an undue hardship on the present Owner of the encroachment to have the encroachment removed, then an easement for the encroachment and for the maintenance of same is granted and reserved and shall exist and be binding upon the Declarant, the Association and upon all present and future Owners, for the benefit of the present and future Owners of such encroachment for the purpose of occupying and maintaining same. If a Dwelling Unit or Common Area element is partially or totally

destroyed or otherwise is in need of maintenance, repair or replacement, mutual and reciprocal easements are granted and reserved upon each Lot for the benefit of the adjacent Owner or Owners to the extent reasonably necessary or advisable to effect such maintenance, repair and replacement; and minor encroachments resulting from any such repairs or replacements and the maintenance thereof are hereby granted and reserved for the benefit of the present and future Owners.

- 7.11 **Delegation of Use.** Any Owner may permit, in accordance with any applicable Rules, the use and enjoyment of the Common Area by the members of the Owner's family, tenants or contract purchasers, providing that these individuals reside in the Owner's Dwelling Unit.
- 7.12 **Title to Common Areas.** The fee title to the Common Area shall be conveyed to the Association at such time as improvements have been substantially completed, and when the Declarant, in its discretion, determines the Association is capable of maintaining the same, but notwithstanding any of the above, the Declarant hereby covenants for itself and its assigns that it shall convey the Common Area to the Association not later than ten (10) years after filing the Original Declaration.
- 7.13 **Easement During Development Period.** During the Development Period, Declarant reserves an easement over, upon, under and across all portions of the Property (except those portions thereof actually intended to be occupied as living space in any building now existing or hereafter constructed or located upon the Property but specifically including, without limitation, the walls, attic crawl spaces and the area below the living space in any Dwelling Unit) for the purpose of constructing, installing, and maintaining underground or concealed electrical and telephone lines, gas, water, sewer, storm drainage lines, security, radio and television antennae and cables, and other utilities and services commonly supplied by public utilities or municipal corporations, and upon all Common Areas for constructing, installing and maintaining thereon Common Area elements. All of such easements shall be for the benefit of all present and future Owners and the Property; such easements and rights of use, however, shall not be unrestricted but shall be subject to reasonable Rules that may be adopted from time to time by the Association.
- 7.14 **Easement After Development Period.** As described above in Section 3.2.1, the General Plan calls for the development of the Initial Property and proposed Phase 2 and Phase 3 additions to the Property. If Declarant completes the Phase 2 through Phase 4 additions to the Property, one of the Common Area elements will be an improved street known as Covey Lane running from the southwesterly boundary of the Initial Property at Bardell Avenue, to the northwesterly boundary of the Property at Colt Drive, as shown on Exhibit C attached to this Declaration. If Declarant fails to complete the proposed Phase 2 and Phase 3 additions to the Property, including Covey Lane as shown on Exhibit C, or does not otherwise provide secondary access to the Property, then (as provided in the Original Declaration) the Association and each of the Owners shall have an easement appurtenant to the Property, for the benefit of the Owners of the Property, over, upon, under and across the property described on Exhibit D attached to this Declaration (which easement area is currently owned by Declarant and which is shown on Exhibit C as the shaded area connecting Covey Lane in Phase 1 of the Property with Colt Drive at the northwesterly boundary of the Property), for the purpose of providing secondary access to the Property, and the Association may develop, construct and install street and roadway improvements thereon (including, without limitation, paving, street lights, sidewalks, street landscaping and related roadway improvements). The easement granted by Declarant to the Association pursuant to this Section 7.14, and any improvements thereon, shall be and constitute Common Area elements. Any improvements placed thereon by the Association shall be developed, constructed and installed at the Association's cost, and shall be maintained, repaired and replaced by the Association at the Association's cost. The easement granted

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pursuant to this Section 7.14 is for the benefit of all present and future Owners and the Property; such easement, however, shall not be unrestricted but shall be subject to reasonable Rules adopted from time to time by the Association. The easement granted pursuant to this Section 7.14 is perpetual, and may not be terminated, altered or amended by Declarant.

ARTICLE VIII - ASSESSMENTS

- 8.1 Creation of the Lien and Personal Obligation of Assessments. Declarant hereby covenants for the Property, and each Owner of any Lot by acceptance of a deed or contract of purchase therefor (whether or not it shall be so expressed in any such deed or other conveyance or agreement for conveyance) is deemed also to covenant and agree to pay to the Association: (1) regular annual Assessments or charges as established by the Association from time to time, and (2) Special Assessments for capital improvements or other unusual or special expenditures (including, without limitation, those assessments referred to in Sections 4.6f, 4.12, 6.4, 7.2j, 7.3, 7.5 and 8.6; such assessments to be fixed, established and collected from time to time as provided in this Article VIII. The regular and Special Assessments, together with interest and attorneys' fees and costs and other costs of collection, if any, shall be a charge and a continuing lien upon the Lot against which each such Assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who is or was the Owner of such Lot at the time such assessment became due. The regular and Special Assessments, together with interest, attorneys' fees and other costs of collection, if any, shall remain a lien upon the property until paid or foreclosed, but shall not be a personal obligation of successors in title unless expressly assumed by them.
- 8.2 Purpose for and Basis of Assessments. The Assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the Property and, in particular, for the improvement, replacement and maintenance of the Common Area and related to the use and enjoyment of the Common Area, Lots, and Dwelling Units. The regular annual Assessments against all Lots shall be based upon an annual budget prepared by the Board, with respect to projected expenses of the Association, including, without limitation, the following:
- a. Maintenance, repair, and operation of the Common Area;
 - b. Premiums for all insurance policies the Association is required, or permitted, to maintain pursuant to Article XI;
 - c. Routine professional management fees and expenses, employees' salaries, and legal and accounting costs;
 - d. Any deficits remaining from the previous fiscal year of the Association;
 - e. Reasonable contingency reserves of the Association, established at the discretion of the Board; and
 - f. Such other further costs, expenses, obligations, and liabilities as the Board, in its sole discretion, may incur for the management, operation and maintenance of the Property and the Association, in accordance with this Declaration, the Bylaws and the Rules.

- 8.3 Annual Assessments. The Declarant shall pay all common expenses until the Lots are assessed for common expenses. Beginning on the first day of the month following the month in which a Lot is conveyed from Declarant to an Owner, Annual Assessments will be made against the Lot and shall be due and payable on a monthly basis commencing on the first day of the month. The Annual Assessments for Lots in a given phase of development may be waived or prorated for partial years during the Development Period, at the sole discretion of Declarant. The Board may modify the Annual Assessments without a vote of the Members, either upward or downward, effective on January 1st of each year in conformance with the rise or fall of the Consumer Price Index (for all urban consumers as published by the Bureau of Labor Statistics of the United States Department of Labor, for the Western Region (1982-1984=100), as published for "all items", or if such index is no longer published, by such successor index as the Board shall determine) from July of the year in which these covenants are recorded to July of the year preceding the year in which such increase becomes effective, taking into consideration, prior increases in such maximum, if any. The Association may otherwise modify the Assessment by approval of Owners holding at least 51% of the votes. After consideration of current maintenance costs and future needs of the Association, the Board, in its sole discretion, may fix the due date for installment payments of the Annual Assessment on a monthly, quarterly, or annual basis.
- 8.4 Special Assessments. In addition to the Annual Assessments authorized in Section 8.3, the Association may levy in any year, a Special Assessment pursuant to Sections 5.3, 5.4 or 5.5, or otherwise for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Areas or separate living areas, including the necessary fixtures and personal property related thereto, or for other unusual or special expenditures, provided that any such Special Assessment shall require the approval of Owners holding at least 51% of the votes. This Section 8.4 shall not prohibit the Board from authorizing capital expenditures for replacements, repairs, improvements, or other expenditures from funds generated by regular Assessments. A Special Assessment may also be levied by the Board against an Owner of a Lot pursuant to Section 4.6f, 4.12, 6.4, 7.2j, 7.3, 7.5, and 8.6, or as otherwise provided for in this Declaration.
- 8.5 Assessments for Reserve Account. Declarant shall establish a Reserve Account for replacement of all Common Area elements that will normally require replacement, in whole or in part, in more than three and less than 30 years, and that are insurable by a common carrier of all purpose risk insurance. The Reserve Account established under this Section 8.5 shall be funded by Assessments against the Lots for maintenance of items for which the reserves are established. The Assessments against the Lots shall begin accruing from the date the first Lot is conveyed from Declarant to an Owner (these assessments may be shown as a separate item in the sales contract). Declarant may defer payment of the accrued Assessment for a Lot under this Section 8.5 until the date the Lot is conveyed. The amount assessed to fund the Reserve Account shall take into account the estimated remaining life of the items for which the reserve is created and the current replacement cost of those items. The Reserve Account shall be established in the name of the Association. The Board is responsible for administering the Reserve Account and for making periodic payments into it. The Board shall adjust the amount of the Reserve Account assessments at regular intervals to reflect changes in current replacement costs over time. The Reserve Account may be used only for replacement of Common Area elements and is to be kept separate from assessments for maintenance. However, after the Owners have assumed responsibility for administration of the Property from Declarant, the Board may borrow funds from the Reserve Account to meet high seasonal demands of the regular operating funds or to meet other temporary expenses. Funds borrowed to meet temporary expenses under this Section 8.5 must be repaid later from Special Assessments or regular Annual

Assessments. Nothing in this Section 8.5 prohibits prudent investment of Reserve Account funds subject to any constraints imposed by this Declaration, the Bylaws, or the Rules. Following the second year after the Association has assumed administrative responsibility for the Property under ORS 94.616, if Owners representing 75% of the votes agree to the action; they may vote to increase, reduce, or eliminate future assessments for the account. Assessments paid into the Reserve Account are the property of the Association and are not refundable to sellers or Owners of Lots. The sellers or Owners of Lots may treat their outstanding share of the Reserve Account as a separate item in the Sales Contract.

- 8.6 Uniform Rate Assessment. Regular Annual Assessments, Reserve Account assessments, and any Special Assessments shall be assessed at a uniform rate for, and allocated on an equal basis to, all Lots in each phase except as otherwise provided in Sections 4.6f, 4.12, 6.4, 7.2j, 7.3, 7.5 and 8.6, and except as permitted by ORS 94.704 (3), (4), and (5), which, among other things, allows the Board to specially assess Lots that are exclusively benefited by an Association expense, allows the Board to specially assess Lot(s) for expenses of the Association that are clearly the fault of the Owner(s) of the Lot(s), and requires the Board to specially assess for the cost of any judgment against the Association only those Lots existing in the Development at the time the judgment was entered.
- 8.7 Date of Commencement of Annual Assessments; Due Dates. Pursuant to Section 8.3, the regular, Annual Assessments shall commence as to each Lot on the first day of the month following the conveyance of the Lot from Declarant to the Owner. The first regular Annual Assessments shall be prorated according to the number of months remaining in the calendar year. The Board shall determine the amount of the regular Annual Assessments at least 30 days in advance of each Annual Assessments period and written notice of the Annual Assessments (which shall include but not be limited to the due dates for the installment payments of the Assessments as established by the Association) shall be sent to every Owner within a reasonable time following such determination.
- 8.8 Effect of Nonpayment of Assessments; Remedies of the Association. Any Assessments that are not paid when due shall be delinquent. If the Assessment is not paid within 30 days after the due date, the Assessment shall bear interest from the date of delinquency at the rate of nine percent (9%) per annum or at such other rate as the Board may from time to time establish by resolution. The aggregate amount of such Assessment, together with interest thereon, costs, expenses and reasonable attorneys' fees for the filing and enforcement thereof, shall constitute a lien on the Lot with respect to which it is fixed and on any improvement thereon, from the date of the delinquency thereof, until the same has been paid or the obligation released by the Association. The provisions of ORS 94.709 (incorporating by reference the provisions of ORS 87.352 to 87.382 and of ORS Chapter 88), as amended from time to time, regarding attachment, notice, recordation, duration and foreclosure, shall apply to the liens for Assessments hereunder. The Owner of the Lot at the time such Assessment becomes due, shall be personally liable for the expenses, costs and disbursements and attorneys' fees which shall be secured by said lien, including costs and fees on appeal. The Owner at the time such Assessment is incurred shall also be liable for any deficiency remaining unpaid after any foreclosure sale. No Owner may waive or otherwise escape liability for the Assessments provided for in Article VIII by non-use of the Common Areas or abandonment of the Lot or any improvement thereon.
- 8.9 Subordination of the Lien. The lien of the Assessments provided for in Article VIII shall be inferior, junior and subordinate to the lien of all first mortgages and first trust deeds now or hereafter placed upon such property, but shall not affect the Assessment lien. However, the sale or transfer of any Lot that is subject to any superior mortgage or trust deed, pursuant to a decree of foreclosure under such mortgage or trust deed and any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such Assessments as to the

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amount thereof which became due after the date of the lien of the mortgage or trust deed and prior to such sale or transfer; and such lien shall attach to the net proceeds of the sale, if any, remaining after such mortgage or trust deed and other prior liens and charges have been satisfied. No sale or transfer shall relieve the Owner of such Lot and any improvements thereon from liability for any Assessments thereafter becoming due or from the lien thereof.

- 8.10 Exempt Property. The following property, which is subject to this Declaration, shall be exempt from the Assessments created in Article VIII: (a) All properties expressly dedicated to and accepted by a local public authority, and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Oregon (however, no land or improvement devoted to dwelling use shall be exempt from said Assessment); (b) the Common Area; and (c) all other properties owned by the Association.
- 8.11 Certificate of Payment. The Association shall, upon demand at any reasonable time, furnish a certificate in writing, signed by an officer of the Association, setting forth whether the Assessments on a specified Lot have been paid. A reasonable charge may be made by the Association for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

ARTICLE IX - EMINENT DOMAIN

- 9.1 Sale to Condemning Authority. If a governmental agency proposes to condemn all or a portion of the Common Area, the Association may sell all or any portion of the Common Area to the condemning authority if 51% of the Owners and 51% of all First Mortgagees (as defined below) approve the sale in advance. Any such sale shall be made by the Association in the capacity of attorney-in-fact for the Owners, acting under an irrevocable power of attorney which each Owner grants to the Association by accepting a deed to a Lot. The sales price shall be any amount deemed reasonable by the Board.
- 9.2 Distribution of Sales Proceeds. The proceeds of a sale conducted pursuant to Section 9.1 shall be distributed equally to the Owners and their First Mortgagees, as their interest may appear.
- 9.3 Taking and Condemnation Awards. If there is a taking by a governmental agency of all or any portion of the Common Area, the condemnation award shall be distributed to all Owners and their respective First Mortgagees in accordance with the court judgment, if any such judgment exists. In all other cases, the proceeds shall be distributed equally among the Owners and their respective First Mortgagees as their interests may appear.

ARTICLE X - RIGHTS OF MORTGAGEES

- 10.1 Warranty. All banks, savings and loan companies or associations, insurance companies or other institutional lenders holding trust deeds or mortgages that are recorded and constitute first liens against Lots ("First Mortgagees") shall be entitled to the rights set forth in this Article X. No amendment of this Article X shall affect the rights of a First Mortgagee whose trust deed or mortgage ("First Mortgage") was recorded prior to the recordation of the amendment, unless the First Mortgagee joins or concurs in the amendment.
- 10.2 Inapplicability of Right of First Refusal. Should any of the Association's Governing Instruments ever provide for a "right of first refusal," this right shall not impair the right

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of a First Mortgagee to: (a) Foreclose or take title to a Lot pursuant to the remedies provided in the First Mortgage; (b) Accept a deed (or assignment) in lieu of foreclosure in the event of default by the Owner of the Lot subject to the First Mortgage; or (c) Interfere with a subsequent sale or lease of a Lot so acquired by the First Mortgagee.

- 10.3 Notice to Eligible Holders. The Association shall give timely written notices of each of the following events to each First Mortgagee who has given the Association written notice that the First Mortgagee desires the rights hereunder ("Eligible Holder"): (a) Any condemnation loss or casualty loss which affects either a material portion of the Development or the Lot which the Eligible Holder holds a First Mortgage; (b) Any delinquency in the payment of assessments or changes by an Owner of the Lot which is subject to a First Mortgage held by the Eligible Holder if the delinquency is not cured within 90 days after its due date; (c) Any lapse, cancellation or material modification of any insurance policy maintained by the Association; (d) Any proposal to take any action specified in this Article X, including, but not limited to, a material amendment of the Governing Instruments, as described in Section 10.5; and (e) Any obligation under the Governing Instrument which is not cured within 90 days.
- 10.4 Unpaid Assessments. Any First Mortgagee who obtains title to a Lot pursuant to the remedies provided in the First Mortgage or foreclosure of the First Mortgage shall not be liable for the Lot's unpaid Assessments that accrue prior to the acquisition of title to the Lot by the First Mortgagee. No transfer of the Lot as a result of a foreclosure or exercise of a power of sale shall relieve the new owner, whether it be a First Mortgagee or another Person, from liability for any Assessments thereafter becoming due or from the lien thereof.
- 10.5 Mortgagee Approval of Material Amendments. Any amendments governing any of the following shall require the prior written approval of at least fifty-one percent (51%) of the Eligible Holders, based upon one vote for each First Mortgage owned, and at least 67% of the total voting power of the Owners: (a) voting rights; (b) Assessments, Assessment liens or priority of such liens; (c) reserves for maintenance, repair and replacement of the Common Area; (d) insurance or Fidelity bonds; (e) rights to use the Common Area; (f) responsibility for maintenance and repair of the Development; (g) expansion or contraction of the Development or the addition, annexation or withdrawal of property to or from the Development; (h) boundaries of any Lot; (i) reallocation of interests in the Common Area; (j) convertibility of Lots into Common Area or of Common Area into Lots; (k) leasing of Lots; (l) imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey such Owner's Lot; (m) a decision by the Association to establish self management when professional management has been required previously by a Eligible Holder; (n) restoration or repair of the Development (after a hazard damage or partial condemnation) in a manner other than that specified in the Governing Instruments; (o) any action to terminate the legal status of the Development after substantial destruction or condemnation occurs; or (p) any provisions which are for the express benefit of Eligible Holders. Notwithstanding the foregoing, any Eligible Holder who receives a written request from the Board to approve a proposed amendment or amendments requiring consent under this Section and who does not deliver a negative response to the Board within 30 days of the receipt of the request shall be deemed to have approved the proposed amendment or amendments.
- 10.6 Mortgagee Approval of Other Actions. Unless at least 67% of the First Mortgagees (based upon one vote for each First Mortgage owned) and 67% of the total voting power of the Owners have given their prior written approval, the Association shall not be entitled to: (a) by act or omission, seek to abandon or terminate the Development; (b) change the pro rata interest or obligations of any individual Lot for either of the following purposes,

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unless the change is due to an annexation: (1) levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; or (2) determining the pro rata share of ownership of each parcel in the Common Area and the improvements thereon; (c) partition or subdivide any Lot; (d) by act or omission, seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Area unless due to an annexation (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this clause); or (e) use hazard insurance proceeds for losses to any Development property (whether to Lots or to the Common Area) for other than the repair, replacement, or reconstruction of that property, except as provided by statute in the case of substantial loss to the Lots and/or Common Area of the Development.

- 10.7 Liens. All taxes, assessments, and charges that may become liens prior to the First Mortgage under local law, shall relate only to the individual Lots and not to the Development as a whole.
- 10.8 Priority. No provision of the Governing Instruments shall give any Owner, or any other party, priority over any rights of the First Mortgage of the Lot pursuant to its Mortgage in the case of a distribution to the Lot Owner of insurance proceeds or condemnation awards for losses to, or a taking of, all or a portion of a Lot or Lots and/or the Common Area.
- 10.9 Reserve Account. Association Assessments shall be large enough to provide for an adequate reserve fund for repairs and replacement of those common elements that must be replaced on a periodic basis. The Reserve Account shall be funded by the Annual Assessments rather than by Special Assessments.
- 10.10 Right to Inspect Books and Records. First Mortgagees, upon written request, shall have the right to: (1) examine the books and records of the Association during normal business hours and (2) require the submission of any financial data furnished to the Owners by the Association.
- 10.11 Payments by Mortgagees. First Mortgagees may, jointly or severally, pay taxes or other charges that are in default and that may or have become a charge against the Common Area, and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage upon the lapse of a policy, for the Common Area. First Mortgagees making these payments shall be entitled to immediate reimbursement from the Association.
- 10.12 Right to furnish Mortgage Information. Each Owner hereby authorizes the Owner's First Mortgagee to furnish information to the Board concerning the status of the First Mortgage and the loan that it secures.

ARTICLE XI - INSURANCE

- 11.1 Fire and Casualty. The Association shall obtain a blanket policy or policies of insurance covering all of the Common Area of the Development, including Common Area improvements now or hereafter erected on the Development, all equipment and fixtures located in the Common Area or used in Connection therewith, and the Perimeter Wall, insuring the Owners, including the Association, against loss or damage by the perils insured under the Standard Special Extended Coverage form (including, but not limited to, loss or damage by lightning, windstorm, water and other special extended coverage risks, and the costs of demolition and debris removal), which may also be extended to include

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Flood and Earthquake Insurance and coverage for the peril of damage resulting from rain or other water intrusion.

Coverage shall be in an amount or amounts equal to full replacement value (i.e., 100%) of replacement cost exclusive of land, foundation, excavation and other items normally excluded from coverage and without any deduction for depreciation), with an "agreed amount" endorsement or its equivalent, if available, or an "inflation guard" endorsement, payable to the Association. Each such policy required to be maintained hereunder may be subject to a "deductible" or self-insurance amount as the Board deems prudent under the then existing circumstances. Each such policy shall provide for full waiver of subrogation by the insurer as to any and all claims against the Association, the Owners, and their respective officers, directors, partners, agents, employees, and tenants, if any, and a full amount of all defenses based upon acts of the insureds or the existence of co-insurance.

- 11.2 Liability Insurance. The Association shall obtain and maintain a policy or policies of Commercial General Public Liability Insurance, with reasonable limits determined by the Board from time to time, subject to the Board's good faith determination of availability and cost effectiveness in relation to the risk and premium to be charged for such coverage. Such policies shall include all of the following extensions of coverage: Products/Completed Operations, Independent Contractors, Blanket Contractual Liability, Broad Form Property Damage, Host Liquor Liability, Non-Owned and Hired Automobile Liability, Employees as Additional Insured, and Personal Injury Liability with the "Employee Exclusion" deleted. Such policies shall name as insured, and shall separately protect, the Owners and the Association, their respective officers, directors, partners, agents, employees (including any manager appointed hereunder), the Board and its members, and their successors and assigns (both individually and as a class), against any liability to the public, including any Owner, his successors, assigns, and tenants or lessees.
- 11.3 Board Members and Officers Liability. The Association shall maintain a policy or policies insuring the Owners, individually or collectively, against claims arising out of or based upon negligent acts, errors, omissions, or alleged breaches of duty of any director, or any officer while acting in their capacity as such, in reasonable amounts determined by the Board from time to time, subject to the Board's good faith determination of availability and cost effectiveness in relation to the risk and premium to be charged for such coverage. Such limits are to be reviewed by the Board not less often than annually. Said policy or policies shall provide for a full waiver or subrogation against the insureds, a full waiver of all defenses based upon acts of insureds and shall further provide that said policy or policies cannot be canceled or modified without at least sixty (60) days prior written notice to the Association.
- 11.4 Fidelity Bond or Insurance. The Association shall maintain, or be covered by, a fidelity bond or policy of insurance against dishonest acts on the part of any persons entrusted with or permitted to handle funds belonging to or administered by the Association, including the professional manager and his employees. Such fidelity bond or policy of insurance shall name the Association as the named insured and shall be written in an amount which is not less than the sum of three months' Assessments on all Lots in the Development plus the Association's reserves or in such other amounts as the Board shall reasonably determine, subject to the Board's good faith determination of availability and cost effectiveness in relation to the risk and premium to be charged for such coverage sufficient to provide protection. An appropriate endorsement shall be added to such bond or policy, if necessary, to cover any persons who serve without compensation, including directors of the Association, if such policy or bond would not otherwise cover the acts of volunteers.

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- 11.5 Worker's Compensation. The Association shall obtain Worker's Compensation Insurance to the extent required to comply with any applicable law.
- 11.6 Insurance Required by Certain Lenders. Notwithstanding Sections 11.1 through 11.5, or any other provision of this Declaration, in the event the casualty and liability insurance and a fidelity bond requirements established for planned developments by FNMA, FHLMC, or GNMA, are greater than those specified in this Declaration, the FNMA, FHLMC, or GNMA requirements, whichever are greatest, shall be maintained by the Association. This requirement as to FNMA, FHLMC, or GNMA shall remain so long as FNMA, FHLMC, or GNMA is a Mortgagee or an Owner of a Lot within the Development; provided, however, to the extent such coverage is not available or has been modified or waived in writing by FNMA, FHLMA, or GNMA it need not be obtained.
- 11.7 General Policy Provisions. Each of the policies of insurance obtained by the Association pursuant to this Article XI shall include the Association, as trustee for the Owners of the Lots as a named insured, and shall provide that the insurers may not cancel, change, or refuse to renew the policies without first giving 60 days prior written notice to the Association, the Owners, and their First Mortgagees. Each such policy shall also provide that coverage shall not be prejudiced by any act or neglect of any Owner, except to the extent such prejudice is unavoidably imposed by law, or by any failure of the Association to comply with any warranty or condition regarding any portion of the Development over which the Association has no control. Each such policy shall contain both a full waiver of subrogation by the insurer as to any and all claims against the Association, any Owners and their respective agents, employees and tenants, and a waiver of any defenses based upon co-insurance or upon invalidity arising from the acts of the insured, except to the extent such invalidity is unavoidably imposed by law. Each such policy shall also provide that the coverage provided may not be brought into contribution with insurance purchased by the Owners or their Mortgagees. All such policies of insurance and bonds shall be obtained from insurance companies with a financial rating of Class VI or better and a policyholder's rating of A or better, both by Best's insurance rating guide. In the event Best's should revise its rating system, the Association shall select insurance companies with equivalent financial and policyholder's ratings under the rating system then being used by Best's or, in the event Best's discontinues its rating system, insurance companies with equivalent financial and policyholder's ratings under such comparable rating system as the Board may select.
- 11.8 Payment of Premiums. Insurance premiums for the policies required hereby shall be a common expense to be included in the monthly Assessment levied by the Association. The portion of Assessment payments necessary for the insurance premiums may be held in a separate account of the Association to be used solely for the payment of the premiums for such policies.
- 11.9 Notice of Issuance or Renewal. The Association shall, upon issuance or renewal of insurance described in this Article XI, but no less often than annually, notify the Owners as to the amount and type of insurance carried by the Association.
- 11.10 Individual Insurance. Each Owner shall provide fire and casualty insurance for his or her Lot and the improvements thereon, and shall also insure his or her personal property; provided, however, the insurance shall, to the extent feasible, contain a waiver of subrogation rights by the carrier as to the other Owners, the Association, Declarant, and the First Mortgagee of the Owner's Lot.

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ARTICLE XII - GENERAL PROVISIONS

- 12.1 Enforcement. Subject to the provisions of this Declaration, the Association, any Owner or both, shall have the right to enforce, by any proceeding of law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration, together with any amendments hereto, or the Articles or Bylaws, and in such action shall be entitled to recover damages and/or injunctive relief, as well as costs and reasonable attorneys fees ordered by the Court. Failure by the Association or by any Owner to enforce any covenant or restriction herein shall in no event be deemed a waiver of the right to do so thereafter.
- 12.2 Term. Except as stated herein below, the provisions of this Declaration shall continue in effect for a term of 50 years from the date of execution. Thereafter, it shall be automatically extended for successive periods of 10 years, until the membership of the Association decides to terminate it. Notwithstanding anything stated herein, in the event the City of Eugene or any other governmental entity accepts dedication of all or any part of the Common Area owned by and/or required to be maintained by the Association, this Declaration shall terminate and the terms and provisions herein shall be of no further force and effect with respect thereto.
- 12.3 Nonwaiver of Remedies. Each remedy provided for in this Declaration is separate, distinct, and nonexclusive. Failure to exercise a particular remedy shall not be construed as a waiver of the remedy.
- 12.4 Limitations of Restrictions on Declarant. Declarant is or may be undertaking the work of construction of incidental improvements and repairs to the existing buildings and appurtenances within the Development. The completion of that work and the sale, rental or other disposal of the Lots is essential to the establishment and welfare of the Development as a planned development community. In order that said work may be accomplished and the Development be established as a fully occupied planned development community as rapidly as possible, for a period of five years after the conveyance of the first Lot from Declarant to an individual owner, nothing in this Declaration shall be understood or construed to:
- a. Prevent Declarant, its contractors or subcontractors from doing on the Development or on any Lot whatever is reasonably necessary or advisable in connection with the completion of said work;
 - b. Prevent Declarant or its representatives from erecting, constructing and maintaining on any parts of the Development, such model homes, sales and/or rental offices, storage areas, and other related structures as may be reasonable or necessary for the conduct of its business of completing said work and establishing said Development as a community, and disposing of the same in Lots by sale, lease or otherwise;
 - c. Prevent Declarant from altering the priority of construction of any Common Area and/or any Lot from that which may have been previously scheduled;
 - d. Prevent Declarant from conducting on any part of the Development its business of completing said work and of establishing a plan of planned development ownership and of disposing of said Development by sale of Lots, or otherwise; or
 - e. Prevent Declarant from maintaining such signs, banners, or flags on any of the Development as may be necessary for the sales, or other disposition thereof.

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So long as Declarant, its successors and assigns, own one or more of the Lots established and described herein, Declarant, its successors and assigns, shall otherwise be subject to the provisions of this Declaration.

- 12.5 Termination of any Responsibility of Declarant. In the event Declarant conveys its rights, title and interest in and to the Development to any individual, partnership or corporation and causes a "Notice of Substitution of Declarant", setting forth the name and business address of such individual, partnership or corporation and a reference to this Declaration to be recorded in the Official Records of Lane County, Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such individual, partnership or corporation shall be obligated to perform all such duties and obligations of Declarant and shall be entitled to exercise the rights available to Declarant hereunder.
- 12.6 Notices. Any notice permitted or required by the Governing Instruments shall be delivered personally or by mail. If delivered by mail, it shall be deemed to have been delivered 72 hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to each Person at the current address given by such Person to the secretary of the Association, or addressed to the Lot of such Person, if no address has been given to the secretary.
- 12.7 Alternative Dispute Resolution. In the event of any dispute between the Association (or any Owner) and the Declarant or any director, officer, partner, employer, subcontractor, or agent of Declarant in excess of \$5,000.00 and which related to this Declaration (except for any action taken by the Association against Declarant for delinquent Assessments, which shall be governed by Article VIII, or any action involving the Common Area improvement bonds, which shall be governed by Section 12.6), the use or condition of the Development, and/or the design, construction or installation of any improvements located thereon, the Association is authorized, but not required, to perform any act reasonably necessary to resolve any such civil claim or action through alternative dispute resolution proceedings such as mediation, binding arbitration, or non-binding arbitration proceedings. Notwithstanding anything stated elsewhere in this Declaration, other than any action taken by the Association against Declarant for delinquent Assessments or, to the extent Common Area improvement bonds provide for the award of attorneys' fees, any action involving the Common Area improvement bonds, in the event of any dispute between the Association and/or an Owner and the Declarant, each party shall bear its own attorneys' fees.
- 12.8 Annexation. Annexation, if any, of real property to the Development other than in accordance with Article III shall require the vote or written consent of two-thirds (2/3) of the total voting power of Members other than Declarant.
- 12.9 Encroachment Easements. Each Lot or Parcel is hereby declared to have an easement over all adjoining Lots and Parcels for the purpose of accommodating any encroachment of a structure, section of the Perimeter Wall, utility meter, fence, motor court, or any other object constructed on a Lot or Parcel and which is due to any engineering errors, original construction, errors in original construction or design reconstruction, repair, movement, settlement or shifting of any building, or any similar cause. There shall be valid easements for the maintenance of said encroachments as long as they exist, and the rights and obligations of the Owners and the Association shall not be altered in any way by said encroachment, settlement or shifting; provided, however, in no event shall a valid easement for encroachment be created in favor of an Owner, Owners, or the Association if said encroachment occurred due to the willful misconduct of such Owner, Owners, or the Association. In the event a structure is partially or totally destroyed and then repaired or rebuilt in substantially the same manner as originally constructed, the Owners of each Lot agree that minor encroachments over adjoining Lots or Common Area shall be permitted

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and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

- 12.10 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provisions.
- 12.11 Binding. This Declaration, as well as any amendment to it and any valid action or directive made pursuant to it, shall be binding on Declarant and the Owners and their heirs, grantees, tenants, successors, and assigns.
- 12.12 Interpretation. The provisions of this Declaration shall be liberally construed and interpreted to effectuate its purpose of creating a uniform plan for the development and operation of a planned development. Failure to enforce any provision of this Declaration shall not constitute a waiver of the right to enforce that provision or any other provision of this Declaration.
- 12.13 Limitation of Liability. The liability of any Owner for performance of any of the provisions of this Declaration shall terminate upon sale, transfer, assignment, or other divestment of the Owner's entire interest in his or her Lot with respect to obligations arising from and after the date of the divestment.
- 12.14 Fair Housing. Neither Declarant nor any Owner shall, either directly or indirectly, refuse to engage in the conveyance, encumbrance, rental, or occupancy of the Owner's Lot to any Person on the basis of race, color, sex, sexual orientation, religion, ancestry, or national origin.
- 12.15 Number, Gender, and Headings. As used in this Declaration, the singular shall include the plural and the masculine shall include the feminine, unless the context requires the contrary. The headings are not part of this Declaration, and shall not affect the interpretation of any provision.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration on this 18th day of Aug., 1998.

THE FOGELSTROM COMPANY, LLC

By: [Signature]

Its: [Signature]

STATE OF OREGON

County of Lane

) SS.
)



OFFICIAL SEAL
CATHY VEIKINS
NOTARY PUBLIC - OREGON
COMMISSION NO. 309328
MY COMMISSION EXPIRES APRIL 4, 2002

The foregoing instrument was acknowledged before me this 18th day of Aug., 1998, by Norman J. Fogelstrom as Member, of The Fogelstrom Company, LLC,

- EXHIBITS:
- EXHIBIT A Legal Description of Initial Property (Phase I)
 - EXHIBIT B General Plan
 - EXHIBIT C Location of Covey Lane
 - EXHIBIT D Location of Easement if Covey Lane not Completed

Cathy Veikins
Notary Public

9865928

Exhibit A

QUAIL RUN-PHASE I, as platted and recorded in File 75, Slides 416 and 417, Lane County Oregon Plat Records, in Lane County, Oregon.

Quail Run Site Plan

9865928

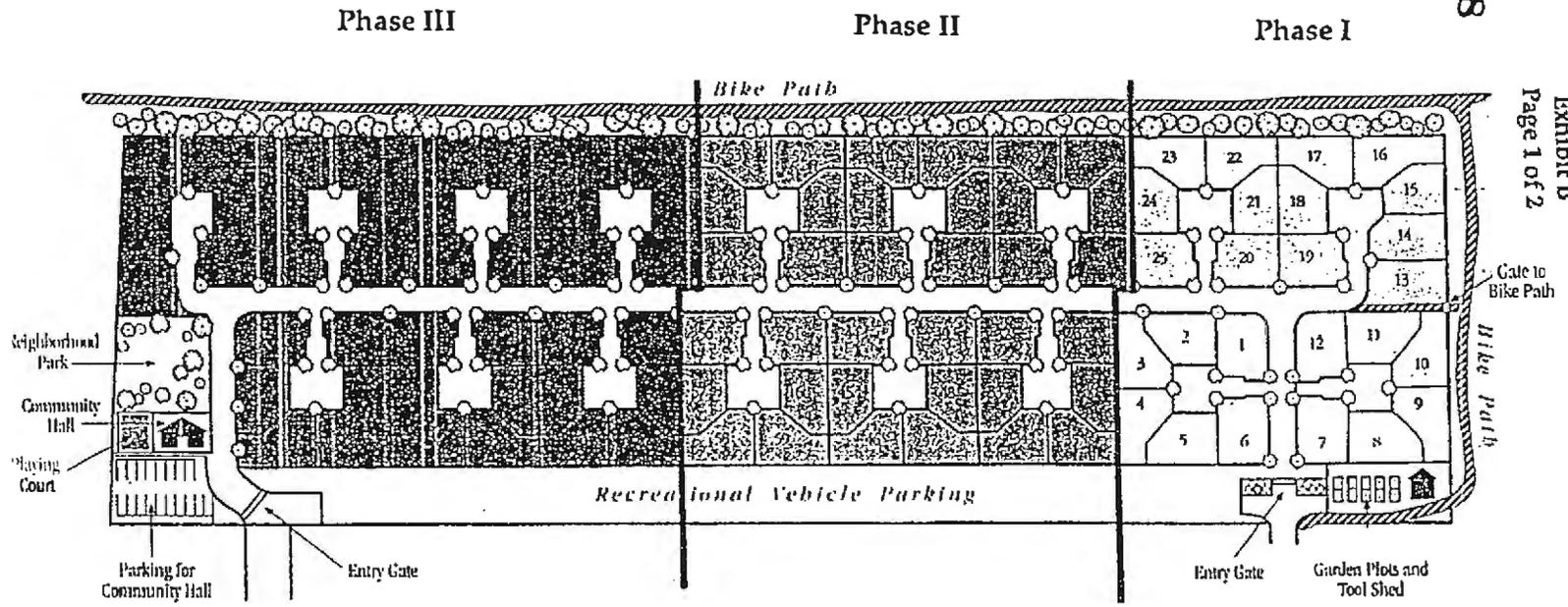


Exhibit B
Page 1 of 2

9865928

Exhibit B
Page 2 of 2

Project No. 95-94

DESCRIPTION FOR
QUAIL RUN PHASES II and III

Beginning at the Southeast corner of the Mahlon H. Harlow Donation Land Claim No. 57, Township 17 South, Range 3 West of the Willamette Meridian, and running thence along the East line of said Claim No. 57 North $00^{\circ} 10' 00''$ East 1064.69 feet to a point on the southerly right-of-way (being 65.00 feet from when measured at right angles to the centerline) of Centennial Boulevard; thence along said right-of-way South $87^{\circ} 12' 46''$ East 422.77 feet to a point being 100.00 feet from when measured at right angles to said centerline of Centennial Boulevard, said point also being on the West right-of-way of Interstate 5 (Pacific Highway); thence leaving said southerly right-of-way and running along said West right-of-way South $00^{\circ} 18' 57''$ West 463.92 feet to a point being opposite from centerline Station L^s 551+10.84 P.T.BK (being 90.00 feet from when measured at right angles to said centerline); thence continuing along said West right-of-way South $00^{\circ} 06' 39''$ East 643.34 feet to a point being 90.00 feet when measured at right angles to the centerline of said Interstate 5; thence leaving said right-of-way North $89^{\circ} 50' 00''$ West 163.24 feet; thence North $00^{\circ} 10' 00''$ East 20.00 feet; thence North $89^{\circ} 50' 00''$ West 261.00 feet to a point on the southerly projection said east claim line; thence along said of southerly projection of said claim line North $00^{\circ} 10' 00''$ East 41.89 feet to the Point of Beginning, being all in Eugene, Lane County, Oregon.

Containing 10.71 acres more or less.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

David L. Brown

OREGON
JULY 20, 1993
DAVID L. BROWN
2609

EXPIRES 12/31/95

9865928

Exhibit C

SECONDARY ACCESS EASEMENT
 FOR THE BENEFIT OF
QUAIL RUN-PHASE I
 N.E. 1/4, SEC. 33, T.17S., R.3W., W.M.
 EUGENE, LANE COUNTY, OREGON
 FEBRUARY 16, 1996
 SCALE 1"=200'

CENTENNIAL BOULEVARD (COUNTY ROAD No. 1304)

S 87°24'0" E 422.77

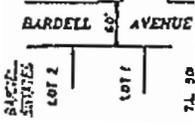
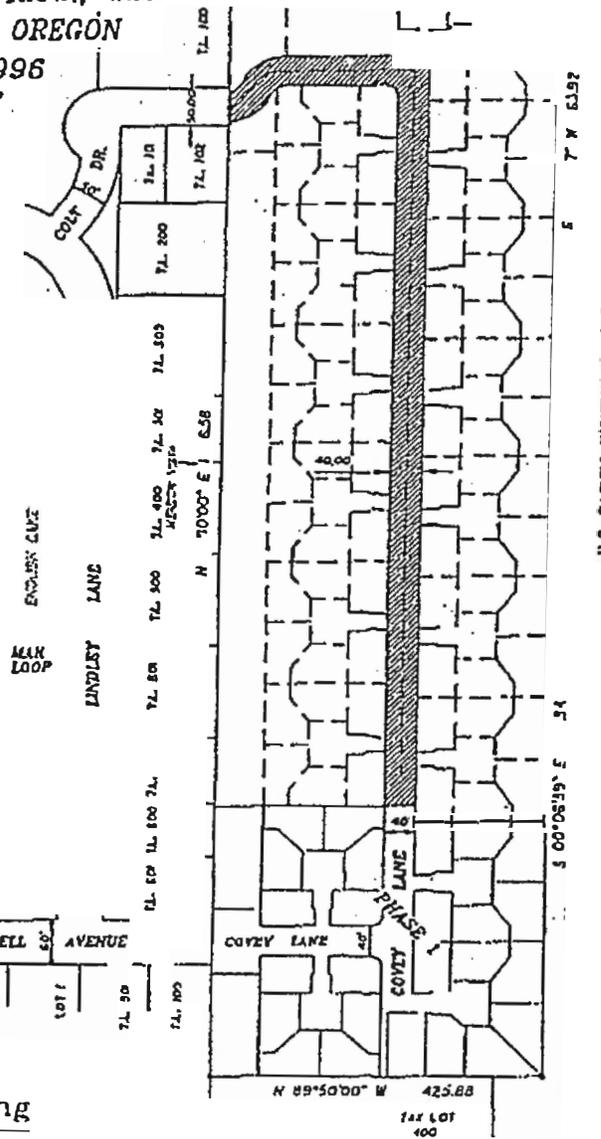


REGISTERED
 PROFESSIONAL
 LAND SURVEYOR

David L. Brown

OREGON
 JULY 20, 1993
 DAVID L. BROWN
 2609

EXPIRES DEC. 31, 1997



Branch Engineering
 310 N. 5th Street
 Springfield, Oregon 97477
 (541)746-0837 FAX (541)746-0309

TAX MAP 17-03-33-41, TAX LOT 300

PROJECT No. 95-94

DEC. No. 9594CCS DATE/PLD. 6-6-95 DWG. No. 9594R1A/DWG. JULY 24-96

After recording return to:
Rex Betz, Branch Engineering, Inc.
310 Fifth Street
Springfield, OR 97477

Division of Chief Deputy Clerk
Lane County Deeds and Records

2002-025850



\$31.00

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04/03/2002 09:39:57 AM

RPR-REST Cnt=1 Str=6 CASHIER 05
\$10.00 \$10.00 \$11.00

SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR QUAIL RUN CLUSTER SUBDIVISION

I. Recitals:

- A. Declarant is the Owner of the real property described in Exhibit A ("Property") attached to this Supplemental Declaration. The Property is located in Eugene, Lane County, Oregon.
- B. Declarant is in the process of developing the Property, also known as Phase III (3) of the Quail Run Cluster Subdivision.
- C. Declarant wishes to add the Property to the Quail Run Cluster Subdivision subject to (1) the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Quail Run Cluster Subdivision ("Amended Declaration") recorded August 19, 1998 at Reception No. 9865928 in Lane County Official Records, (2) the First Amendment to Amended and Restated Declaration of Covenants, Conditions and Restrictions for Quail Run Cluster Subdivision ("First Amendment") recorded September 29, 1999 in Reel 2594R at Reception No. 99083363 in Lane County Official Records, and (3) the Supplemental Declaration of Covenants, Conditions and Restrictions for Quail Run Cluster Subdivision ("Phase 2 Supplemental Declaration") recorded November 30, 1999 in Reel 2610R at Reception No. 99097389 in Lane County Official Records.

II. Property Addition:

Under the authority of Sections 3.3 and 3.4.1 of the Amended Declaration, Declarant hereby adds the Property to the Quail Run Cluster Subdivision. The Property shall be subject to the Amended Declaration as recorded August 19, 1998 in Lane County Official Records, the First Amendment recorded September 29, 1999 in Lane County Official Records and the Phase 2 Supplemental Declaration recorded November 30, 1999 in Lane County Official Records.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Supplemental Declaration on this 20th day of March, 2002.

THE FOGELSTROM COMPANY, L.L.C.

By: [Signature]
Norman J. Fogelstrom, Member
Fogelstrom Company, L.L.C.

ACKNOWLEDGMENT

State of Oregon)
County of Lane)ss

On March ^{20th} 30, 2002 personally appeared the above named Norman J. Fogelstrom who being duly sworn said that he is a member of the Fogelstrom Company, L.L.C. and that the foregoing instrument was signed on behalf of said company and that he does hereby acknowledge said instrument to be his voluntary act and deed.



[Signature]

EXHIBIT "A"

QUAIL RUN PHASE 3

BEGINNING AT THE NORTHWEST CORNER OF QUAIL RUN-PHASE 2 AS PLATTED AND RECORDED IN FILE 75, SLIDES 912 AND 913 LANE COUNTY OREGON PLAT RECORDS WHICH IS MARKED BY A 5/8 INCH BY 30 INCH IRON REBAR WITH A YELLOW PLASTIC CAP MARKED "BRANCH ENGINEERING" (INITIAL POINT), ALSO BEING ON BOTH THE EAST BOUNDARY OF THE MAHLON H. HARLOW DONATION LAND CLAIM NO. 57 IN TOWNSHIP 17 SOUTH, RANGE 3 WEST OF THE WILLAMETTE MERIDIAN AND THE EAST BOUNDARY OF MEADOW VISTA AS PLATTED AND RECORDED IN BOOK 22, PAGE 21 LANE COUNTY OREGON PLAT RECORDS; THENCE ALONG THE EAST LINE OF SAID DONATION LAND CLAIM AND SAID EAST PLAT BOUNDARY NORTH 00° 10' 00" EAST 626.58 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY OF CENTENNIAL BOULEVARD (COUNTY ROAD NO. 1304) PER DEED RECORDED DECEMBER 18, 1972, RECEPTION NO. 32960 LANE COUNTY OREGON OFFICIAL RECORDS; THENCE LEAVING SAID EAST CLAIM LINE AND SAID PLAT BOUNDARY AND RUNNING ALONG SAID SOUTHERLY MARGIN SOUTH 87° 12' 46" EAST 422.77 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY OF INTERSTATE 5 (U.S. PACIFIC HIGHWAY); THENCE LEAVING SAID SOUTHERLY RIGHT OF WAY AND RUNNING ALONG SAID WESTERLY RIGHT OF WAY THE FOLLOWING TWO NUMBERED COURSES: (1) SOUTH 00° 18' 57" WEST 463.92 FEET TO A POINT BEING 90.00 FEET WESTERLY BY PERPENDICULAR MEASUREMENT FROM INTERSTATE 5 (U.S. PACIFIC HIGHWAY) CENTERLINE STATION 551+24.85 P.O.T. AND (2) SOUTH 00° 06' 39" EAST 163.33 FEET TO THE NORTHEAST CORNER OF AFORESAID PLAT OF QUAIL RUN-PHASE 2; THENCE LEAVING SAID WESTERLY RIGHT OF WAY AND RUNNING ALONG THE NORTHERLY BOUNDARY OF AFORESAID QUAIL RUN-PHASE 2 THE FOLLOWING THREE NUMBERED COURSES: (1) NORTH 89° 50' 00" WEST 160.91 FEET, (2) NORTH 00° 10' 00" EAST 20.00 FEET, (3) NORTH 89° 50' 00" WEST 261.00 FEET TO THE POINT OF BEGINNING (INITIAL POINT) BEING ALL LOCATED IN THE CITY OF EUGENE, LANE COUNTY, OREGON..

March 9, 2002
REGISTERED
PROFESSIONAL
LAND SURVEYOR

Rex A. Betz
OREGON
JULY 20, 1993
REX A. BETZ
#2808

Lic. Exp. 12/31/03

99097389

SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR QUAIL RUN CLUSTER SUBDIVISION

I. Recitals.

A. Declarant is the Owner of the real property described in Exhibit A ("Property"), attached to this Supplemental Declaration. The Property is located in Eugene, Lane County, Oregon.

B. Declarant is in the process of developing the Property, also known as Phase II of the Quail Run Cluster Subdivision.

C. Declarant wishes to add the Property to the Quail Run Cluster Subdivision, subject to the Amended And Restated Declaration Of Covenants, Conditions And Restrictions For Quail Run Cluster Subdivision ("Amended Declaration"), recorded August 19, 1998, Reception No. 9865928, Lane County Official Records, and subject to the First Amendment To Amended And Restated Declaration Of Covenants, Conditions, And Restrictions For Quail Run Cluster Subdivision ("First Amendment"), recorded September 29, 1999, Reel 2594R, Reception No. 99083363, Lane County Official Records.

II. Property Addition.

4600NOV.30'99#06REC 10.00
4600NOV.30'99#06PFUND 10.00

Under the authority of Sections 3.3 and 3.4.1 of the Amended Declaration, Declarant hereby adds the Property to the Quail Run Cluster Subdivision. The Property shall be subject to the Amended Declaration, as recorded August 19, 1998, Reception No. 9865928, Lane County Official Records and the First Amendment, recorded September 29, 1999, Reel 2594R, Reception No. 99083363, Lane County Official Records.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Supplemental Declaration on this 19 day of October, 1999.

THE FOGELSTROM COMPANY, LLC

By: [Signature]

Its: [Signature]

STATE OF OREGON)
) ss.
County of Lane)

The foregoing instrument was acknowledged before me this 19 day of October, 1999, by NORMAN J. FOGELSTROM as MEMBER PRES. of T Fogelstrom Company, LLC.



[Signature]
Notary Public for Oregon
My Commission Expires: 5-27-00

AFTER RECORDING RETURN TO: Stan G. Potter
Gleaves Swearingen Larsen Potter Scott & Smith
975 Oak St., Suite 800
Eugene, OR 97401

99097389

EXHIBIT A

Beginning at the initial point which is marked by a 5/8 inch by 30 inch iron rebar with a yellow plastic cap marked "Branch Eng. LS 2609", being South 00°10'00" West 41.89 feet from the Southeast corner of the Mahlon H. Harlow Donation Land Claim No. 57, Township 17 South, Range 3 West of the Willamette Meridian, said initial point being on the East boundary of Meadow Vista as platted and recorded in Book 22, Page 21, Lane County Oregon Plat Records, said initial point also being on the Southerly projection of the East line of said Claim No. 57; thence along said Easterly boundary of said plat of Meadow Vista and the Southerly projection of said claim line and along the East line of said claim North 00°10'00" East 480.00 feet; thence leaving said plat boundary and claim line and running South 89°50'00" East 261.00 feet; thence South 00°10'00" West 20.00 feet; thence South 89°50'00" East 160.91 feet to a point on the West right-of-way (being 90.00 feet from when measured at right angles to the centerline) of Interstate 5 (U.S. Pacific Highway); thence along said West right-of-way South 00°06'39" East 480.01 feet to the Northeast corner of the plat of Quail Run - Phase I as platted and recorded in File 75, Slides 416 and 417, Lane County Oregon Plat Records; thence leaving said right-of-way and running along the Northerly boundary of said Quail Run - Phase I North 89°50'00" West 163.24 feet to a corner thereof, North 00°10'00" East 20.00 feet to a corner thereof and North 89°50'00" West 261.00 feet to the initial point, being all located in the City of Eugene, Lane County, Oregon.

State of Oregon
 County of Lane — ss.
 I, the County Clerk, in and for the said
 County, do hereby certify that the within
 instrument was received for record at

'99 NOV 30 AM 11:59

Reel **2610R**
 Lane County OFFICIAL Records
 Lane County Clerk

By: *Denil S. Sulek*
 County Clerk

9-29-99

2584

99083363

E 99-8149CV //

RETURN TO CASCADE TITLE CO

CT 220645 (1)

20/16

FIRST AMENDMENT TO AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR QUAIL RUN CLUSTER SUBDIVISION

Quail Run Homeowners' Association, Inc., a nonprofit corporation organized under the laws of the State of Oregon ("Association"), by consent and agreement of the owner representing seventy-five percent of the total votes in the Association, amends the Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Quail Run Cluster Subdivision recorded on August 19, 1998, as document no. 9865928, Reel 2454, Lane County Official Records, in the following particulars:

Article VII, Section 7.2.f., is amended to read in its entirety:

"Display any sign to the public view on or from any Lot or the Common Area without the prior written consent of the Board, except one sign advertising the property for sale, lease or exchange. Such signs allowed are subject to the requirements of the Bylaws and Rules adopted by the Association."

8603SEP,29'99H02REC 20.00
8603SEP,29'99H02PFUND 10.00

Article VII, Section 7.2.h., is amended to read in its entirety:

"Create, allow or suffer any offensive or unsightly or obnoxious condition, conduct or activity, or anything that may be or become visually offensive, an annoyance or a nuisance to the neighborhood or illegal conditions, conduct or activity on any Lot or in the Common Area. Noise annoyances or nuisances include without limitation, excessive noise from radios, stereos, musical instruments, pets, engines, or noise from other sources."

Article VII, Section 7.2.i., is amended to read in its entirety:

"Alter, construct, add or remove anything on or from the Common Area, including all areas maintained by the Association, except upon the written consent of the Association."

Article VII, Section 7.2.j., is amended to read in its entirety:

"Park or store boats, trailers, trailer homes, mobile homes, motor homes, motorcycles, cars, trucks, tents, campers and like vehicles and/or equipment on any part of the Lots or on any Common Area (including, without limitation, the street, pathway, bicycle path or other public way), except within the confines of the garage. No portion of any of the foregoing vehicles and/or equipment may project beyond the garage except under such circumstances, if any,

99083363

as may be prescribed in the Rules or by written permit approved by the Board. All other parking or storage of such vehicles and/or equipment shall be prohibited except in the Common Area specifically designated for extra vehicle, parking or storage, or as may be approved in writing by the Board. The configuration and dimensions of, and the rights of use of and access to and from the Common Area designated for extra vehicle parking and storage, will be subject to reasonable Rules as determined from time to time by Declarant or the Board. No repair or other work, other than routine cleaning and maintenance, may be performed on vehicles or equipment in any area of the Development, and then only if the area is cleaned up after such routine cleaning or maintenance work is completed. No Owner shall permit any vehicle and/or equipment that is in a state of disrepair to be abandoned or to remain parked or stored upon any Lot or on the Common Area for a period in excess of 48 hours. A vehicle and/or equipment shall be deemed to be in a "state of disrepair" when the Board determines that its presence reasonably offends Owners or occupants of the Lots. Should any Owner fail to remove such vehicle and/or equipment within five days following the date on which notice is mailed to such Owner by the Association, the Association may have the vehicle and/or equipment removed from the Property and charge the expense of such removal and storage of the vehicle and/or equipment to the Owner. Any such charge shall constitute a Special Assessment levied against the Owner, shall be a personal obligation of the Owner, and shall be a continuing lien upon the Owner's Lot as a Special Assessment pursuant to Article VIII."

Article XII, Section 12.1, is amended to read in its entirety:

"Enforcement.

- (a) Subject to the provisions of this Declaration, the Association, any Owner or both, shall have the right to enforce, by any proceeding of law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration, together with any amendments hereto, or Articles or Bylaws, and in any such action shall be entitled to recover damages and/or injunctive relief, as well as costs and reasonable attorneys fees ordered by the Court.
- (b) In addition to or as an alternative to such enforcement action, the Association may enter upon any Lot upon which a violation occurs, and may modify, remedy or summarily abate, at the

99083363

expense of the Owner of such Lot, any thing or condition that may be or exist thereon contrary to the provisions of the Declaration, Covenants, Conditions or Restrictions or Bylaws, or Rules. The Association shall not thereby be deemed to have trespassed upon such Lot, and shall be subject to no liability to the Owner or occupant of such parcel for any such entry or other action taken pursuant to this paragraph. To the extent that Owner of such Lot fails to reimburse the Association for any such reasonable expense incurred, the unpaid amount thereof shall be added to the amount of the maintenance assessment charged to said Owner and shall be enforceable as an assessment in accordance with Article III.

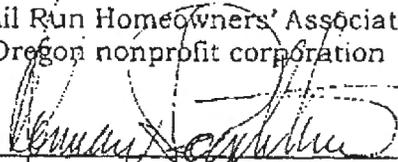
- (c) Failure by the Association or by any Owner to enforce any covenant or restriction herein shall in no way be deemed a waiver of the right to do so thereafter."

Except as specifically above provided, the previously Amended and Restated Declaration of Covenants, Conditions and Restrictions for Quail Run Cluster Subdivision remain unamended and in full force and effect.

IN WITNESS WHEREOF, the undersigned, as owner representing more than seventy-five percent of the total votes in the Association does consent and agree to the above amendments to the previously stated Amended and Restated Declaration.

DATED this 27 day of Sept. 1999.

Quail Run Homeowners' Association, Inc.,
an Oregon nonprofit corporation

By: 
Norman J. Fogelstrom, Member of The
Fogelstrom Company, LLC

5

99083363

STATE OF OREGON)
) ss.
County of Lane)

The foregoing instrument was acknowledged before me on this 27 day of Sept, 1999, by Norman J. Fogelstrom, as Member of The Fogelstrom Company, LLC representing more than seventy-five percent of the total votes in Quail Run Homeowners' Association, Inc.

Peggy S. Ridings
Notary Public For Oregon
My commission expires: 5-13-01



State of Oregon
County of Lane — ss.
I, the County Clerk, in and for the said
County, do hereby certify that the within
instrument was received for record at

'99 SEP 29 AM 9:11

Reel **2594R**
Lane County OFFICIAL Records
Lane County Clerk

By: Denil S. Sula
County Clerk

✓

AFTER RECORDING, RETURN TO:
WILLIAM R. POTTER
ARNOLD GALLAGHER, P.C.
800 WILLAMETTE STREET, STE. 800
EUGENE, OR 97401

Lane County Clerk
Lane County Deeds and Records

2012-063693



\$47.00

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12/11/2012 03:42:08 PM

RPR-AMEN Cnt=1 Stn=15 CASHIER 02
\$10.00 \$10.00 \$11.00 \$16.00

**FIRST AMENDMENT TO THE
AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
QUAIL RUN CLUSTER SUBDIVISION**

This Amendment amends the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Quail Run Cluster Subdivision, recorded as Instrument No. 9865928 in the Lane County Deeds and Records (the "Declaration").

The Declaration is amended as follows:

1. ARTICLE VIII - ASSESSMENTS

Section 8.3 – The second to last sentence is hereby deleted and replaced with the following: **"The Association may otherwise modify the Annual Assessment upon approval by a majority of Owners present at any legal meeting, as defined in Section 2.3 of the Bylaws."**

Section 8.4 – The following language at the end of the first sentence is hereby deleted: "provided that any such Special Assessment shall require the approval of Owners holding at least 51% of the votes." The deleted language is replaced with the following: **"provided that any such Special Assessment shall require approval by a majority of Owners present at any legal meeting, as defined in Section 2.3 of the Bylaws."**

Section 8.5 - The following language in the second to last sentence is hereby deleted: "if Owners representing 75% of the votes agree to the action, they may vote to increase, reduce, or eliminate future assessments for the account." The deleted language is replaced with the following: **"the Owners may increase, reduce, or eliminate future assessments for the account upon approval by a majority of Owners present at any legal meeting, as defined in Section 2.3 of the Bylaws."**

2. Except as expressly modified herein, the Declaration remains unchanged and in full force and effect.

The undersigned, being the President and Secretary of the Quail Run Homeowners' Association, hereby certify that the amendments set forth in this Amendment were duly approved by the Owners in accordance with the Declaration and ORS 94.590, effective as of November 1, 2012.

FIRST AMENDMENT TO AMENDED AND RESTATED DECLARATION - 1

C:\Users\Owner\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.IE5\CIK0VB\Y\First Amendment to Declaration
120312.doc

IN WITNESS WHEREOF, this Amendment has been executed this 11 day of

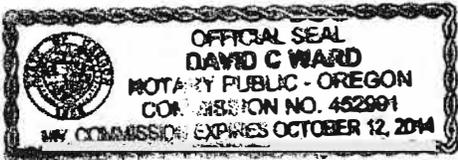
Dec, 2012.

By: David J Strickland - President
Name: DAVID J STRICKLAND
Its: President

By: Mary Koeblich
Name: MARY E. KOEBLICH
Its: Secretary

STATE OF OREGON)
)ss.
County of Lane)

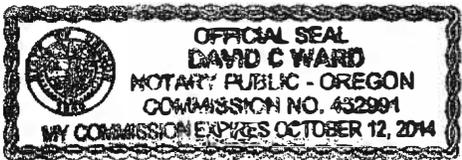
Personally appeared David J Strickland, President of the Quail Run Homeowners' Association, who, being duly sworn, acknowledged said instrument to be her/his voluntary act and deed.



David C. Ward
Notary Public for Oregon
My Commission expires: Oct 12 2014

STATE OF OREGON)
)ss.
County of Lane)

Personally appeared Mary Koeblich, Secretary of the Quail Run Homeowners' Association, who, being duly sworn, acknowledged said instrument to be her/his voluntary act and deed.



David C. Ward
Notary Public for Oregon
My Commission expires: Oct 12 2014