

**PROTECTIVE COVENANTS, CONDITIONS,  
DECLARATIONS AND RESTRICTIONS**  
**FOR**  
**TIMBERHILL TOWNHOUSE ASSOCIATION NO. 1**  
**BENTON COUNTY, OREGON**

**TO: The Public**

THIS DECLARATION, made on the date hereinafter set forth by the undersigned, hereinafter referred to as "Declarant":

WHEREAS, Declarant is the owner of certain real property in the County of Benton, State of Oregon, hereinafter referred to as "said property", more particularly described as follows:

Beginning at the initial point which is North 51.54' and East 442.92' from the Southeast corner of the James L. Mulkey D. L. C. No. 65 of T11 S, R 5 W, WM, Benton County, Oregon, which is the initial point of Timber Hill First Addition, thence N 35° 29' 28" E 260.48'; thence N 21° 16' 49" E 100.00'; thence N 5° 29' 52" E 100.00'; thence N 4° 38' 45" W 28.64'; thence N 16° 51' 31" W 106.69'; thence N 35° 14' 27" W 95.91'; thence S 56° 01' 18" E 897.15'; thence S 0° 04' 00" W 40.00' to a point on the northerly right of way line of N.W. WALNUT BLVD.: thence along a 2341.83' radius curve to the left (the chord of which bears S 86° 07' 15" W 513.25') a distance of 514.28'; thence S 79° 49' 46" W 21.26'; thence along a 2241.83' radius curve right ( the chord of which bears S 83° 56' 16" W 321.22') a distance 321.49' to the point of beginning.

Whereas, Declarant desires to subject said property to certain protective covenants, conditions, restrictions, reservations, easements, liens and charges for the benefit of said property, and its present and subsequent owners, as hereinafter specified, and will convey said property subject thereto,

NOW, THEREFORE, Declarant hereby declares that all of the said property is and shall be held and conveyed upon and subject to the easement, conditions, covenants, restrictions and reservations hereinafter set forth; all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of said property. These easements, covenants, restrictions, conditions and reservations shall constitute covenants to run with the land and shall be binding upon all persons claiming under them and also that these conditions, covenants, restrictions, easements and reservations shall inure to the benefit of and be limitations upon all future owners of said property, or any interest therein.

**ARTICLE I**

**DEFINITIONS**

Whenever used in this Declaration, the following terms shall have the following meanings:

1. "Dwelling Unit" and "Garage" shall include both the main portion of any structure intended to be occupied by one family as a dwelling and all projections therefrom but shall not include the eaves of such structures, nor uncovered front porches or steps;
2. "Association" shall mean TIMBERHILL TOWNHOUSE ASSOCIATION NO. 1, a nonprofit corporation organized under the laws of the State of Oregon, its successors and assigns;
3. "Said Property" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association by recorded declarations in the manner hereinafter set forth;
4. "Common Area" shall mean all real property, and appurtenances thereto, now or hereafter owned

by the Association for the common use and enjoyment of the members of the Association;

5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of Common Areas, and to any parcel of said property under one ownership consisting of a portion of one or more of such lots and/or contiguous portions of two or more contiguous lots and upon which a dwelling has been constructed and occupied.
6. "Member" shall mean and refer to every person or entity who holds membership in the Association.
7. "Owner" shall mean and refer to the record owner (including contract sellers), whether one or more persons or entities, of all or any part of said property, excluding those having such interest merely as security for the performance of an obligation.
8. "Declarant" or "Developer" shall mean and refer to the undersigned, their successors, heirs and assigns, if such successors, heirs or assigns should acquire more than one undeveloped lot or building site from the Declarant for the purpose of development.
9. "Building Site" shall mean and refer to a Lot, or any parcel of said property under one ownership which consists of a portion of one of such lots or contiguous portions of two or more contiguous lots if a building is constructed thereon.
10. "Set back" means the minimum distance between the dwelling unit or other structure referred to and a given street or road or lot line
11. "Mortgage" shall mean and refer to any mortgage or deed of trust, and "Mortgagee" shall refer to the mortgagee or trustee under a deed of trust.

## **ARTICLE II**

### **ANNEXATION OF ADDITIONAL PROPERTY**

Real property in addition to that described in EXHIBIT A may be made subject to the jurisdiction of the Association, whereupon automatically it shall be included in any reference herein to "said property" or "said properties".

1. Annexation of additional properties shall require the assent of persons entitled to cast two-thirds (2/3) of the votes of the members present in person or by written proxy and (except as provided in Section 2 below) the assent of persons entitled to cast two-thirds (2/3) of the votes of each class of members present in person or by written proxy at a meeting of the Association duly called for such purpose, written notice of which shall be sent to all members not less than 30 days nor more than 60 days in advance of such meeting, setting forth the purpose thereof.

The presence of members entitled to cast 60% of the votes of each class of membership shall constitute a quorum at such meeting. In the event that a quorum is not forthcoming at any such meeting, another meeting may be called, subject to the notice requirement set forth above, and the required quorum at such meeting shall be one-half of the required quorum at the preceding meeting. If the required assent is not forthcoming, no subsequent meeting shall be held for the purpose of annexing such property for sixty days from the date of the last of such meeting.

2. If within ten (10) years of the date of incorporation of this Association, the Declarant should develop additional lands within the area described in EXHIBIT B attached hereto, such additional lands may be annexed to said properties without the assent of the Class A members; provided, however, that if any of said property is subjected to an FHA-insured mortgage, then the development of additional lands referred to in this subparagraph (2) shall be in accordance with the general land development plans submitted to the Federal Housing Administration with the processing papers for the first application for an FHA-insured mortgage on any part of said property. Detailed plans for the development of additional lands must be submitted to the Federal Housing Administration prior to such development, if such property is to be annexed to the Association without the consent of the members. If the Federal Housing Administration determines that such detailed plans are not in accordance with the general plan on file and so advises the Association and the Declarant, the development of the additional lands must have

the assent of two-thirds (2/3) of the members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting. At this meeting, the presence of members or of proxies entitled to cast sixty percent (60%) of all of the votes of the membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth above, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meetings. Unless otherwise specifically so stated, submission by the developer to FHA of a general development plan shall not obligate developer to make the proposed annexations.

## **ARTICLE III**

### **MEMBERSHIP**

Every person or entity who is a record owner (including contract sellers) of a fee or undivided fee interest in any Dwelling Unit or any Lot, or Building Site located upon any part of said property shall, by virtue of such ownership, be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any such Dwelling Unit, Lot or Building Site made subject to the jurisdiction of the Association. Such ownership shall be the sole qualification for membership, and shall automatically commence upon a person becoming such owner, and shall automatically terminate and lapse when such ownership in said property shall terminate or be transferred.

## **ARTICLE IV**

### **VOTING RIGHTS**

The Association shall have two classes of voting membership:

**Class A.** Class A members shall be all those Owners as defined in Article III with the exception of the Declarant. Class A members shall be entitled to one vote for each Dwelling Unit, Lot and Building Site in which they hold the interest required for membership by Article III. When more than one person holds such interest in any Dwelling Unit or Lot or Building Site, all such persons shall be members. The vote for such Dwelling Unit, Lot or Building Site shall be exercised as they among themselves determine, or if unable to agree, they may cast fractional votes proportionate to their ownership interests, but in no event shall more than one Class A vote be cast with respect to any one Dwelling Unit or Lot. The vote applicable to any of said property being sold under a contract of purchase shall be exercised by the contract vendor unless the contract expressly provides otherwise.

In order to prevent duplication of voting rights, if the owner of a Dwelling Unit is entitled to a vote by reason of any such ownership, neither he nor any other person shall be entitled to a vote by virtue of ownership of any interest in the land upon which is located the building in which such Dwelling Unit is located.

**Class B.** The Class B member(s) shall be the Declarant, its successors and assigns. Class B member(s) shall be entitled to five (5) votes for each Lot in which it holds the interest required for membership by Article III, and which is subjected to the jurisdiction of the Association by recorded covenants; provided that existing Class B votes shall be converted to Class A votes upon the happening of either of the following events, whichever occurs earlier:

a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; provided that if Declarant subjects additional property to the jurisdiction of the Association by recorded covenants in the manner provided herein, it shall be entitled to Class B votes for such additional property as indicated above; or

b) On a date five (5) years from the date of the recording of these Covenants.

## **ARTICLE V**

### **PROPERTY RIGHTS**

**Section 1. Members' Easements of Enjoyment.** Every member of the Association shall have a right and easement in and to the Common Areas and such easement shall be appurtenant to and shall pass with the title to every assessed Lot; subject, however, to the following provisions:

a) The right of the Association to limit the number of members permitted to use a particular part of the Common Areas at any one time;

b) The right of the Association to charge reasonable admission fees for the use of any recreational facility now or hereafter situated upon the Common Areas or otherwise controlled by the Association, including, particularly, the right to charge an annual or other periodic fee for members who desire exclusive use of such facility and who are willing to pay a special fee or assessment for such use;

c) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Areas and facilities and in aid thereof to mortgage said Common Area facilities for such purposes, and the rights of any mortgages in said properties shall be subordinate to the rights of the homeowners hereunder;

d) The right of the Association to suspend any member's voting rights and/or right to use of any of the recreational facilities owned by the Association, for any period during which any assessments against said member's property remains unpaid; and for a period not to exceed thirty (30) days for each infraction of its published rules and regulations;

e) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such condition or transfer shall be effective unless an instrument signed by members entitled to cast a two-thirds of the votes of the membership, (and a two-thirds majority of the votes of all classes of membership, if there is more than one class of membership) has been recorded in the appropriate County deed records, agreeing posed action is sent to such dedication or transfer, and unless written notice of the proposed action is sent to every member not less than thirty (30) days nor more than ninety (90) days prior to such dedication or transfer;

f) The right of the Directors of the Association to promulgate reasonable rules and regulations governing such rights of use, from time to time, in the interest of securing maximum safe usage of such Common Areas by the members of the Association without unduly infringing upon the privacy or enjoyment of the owner or occupant of any part of said property, including, without being limited thereto, rules restricting persons under or over designated ages from using certain portions of said property during certain times, and reasonable regulations and restrictions regarding parking.

**Section 2. Delegation of Use.** Any member may delegate, in accordance with the Rules and Regulations adopted from time to time by the Directors, his right of enjoyment to the Common Areas and facilities to the members of his family, his tenants, or contract purchasers, providing they reside on the property.

**Section 3. Title to the Common Areas.** The Declarant hereby covenants for itself, its heirs and assigns, that it will convey to the Association fee simple title to the Common Areas designated as such on EXHIBIT A, prior to the conveyance of the first Lot which is subjected to an FHA insured mortgage.

## **ARTICLE VI**

### **COVENANT FOR MAINTENANCE ASSESSMENT**

## **1. Creation of the Lien and Personal Obligation of Assessments.**

The Declarant hereby covenants for all of said Property, and each Owner of any Dwelling Unit, Lot or Building Site by acceptance of a deed or contract of purchase thereof, whether or not it shall be so expressed in any such deed or other conveyance or agreement for conveyance, is deemed to covenant and agree to pay to the Association: (1) Regular annual or other regular periodic assessments or charges, and (2) Special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The regular and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time such assessment was levied. The obligation shall remain a lien on the property until paid or foreclosed, but shall not be a personal obligation of successors in title unless expressly assumed by them.

**2. Purpose 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 said property and in particular for the improvement and maintenance of said property, any Common Areas, the services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas, and of the Dwelling Units situated upon said property and including, without being limited thereto, the payment of taxes and insurance on all or any of said property.

**3. Basis and Maximum Annual Assessments.** Until January 1 of the year immediately following the conveyance of the first Dwelling Unit or Lot or Building Site to an Owner, the maximum regular assessment shall be Fifty (\$50.00) dollars per month for each Lot or Dwelling Unit subject thereto, or such lesser sum as may be provided in the Bylaws:

- a) From and after January 1 of the year immediately following the conveyance of the first Lot or Dwelling Unit to an Owner, the maximum monthly assessment may be increased by the Board of Directors, effective on the first day of the month following such increase, without vote of the membership in conformance with the rise, if any, of the Consumer Price Index (published by the Department of Labor, Washington, D.C., or successor U.S. Governmental agency, U.S. City average) 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.
- b) From and after January 1 of the year immediately following the conveyance of the first Lot to an owner, the maximum monthly assessment may be increased above that determined by reference to the Consumer Price Index, as aforesaid, by a vote of the members, provided that any such increase shall be approved by the affirmative vote of not less than two-thirds of the votes of each class of the members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum flat charge and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.
- c) After consideration of current maintenance costs and future needs of the Association, the Board of Directors may fix a regular flat assessment upon a monthly, quarterly, or annual basis at an amount not in excess of the maximum specified above.
- d) If any Owner should fail to keep and maintain properly the exterior of any building or lot or the exterior of any common or other area of said property owned or maintained by said Owner in good condition, or if any part of said property becomes damaged or destroyed, then the Association, after giving said Owner reasonable written notice (by Certified or Registered Mail with return receipt requested, quoting a copy of this paragraph), may enter upon said property and perform said maintenance and assess the reasonable cost thereof to said Owner, such assessment shall be added to the regular assessment and become a lien and enforceable in the same manner. Disputes concerning the enforcement of this provision and the necessity of

such maintenance or replacement shall be arbitrated by an arbitrator to be mutually agreed upon by the parties, or if the parties are unable to agree, then as appointed by the Court having general jurisdiction in Benton County, Oregon, or other court of appropriate jurisdiction.

- 4. Special Assessments for Capital Improvements.** In addition to the annual assessments authorized above, the Association may levy in any assessment year, a special assessment applicable to that year only, 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, including the necessary fixtures and personal property related thereto, provided that, except for repairs or replacements, any such assessment for structural alterations, capitol additions or capital improvements reflecting an expenditure of in excess of \$500 shall require the assent of a two-thirds (2/3) majority of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting.
- 5. Uniform Rate of Assessment.** Both regular periodic flat charges and any special assessments must be fixed at a uniform rate for all Dwelling Units, Lots and Building Sites, and may be collected on an annual, quarterly or monthly basis in the discretion of the Directors; except that assessments may be levied applicable to some Lots only with prior consent by the Owners of such lots if such procedure is considered equitable in the discretion of the Board in order to construct facilities to be available only to the members desiring to pay for the cost thereof.
- 6. Quorum For Any Action Authorized Under Sections 3 and 4.** At the first meeting called, as provided in Sections 3 and 4 hereof, the presence at the meeting of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in Section 3 and 4, and the required quorum at such subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the date of the meeting at which no quorum was forthcoming.
- 7. Date of Commencement of Annual Assessments: Due Dates.** All Dwelling Units, and all Lots and Building Sites upon which buildings have been constructed shall be subject to the annual or monthly assessments provided for herein on the first day of the month following the date the designed park or recreation facilities are available for use by the members. The first regular assessment shall be adjusted according to the number of months remaining in the calendar year but in no event shall an assessment be levied for a period in which a Lot was not accessible from a paved street or roadway to an improved public street. The Board of Directors shall fix the amount of the regular assessment at least thirty (30) days in advance of each assessment period. Written notice of the assessment shall be sent to every owner subject thereof. The due dates shall be established by the Board of Directors. 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 special Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.
- 8. Effect of Nonpayment of Assessments: Remedies of the Association.** Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of six percent (6%) per annum. The Secretary of the said Association shall file in the office of the Director of Records, County Clerk or appropriate recorder of conveyance of the County in which said property is located, a statement of the amount of any such charges or assessments, together with interest as aforesaid, which has become delinquent with respect to any Dwelling Unit, Lot or Building Site on said property, and upon payment in full thereof, shall execute and file a proper release of the lien securing the same. The aggregate amount of such assessments, together with interest, costs and expenses and a reasonable attorney's fee for the filing and enforcement thereof, shall constitute a lien on the whole Dwelling Unit, Lot or Building Site

(including any undivided interest in common elements of any Dwelling Unit, Lot or Building Site in any condominium), with respect to which it is fixed from the date the note of delinquency thereof is filed in the office of said Director of Records or County Clerk, or other appropriate recording office, until the same has been paid or released as herein provided. Such lien may be enforced by said Association in the manner provided by law with respect to liens upon real property. The owner of said property at the time said assessment is levied shall be personally liable for the expenses, costs and disbursements, including reasonable attorney's fees of the Declarant or of the Association, as the case may be, of processing and if necessary, enforcing such liens, all of which expense, costs and disbursements and attorney's fees shall be secured by said lien, including fees on appeal, and such owner at the time such assessment is levied 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 herein by non-use of the Common Areas or abandonment of his Dwelling Unit, Lot or Building Site.

- 9. Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be inferior, junior and subordinate to the lien of all mortgages and trust deeds now or hereafter placed upon said property or any part thereof. Sale or transfer of any Dwelling Unit, Lot or Building Site, or any other part of said property shall not affect the assessment lien. However, the sale or transfer of any Dwelling Unit or Lot or Building Site which is subject to any mortgage, pursuant to a decree of foreclosure under such mortgage or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to amounts thereof which became due prior to such sale or transfer; and such lien shall attach to the net proceeds of sale, if any, remaining after such mortgages and other prior liens and charges have been satisfied. No sale or transfer shall relieve such Dwelling Unit, Lot or Building Site from liability for any assessments thereafter becoming due or from the lien thereof.
- 10. Exempt Property.** The following property subject to this Declaration shall be exempt from the assessments created herein; (a) all properties expressly dedicated to and accepted by a local public authority; (b) any Common Areas; (c) all other properties owned by the Association; and (d) property owned by the Declarant prior to the time a Dwelling Unit or other building is constructed thereon and occupied. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

## **ARTICLE VII.**

### **PARTY WALLS**

- 1. General Rules of Law to Apply.** Each wall which is built as a part of the original construction of the homes upon the properties and placed on or immediately adjacent to the dividing line between the Lots owned by different persons shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.
- 2. Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared equally by the Owners whose Lots abut such wall.
- 3. Destruction by Fire or other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions. The word "use" as referred to herein means ownership of a dwelling unit or other structure which incorporates such wall or any part thereof.
- 4. Weatherproofing.** Notwithstanding any other provision of this Article, an owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.
- 5. Right to Contribution Runs with Land.** The right of any owner to contribution from any other

owner under this Article shall be appurtenant to the land and shall pass to such owner's successors in title.

6. **Arbitration.** Any dispute concerning a party wall or any provisions of this Article shall be arbitrated. Each party shall choose one arbitrator, and such arbitrators shall choose an additional arbitrator, and the decision shall be by a majority of all the arbitrators.
7. **Encroachments.** If any portion of a party wall or other part of a building or structure now or hereafter constructed upon said property encroaches upon any part of the Common Areas or upon the Lot or Lots used or designated for use by another lot owner, an easement for the encroachment and for the maintenance of same is granted and reserved and shall exist, and be binding upon the Declarant and upon all present and future owners of any part of said property for the benefit of the present and future owners of such encroaching building or structure for the purpose of occupying and maintaining the same; in the event a structure consisting of more than one dwelling unit becomes partially or totally destroyed or in need of repair or replacement, mutual and reciprocal easements are granted and reserved upon the Common Areas and in and upon each Dwelling Unit and Lot for the benefit of the Association and the adjacent owner or owners to the extent reasonably necessary or advisable to make repairs and replacements; and minor encroachments resulting from any such repairs and/or replacements and the maintenance thereof are hereby granted and reserved for the benefit of the present and future owners thereof. The easements for encroachment herein granted and reserved shall run with the land.

## **ARTICLE VIII.**

### **ARCHITECTURAL CONTROL**

1. No building, fence, wall, hedge, structure, improvement, obstruction, ornament, landscaping or planting shall be placed or permitted to remain upon any part of said property unless a written request for approval thereof containing the plans and specifications therefor, including exterior color scheme, has been approved in writing by a majority of the Architectural Committee or by its representative designated by a majority of the Committee.
2. The Architectural Committee referred to herein shall be composed of W. Dale Dyer, John H. Klein, Howard Baker, and Lester A. Dow. Its decision shall be final and binding; however, applications may be resubmitted. Upon failure of the committee or its designated representative to approve or disapprove any application for a period of thirty (30) days after it has been submitted in writing, in duplicate, to the Chairman of the committee or his designated representative, said application will be deemed to have been approved if the said Chairman has signed and dated said application, acknowledging receipt thereof on a copy submitted with the original. The original members of the Committee shall serve for three years. New members shall be elected for a term of one year by majority vote of the members of the Architectural Committee. If any member of the Committee is unable or unwilling to act, the remaining members shall elect a successor to serve out the unexpired term.
3. No member of the Architectural Committee, however created, or constituted, shall receive any compensation from the Association or make any charge for his services as such.

## **ARTICLE IX.**

### **EXTERIOR MAINTENANCE**

1. **Maintenance of Common Areas and Exterior Maintenance.** The Association shall maintain or provide for the maintenance of the Common Areas, and in addition, the Association may, if it so desires, provide exterior maintenance upon and for each Lot subject to assessment hereunder, including, without being limited to, the following: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, landscaped areas, walks and other exterior improvements. Such exterior maintenance shall not include glass surfaces. In the event that the need for such maintenance or repair is caused through the willful or negligent act or omission of the Owner, his family, tenants, guests or invitees, the cost of such maintenance or

repairs may, in the discretion of the Directors, be added to and become a part of the assessment to which such lot is subject, and a lien and enforceable in the same manner. Damage caused by fire, flood, storm, earthquake, riot, vandalism or other causes other than normal wear from use and the elements shall be the responsibility of each owner and not included in any maintenance provided by the Association, except to the extent of any insurance proceeds payable to the Association therefor. The Association shall have the right, after notice to the Owner, to enter upon any lot for the purpose of performing such exterior maintenance at reasonable hours on any day except Sunday.

Each owner shall be responsible for maintaining and keeping in good order and repair the interior of his own dwelling unit.

## **ARTICLE X.**

### **PROPERTY USE RESTRICTIONS**

The following restrictions shall be applicable to the real property described in EXHIBIT A and shall be for the benefit of and limitations upon all present and future owners of said property, or of any interest therein:

1. Unless written approval is first obtained from the Architectural Committee, no sign of any kind shall be displayed to public view on any building or building site on said property except one professional sign of not more than five square feet advertising the property for sale or rent, or signs used by the developer to advertise the property during the construction and sales period. If a property is sold or rented, any sign relating thereto shall be removed immediately, except that the Declarant and only Declarant or its agent may post a "Sold" sign for a reasonable period following a sale.
2. No animals, livestock or poultry of any kind shall be raised, bred or kept on any part of said property, except dogs, cats, or other household pets provided that such household pets are not kept, bred or maintained for any commercial purpose.
3. No part of said property shall be used or maintained as a dumping ground for rubbish, trash, garbage, or any other waste. No garbage, trash or other waste shall be kept or maintained on any part of said property except in a sanitary container. All incinerators or other equipment for the storage of disposal of such material shall be kept in a clean and sanitary condition.
4. No noxious or offensive or unsightly conditions shall be permitted upon any part of said property, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.
5. No trailer, camper-truck, tent, garage, barn, shack, or other outbuilding shall at any time be used as a residence temporarily or permanently on any part of said property.
6. Parking of boats, trailers, motorcycles, trucks, truck-campers and like equipment, or junk cars or other unsightly vehicles, shall not be allowed on any part of said property nor on public ways adjacent thereto excepting only within the confines of an enclosed garage, and no portion of same may project beyond the enclosed area except under such circumstances, if any, as may be prescribed by written permit approved by the Architectural Committee. All other parking of equipment shall be prohibited except as approved in writing by the Architectural Committee.
7. No owner shall remove or otherwise alter any plant or tree or any landscaping or improvement in any Common Area or in any recreational area without the written consent of the Architectural Committee.
8. The records of the Secretary of the Association shall be conclusive evidence as to all matters shown by such records and the issuance of a certificate of completion and compliance by the Secretary or Assistant Secretary of the Association showing that the plans and specifications for the improvement or other matters herein provided for have been approved, and that said improvements have been made in accordance therewith, or a certificate as to any matters relating to and within the jurisdiction of the Association by the Secretary thereof, shall be conclusive

evidence that shall fully justify and protect any title company certifying, guaranteeing, or insuring title to said property, or any portion thereof, or any lien thereon and/or any interest therein as to any matters referred to in said certificate, and shall fully protect any purchaser or encumbrancer from any action or suit under this Declaration. After the expiration of one year following the issuance of a building permit therefor by municipal or other governmental authority, any structure, work, improvement or alteration shall, as to any purchaser or encumbrancer in good faith and for value and as to any title company which shall have insured the title thereof, be deemed to be in compliance with all the provisions hereof, unless a notice of noncompliance executed by the Association shall have appeared of record in the office of the County Clerk of the County in which said property is situate, or unless legal proceedings shall have been instituted to enforce completion or compliance.

9. All owners are members of the Association and entitled to an equal share in the rights and interests and privileges and obligations as such, including the right to use all recreational and other Common Areas owned by such Association subject to the rules and regulations and restrictions applicable thereto.
10. All walks and streets are for the use of the members on an equal basis, subject to reasonable rules and regulations promulgated from time to time in writing by the Directors. It shall be the responsibility of each member to allow maximum ease of pedestrian and vehicular ingress and egress over walks and streets and driveways by prohibiting automobile parking in front of garages or in driveways or alleyways and allowing no obstruction or barrier on, across or adjacent to sidewalks which would interfere with any members' use of the Common Area or access to his own Lot.
11. Installation of radio and/or television antennae is prohibited outside any building without written permission from the Architectural Committee.

## **ARTICLE XI.**

### **EASEMENTS**

All conveyances of land situate in the said Property, made by the Declarant, and by all persons claiming by, through, or under the Declarant, shall be subject to the foregoing restrictions, conditions and covenants, whether or not the same be expressed in the instruments of conveyance, and each and every such instrument of conveyance shall likewise be deemed to grant and reserve, whether or not the same be declared therein, mutual and reciprocal easements over and across all of the Commons Areas of said property for the purpose of traveling by foot or conveyance or resting or otherwise being thereon, and in addition thereto, an easement is granted and reserved over, under and across all portions of said property (except those portions thereof actually intended to be occupied as living space in any building now or hereafter located upon said property) and specifically including, without being limited thereto, the interior of party walls, attic crawl spaces and the area below the living space in any living unit, and in addition thereto, over, under, across and upon all land upon which no building is located and which is situate within five feet of the side and rear lines of each lot now or hereafter recorded or platted with respect to said property, all for the purpose of building, constructing and maintaining underground or concealed electric and telephone lines, gas, water, sewer, storm drainage lines, radio and television antenna and cables, and other utilities and services now or thereafter commonly supplied by public utilities or municipal corporations, and upon all Common Areas for constructing and maintaining thereon streets, driveways, community and recreational facilities, ornaments and statutes, swimming pools, lawns, landscaping and planted areas thereon; all of said easements shall be for the benefit of all present and future owners of property subjected to the jurisdiction of the Association by recorded covenants and restrictions, recorded as hereinabove provided, and their tenants, contract purchasers and guests; said easements and rights of use, however, shall not be unrestricted but shall be subject to reasonable rules and regulations governing said right of use, as promulgated from time to time by the Architectural Committee in the interest of securing maximum safe usage of said easements without unduly infringing upon the privacy of the owner or occupant of any part of

said property. An easement over, upon and across all parts of said property is granted and reserved to the Association, its successors and assigns to the extent reasonably required to perform exterior maintenance and to the extent reasonably necessary to perform other maintenance necessary or advisable to protect or preserve the value of the said property and the living units thereon. (See also easement for encroachments in Article VII.)

## **ARTICLE XII.**

### **GENERAL PROVISIONS**

- 1. Enforcement.** The Association, or any Owner, or the owner of any recorded mortgage on any part of said property shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, easements, liens and charges now or hereafter imposed by the provisions of the Declaration. Failure by the Association, or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.
- 2. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.
- 3. Amendment.** The Covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. Any of the covenants and restrictions of this Declaration, except the easements herein granted, may be amended during the first twenty-five (25) year period by an instrument signed by members entitled to cast not less than seventy-five percent (75%) of the votes of each class of membership. Easements herein granted and reserved shall not be amended except by instrument signed and acknowledged by one hundred percent (100%) of the Owners of the property affected, the Architectural Committee, by the Planning Commission or by the governing body of the County or other public authority having jurisdiction over the granting of building permits in said property, and by the Declarant, so long as it owns any interest in the real property referred to in EXHIBIT B. All such amendments must be recorded in the appropriate Deed Records of the County in which said property is situate, to be effective. [See also easements for encroachments specified in Article VII.]
- 4. No Right of Reversion.** Nothing herein contained in this Declaration, or in any form of deed which may be used by Declarant, or its successors and assigns, in selling said property, or any part thereof, shall be deemed to vest or reserve in Declarant or the Association any right of reversion or re-entry for breach or violation of any one or more of the provisions hereof.
- 5. Rights of Mortgagees Relating to Maintenance.** At any time that any part of the Common Area, or any other part of said property or any living unit or building or improvement located thereon is not properly maintained and kept in good order and repair by the Association or otherwise, to the extent reasonably necessary to protect and preserve the appearance and value thereof and the appearance and value of the remainder of said property, then the record owner of any mortgage or deed of trust upon any part of said property or living unit or building located thereon, upon giving written notice as hereinafter provided, shall be entitled to exercise the rights of the mortgagor-owner of such property as a member of the Association to vote at all regular and special meetings of the members of the Association for a period of one year following the date of such notice. During said period of time such mortgagees shall be given notice of all regular and special meetings of the Association, the owner-mortgagor shall receive such notice also and may attend such meetings as an observer. Said notice shall quote this paragraph and shall be sent by Certified United States mail, return receipt requested, to the owner-mortgagor, a copy by regular mail to the Association, at the last known address of each.
- 6. Insurance.** The owner of every building or dwelling unit located upon any part of said property shall at all times cause the same to be insured with broad form fire and extended coverage

insurance for the full replacement value thereof, purchased through one or more companies selected by the Association, naming the Association as an insured, and shall upon request, cause the insurance company to furnish the Association with a certificate showing said insurance to be in effect. If any owner fails to furnish the Association with said certificate, the Association may obtain (but it shall not be obligated to do so) such insurance with the proceeds payable to the owner, any mortgagees, and to the Association as their respective interests may appear. The Association shall assess the cost of such insurance against the owner, and such assessment shall become a lien and collectable and enforceable in the same manner as all assessments provided for herein.

- 7. Benefit of Provisions; Waiver.** The provisions contained in this Declaration shall bind and inure to the benefit of and be enforceable by Declarant, the Association, and the owner or owners of any portion of said property, and their heirs and assigns, and each of their legal representatives, and failure by Declarant or by the Association or by any of the property owners or their legal representatives, heirs, successors or assigns, to enforce any of such conditions, restrictions or charges herein contained shall in no event be deemed a waiver of the right to do so.
- 8. Assignment by Declarant.** Any or all rights, powers, and reservations of Declarant herein contained may be assigned to the Association or to any other corporation or association which is now organized or which may hereafter be organized and which will assume the duties of Declarant hereunder pertaining to the particular rights, powers and reservations assigned; and upon any such corporation or association evidencing its intent in writing to accept such assignment and assume such duties, it shall, to the extent of such assignment, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein. All rights of Declarant hereunder reserved or created shall be held and exercised by the undersigned Developer alone, so long as it owns any interest in any portion of said property.
- 9. Common Area Taxes.** It shall be the obligation of the Association and its officers to pay any real property taxes assessed against the Association for the common areas, and to pass on to the owners of each lot an assessment for an equal share of any common area real property taxes. If any real property taxes assessed against the common areas become delinquent, an equal pro rata portion of such taxes shall be a first lien against each lot in said property and enforceable as such, together with interest and penalties, if any, against each such lot by the taxing authority and/or by the Association.

IN WITNESS WHEREOF, we, the owners of all property within said Property, have hereunto caused these presents to be executed this \_\_\_\_\_ day of \_\_\_\_\_,???