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**Declaration of Covenants, Conditions,
Restrictions, and Easements**

for

Eagle Point Golf Community

and

Lakeside Park Subdivision

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DECLARATION of COVENANTS, CONDITIONS, RESTRICTIONS and EASEMENTS
for
EAGLE POINT GOLF COMMUNITY
and
LAKESIDE PARK SUBDIVISION

NOTICE: THIS DOCUMENT CONTAINS LIMITATIONS UPON THE LIABILITY OF THE ASSOCIATION, ITS DIRECTORS, OFFICERS AND AGENTS AND OTHERS (SEE SECTIONS 4.8, 5.4 AND 13.4) AND RESTRICTIONS AS WELL AS EASEMENTS, INDEMNITIES AND HOLD HARMLESS PROVISIONS, LIMITATIONS OF LIABILITY AND ASSUMPTIONS OF RISK RELATED TO THE GOLF COURSE (SEE SECTIONS 12.6 and 13.4 and ARTICLE XVI).

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS ("Declaration") for **EAGLE POINT GOLF COMMUNITY** ("EPGC") is made by Eagle Point Developments, LLC, an Oregon limited liability company, and Alta Vista Development Company, an Oregon corporation (collectively "Declarant") and adds to a certain Declaration made on July 25, 1995, filed as document number 95-20209, and a subsequent Declaration made on April 4, 2000, filed as document number 00-12919, in the Official Records of Jackson County, Oregon.

Eagle Point Developments and Alta Vista Development Company are the owners of the real property situated in the City of Eagle Point, Jackson County, Oregon, described in Exhibit "A", which is attached and incorporated by reference. This Declaration imposes upon the Properties (as defined in Article I) mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Properties, and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Properties.

Declarant hereby declares that all of the property described in Exhibit "A" and any additional property subjected to this Declaration by Supplemental Declaration (as defined in Article I) shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of and which shall run with the Properties subjected to this Declaration. This Declaration shall be binding on and shall inure to the benefit of all parties having any right, title or interest in the Properties or any part thereof, their heirs, successors, successors-in-title and assigns and also shall inure to the benefit of each person having any right, title or interest in or to the Golf Course or any part thereof, as well as such person's heirs, successors, successors-in-title and assigns.

ARTICLE I

Definitions

The terms used in this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1 "**Area of Common Responsibility**": the Common Area, together with those areas, if any, which by the terms of this Declaration, any Supplemental Declaration or other applicable covenants, or by contract become the responsibility of the Association. Area of Common Responsibility includes those areas identified as such in Exhibit "B".

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1.2 "**Articles of Incorporation**" or "**Articles**": the Articles of Incorporation of Eagle Point Golf Course Community Association, as filed with the Secretary of State for the State of Oregon.

1.3 "**Association**": Eagle Point Golf Community Homeowners Association, an Oregon non-profit mutual benefit corporation, its successors and assigns.

1.4 "**Base Assessment**": assessments levied on all Units subject to assessment under Article X to fund Common Expenses for the general benefit of all Units, as more particularly described in Sections 10.1 and 10.2.

1.5 "**Board of Directors**" or "**Board**": the body responsible for administration of the Association, selected as provided in the By-Laws and generally serving the same role as the Board of Directors under the Oregon Nonprofit Corporation Act and the Oregon Planned Community Act.

1.6 "**Builder**": any person who purchases one or more Units for the purpose of constructing improvements for later sale to Retail Owners of parcels of land within the Properties for further subdivision, development, and/or resale in the ordinary course of such person's business.

1.7 "**EPGC**": the Properties as described in Sections 1.36.

1.8 "**Business**" and "**Trade**": shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether (a) such activity is engaged in full or part-time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

1.9 "**By-Laws**": the By-Laws of the Association, as they may be originally adopted and, thereafter, amended.

1.10 "**Class B Control Period**": the period of time during which the Class "B" Member is entitled to appoint a majority of the members of the Board of Directors as provided in Section 3.3 of the By-Laws.

1.11 (intentionally left blank)

1.12 "**Common Area**": all real and personal property, not including the Golf Course, which the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners. The term shall include the Exclusive Common Area, as defined below.

1.13 "**Common Expenses**": the actual and estimated expenses incurred or anticipated to be incurred by the Association for the general benefit of all Units, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Declaration, the By-Laws, and the Articles of Incorporation. Common Expenses shall not include any expenses incurred during the Class "B" Control period for initial developments original construction, installation of infrastructure, original capital improvements, or other original construction costs unless approved by Members representing a majority of the total Class "A" votes of the Association.

1.14 "**Community-Wide Standard**": the standard of conduct, maintenance or design and the activity generally prevailing throughout the Properties. Such standard may be more specifically determined by the Board of Directors and the Design Review Committee.

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1.15 "**Declarant**": Eagle Point Developments, LLC, an Oregon limited liability company, and Alta Vista Developments, an Oregon limited partnership.

1.16 "**Design Guidelines**": the architectural guidelines and procedures adopted by the Design Review Committee pursuant to the Article XI and applicable to all Units within the Properties.

1.17 "**Exclusive Common Area**": a portion of the Common Area intended for the exclusive use or primary benefit of one or more, but less than all, Neighborhoods, as more particularly described in Article II.

1.18 "**Golf Course**": the property described in Exhibit "C", attached hereto, which is privately owned by Eagle Point Golf Club, LLC, an Oregon limited liability company, its successors, or assigns, and which is being operated as a golf course. Where appropriate, "**Golf Course**" also refers to the person(s) or entity owning the Golf Course.

1.19 "**Master Plan**": the Master Plan for the development of EPGC, as approved by the City of Eagle Point, Oregon, as it may be amended, which plan includes the property described in Exhibit "A". The Master Plan may also include subsequent plans approved by the City of Eagle Point, Oregon, for the development of all or a portion of the Properties. Declarant reserves the right to amend the Master Plan. Inclusion of property in the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration nor shall the exclusion of property from the Master Plan bar its later annexation in accordance with Article IX.

1.20 "**Maximum Units**": the Units approved for development under the Master Plan or the maximum number of Units which may be developed in the Properties under the zoning designation of such property, from time to time.

1.21 "**Member**": a Person entitled to membership in the Association, as provided in Section 3.2.

1.22 "**Mortgage**": a mortgage, deed of trust, a deed to secure debt, or any other form of security deed.

1.23 "**Mortgagee**" a beneficiary or holder of a Mortgage.

1.24 "**Mortgagor**" any Person who gives a Mortgage.

1.25 "**Neighborhood**": two or more Units which share interests other than those common to all Units, as more particularly described in Section 3.4. Where the context permits or requires, the term "Neighborhood" shall also refer to the Neighborhood Committee, if any, established in accordance with the By-Laws, or the Neighborhood Association established to act on behalf of the Owners of Units within the Neighborhood. Neighborhood boundaries may be established and modified as provided in Section 3.4.

1.26 "**Neighborhood Assessments**": assessments levied against the Units in a Neighborhood to fund Neighborhood Expenses, as described in Sections 10.1 and 10.3.

1.27 "**Neighborhood Association**": any association of Owners within a Neighborhood.

1.28 "**Neighborhood Expenses**": the actual and estimated expenses incurred or anticipated to be incurred by the Association for the benefit of the Owners and occupants of Units within a Neighborhood, which may include a reasonable reserve for capital repairs and replacements, as the Board may specifically authorize and as may be authorized herein or in Supplemental Declarations applicable to the Neighborhood.

1.29 "**Office of the County Clerk**": The Office of the County Clerk of Jackson County, Oregon.

1.30 "**ORS**": Oregon Revised Statutes.

1.31 "**Owner**": one or more persons who hold the record title to any Unit, but excluding, in all cases, any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, then upon recording of such contract, the purchaser (rather than the fee owner) will be considered the Owner, unless the contract specifically provides to the contrary.

1.32 "**Person**": a natural person, a corporation, a partnership, a trustee, or any other legal entity.

1.33 (intentionally left blank)

1.34 "**Phase**": all Units simultaneously subjected to this Declaration by the Declarant by its execution and recordation of this Declaration and each Supplemental Declaration in the Office of the Jackson County Clerk. The property described on Exhibit "A" to this Declaration shall constitute the first Phase ("Phase I"). A Phase may be developed in smaller areas called "Subphases". All Units within a particular Phase which are covered by an original permit filed by a Builder or Declarant shall constitute a Subphase, and the Units covered by each amendment to such permit shall constitute a separate Subphase.

1.35 "**Private Amenities**": certain real property and any improvements and facilities thereon located adjacent to, in the vicinity of, or within the Properties, which are privately owned and operated by persons other than the Association for recreational and related purposes, on a club membership basis, use fee basis, or otherwise, and shall include, without limitation, the Golf Course.

1.36 "**Properties**": the real property described in Exhibit "A" together with such additional property as is subjected to this Declaration in accordance with Article IX, Exhibit "A" and the Supplemental Declarations which subject additional property to the Declaration shall provide a legal description of the Common Area, if any.

1.37 "**Retail Owner**": an Owner other than the Declarant or Builder.

1.38 "**Special Assessment**": assessments levied in accordance with Section 10.5.

1.39 "**Specific Assessment**": assessments levied in accordance with Section 10.6.

1.40 "**Supplemental Declaration**": an amendment or supplement to this Declaration filed pursuant to Article IX which subjects additional property to this Declaration, and identifies the Common Area within the additional property, if any, and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein. The term shall also refer to an instrument filed by the Declarant pursuant to Section 3.4(c), which designates Voting Groups.

1.41 "**Unit**": a portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. The term shall include, by way of illustration but not limitation, condominium units, townhouse units, cluster homes, patio or zero lot line homes, and single-family detached houses on separately platted lots, as well as vacant land intended for development as such, but shall not include Common Areas, common property of any Neighborhood Association, or property dedicated to the public.

In the case of a building within a condominium or other structure containing multiple dwellings, each dwelling shall be deemed to be a separate Unit. In the case of a parcel of vacant land on which improvements are under construction, the parcel shall be deemed to contain the number of Units designated for residential use for such parcel on the Master Plan or the site plan approved by Declarant, whichever is more recent, until such time as a subdivision plat or condominium plat is filed of record on all or a portion of the parcel. Thereafter, the portion encompassed by such plat shall be deemed to contain the number of Units designated for residential use on the plat. No portion of the Golf Course is included in the Properties, and, accordingly, no portion of the Golf Course is included within a Unit.

1.42 "**Voting Group**": one or more Neighborhoods whose Members vote on a common slate for election of directors to the Board of Directors, as more particularly described in Section 3.4 or, if the context so indicates, the group of Owners whose Units comprise such Neighborhoods.

ARTICLE II

Property Rights

2.1 **Common Area**: Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) This Declaration, the By-Laws and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The right of the Board to adopt rules regulating the use and enjoyment of the Common Area, including rules regulating and restricting use of recreational facilities within the Common Area;
- (d) The right of the Board to suspend the right of an Owner to use recreational facilities within the Common Area (i) for any period during which any charge against such Owner's Unit remains delinquent, and (ii) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation, of the Declaration, any applicable Supplemental Declaration, the By-Laws, or rules of the Association after notice and a hearing pursuant to the Section 3.23 of the By-Laws;
- (e) The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area pursuant to Section 4.7;
- (f) The right of the Board to impose reasonable membership requirements and charge reasonable membership admission or other fees for the use of any recreational facility situated upon the Common Area;
- (g) The right of the Board to permit use of any recreational facilities situated on the Common Area by persons other than Owners, their families, lessees and guests upon payment of use fees established by the Board;
- (h) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the approval requirements set forth in Section 14.2; and

(i) The rights of certain Owners to the exclusive use of those portions of the Common Area designated "Exclusive Common Areas", as more particularly described in Section 2.2.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, permitted lessees, and social invitees, subject to reasonable Board regulation. An Owner who has the right to and does lease his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit.

The initial Common Area as identified in Exhibit "A" shall be conveyed to the Association prior to or in concurrence with the conveyance of a Unit to a Retail Owner.

2.2 Exclusive Common Area. Certain portions of the Common Area may be designated as Exclusive Common Area and reserved for the exclusive use or primary benefit of Owners, occupants and invitees of Units within a particular Neighborhood or Neighborhoods. By way of illustration and not limitation, Exclusive Common Areas may include entry features, recreational facilities, landscaped medians and cul-de-sacs, lakes and other portions of the Common Area within a particular Neighborhood or Neighborhoods. All costs associated with maintenance, repair, replacement, and insurance of Exclusive Common Areas shall be assessed as a Neighborhood Assessment against the Owners of Units in those Neighborhoods to which the Exclusive Common Area is assigned.

Initially, the Declarant shall designate any Exclusive Common Area as such and shall assign the exclusive use thereof in the deed conveying the Common Area to the Association or on the plat or survey relating to such Common Area; provided, any such assignment shall not preclude the Declarant from later assigning use of the same Exclusive Common Area to additional Units and/or Neighborhoods, so long as the Declarant has a right to subject additional property to this Declaration pursuant to Section 9.1. Thereafter, a portion of the common Area may be assigned as Exclusive Common Area of a particular Neighborhood or Neighborhoods and Exclusive Common Area may be reassigned upon the vote of Members representing a majority of the total Class "A" votes in the Association, including a majority of the Class "A" votes within the Neighborhood(s) to which the Exclusive Common Areas are assigned, if applicable, and within the Neighborhood(s) to which the Exclusive Common Areas are to be assigned. So long as the Declarant has a right to subject additional property to this Declaration pursuant to Section 9.1, any such assignment or reassignment shall also require the Declarant's consent.

The Association may, upon approval of a majority of the members of the Class "A" votes within the Neighborhood(s) to which certain Exclusive Common Areas are assigned, permit Owners of Units in other Neighborhoods to use all or a portion of such Exclusive Common Areas upon payment of reasonable user fees, which fees shall be used to offset the Neighborhood Expenses attributable to such Exclusive Common Areas.

2.3 Private Amenities. Access to and use of the Private Amenities, including the Golf Course, is strictly subject to the rules and procedures of the respective owners of the Private Amenities, and no Person gains any right to enter or to use those facilities by virtue of membership in the Association or ownership or occupancy of a Unit.

All Persons, including all Owners, are hereby advised that no representations or warranties, either written or oral, have been or are made by the Declarant, any owner of any Private Amenity or any other Person with regard to the nature or size of improvements to, or the continuing ownership or operation of the Private Amenities. No purported representation or warranty, written or oral, in conflict with this Section shall be effective without an amendment to this Declaration executed or joined into by the Declarant or the owner(s) of the Private Amenity(ies) which are the subject thereof.

The ownership or operational duties of and as to the Private Amenities may change at any time and from time to time by virtue of, but without limitation, (a) the sale to or assumption of operations by an independent entity, (b) conversion of the membership structure to an "equity" club or similar arrangement whereby the members of a Private Amenity or an entity owned or controlled thereby become the owner(s) and/or operator(s) of the Private Amenity, or (c) the conveyance of a Private Amenity to one or more affiliates, shareholders, employees or independent contractors of the Declarant. No consent of the Association, any Neighborhood Association, or any owner shall be required to effectuate such a transfer or conversion.

Rights to use the Private Amenities will be granted only to such persons, and on such terms and conditions, as may be determined by their respective owners. Such owners shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of their respective Private Amenities and to terminate use rights altogether.

ARTICLE III

Association Function, Membership and Voting Rights

3.1 Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Properties as the Board may adopt. The Association shall also be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration and in the Design Guidelines. The Association shall perform its functions in accordance with this Declaration, the By-Laws, the Articles and Oregon law.

3.2 Membership. Every Owner shall be a Member of the Association. There shall be only one membership per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 3.3 and in the By-Laws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners.

3.3 Voting. The Association shall have two classes of membership, Class "A" and Class "B".

(a) "**Class "A"**". The Class "A" Members shall be all Owners except the Class "B" Member, if any. Class "A" Members shall have one vote for each Unit in which they hold the interest required for membership under Section 3.2; there shall be only one vote per Unit.

(b) "**Class "B"**". The Class "B" Members shall be the Declarant or its successors and assigns. The Class "B" Member shall be entitled to three votes for each Unit owned. The Class "B" membership shall cease and be converted to Class "A" membership upon the earlier of the following:

- (i) when 75% of the Maximum Units are owned by Retail Owners or Builders;
- (ii) when, in its discretion, the Declarant so determines.

From and after the happening of these events, whichever occurs first, each Class "B" Member shall be deemed to be a Class "A" Member entitled to one vote for each Unit in which it holds the interest required for membership under Section 3.1. The Class B Members shall have a right to disapprove actions of the Board and committees as provided in Section 3.18 of the By-Laws.

Not later than the 60 days after Units representing 50% of all votes are owned by retail Owners and Builders, the Association shall form a "Transitional Advisory Committee" in accordance with O.R.S. 94.604 and Section 5.4 of the By-Laws. Not later than 120 days after Units representing 75% of all votes are owned by Retail Owners and Builders, the Declarant shall call a meeting for the purpose of turning over administrative responsibilities to the Association in accordance with ORS 94.609 and 94.616.

(c) **Exercise of Voting Rights.** In any situation in which a Member is entitled personally to exercise the vote for his or her Unit and there is more than one Owner of a particular Unit, the vote for such Unit shall be exercised as such co-owners determine among themselves. If any Owner casts a vote representing a certain Unit, it will be conclusively presumed, for all purposes, that such Owner was acting with the authority and consent of the Owners of the Unit, unless the Association or Neighborhood Association, as the case may be, has received written notice to the contrary from another Owner or agent of an Owner. In the event co-owners are unable to agree among themselves, by vote of a majority in interest, as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. Fractional votes shall not be allowed.

3.4 Neighborhoods and Voting Groups.

(a) **Neighborhoods.** Every Unit shall be located within a Neighborhood. Upon majority vote of the Owner(s) of Units within Neighborhood, the Units within a Neighborhood may be subject to additional covenants and/or the Owners may all be members of a Neighborhood Association in addition to being Members of the Association. However, a Neighborhood Association shall not be required except in the case of a condominium or as otherwise required by law. The Owners of Units within any Neighborhood which does not have a Neighborhood Association may elect a Neighborhood Committee, as described in Section 5.3 of the By-Laws, to represent the interests of such Owners.

Any Neighborhood may request that the Association provide a higher level of service or special services for the benefit of Units in such Neighborhood. and, upon the majority vote, written consent, or a combination thereof, of the Owners of Units within the Neighborhood and approval by the Board of Directors, the Association shall provide the requested services. The cost of such services shall be assessed against the Units within such Neighborhood as a Neighborhood Assessment pursuant to Article X.

Exhibit "A" to this Declaration, and each Supplemental Declaration filed to subject additional property to this Declaration, shall initially assign the property described therein to a specified Neighborhood by name, which Neighborhood may be then existing or newly created. The Declarant may unilaterally amend this Declaration or any Supplemental Declaration to re-designate Neighborhood boundaries; provided, two or more Neighborhoods shall not be combined without majority vote, written consent, or a combination thereof, of the owners of the Units in the affected Neighborhoods.

By majority vote, written consent, or a combination thereof, the Owner(s) of Units within any Neighborhood may at any time petition the Board of Directors to divide the property comprising the Neighborhood into two or more Neighborhoods or to combine two or more Neighborhoods into one Neighborhood. Such petition shall be in writing and shall include a plat or survey of the entire parcel which indicates the boundaries of the proposed Neighborhood(s) or otherwise identifies the Units to be included within the proposed Neighborhood(s). Such petition shall be granted upon the filing of all required documents with the Board. The Board may deny an application only upon determination that

(i) there is no reasonable basis for distinguishing between the areas proposed to be divided into separate Neighborhoods in the case of a Neighborhood division application or (ii) there is a reasonable basis for distinguishing between the two or more Neighborhoods proposed to be consolidated into one Neighborhood in the case of a Neighborhood consolidation application. All applications and copies of any denials shall be filed with the books and records of the Association and shall be maintained as long as this Declaration is in effect.

(b) **Quorum for Neighborhood Meetings.** The presence, in person or by proxy, of Members representing at least 30% of the total votes attributable to Units in the Neighborhood shall constitute a quorum at any Neighborhood meeting.

(c) **Voting Groups.** The Declarant may designate Voting Groups consisting of one or more Neighborhoods for the purpose of electing directors to the Board, in order to promote representation on the Board of Directors for various groups having dissimilar interests and to avoid a situation in which the Members owning Units similar Neighborhoods are able; due to the number of Units in such Neighborhoods, to elect the entire Board of Directors, excluding representation of others. Following termination of the Class "B" Membership, the number of Voting Groups within the Properties shall not exceed the total number of directors to be elected by the Members pursuant to the By-Laws. The Members owning Units in the Neighborhoods within each Voting Group shall vote on a separate slate of candidates for election to the Board with each Voting Group being entitled to elect one director.

The Declarant shall establish Voting Groups, if at all, not later than the date of expiration of the Declarant's right to annex property pursuant to Article IX, by filing with the Association and in the Office of the County Clerk a Supplemental Declaration identifying the Units within each Voting Group. Such designation may be amended from time to time by Declarant, acting alone, any time prior to the expiration of Declarant's right to annex property pursuant to Article IX. After expiration of the right to annex property pursuant to Article IX, the Board shall have the right to file or amend such Supplemental Declaration upon a vote of a majority of the total numbers of directors. Neither recordation nor amendment of such Supplemental Declaration shall constitute an amendment to this Declaration for which consent or approval of any Person shall be required except as stated in this paragraph.

Until such time as Voting Groups are established, all of the Properties shall constitute a single Voting Group. After a Supplemental Declaration establishing Voting Groups has been filed, any and all portions of the Properties not assigned to a specific Voting Group shall constitute a single Voting Group.

ARTICLE IV

Rights and Obligations of the Association

4.1 **Common Area.** The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and control the Area of Common Responsibility, and all improvements thereon (including, without limitation, furnishings, equipment, and landscaped areas), and shall keep them in good, clean, attractive, and sanitary condition, order, and repair, consistent with this Declaration and the Community-Wide Standard.

4.2 **Personal Property and Real Property for Common Use.** The Association may acquire, hold and dispose of tangible and intangible personal property and real property. Declarant may convey to the Association improved or unimproved real estate located within the Properties or within properties subject to annexation in accordance with Section 9.1, personal property and leasehold and other property interests. Such property shall

be accepted by the Association and thereafter shall be maintained as Common Area by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed. The Declarant shall convey the initial Common Area to the Association prior to or concurrent with the conveyance of a Unit to a Retail Owner.

4.3 Enforcement. The Board of Directors may impose sanctions for violations of this Declaration, the By-Laws, or rules in accordance with procedures set forth in the By-Laws, including reasonable monetary fines and suspension of the right to vote and to use any recreational facilities within the Area of Common Responsibility. Fines imposed for violations of this Declaration shall constitute a Specific Assessment, pursuant to Section 10.6 of this Declaration, against the Unit of the owner in violation. In addition, in accordance with Section 3.23 of the By-Laws, the Association may exercise self-help to cure violations, and may suspend any services it provides to the Unit of any Owner who is more than 30 days delinquent in paying any assessment or other charge due to the Association. The Board may seek relief in any court for violations or to abate nuisances.

The Association, by contract or other agreement, may enforce state statutes and regulations and county and city ordinances, if applicable, and permit the City of Eagle Point and Jackson County to enforce applicable ordinances on the Properties for the benefit of the Association and its Members.

4.4 Implied Rights; Board Authority. The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-Laws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the By-Laws, Articles, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.5 Government Interests. So long as the Declarant has the right to annex property in accordance with Section 9.1, the Declarant may designate sites within the Properties for fire; police, utility facilities, public schools and parks, and other public facilities. The sites may include Common Areas.

4.6 Indemnification. The Association shall indemnify every officer, director, and committee member against all expenses, including counsel fees, reasonably incurred in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member.

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Pursuant to ORS 65.784, if the Association indemnifies or advances expenses pursuant to this Section or ORS 65.391-65.411, the Association shall report the indemnification or advance in writing to the Members with or before the notice of the next meeting of the Members.

4.7 **Dedication of Common Areas.** The Association may dedicate portions of the Common Areas to the City of Eagle Point or Jackson County, Oregon, or to any other local, state or federal governmental entity, subject to such approval as may be required by Section 14.2.

4.8 **Security.** The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. **NEITHER THE ASSOCIATION, DECLARANT, ANY SUCCESSOR DECLARANT, BUILDER NOR THEIR OFFICERS, DIRECTORS, EMPLOYEES, INDEPENDENT CONTRACTORS AND AGENTS SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTIES, NOR SHALL ANY OF THEM BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR OF INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM CANNOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES, UNDERSTANDS AND COVENANTS TO INFORM ITS TENANTS THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES, DECLARANT, ANY SUCCESSOR DECLARANT ARE NOT INSURERS AND THAT EACH PERSON USING THE PROPERTIES ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO UNITS AND TO CONTENTS OF UNITS RESULTING FROM ACTS OF THIRD PARTIES.**

4.9 **Powers of the Association Relating to Neighborhoods.** The Association and/or the Declarant shall have the power to veto any action taken or contemplated to be taken by any Neighborhood Association or Neighborhood Committee which the Board reasonably determines to be adverse to the interests of the Association or its Members or inconsistent with the Community-Wide Standard. The Association and/or the Declarant also shall have the power to require specific action to be taken by any Neighborhood Association or Neighborhood Committee in connection with any of its obligations and responsibilities. Without limiting the generality of the foregoing, the Association may (a) require specific maintenance or repairs or aesthetic changes to be effectuated by the Neighborhood Association or Neighborhood Committee, and (b) require that a proposed budget include certain items and that specific expenditures be made.

Any action required by the Association in a written notice pursuant to the foregoing paragraph to be taken by a Neighborhood Association or Neighborhood Committee shall be taken within the reasonable time frame set by the Association in such written notice. If the Neighborhood Association or Neighborhood committee fails to comply with the requirements set forth in such written notice, the Association shall have the right to effect such action on behalf of the Neighborhood Association or Neighborhood Committee.

To cover the Associations administrative expenses in connection with the foregoing and to discourage failure to comply with the requirements of the Association, the Association shall assess the Units in such Neighborhood for their *pro rata* share of any expenses incurred by the Association in taking such action in the manner provided in Section 10.6. Such assessments may be collected as a Specific Assessment hereunder and shall be subject to all lien rights provided for herein.

4.10 **Recycling Programs.** The Board may establish a recycling program and recycling center within the Properties and in such event, all occupants of Units shall support such program by recycling, to the extent reasonably practical, all materials which the Association's recycling program or center is set up to accommodate. The Association may, but shall have no obligation to, purchase recyclable materials in order to

encourage participation, and any income received by the Association as a result of such recycling efforts shall be used to reduce Common Expenses.

4.11 **Public Gardens and Environmental Programs.** The Board may establish gardens within the Common Area or designate spaces within the Common Area for the establishment of gardens to promote public awareness of and participation in conservation, management and enhancement of native vegetation, soils and geology and may establish programs to promote an understanding of the natural landscape and environment.

4.12 **Wildlife Mitigation.** The Association shall adhere to a Wildlife Plan or successor plans approved by the Board, to the extent that its recommendations pertain to the Properties.

ARTICLE V

Maintenance

5.1 **Association's Responsibility.** The Association shall maintain and keep in good repair the Area of Common Responsibility, which shall include, but need not be limited to:

(a) all landscaping and other flora, parks, signage, structures and improvements, including any private streets, bike and pedestrian pathways/trails, situated upon the Common Area;

(b) landscaping, sidewalks, street lights and signage within public rights-of-way within or abutting the Properties, and landscaping and other flora within any public utility easements and conservation easements within the Properties (subject to the terms of any easement agreement relating thereto); provided, however, that it shall be the responsibility of each Owner to landscape, irrigate and maintain any area within public rights-of-way between such Owner's Unit and the paved roadway located in rights-of-way adjacent to such Owner's unit from the date a Certificate of Occupancy is issued with respect to improvements on such Unit;

(c) such portions of any additional property included within any Area of Common Responsibility as may be dedicated by this Declaration, any Supplemental Declaration, or any contract or agreement for maintenance thereof entered into by the Association; and

(d) any property and facilities owned by the Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members, such property and facilities to be identified by written notice from the Declarant to the Association and to remain a part of the Area of Common Responsibility and be maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.

There are hereby reserved to the Association easements over the Properties as necessary to enable the Association to fulfill such responsibilities. The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for reasonable periods as necessary to perform required maintenance or repairs, unless Members representing 75% of the, Class "A" votes and the Declarant, as long as the Declarant has the right to annex property in accordance with Section 9.1, agree in writing to discontinue such operation.

The Association may delegate to a Neighborhood Association maintenance responsibility for any Exclusive Common Area within any Neighborhood, in addition to that designated by any Supplemental Declaration. The Association may re-assume maintenance for such property either by agreement with the

Neighborhood or because, in the opinion of the Board, the level and quality of service then being provided is not consistent with the Community-Wide Standard. All costs of maintenance pursuant to this paragraph shall be assessed as a Neighborhood Assessment only against the Units within the Neighborhood to which the services are provided. The provision for services in accordance with this Section shall not constitute discrimination within a class.

The Association may maintain other property which it does not own, including, without limitation, publicly owned property, conservation easements held by nonprofit entities, and other property dedicated to public use, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Units in the manner of and as part of the Base Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants, or agreements with the owner(s) thereof. All costs associated with maintenance, repair and replacement of Exclusive Common Areas shall be a Neighborhood Expense assessed as a Neighborhood Assessment solely against the Units within the Neighborhood(s) to which the Exclusive Common Areas are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

5.2 Owner's Responsibility. Each Owner shall maintain his or her Unit and all structures, parking areas, landscaping and other improvements comprising the Unit in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association or a Neighborhood pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Unit. Each Owner shall also be responsible for landscaping, irrigating and maintaining any area within public right-of-way between such Owner's Unit and the paved roadway located in rights-of-way adjacent to such Owner's Unit from the date a Certificate of Occupancy is issued with respect to improvements on such Unit. In addition to any other enforcement rights, if an owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner in accordance with Section 10.6. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry; except when entry is required due to an emergency situation. There are hereby reserved to the Association easements over the Units as necessary to enable the Association to perform such maintenance.

5.3 Neighborhood's Responsibility. The Owners of Units within each Neighborhood shall be responsible for paying, through Neighborhood Assessments, the costs of operating, maintaining and insuring certain portions of the Exclusive Common Area designated or reserved for such Neighborhood. This may include, without limitation, the costs of maintaining any signage, entry features, right-of-way and open space between the Neighborhood and adjacent public roads or private streets within the Neighborhood, regardless of ownership and regardless of the fact that such maintenance may be performed by the Association.

Any Neighborhood Association whose Exclusive Common Area:

(a) is adjacent to any portion of the Common Area upon which a wall is constructed, other than a wall which forms part of a building, shall maintain that portion of the Common Area between the wall and the property line of the Exclusive Common Area.

(b) fronts on any roadway within the Properties shall maintain the landscaping on that portion of the Common Area or right-of-way between the property line of the Exclusive Common Area and the nearest curb of such roadway; provided, there shall be no right to remove trees, shrubs or similar vegetation from this area without prior approval pursuant to Article XI.

Any Neighborhood Association having any responsibility for maintenance of property within such Neighborhood shall perform such maintenance responsibility in a manner consistent with the Community-Wide Standard and shall pay the costs of such maintenance through Neighborhood Assessments. If it fails to do so, the Association may perform such responsibilities and assess the costs against all Units within such Neighborhood as provided in Section 10.3.

5.4 Standard of Performance. Maintenance, as used in this Article, shall include, without limitation, repair and replacement as needed, as well as such other duties, which may include irrigation, as the Board may determine necessary or appropriate to satisfy the Community-Wide Standard. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants:

Notwithstanding anything to the contrary contained herein, the Association, and/or an Owner and/or a Neighborhood Association shall not be liable for damage to property which is not an area of Common Responsibility or personal injury occurring on, or arising out of the condition of property which it does not own unless and only to the extent that it has been negligent in the performance of its maintenance responsibilities.

5.5 Party Walls and Similar Structures.

(a) **General Rules of Law to Apply.** Each wall, fence, driveway or similar structure built as a part of the original construction on the units which serves and/or separates any two adjoining Units shall constitute a party structure. To the extent not inconsistent with the provisions of this section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) **Sharing of Repair and Maintenance.** All Owners who make use of the party structure shall share the cost of reasonable repair and maintenance of such structure equally.

(c) **Damage and Destruction.** If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners subsequently use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rules of law regarding liability for negligent or willful acts or omissions.

(d) **Right to Contribution Runs with Land.** The right of an Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

ARTICLE VI

Insurance and Casualty Losses

6.1 Association Insurance. The Association, acting through its Board or its duly authorized agent, shall obtain blanket "all-risk" property insurance, if reasonably available, for all insurable improvements in the Area

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of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a loss. The Association shall have the authority to and interest in insuring any privately or publicly owned property for which the Association has maintenance or repair responsibility. Such property shall include, by way of illustration and not limitation, any insurable improvements on or related to parks, rights-of-way, medians, easements and walkways which the Association is obligated to maintain. If blanket "all-risk" coverage is not generally available at reasonable cost, then the Association shall obtain fire and extended coverage, including coverage for vandalism and malicious mischief. The face amount of the policy shall be sufficient to cover the full replacement cost of the insured property. Except as otherwise provided herein, the cost of such insurance shall be a Common Expense to be allocated among all Units subject to assessment as part of the annual Base Assessment.

In addition, the Association may, upon request of a Neighborhood, and shall, if so specified in a Supplemental Declaration applicable to the Neighborhood, obtain and continue in effect adequate blanket "all-risk" property insurance on all insurable improvements within the Exclusive Common Area of such Neighborhood, if reasonably available. If "all-risk" property insurance is not generally available at reasonable cost, then fire and extended coverage may be substituted. Such coverage may be in such form as the Board of Directors deems appropriate. The face amount of the policy shall be sufficient to cover the full replacement cost of all structures to be insured. The costs shall be charged to the Owners of Units within the benefited Neighborhood as a Neighborhood Assessment.

The Association shall have no insurance responsibility for any part of any Unit.

The Association also shall obtain a public liability policy insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents or contractors while acting on its behalf. If generally available at a reasonable cost, the public liability policy shall have at least a \$1,000,000.00 combined single limit as respects bodily injury and property damage and at least a \$3,000,000.00 limit per occurrence and in the aggregate.

Except as otherwise provided above with respect to Exclusive Common Areas, premiums for all insurance obtained by the Association shall be Common Expenses and shall be included in the Base Assessment. However, premiums for insurance on Exclusive Common Areas shall be included in the Neighborhood Assessment of the Neighborhood(s) benefited.

The policies may contain a reasonable deductible which shall not be subtracted from the face amount of the policy in determining whether the insurance equals the required coverage. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Neighborhood Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with Section 3.23 of the By-Laws, that the loss is the result of the negligence or willful conduct of one or more Owners or occupants, then the Board may specifically assess the full amount of such deductible against the Unit of such Owner or occupant, pursuant to Section 10.6.

All insurance coverage obtained by the Association shall:

(a) be written with a company authorized to do business in Oregon which holds a Best rating of A or better and if assigned a financial size category of IX or larger as established by A.M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating which is available;

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(b) be written in the name of the Association as trustee for the benefited parties. Policies on the Common Area shall be for the benefit of the Association and its Members. Policies on Exclusive Common Areas may be written for the benefited Neighborhood Association(s).

(c) vest in the Board as to policies naming the Association and in the Neighborhood Committee of a Neighborhood Association, as to policies naming the Neighborhood Association exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss;

(d) not be brought into contribution with insurance purchased by individual Owners, occupants or their Mortgagees; and

(c) have an inflation guard endorsement, if reasonably available. If the policy contains a co-insurance clause, it shall also have an agreed amount endorsement. The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Jackson County, Oregon, area.

The Board shall use reasonable efforts to secure insurance policies containing endorsements that:

(a) waive subrogations as to any claims against the Association's Board, officers, employees and its manager, the Owners and their tenants, servants, agents and guests;

(b) waive the insurer's rights to repair and reconstruct instead of paying cash;

(c) preclude cancellation, invalidation, suspension or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;

(d) exclude individual owner's policies from consideration under any "other insurance" clause; and

(e) require at least 30 days' prior written notice to the Association of any cancellation, substantial modification or non-renewal.

The Association shall also obtain as a Common Expense, worker's compensation insurance and employer's liability insurance, if and to the extent required by law, directors' and officers' liability coverage, if reasonably available, and flood insurance, if advisable.

The Association also shall obtain, as a Common Expense, a fidelity bond or bonds, if generally available at reasonable cost, covering all persons responsible for handling Association funds. The Board shall determine the amount of fidelity coverage in its best business judgment but, if reasonably available, shall secure coverage equal to not less than one-sixth (1/6) of the annual Base Assessments on all Units plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least 30 days' prior written notice to the Association of any cancellation, substantial modification or non-renewal.

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6.2 Owners' Insurance. By virtue of taking title to a Unit, each Owner covenants and agrees with all other owners and with the Association to carry blanket "all-risk" property insurance on its Unit(s) and structures thereon providing full replacement cost coverage less a reasonable deductible, unless either the Neighborhood in which the Unit is located or the Association carries such insurance (which they are not obligated to do hereunder).

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his or her Unit, he or she shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article XI of this Declaration. Alternatively, the Owner shall clear the Unit of all debris and ruins and maintain the Unit in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

Additional recorded covenants applicable to any Neighborhood may establish more stringent requirements regarding the standards for rebuilding or reconstructing structures on the Units within such Neighborhood and the standards for cleaning and maintaining the Units in the event the structures are not rebuilt or reconstructed.

6.3 Damage or Destruction.

(a) Immediately after damage or destruction to all or any part of the Properties covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

(b) Any damage to or destruction of the Common Area shall be repaired or reconstructed unless the Members representing at least 75% of the total Class "A" votes and the Declarant, as long as the Declarant has the right to annex property in accordance with Section 9.1, decide within 60 days after the loss not to repair or reconstruct.

Any damage to or destruction of the Exclusive Common Area of any Neighborhood shall be repaired or reconstructed unless the Unit Owners representing at least 75% of the total vote of the Units within the Neighborhood decide within 60 days after the damage or destruction not to repair or reconstruct. If the Neighborhood Association covenants, if any, require a greater percentage of Unit Owners within the Neighborhood to approve, then such provision shall control.

If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed 60 additional days.

(c) If it is determined in the manner described above that the damage or destruction to the Common Area or the Exclusive Common Area of any Neighborhood shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and maintained by the Association or the Neighborhood Association, as applicable, in a neat and attractive landscaped condition consistent with the Community-Wide Standard.

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6.4 Disbursement of Proceeds. Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association or the Neighborhood Association, as appropriate, and placed in a capital improvement account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

6.5 Repair and Reconstruction. If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors shall, without a vote of the Members, levy Special Assessments against those Unit Owners responsible for the premiums for the applicable insurance coverage under Section 6.1.

ARTICLE VII

No Partition

Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the Properties or such portion thereof have been removed from the provisions of this Declaration. This Article shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

ARTICLE VIII

Condemnation

If any part of the Common Area, or Exclusive Common Area, shall be taken or conveyed in lieu of or under threat of condemnation by the Board acting on the written direction of Members representing at least 75% of the total Class "A" votes of the Association, in the case of Common Area, or 75% of the total Class "A" votes of Owners within the Neighborhood(s), in the case of Exclusive Common Area, and of the Declarant, as long as the Declarant has the right to annex property in accordance with Section 9.1, each Owner shall be entitled to written notice. The award made for such taking shall be payable to the Association as applicable to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking the Declarant, so long as the Declarant has the right to annex property in accordance with Section 9.1, and Members representing at least 75% of the total Class "A" votes in the Association shall otherwise agree, unless the taking is of Exclusive Common Area, in which case, the votes shall be of Members whose Units are within the affected Neighborhoods. Any such construction shall be in accordance with plans approved by the Board.

ARTICLE IX

Annexation and Withdrawal of Property

9.1 Annexation Without Approval of Membership. Prior to the first sale of a Unit to a Retail Owner, Declarant may unilaterally subject to the provisions of this Declaration any real property including, without limitation, the real property described in Exhibit "D" until all property described on Exhibit "D" has been subjected to this Declaration or 30 years after the recording of this Declaration, whichever is earlier. After the first sale of a Unit to a Retail Owner, Declarant may unilaterally subject to the provisions of this Declaration

any real property including, without limitation, the real property described in Exhibit "D" until the earlier of (a) the date on which all property described on Exhibit "D" has been subjected to this Declaration or (b) ten years from the date of recording of the most recent Supplemental Declaration to annex additional property.

Declarant may transfer or assign this right to annex property, provided that such transfer is memorialized in a written, recorded instrument executed by Declarant. Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any of the property set forth in Exhibit "D" in any manner whatsoever.

Such annexation shall be accomplished by filing a Supplemental Declaration in the Office of the County Clerk describing the property to be annexed and specifically subjecting it to the terms of this Declaration. Such Supplemental Declaration shall not require the consent of Members, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein. The Supplemental Declaration may provide for annexation to be effective upon a specified date, if other than the date of filing, or upon the fulfillment of stated conditions.

There is no limitation on the number of Units which the Declarant may create or annex. There is no limitation on the right of Declarant to annex Area of Common Responsibility. Upon annexation, the allocation of votes and the formula to be used for allocating common expenses and the manner in which assessments are imposed shall be determined as provided herein. Assessments with respect to Units annexed during a fiscal year shall be prorated.

9.2 Annexation with Approval of Membership. The Association or the Declarant may subject any real property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of Members representing 75% of the Class "A" votes of the Association represented at a meeting duly called for such purpose, and the consent of the Declarant, so long as Declarant has the right to annex property in accordance with Section 9.1.

Such annexation shall be accomplished by filing a Supplemental Declaration in the Office of the County Clerk describing the property to be annexed and specifically subjecting it to the terms of this Declaration. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the annexed property. Any such annexation shall be effective upon filing unless otherwise provided therein.

9.3 Withdrawal of Property. The Declarant reserves the right to amend this Declaration so long as it has a right to annex additional property pursuant to this Article, without prior notice and without the consent of any Person, for the purpose of removing property then owned by the Declarant or its affiliates from the coverage of this Declaration, to the extent originally included in error or as a result of any changes in the Declarant's plans for the Properties, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Properties. Withdrawal of property shall occur by filing a Supplemental Declaration in the Office of the County Clerk describing the property to be withdrawn. Upon withdrawal, the allocation of votes and the formula to be used for allocating common expenses shall be determined in the manner provided herein. Assessments with respect to Units withdrawn during a fiscal year shall be prorated.

9.4 Additional Covenants and Easements. The Declarant may unilaterally subject any portion of the property submitted to this Declaration initially or by Supplemental Declaration to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through Neighborhood

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Assessments. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrent with or after the annexation of the subject property, and shall require the written consent of the owner(s) of such property, if other than the Declarant.

9.5 Amendment. This Article shall not be amended without the prior written consent of Declarant so long as the Declarant has the right to annex property in accordance with Section 9.1.

9.6 Phasing of Construction. In addition to and not in lieu of the rights provided in this Article, subject to any applicable laws and regulations and subject to the Declarant's prior written approval, any Builder or Declarant shall have the right to develop their Units in Subphases, which include less than all Units in a Phase, as defined in Section 1.34.

ARTICLE X

Assessments

10.1 Creation of Assessments. The Association is hereby authorized to levy assessments against each Unit for Association expenses as the Board may specifically authorize from time to time. There shall be four types of assessments for Association expenses: (a) Base Assessments to fund Common Expenses for the general benefit of all Units; (b) Neighborhood Assessments for Neighborhood Expenses benefiting only Units within a particular Neighborhood or Neighborhoods; (c) Special Assessments as described in Section 10.5; and (d) Specific Assessments as described in Section 10.6. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties is deemed to covenant and agree to pay these assessments.

All assessments, (except as otherwise provided in Section 10.6(b)) together with interest from the due date of such assessment at the rate of 12% *per annum* or the highest rate allowed by Oregon law, whichever is less, late charges, in the amount of 5% of any assessment, or payment thereon, which is not paid within 10 days from the date such assessment or payment is due, costs and reasonable attorney's fees, shall be a charge and continuing lien upon each Unit against which the assessment is made until paid, as more particularly provided in Section 10.9. Each such assessment, together with interest, late charges, costs of the structural improvements; or (c) completion of all elements of the structural improvements which the Association is obliged to maintain.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials or a combination of services and materials with the Declarant or other entities for payment of Common Expenses subject to Section 3.24 of the By-Laws. The Declarant's payment of assessments may be reduced or abated by the agreed value of any such services, or materials provided by Declarant, in accordance with any such contract or agreement with the Association.

10.2 Computation of Base Assessment. The Board shall prepare a budget covering the estimated Common Expenses during the coming year pursuant to the terms and provisions set forth in Section 3.20(f) of the By-Laws. The budget shall include a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 10.4.

The Base Assessment shall be levied equally against all Units and shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Units subject to assessment under Section 10.8 on the first day of the fiscal year for which the budget is prepared and the number of Units reasonably anticipated to become subject to assessment during the fiscal year.

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So long as the Declarant has the right unilaterally to annex additional property pursuant to Article IX, the Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 10.1), which may be either a contribution, an advance against future assessments due from the Declarant, or a loan, in the Declarant's discretion. Any such subsidy and the nature thereof shall be conspicuously disclosed as a line item in the Common Expense budget and shall be made known to the membership. The payment of such subsidy in any year shall under no circumstances obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

The Board shall send a copy of the budget and notice of the amount of the Base Assessment for the following year to each Owner not less than 45, nor more than 60 days, prior to the beginning of the fiscal year for which it is to be effective, and reasonable attorney's fees, also shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. Upon a transfer of title to a Unit, the grantee shall not be liable for any assessments and other charges due at the time of conveyance unless expressly assumed by him or her. No first Mortgagee who obtains title to a Unit by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which occurred prior to such acquisition of title.

Assessments shall be paid in such manner and on such dates as the Board may establish. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment and any Neighborhood Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his or her Unit, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

The Association shall, within 10 business days after request, furnish to any owner liable for any type of assessment a certificate, in writing, in recordable form and signed by an officer of the Association setting forth whether such assessments has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

No Owner may exempt himself or herself from liability for assessments, by nonuse of Common Area, abandonment of his or her Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or setoff shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

The Declarant and Builders are subject to the payment of assessments against Units, which they own; provided, however, any Unit that they own which does not include a structural improvement for human occupancy shall be exempt from payment of that portion of any such assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and the use of the structural improvements. The exemption may include, but is not necessarily limited to: (a) roof replacement; (b) exterior maintenance; (c) walkway and carport lighting; (d) refuse disposal; (e) cable television; and (f) domestic water supplied to Units. This exemption from the payment of assessments attributed to Units shall be in effect only until the earliest of the following events: (a) substantial completion of the structural improvements; (b) occupancy or use

10.3 Computation of Neighborhood Assessments. The Board shall prepare a separate budget covering the estimated Neighborhood Expenses for each Neighborhood on whose behalf Neighborhood Expenses are expected to be incurred during the coming year pursuant to the terms and provisions set forth in Section 3.20(f) of the By-Laws. The board shall be entitled to set such budget only to the extent that this Declaration, any

Supplemental Declaration, or the By-Laws specifically authorizes the Board to assess certain costs as a Neighborhood Assessment. Any Neighborhood may request that additional services or a higher level of services be provided by the Association, and subject to approval of the Board, any additional costs shall be added to such budget. Such budget shall include a capital contribution establishing a reserve fund for repair and replacement of capital items maintained as a Neighborhood Expense, if any, within the Neighborhood.

Neighborhood Expenses shall be allocated equally among all Units within the benefited Neighborhood; provided, if so specified in the Supplemental Declaration applicable to such Neighborhood or if so directed by petition signed by a majority of the Owners within the Neighborhood, any portion of the assessment intended for exterior maintenance of structures, insurance on structures, or replacement reserves which pertain to particular structures shall be levied on each of the benefited Units in proportion to the benefit received.

The Board shall cause a copy of such budget and notice of the amount of the Neighborhood Assessment for the coming year to be delivered to each Owner of a Unit in the Neighborhood not less than 45, nor more than 60 days, prior to the beginning of the fiscal year.

10.4 Reserve Budget and Capital Contribution. The Board shall annually prepare reserve budgets for both general and Neighborhood purposes which take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost and in accordance with ORS 94.595. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual Base Assessments or Neighborhood Assessments, as appropriate, over the budget period.

10.5 Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover un-budgeted expenses or expenses in excess of those budgeted, subject to the limitations set forth in Section 10.7. Such Special Assessment may be levied against the entire membership, if such Special Assessment is for Common Expenses, or against the units within any Neighborhood if such Special Assessment is for Neighborhood Expenses. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

10.6 Specific Assessments. The board shall have the power to levy Specific Assessments against a particular Unit or Units constituting less than all Units within the Properties or within a Neighborhood, as follows:

(a) to cover the costs, including overhead and administrative costs, of providing benefits, items or services to the Unit or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to owners (which might include, without limitation, landscape maintenance, handyman service, pool cleaning, pest control, etc.), which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner;

(b) to cover costs incurred in bringing the Unit into compliance with the terms of this Declaration, any applicable Supplemental Declaration, the By-Laws or rules, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their licensees, invitees, or guests; provided the Board shall give the unit Owner prior written notice and an opportunity for a hearing before levying a Specific Assessment under this subsection (b); and

(c) to enforce sanctions established and imposed by the Board of Directors pursuant to Section 4.3 of this Declaration.

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The Association may also levy a Specific Assessment against any Neighborhood to reimburse the Association for costs incurred in bringing the Neighborhood into compliance with the provisions of the Declaration, any applicable Supplemental Declaration, the Articles, the By-Laws, and rules, provided the Board gives the Members of such Neighborhood prior written notice and an opportunity to be heard before levying any such assessment.

10.7 Limitation of Increase of Assessments: Not with standing any provision to the contrary, and except for assessment increases necessary for emergency situations or to reimburse the Association pursuant to Section 10.6, the Board may not impose a Base Assessment, Neighborhood Assessment or Specific Assessment that is more than 20% greater than each of those assessments for the immediately preceding fiscal year nor impose a Special Assessment which in the aggregate exceeds 5% of the budgeted Common Expenses or Neighborhood Expenses, as the case may be, for the current fiscal year, without a majority vote of Members who are subject to the applicable assessment at a meeting of the Association. For purposes of this Section, "quorum" means the Members representing more than 50% of the Members who are subject to the applicable assessment. For purposes of this Section, the term "Base Assessment" or "Neighborhood Assessment" shall be deemed to include amount assessed against each Unit plus a *pro rata* allocation of any amounts the Association received through any subsidy or maintenance agreement, if any, in effect for the year immediately preceding the year for which the assessment is to be increased.

An emergency situation is any one of the following:

- (a) an extraordinary expense required by an order of a court;
- (b) an extraordinary expense necessary to repair or maintain the Properties or any part of them for which the Association is responsible or where a threat to personal safety or violation of law on the Properties is discovered; or
- (c) an extraordinary expense necessary to repair or maintain the Properties or any part of them, or for costs previously incurred therefor, for which the Association is responsible which could not have been reasonably foreseen by the Board in preparing and distributing the *pro forma* budget pursuant to Section 10.2. However, prior to the imposition or collection of such an assessment, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. Such resolution shall be distributed to the Members with the notice of such assessment.

10.8 Date of Commencement of Assessments. Subject to Section 10.1, the obligation to pay the assessments provided for herein shall commence as to all Units within each Subphase on the earlier of (a) the first day of the month following the first conveyance of a Unit in the Subphase to a Retail Owner; or (b) the first day of the month following conveyance of the Common Area in the Subphase to the Association. The first annual assessment shall be adjusted according to the number of days remaining in the fiscal year at the time assessments commence on the Unit.

10.9 Lien for Assessments. All assessments authorized in this Article shall constitute a lien against the Unit against which they are levied until paid unless otherwise specifically precluded in this Declaration. The lien shall also secure payment of interest, late charges (subject to the limitations of Oregon law) and costs of collection (including attorneys' fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in

good faith and for value. The Association may enforce such lien, when delinquent, by suit, judgment and foreclosure.

The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage and convey the Unit. While a Unit is owned by the Association following foreclosures (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its equal *pro rata* share of the assessment that would have been charged such Unit had it not been acquired by the Association. The Association may sue for unpaid Common Expenses and costs without foreclosing or waiving the lien securing the same.

The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall continue to be the personal obligation of the Owner of the Unit at the time the assessments were levied.

10.10 **Failure to Assess.** Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments and Neighborhood Assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

10.11 **Capitalization of Association.** Upon acquisition of record title to each Unit by its first Retail Owner, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to one-sixth (1/6) of the annual Base Assessment per Unit for that year. For purposes of this Section, the term "Base Assessment" shall be deemed to include the amount assessed against each Unit plus a *pro rata* allocation of any amounts the Association received through any subsidy or maintenance agreement, if any. This amount shall be in addition to, not in lieu of, the annual Base Assessment and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to the terms of this Declaration and the By-Laws.

10.12 **Exempt Property.** The following property shall be exempt from payment of Base Assessments, Neighborhood Assessments and Special Assessments:

- (a) all Common Area;
- (b) any property dedicated to and accepted by any governmental authority or public utility; and
- (c) any property owned by a Neighborhood Association for the common use and enjoyment of its members or owned by the members of a Neighborhood Association as tenants in common.

In addition, the Declarant shall have the right, but not the obligation, to grant exemptions to certain Persons qualifying for Section 501(c) status under the Internal Revenue Code so long as such Persons own property subject to this Declaration for purposes listed in Section 501(c).

No portion of the Golf Course is included in the Properties, and, accordingly, no portion of the Golf Course is included within a Unit, and, therefore, no portion of the Golf Course is subject to payment of any assessment whatsoever.

ARTICLE XI

Architectural Standards

11.1 **General.** No structure shall be placed, erected or installed upon any Unit and no improvements (including, but not limited to, staking, clearing, excavation, grading and other site work, exterior alteration of existing improvements, planting or removal of landscaping materials and installation or removal of an irrigation system) shall take place except in compliance with this Article and the Design Guidelines and upon approval of the appropriate committee under Section 11.2.

Any Owner may remodel, paint or redecorate the interior of structures on his or her Unit without approval. However, modification to the interior of screened porches, patios and similar portions of a Unit visible from outside the structures on the Unit shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

All dwellings and landscaping constructed or placed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect or licensed building designer.

This Article shall not apply to the activities of the Declarant, nor to improvements to the Common Area by or on behalf of the Association.

This Article may not be amended without the Declarant's written consent so long as the Declarant owns any land subject to this Declaration or subject to annexation to this Declaration.

11.2 **Architectural Review.** Responsibility for administration of the Design Guidelines, as defined below, and review of all applications for construction and modifications under this Article shall be handled by the two committees as described in subsections (a) and (b). The members of the Committees need not be Members of the Association or representative of Members, and may, but need not, include architects, engineers or similar professionals whose compensation for professional services, if any, shall be established from time to time by the Board. The Board may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review.

(a) **Design Review Committee.** The Design Review Committee ("DRC") shall consist of at least three, but not more than five, persons. So long as Declarant, any affiliate of the Declarant, or any Builder owns any Unit, the Declarant retains the right to appoint all members of the DRC, who shall serve at the discretion of the Declarant. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon surrender of such right, the Board of Directors may appoint the members of the DRC, who shall serve and may be removed at the discretion of the Board of Directors, or it may dissolve the DRC, in its discretion, and transfer all its jurisdiction to the Modifications committee established under Section 11.2(b). Notwithstanding the foregoing, when the DRC is considering approval of structures or improvements on a Unit which adjoins the Golf Course, the DRC shall include an additional member, bringing the total membership of the DRC up to a maximum of six (6) persons. The additional member shall be selected by the Golf Course

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and shall sit on the DRC only while the committee is considering approval of structures or improvements on a Unit which adjoins the Golf Course.

The DRC shall have exclusive jurisdiction over all original construction on any Units owned by Declarant, any affiliates of Declarant or any Builder. In addition, the DRC shall have exclusive jurisdiction over original construction on all Units owned by Retail Owners until the earlier of (i) the date upon which Retail Owners own 90% of the Maximum Units, or (ii) the expiration of 25 years after the conveyance of the first Unit to a Retail owner, at which time the Modifications Committee shall assume such jurisdiction.

(b) **Modifications Committee.** The Board of Directors shall establish a Modifications Committee ("MC") to consist of at least three and no more than five persons, all of whom shall be appointed by and shall serve at the discretion of the Board. The MC shall have exclusive jurisdiction over modifications, additions or alterations made on or to existing structures on Units or containing Units and the adjacent open space and shall assume exclusive jurisdiction over original construction on all such Units upon termination of the DRC's jurisdiction over Units owned by Retail Owners as specified in subsection (a) above. Notwithstanding the foregoing, when the MC is considering approval of structures or improvements on a Unit which adjoins the Golf Course, the MC shall include an additional member, bringing the total membership of the MC up to a maximum of six (6) persons. The additional member shall be selected by the Golf Course and shall sit on the MC only while the committee is considering approval of structures or improvements upon a Unit which adjoins the Golf Course. The MC may delegate its authority as to a particular Neighborhood to the Neighborhood Association, if any, so long as the MC has determined that such Neighborhood Association has in force review and enforcement practices, procedures, including Golf Course representation, and appropriate standards at least equal to those of the MC. Such delegation may be revoked and jurisdiction reassumed at any time by written notice. The DRC shall have the right to veto any action taken by the MC or a Neighborhood Association which the DRC determines, in its sole discretion, to be inconsistent with the Design Guidelines.

As it pertains to the Golf Course representative on the DRC, MC or Neighborhood Association, this Section 11.2 shall not be amended without the written consent of the Golf Course, which consent to be effective must be embodied in a document headed "**Consent to Amendment of Section 11.2 of the Covenants, Conditions and Restrictions for Eagle Point Golf Course Community**" and executed by a duly authorized representative of the owner of the Golf Course.

11.3 Guidelines and Procedures. The Declarant shall prepare the initial design and development guidelines and application and review procedures ("Design Guidelines") which shall apply to all construction activities within the Properties. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary from one portion of the Properties to another depending upon the location, unique characteristics and intended use.

The DRC shall adopt such Design Guidelines at its initial organizational meeting and thereafter shall have sole and full authority to amend them until termination of DRC's jurisdiction over Units owned by Retail owners as specified in Section 11.2(a), after which such authority shall vest in the MC. Any amendments to the Design Guidelines shall apply to construction and modifications commenced after the date of such amendment only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced.

The DRC shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Properties, and all such Persons shall conduct their activities in accordance with such Design Guidelines. In the Declarant's discretion, such Design Guidelines may be recorded in the Office of the County Clerk, in which event the recorded version, as it may unilaterally be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

The MC may promulgate detailed procedures and standards governing its area of responsibility, consistent with those set forth in the Design Guidelines and subject to review and approval or disapproval by the DRC.

11.4 Submission of Plans and Specifications.

(a) No construction or improvements shall be commenced, erected, placed or maintained on any Unit, nor shall any exterior addition, change or alteration be made thereto, until the plans and specifications ("Plans") showing site layout, structural design, exterior elevations, exterior materials and colors, signs, landscaping, drainage, lighting, irrigation, utility facilities layout and screening therefor shall have been submitted to and approved in writing by the DRC or MC, as appropriate. The Design Guidelines shall set forth the procedure for submission of the plans.

(b) In reviewing each submission, the DRC or MC, as appropriate, may consider visual and environmental impact, ecological compatibility, natural platforms and finish grade elevation, harmony of external designs with surrounding structures and environment and location in relation to surrounding structures and plant life and harmony (where appropriate due to proximity) with the design, planting, landscaping and layout of the Golf Course. The committees may require relocation of native plants within the construction site or the installation of an irrigation system for the landscaping including the natural plant life on the Unit as a condition of approval of any submission.

The DRC or the MC, as appropriate, shall, within 45 days after receipt of each submission of the Plans, advise the party submitting the same, in writing, at an address specified by such party at the time of submission, of (i) the approval of Plans, or (ii) the segments or features of the Plans which are deemed by such committee to be inconsistent or not in conformity with this Declaration and/or the Design Guidelines, the reasons for such finding and suggestions for the curing of such objections. In the event the appropriate committee fails to advise the submitting party by written notice within the time set forth above of either the approval or disapproval of the Plans, approval shall be deemed to have been given. Notice shall be deemed to have been given at the time the envelope containing such notice, properly addressed and postage prepaid is deposited with the U. S. Postal Service, registered or certified mail, return receipt requested. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery.

(c) If construction does not commence on a project for which Plans have been approved within twelve (12) months of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the Plans to the Declarant for reconsideration.

11.5 No Waiver of Future Approvals. Each Owner acknowledges that the members of the DRC and the MC will change from time to time and that interpretation, application and enforcement of the Design Guidelines may vary accordingly. Approval of proposals, plans and specifications, or drawings for any work done or proposed; or in connection with any other matter requiring approval, shall not be deemed to constitute a

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waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings or other matters subsequently or additionally submitted for approval.

11.6 Variance. The DRC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the DRC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, the cost of compliance or the terms of any financing shall not be considered a hardship warranting a variance.

11.7 Limitation of Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and neither the DRC nor the MC shall bear any responsibility for insuring the structural integrity or soundness of approved construction or modifications, nor for insuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board, any committee, or member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner or quality of approved construction or modifications to any Unit.

11.8 Enforcement. Any structure or improvement placed or made in violation of this Article shall be deemed to be non-conforming. Upon written request from the Board or the Declarant, Owners shall at their own cost and expense, remove such structure or improvement, restore the land to substantially the same condition as existed prior to the non-conforming work, and/or make such modifications as necessary to remove the nonconformity. Should an Owner fail to remove, modify and/or restore as required, the Board or its designee shall have the right to enter the property, remove the violation, restore the property to substantially the same condition as previously existed, and/or make such modifications as necessary to remove the nonconformity. All costs, together with interest at the rate of 12% *per annum* or the maximum rate then allowed by law, whichever is less, may be assessed against the benefited Unit and collected as a Specific Assessment unless otherwise prohibited in this Declaration.

Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded by the Board from the Properties, subject to the notice and hearing procedures contained in the By-Laws. In such event, neither the Association, its officers or directors shall be held liable to any Person for exercising the rights granted by this paragraph.

In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the DRC and MC.

11.9 Design and Construction Standards Relating to Golf Course.

(a) The work of construction and installation of landscaping in the backyard area of any Unit adjacent to the Golf Course shall be completed within nine (9) months from the date of completion of a residential structure on such Unit.

(b) All grass lawns planted on Units or Areas of Common Responsibility adjacent to the Golf Course shall be of equal or better grade than the Golf Course grass. All burrowing animals, including but not limited to gophers, moles and squirrels, which appear on any Unit adjacent to the Golf Course shall be exterminated as expeditiously as possible.

(c) Back yard fences located in the Golf Course area of Golf Course Lots, other than fences separating a Golf Course Lot from another Golf Course Lot or fences separating a Golf Course Lot from Common Areas may be required and where they are installed, they must conform to the design standards of the DRC or HC. In addition, such fences, prior to installation, must have the written approval of the Golf Course and the Eagle Point Golf Community Architectural Review Committee.

(d) No structure greater than four (4) feet in height may be constructed or maintained within the "golf course area", except for fences constructed in accordance with the standards of Section 11.9 (c), and no hedge, mass-planting or shrub shall be maintained within the golf course area at a height greater than four (4) feet from the grade of the Unit adjacent to the Golf Course. The provisions in this section relating to plantings shall not apply to side yards within the golf course area. For purposes of this section, golf course area means: the back yard area of a Unit adjacent to the Golf Course extending from the Unit boundary line adjacent to the Golf Course to a depth of the lesser of twenty-five (25) feet or to the wall of the residential structure on the Unit; the golf course area shall include a side yard where the side yard is adjacent to the Golf Course and not adjacent to a Lot designated for a residential structure; in a side yard, the golf course area shall extend from the Unit boundary line adjacent to the Golf Course to a depth of the lesser of five (5) feet or to the wall of the residential structure on the Unit.

(e) This Section 11.9 shall not be amended without the written consent of the owner of the Golf Course which consent to be effective must be embodied in a document headed "CONSENT TO AMENDMENT OF SECTION 11.9 OF THE COVENANTS, CONDITIONS AND RESTRICTIONS FOR EAGLE POINT GOLF COURSE COMMUNITY" and executed by a duly authorized representative of the owner of the Golf Course.

ARTICLE XII

Use Guidelines and Restrictions

12.1 **Plans of Development; Applicability, Effect.** Declarant has created EPGC as a residential and recreational development and, in furtherance of its and every other Owner's interests, has established a general plan of development for EPGC as a master planned community. The Properties are subject to land development, architectural and Design Guidelines as set forth in Article XI. The Properties are subject to guidelines and restrictions governing land use, individual conduct and uses of or actions upon the Properties as provided in this Article XII. This Declaration and resolutions of the Board or the Members may establish affirmative and negative covenants, easements and restrictions ("Use Guidelines and Restrictions").

All provisions of this Declaration and of any Association rules shall also apply to all occupants, tenants, guests and invitees of any Unit. Any lease on any Unit shall provide that the lessee and all occupants of the leased Unit shall be bound by the terms of this Declaration, the By-Laws and the rules of the Association.

Declarant promulgates EPGC's general plan of development in order to protect all Owners quality of life and collective interests, the aesthetics and environment within the Properties and the vitality of and sense of community within EPGC, all subject to the Board's and the Members' ability to respond to changes in circumstances, conditions, needs and desires within the master planned community.

Declarant has prepared initial Use Guidelines and Restrictions which contain general provisions applicable to all of the Properties, as well as specific provisions which may vary within the Properties depending upon the location, characteristics and intended use. Such initial Use Guidelines and Restrictions are set forth in Section 12.6.

12.2 **Board Power.** Subject to the terms of this Article XII and to its duty of care and undivided loyalty to the Association and its Members, the Board shall implement and manage the Use Guidelines and Restrictions through rules which adopt, modify, cancel, limit, create exceptions to, or expand the Use Guidelines and Restrictions.

The Board shall send a copy of any proposed new rule(s) or amendment(s) to each Owner at least 30 days prior to its effective date. The rule(s) shall become effective unless disapproved at a meeting by Members representing at least 75% of the total Class "A" votes and by the Declarant so long as the Declarant owns property subject to this Declaration, or which may become subject to the Declaration. The Board shall have no obligation to call a meeting of the Members to consider disapproval except upon petition of the Members as required for special meetings in Section 2.4 of the By-Laws.

The Board shall have all powers necessary and proper, subject to its exercise of sound business judgment and reasonableness to effect the powers contained in this Section 12.2.

The Board shall provide, without cost, a copy of the Use Guidelines and Restrictions and rules then in effect to any requesting Member or Mortgagee.

12.3 **Members' Power.** Subject to the rights of the Golf Course, including the provisions of Section 12.6(c) requiring the consent of the Golf Course to certain amendments, the Members, at a meeting duly called for such purpose as provided in Section 2.4 of the By-Laws, may adopt, repeal, modify, limit and expand Use Guidelines and Restrictions and implementing rules by a vote of 75% of the total Class "A" votes and the approval of the Declarant so long as the Declarant owns property subject to this Declaration or which may become subject to the Declaration.

12.4 **Owners' Acknowledgment.** All Owners are subject to the Use Guidelines and Restrictions and are given notice that (a) their ability to use their privately owned property is limited thereby, and (b) the Board and/or the Members may add, delete, modify, create exceptions to, or amend the Use Guidelines and Restrictions in accordance with Sections 12.2, 12.3 and 18.2, as applicable.

Each owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her property can be affected by this provision and that the Use Guidelines and Restrictions and rules may change from time to time.

12.5 **Rights of Owners.** Except as may be specifically set forth in Section 12.6, neither the Board nor the Members may adopt any rule in violation of the following provisions:

- (a) **Equal Treatment.** Similarly situated Owners and occupants shall be treated similarly.
- (b) **Household Composition.** No rule shall interfere with the freedom of occupants of Units to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Unit on the basis of the size and facilities of the Unit and its fair share use of the Common Area, including parking.
- (c) **Activities Within Unit.** No rule shall interfere with the activities carried on within the confines of Units, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of

other Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the Unit, that block the views from other Units or that create an unreasonable source of annoyance.

(d) **Pets.** Unless the keeping of pets in any Neighborhood is prohibited by Supplemental Declaration at the time of the sale of the first Unit in such Neighborhood, no rule prohibiting the keeping of ordinary household pets shall be adopted thereafter over the objection of any affected owner expressed in writing to the Association. The Association may adopt reasonable regulations designed to minimize damage and disturbance to other Owners and occupants, including regulations requiring damage deposits, waste removal, leash controls, noise controls, pet, occupancy limits based on size and facilities of the Unit and fair share use of the Common Area. Nothing in this provision shall prevent the Association from requiring removal of any animal that presents an actual threat to the health or safety of residents or from requiring abatement of any nuisance or unreasonable source of annoyance.

(e) **Allocation of Burdens and Benefits.** Except as permitted by Section 2.2, the initial allocation of financial burdens and rights to use Common Areas among the various Units shall not be changed to the detriment of any Owner over that owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Areas available, from adopting generally applicable rules for use of Common Areas or from denying use privileges to those who abuse the Common Area, violate rules or this Declaration, or fail to pay assessments. This provision does not affect the right to increase the amount of assessments as provided in Article X.

(f) **Alienation.** No rule shall prohibit transfer of any Unit or require consent of the Association or Board for transfer of any Unit for any period greater than one month. The Association shall not impose any fee on transfer of any Unit greater than an amount reasonably based on the costs to the Association relating to the transfer.

(g) **Reasonable Rights to Develop.** No rule or action by the Association or Board shall unreasonably impede Declarant's right to develop in accordance with the Master Plan.

12.6 Initial Use Guidelines and Restrictions.

(a) **General.** The Properties shall be used only for residential, recreational and related purposes (which may include, without limitation, offices for any property manager retained by the Association or business offices for the Declarant or the Association consistent with this Declaration and any Supplemental Declaration). Any Supplemental Declaration or additional covenants imposed on the property within any Neighborhood may impose stricter standards than those contained in this Article, and the Association shall have standing and the power to enforce such standards.

(c) **Restricted Activities.** The following activities are prohibited within the Properties unless expressly authorized by and then subject to such conditions as may be imposed by the Board:

(i) posting of signs (including without limitation, commercial, political, family "crest" or name signs, and all such similar signs) which are visible from the exterior of Units except: such signs as may be required by legal proceedings; such residential identification signs as are installed in the initial construction of improvements on Units, subject to the review of the DRC or MC as to suitability; during the time of construction of any improvements by Declarant or Builders, job and sales identification signs; and not more than one "for sale" sign having dimensions not to exceed thirty (30) by twenty-four (24) inches, including sign inserts.

(ii) subdivision of a Unit into two or more Units after a subdivision plat including such Unit has been approved and filed with the appropriate governmental authority, or changing the boundary lines of any Unit, except that the Declarant and Builders, with Declarant's consent, shall be permitted to subdivide or change the boundary lines of Units which they own;

(iii) active use of lakes, ponds, streams or other bodies of water within the Properties or within the Golf Course, except that the owner of the Golf Course and its agents, successors and assigns shall have the exclusive right and all necessary easements to retrieve golf balls within the Properties or within the Golf Course. The Association shall not be responsible for any loss, damage or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds, streams or other bodies of water within or adjacent to the Properties;

(iv) operation of a timesharing, fraction-sharing or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years, except that Declarant and its assigns may develop or operate such a program with respect to Declarant with respect to Units which it owns or sells.

(v) occupancy of a Unit by more than a single family. For purposes of this restriction, a single family shall be defined as any number of persons related by blood, adoption or marriage living with not more than one person who is not so related as a single household unit, or no more than three persons who are not so related living together as a single household unit and the household employees of either such household unit;

(vi) capturing, trapping or killing wildlife, except in circumstances posing an imminent threat to the safety of persons using the Properties, raising, breeding or keeping of animals, livestock or poultry of any kind, and permitting pets to go upon the Golf Course.

(vii) activities which materially disturb or destroy the vegetation, wildlife or air quality within the Properties or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution.

(viii) any construction, erection or placement of ornamentation or other objects or equipment, permanently or temporarily, on the outside portions of the Unit, whether such portion is improved or unimproved, except for reasonable and typical holiday ornamentation which shall be placed on a Unit only during the normal holiday periods for which the ornamentation is designed, and except as may be approved by the DRC or HC.

(ix) discharging of firearms. The term "firearms" includes "BB" guns, pellet guns and other firearms of all types, regardless of size. Notwithstanding anything to the contrary contained herein, or in the By-Laws, the Association shall not be obligated to take action to enforce this provision; and

(x) any business, trade, garage sale, moving sale, rummage sale or similar activity, other than those coordinated by the Association, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Unit; (b) the business activity conforms to all zoning requirements for the Properties; (c) the business activity does not involve regular visitation of the Unit by clients, customers, suppliers or other business invitees or door-to-door solicitation of residents of the properties; and (d) the business

activity is consistent with the residential character of the Properties and does not constitute a nuisance or a hazardous or offensive use or threaten the security or safety of other residents of the Properties as may be determined in the sole discretion of the Board. This subsection shall not apply to any activity conducted by the Declarant or a Builder approved by the Declarant with respect to its development and sale of the Properties or its use of any Units which it owns within the Properties, including the operation of a timeshare or similar program. The leasing of a Unit shall not be considered a business or trade within the meaning of this subsection. "Leasing" for purposes of this Declaration, is defined as regular, exclusive occupancy of a Unit by any person other than the Owner, for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity or emolument. Units may be leased only in their entirety. No fraction or portion may be leased. No structure on a Unit other than the primary residential dwelling shall be leased or otherwise occupied for residential purposes, except that a Unit may make residential use of such a structure for an ancillary use such as in-law suite or nanny suite, but not for independent leasing. All leases shall be in writing. No transient tenants may be accommodated in a Unit and all leases shall be for an initial term of no less than 30 days, except: (a) with the prior written consent of the Board, or (b) as initially authorized by Declarant in Exhibit "A" or a Supplemental Declaration for Units located within certain Neighborhoods. The Owners may not amend this provision to prohibit leasing of Units within certain Neighborhoods authorized by Declarant for rental to transient tenants and for a term less than 30 days until: (a) 75% of the Units within that particular Neighborhood are owned by Retail owners, and (b) 75% of the Class A Members, other than the Declarant, within that particular Neighborhood approve the amendment. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Unit Owner within 10 days of execution of the lease. The Owner must make available to the lessee copies of the Declaration, By-Laws and the rules and regulations. The Board may adopt reasonable rules regulating leasing and subleasing.

(c) Additional Restrictions Relating to Golf Course.

(i) No Owner, occupant or user shall go onto or use the Golf Course or any of its improvements without the consent of the Golf Course, and no such person shall allow a dog or other pet to go onto or use the Golf Course without the consent of the Golf Course.

(ii) All Owners of Units adjacent to the Golf Course shall restrain all dogs and other animals so that dogs and other pets kept by them cannot enter onto or use the Golf Course.

(iii) **Private Yard Areas.** The portion of each Unit that is adjacent to the Golf Course and twenty feet (20') in depth measured from the Golf Course boundary shall be referred to herein as "Golf Course Adjacent Area". Golf Course Adjacent Areas shall be used only as turfed, natural or garden areas, including walkways and retaining walls. With the DRC's or the Units MC's approval, each Owner shall have the right to plant grass varieties and other types of vegetation and establish an irrigation system on the Golf Course Adjacent Area. Each Owner's maintenance obligations shall include performing all necessary landscaping and gardening to properly maintain and periodically replace trees, plants, grass and other vegetation located in the Golf Course Adjacent Area.

(iv) The installation of turf or other landscaping in the Golf Course Adjacent Areas shall be completed within ninety (90) days from the completion of the residence on the Unit in question. This time period may be extended by the DRC.

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(v) All grass planted in the Golf Course Adjacent Areas shall be of a variety that is compatible with and not detrimental to the grass on the Golf Course. As expeditiously as possible, each Owner of a Golf Course Adjacent Area shall exterminate burrowing animals found in the Golf Course Adjacent Area, including, not limited to, gophers, moles and squirrels.

(d) **Prohibited Conditions.** The following shall be prohibited within the Properties:

(i) sprinkler or irrigation systems or wells of any type which draw upon water from creeks, streams, ponds or other ground or surface waters within the Properties, except that Declarant, the Association and the Golf Course shall have the right to collect and divert storm water runoff from streets and other hard surfaces for irrigation and other purposes;

(ii) hedges, walls, dog runs, animal pens or fences of any kind on any Unit except as approved in accordance with Article XI;

(iii) excessive exterior lighting on any Unit. The Board shall, in its sole discretion, determine whether any exterior lighting is excessive.

ARTICLE XIII

Easements

13.1. **Easements of Encroachment.** There shall be reciprocal appurtenant easements of encroachment and for maintenance and use of any permitted encroachment between each Unit and any adjacent Common Area and between adjacent Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three (3) feet as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, an Owner, occupant or the Association.

13.2 **Easements for Utilities, Etc.** There are hereby reserved unto Declarant, so long as the Declarant has the right to annex property in accordance with Section 9.1, the Association and the designees of each, an easement (which may include, without limitation, ingress and egress reasonably necessary) for the purpose of replacing, repairing and maintaining cable television systems, master television antenna systems, security and similar systems, roads, walkways, bicycle pathways, trails, ponds, wetlands, drainage systems, street lights, signage and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas and electricity and for the purpose of installing any of the foregoing on property which it owns or within easements designated for such purposes on recorded plats of the Properties. The easement shall not entitle the holders to construct or install any of the foregoing systems, facilities or utilities over, under or through any existing dwelling on a Unit, and any damage to a Unit resulting from the exercise of this easement shall promptly be repaired by and at the expense of the Person, agency, or public utility exercising the easement. The Exercise of this easement shall not unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant. The public utility easement (P.U.E.) as delineated on the recorded plat thereof shall extend and also affect the north ten (10) feet of Lot 17, *Lakeside Park Subdivision*.

Declarant specifically grants to the local water supplier, electric company and natural gas supplier easements across the Properties for ingress, egress, installation, reading, replacing, repairing and maintaining utility meters and boxes. However, the exercise of this easement shall not extend to permitting entry into the

dwelling on any Unit, nor shall any utilities be installed or relocated on the Properties, except as approved by the Declarant or his assigns.

13.3 Easements to Serve Additional Property. The Declarant hereby reserves for itself and its duly authorized agents, representatives, employees, successors, assigns, licensees and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access and development of the property described in Exhibit "C", whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of the exercise of these easements. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof is not made subject to this Declaration, the Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of maintenance of any access roadway serving such property.

13.4 Easements and Indemnities Relating to Golf Course.

(a) Each Unit, the Area of Common Responsibility and the Common Area are burdened with an easement permitting (i) golf balls to come upon them, and (ii) for golfers at reasonable times and in a reasonable manner to come upon them to retrieve golf balls. In some cases, the golf balls which come upon the Area of Common Responsibility, Common Area or Units may have sufficient force and velocity to do serious harm to a person, to pets, to improvements or to personal property. EACH OWNER, FOR SUCH OWNER'S FAMILY MEMBERS, VISITORS, INVITEES AND GUESTS AND SUCH OWNER'S SUCCESSORS AND ASSIGNS, ASSUMES SUCH RISK AND WAIVES EACH RIGHT SUCH PERSON OTHERWISE WOULD HAVE AGAINST DECLARANT, BUILDERS, THE ASSOCIATION AND ITS MEMBERS (IN THEIR CAPACITY AS SUCH), THE GOLF COURSE, THE GOLF COURSE OWNER AND OPERATOR, THE GOLF COURSE DESIGNER, THE GOLF COURSE CONTRACTOR AND THE OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, INDEPENDENT CONTRACTORS, DESIGNERS, ARCHITECTS, AGENTS, SUCCESSORS AND ASSIGNS OF THE FOREGOING, TO THE FULLEST EXTENT PERMISSIBLE BY LAW, FOR EACH INJURY RESULTING FROM THE DESIGN OF SUCH GOLF COURSE, OR THE LOCATION OF A UNIT IN RELATION TO THE GOLF COURSE, AND AGREES TO INDEMNIFY AND HOLD DECLARANT, BUILDERS, THE ASSOCIATION AND ITS MEMBERS (IN THEIR CAPACITY AS SUCH), THE GOLF COURSE, THE GOLF COURSE OWNER AND OPERATOR, THE DESIGNER OF THE GOLF COURSE, THE BUILDER OF THE GOLF COURSE AND THE OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, INDEPENDENT CONTRACTORS, DESIGNERS, ARCHITECTS, AGENTS, SUCCESSORS AND ASSIGNS OF THE FOREGOING HARMLESS FROM AND AGAINST ALL CLAIMS AND LIABILITY INCLUDING, WITHOUT LIMITATION, LEGAL FEES AND COSTS IN THE EVENT ANY PERSON WHILE ON A UNIT, RECEIVES ANY INJURY, OR SUFFERS PROPERTY DAMAGE AND THEREAFTER SEEKS TO RECOVER AGAINST SUCH PERSONS OR ENTITIES FOR COMPENSATION FOR SUCH INJURY OR DAMAGE, WHETHER DIRECTLY OR INDIRECTLY, OR AS THE RESULT OF A THIRD PARTY CLAIM OR CROSS-CLAIM. EACH OWNER AND SUCH OWNER'S FAMILY MEMBERS, INVITEES, GUESTS, VISITORS, SUCCESSORS AND ASSIGNS, WAIVES EACH AND EVERY CLAIM OR RIGHT THEY MAY HAVE TO CLAIM THAT THE NORMAL AND CUSTOMARY OPERATION OF THE GOLF COURSE CONSTITUTES A NUISANCE, OR THAT ANY ASPECT OF THE GOLF COURSE OPERATION SHOULD BE LIMITED TO ANY SPECIFIC HOURS OF THE DAY OR TO ANY SPECIFIC DAYS OF THE WEEK. EACH OWNER, BY ACCEPTANCE OF THE DEED OR CONTRACT FOR A UNIT, AND SUCH FAMILY MEMBERS, INVITEES, GUESTS, VISITORS, SUCCESSORS AND ASSIGNS OF SUCH OWNER, ASSUMES

THE RISKS WHICH ARE ASSOCIATED WITH THE GAME OF GOLF AND THE FLIGHT OF GOLF BALLS OVER AND UPON THEIR LOT, INCLUDING, WITHOUT LIMITATION, THE POSSIBILITY OF DAMAGE TO THEIR PROPERTY, REAL OR PERSONAL, AND INJURY TO THEMSELVES, THEIR FAMILY, PETS, FRIENDS, INVITED GUESTS, VISITORS OR ANY OTHER PERSON ON THEIR UNIT, AND AGREES TO INDEMNIFY AND HOLD DECLARANT, BUILDERS, THE ASSOCIATION AND ITS MEMBERS (IN THEIR CAPACITY AS SUCH), THE GOLF COURSE, THE GOLF COURSE OWNER AND OPERATOR, THE DESIGNER OF THE GOLF COURSE AND THE BUILDER OF THE GOLF COURSE, AND THE OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, INDEPENDENT CONTRACTORS, DESIGNERS, ARCHITECTS, AGENTS, SUCCESSORS AND ASSIGNS OF THE FOREGOING, HARMLESS AND FREE FROM AND AGAINST ALL CLAIMS AND LIABILITY, INCLUDING, WITHOUT LIMITATION, LEGAL FEES AND COSTS ARISING FROM ANY SUCH ASSUMED RISK. This Section 13.4(a) shall not be amended without the written consent of the Golf Course and its owner, which consent must be embodied in a document headed "**Consent to Amendment of Section 13.4(a) of the Declaration of Covenants, Conditions, Restrictions and Easements for Eagle Point Golf Course Community**" and executed by a duly authorized representative of the Golf Course and its owner.

(b) The owner of the Golf Course, its respective agents, successors and assigns, shall at all times have a right and nonexclusive easement of access and use over those portions of the Common Area reasonably necessary, with or without the use of maintenance vehicles and equipment, for the operation, maintenance, repair and replacement of the Golf Course.

(c) The Properties immediately adjacent to the Golf Course are hereby burdened with a non-exclusive easement in favor of the Golf Course for overspray of water from any irrigation system serving the Golf Course. Under no circumstances shall the Association or the owners of the Golf Course be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

(d) The owner of the Golf Course, its respective agents, successors and assigns, shall have a perpetual, exclusive easement of access over the Area of Common Responsibility and unimproved portions of the Properties for the purpose of retrieving golf balls from bodies of water within the Area of Common Responsibility lying reasonably within range of golf balls hit from the Golf Course.

(e) The owner of the Golf Course, its respective agents, successors and assigns, as well as its guests, invitees, employees and authorized users of the Golf Course, shall at all times have a right and non-exclusive easement of access and use over all roadways and golf cart paths, if any, located or to be located within the Properties reasonably necessary to travel to and from the Golf Course and the right to park their vehicles on the streets within the Properties, where parking is permitted by law and at reasonable times before, during and after golf tournaments and other similar functions held at the Golf Course.

(f) The owner of the Golf Course, its respective agents, successors and assigns, shall have a perpetual, non-exclusive easement to the extent reasonably necessary, over the Common Area for the installation, maintenance, repair, replacement and monitoring of utility lines, wires, drainage pipelines and pipelines serving all or portions of the Golf Course.

(g) The Properties are hereby burdened with easements in favor of the Golf Course for natural drainage of storm water runoff from the Golf Course.

(h) The Common Area is hereby burdened with easements in favor of the Golf Course for golf cart paths serving the Golf Course. Under no circumstances shall the Association or the owners of the Golf Course be held liable for any damage or injury resulting from the exercise of this easement.

(i) The owner of the Golf Course, its respective agents, successors and assigns, as well as its guests, invitees, employees and authorized users of the Golf Course shall at all times have a right and non-exclusive easement of access and use over the golf cart paths located within the Properties.

13.5 Easements for Cross-Drainage. Every Unit and the Common Area shall be burdened with easements for natural drainage of storm water runoff from other portions of the Properties; provided no Person shall alter the natural drainage on any Unit so as to materially increase the drainage of storm water onto adjacent portions of the Properties without the consent of the owner of the affected property.

13.6 Right of Entry. The Association shall have the right, but not the obligation, to enter upon any Unit for emergency, security and safety reasons to perform maintenance pursuant to Article V hereof and to inspect for the purpose of insuring compliance with this Declaration, any Supplemental Declaration, By-Laws and rules which may be exercised by any member of the Board, the Association, officers, agents, employees and managers and all policemen, firemen, ambulance personnel and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board.

ARTICLE XIV

Mortgage Provisions

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units in the Properties. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

14.1 Notices of Action. An institutional holder, insurer or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, there by becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Common Area which affects any Unit insured by the Association on which there is a first mortgage held, insured or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days following notice of such delinquency by the Association, or any other violation of the Declaration or By-Laws relating to such Unit or the Owner or Occupant which is not cured within 60 days following notice of such violation by the Association. Notwithstanding this provision, any holder of a first Mortgage is entitled to written notice, upon request, from the Association of any default in the performance by an Owner of a Unit of any obligation under the Declaration or By-Laws which is not cured within 60 days following notice of such default by the Association;

(c) Any, lapse, cancellation or material modification of any insurance policy maintained by the Association; or

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders.

14.2 Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least 75% of the first Mortgagees or Members representing at least 75% of the total Association vote entitled to be cast consent, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer all or any portion of the Common Area, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this subsection);

(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner of a Unit (a decision, including contracts, by the Board or provisions of any declaration subsequently recorded on any portion of the Properties regarding assessments for neighborhoods or other similar areas shall not be subject to this provision where such decision or subsequent declaration is otherwise authorized by this Declaration);

(c) By act or omission change, waive or abandon any scheme of regulations or enforcement pertaining to architectural design, exterior appearance or maintenance of Units and the Common Area (the issuance and amendment of Design Guidelines, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver or abandonment within the meaning of this provision);

(d) Fail to maintain insurance as required by this Declaration; or

(e) Use hazard insurance proceeds for any Common Area losses for other than the repair, replacement or reconstruction of such property.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

14.3 Other Provisions for First Mortgagees. To the extent possible under Oregon law;

(a) Any restoration or repair of the Properties after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with this Declaration and the original plans and specifications unless the approval is obtained of the Eligible Holders of first Mortgages on Units to which at least 51% of the votes of Units subject to Mortgages held by Eligible Holders are allocated.

(b) Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Eligible Holders of first Mortgages on Units to which at least 51% of the votes of Units subject to Mortgages held by such Eligible Holders are allocated.

14.4 **Amendments to Documents.** The following provisions do not apply to amendments to the Declaration or By-Laws or termination of the Association made as a result of destruction, damage or condemnation pursuant to Section 14.3(a) and (b) or to the annexation or withdrawal of land in accordance with Article IX.

(a) The consent of Members representing at least 75% of the Class "A" votes and the Declarant, so long as it owns any land subject to this Declaration or which may be annexed pursuant to Article IX, and the approval of the Eligible Holders of first Mortgages on Units to which at least 75% of the votes of Units subject to Mortgages held by Eligible Holders are allocated shall be required to terminate the Association.

(b) The consent of Members representing at least 75% of the Class "A" votes and of the Declarant so long as it owns any land subject to this Declaration or which may be annexed pursuant to Article IX, and the approval of Eligible Holders of first Mortgages on Units to which at least 51% of the votes of Units subject to Mortgages held by Eligible Holders are allocated shall be required materially to amend any provisions of the Declaration, By-Laws or Articles of Incorporation or to add any material provisions thereto which establish, provide for, change, govern or regulate any of the following:

- (i) voting;
- (ii) assessments, assessment liens or subordination of such liens;
- (iii) reserves for maintenance, repair and replacement of the Common Area;
- (iv) insurance or fidelity bonds;
- (v) rights to use the Common Area;
- (vi) responsibility for maintenance and repair of the Properties;
- (vii) expansion or contraction of the Properties or the addition, annexation or withdrawal of Properties to or from the Association;
- (viii) boundaries of any Unit;
- (ix) leasing of Units;
- (x) imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer or otherwise convey his or her Unit;
- (xi) establishment of self-management by the Association where professional management has been required by an Eligible Holder; or
- (xii) any provisions included in the Declaration, By-Laws or Articles of Incorporation which are for the express benefit of holders, guarantors or insurers of first Mortgages on Units.

14.5 **No Priority.** No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

14.6 Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

14.7 Amendment by Board. Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of its respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may record an amendment to this Article to reflect such changes.

14.8 Applicability of Article XIV. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws or Oregon law for any of the acts set out in this Article. Nothing contained in this Article XIV shall be construed to alter, limit or reduce, in any way, the easements, indemnities or other rights reserved to the Golf Course or to permit, under the procedure set forth in this Article XIV, any modification of such indemnities, easements or other rights.

14.9 Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

ARTICLE XV

Declarant's Rights

Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the By-Laws may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration or the By-Laws. No such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Office of the County Clerk. Nothing in this Declaration shall be construed to require Declarant or any successor to develop any of the property set forth in Exhibit "C" in any manner whatsoever.

So long as construction and initial sales of Units shall continue, the Declarant and Builders authorized by Declarant may maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient or incidental to the construction or sale of such Units, including, but not limited to, business offices, signs, model units and sales offices. The Declarant and authorized Builders shall have easements for access to and use of such facilities. The Declarant's or Builder's unilateral right to use the Common Area for purposes stated in this paragraph shall not be exclusive and shall not unreasonably interfere with use of such Common Areas by Owners unless leased pursuant to a lease agreement with the Association providing for payment of reasonable rent.

No Person shall record any declaration of covenants, conditions and restrictions or declaration of condominium or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Declarant.

This Article may not be amended without the written consent of the Declarant. The Declarant's rights contained in this Article shall terminate upon the earlier of (a) 40 years after the conveyance of a Unit to a Retail Owner, or (b) upon recording by Declarant of a written statement that all sales activity has ceased. Thereafter, the Declarant or Builders may continue to use the Common Areas for purposes stated in this

paragraph only pursuant to a rental or lease agreement between the Declarant or such Builder and the Association which provides for rental payments based on the fair market rental value of any such portion of the Common Areas.

ARTICLE XVI

Golf Course

16.1 Ownership and Operation of Golf Course. All Persons, including all Owners, are hereby advised that no representations or warranties have been or are made by the Declarant or any other Person with regard to the continuing existence, ownership, operation or maintenance of the Golf Course. The Golf Course is owned by Eagle Point Golf Club, L.L.C., an Oregon limited liability company, which is entirely separate and distinct from the Declarant. The ownership and/or operation of the Golf Course may be changed at any time, solely at the discretion of Eagle Point Golf Club, L.L.C., and/or its successors and assigns. All persons, including all Owners, are hereby advised that operation and maintenance of the Golf Course will result in noise, traffic, social and recreational gatherings of large numbers of people, the use of sound amplification systems and photography equipment and require the application of fertilizers and pesticides. Each owner, for such Owner and such Owner's successors and assigns, assumes the risk and waives each right such person otherwise would have against any parties having any right, title or interest in the Golf Course, resulting from the foregoing conditions and other similar circumstances associated with the operation and maintenance of the Golf Course.

16.2 Right to Use. Neither membership in the Association nor ownership or occupancy of a Unit shall confer any ownership interest in or right to use the Golf Course in any manner. Rights to use the Golf Course will be granted only to such persons and on such terms and conditions as may be determined from time to time by the owner of the Golf Course. The owner of the Golf Course shall have the right, from time to time, in its sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of the Golf Course, including, without limitation, eligibility for and duration of use rights, categories of use and extent of use privileges and number of users and shall also have the right to reserve use rights and to terminate use rights altogether, subject to the provisions of any outstanding membership documents.

16.3 View Impairment. Neither the Declarant, the Association nor the owner or operator of the Golf Course guarantees or represents that any view over and across the Golf Course from adjacent Units will be preserved without impairment. The owner of the Golf Course, if any, shall have no obligation to prune or thin trees or other landscaping, and shall have the right, in its sole and absolute discretion, to add trees and other landscaping to the Golf Course from time to time. In addition, the owner of the Golf Course may, in its sole and absolute discretion, change the location, configuration, size and elevation of the tees, bunkers, fairways and greens on the Golf Course from time to time. Any such additions or changes to the Golf Course may diminish or obstruct any view from the Units, and any express or implied easements for view purposes or for the passage of light and air are hereby disclaimed.

16.4 Limitations on Amendments. In recognition of the fact that the provisions of this Article are for the benefit of the owner of the Golf Course, no amendment to this Article and no amendment in derogation of any rights reserved or granted to the Golf Course by other provisions of this Declaration; may be made without the written approval of the Golf Course.

16.5 Jurisdiction and Cooperation. It is Declarant's intention that the Association and the owner of the Golf Course shall cooperate to the maximum extent possible in the operation of the Properties and the Golf Course. Each shall reasonably assist the other in upholding the Community-Wide Standard. The Association shall have no power to promulgate rules and regulations affecting activities on or use of the Golf Course.

ARTICLE XVII

Dispute Resolution and Limitation on Litigation

17.1 Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes. The Association, Declarant, Owners, all Persons subject to this Declaration and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Bound Party covenants and agrees that all claims, grievances or disputes between such Bound Party and any other Bound Party involving the Properties, including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the By-Laws, the Association rules or the Articles of Incorporation (collectively "Claim"), except for those Claims authorized in Section 17.2 shall be subject to the procedures set forth in Section 17.3.

17.2 Exempt Claims. The following Claims ("Exempt Claims") shall be exempt from the provisions of Section 17.3:

- (a) any suit by the Association against any Bound Party to enforce the provisions of Article X;
- (b) any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article XI and Article XII; and
- (c) any suit between Owners (other than the Declarant) seeking redress on the basis of a Claim which would constitute a cause of action under the law of the State of Oregon, in the absence of a claim based on the Declaration, By-Laws, Articles or rules of the Association, if the amount in controversy exceeds \$5,000.00.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 17.3, but there shall be no obligation to do so.

17.3 Mandatory Procedures for all Other Claims. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") other than a Claim exempted from this provision by Section 17.2, shall not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of such Claim until it has complied with the following procedures:

- (a) **Notice.** The Claimant shall notify each Respondent in writing of the Claim ("Notice"), stating plainly and concisely:
 - (i) the nature of the Claim, including date, time, location, persons involved, Respondent's role in the Claim and the provisions of this Declaration, the By Laws, the Rules, the Articles of Incorporation or other authority out of which the Claim arises;
 - (ii) the basis of the Claim (i.e., the provision of the Declaration, By-Laws, Rules or Articles triggered by the Claim);
 - (iii) what Claimant wants Respondent to do or not do to resolve the Claim; and

(iv) that Claimant wishes to resolve the Claim by mutual agreement with Respondent and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

(b) Negotiation.

(i) Each Claimant and Respondent ("Parties") shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.

(ii) Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties and to the welfare of the community.

(c) Mediation.

(i) If the parties do not resolve the claim through negotiation within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have 30 additional days within which to submit the Claim to mediation under the auspices of the Neighborhood Mediation Center in Portland, Oregon or such other independent agency providing similar services upon which the Parties may mutually agree.

(ii) If Claimant does not submit the claim to mediation within 30 days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

(iii) If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation process, the mediator shall, within five days of the termination of the mediation proceedings, provide the Parties with a written non-binding recommendation for resolution of the Claim ("Mediator's Recommendation").

(d) Final and Binding Arbitration.

(i) If the Parties do not agree in writing to accept the Mediator's Recommendation within 10 days after receipt of notice thereof, the Claimant shall have 30 additional days to submit the Claim to arbitration in accordance with the Rules of Arbitration contained in Exhibit "E" or the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Persons not a Party to the foregoing proceedings.

(ii) this subsection (d) is an agreement of the Bound Parties to arbitrate all Claims except Exempt Claims and is specifically enforceable under the applicable arbitration law of the State of Oregon. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Oregon.

17.4 Allocation of Costs of Resolving Claims.

(a) Each Party shall bear all of its own costs incurred prior to and during the proceedings described in Section 17.3(a), (b) and (c), including the fees of its attorney or other representative. Each Party shall share equally all charges rendered by the mediator(s) pursuant to Section 17.3(c).

(b) Each Party shall bear all of its own costs (including the fees of its attorney or other representative) incurred after the Termination of Mediation under Section 17.3(c) and shall share equally in the costs of conducting the arbitration proceeding (collectively, "Post Mediation Costs"), except as otherwise provided in this subsection; provided, however, if the Claim is rejected in whole, the Claimant shall pay all Post Mediation Costs, including the costs incurred by the Respondent.

17.5 Enforcement of Resolution. If the Parties agree to resolve any Claim through negotiation or mediation in accordance with Section 17.3 and any Party thereafter fails to abide by the terms of such Agreement, or if the Parties agree to accept the Award following arbitration and any Party thereafter fails to comply with such Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section 17.3. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties, jointly and severally) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys' fees and court costs.

ARTICLE XVIII

General Provisions

18.1 Term. This Declaration shall run with and bind the Properties and shall inure to the benefit of and shall be enforceable by the Association, Golf Course, or any owner, their respective legal representatives, heirs, successors and assigns for a term of 40 years from the date of recording of this Declaration with the Office of the County Clerk.

18.2 Amendment.

(a) **By Declarant.** Prior to the conveyance of the first Unit to a Retail Owner, Declarant may unilaterally amend this Declaration. After the conveyance of any Unit to a Retail Owner, the Declarant may unilaterally amend this Declaration if such amendment is (i) necessary to bring any provision into compliance with any applicable governmental statutes, rule, regulation, or judicial determination; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage on the Units; or (iii) required by an institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable it to make, purchase, insure or guarantee mortgage loans on the Units; or (iv) otherwise necessary to satisfy the requirements of any governmental agency for approval of this Declaration. However, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing. Thereafter and otherwise, this Declaration may be amended in accordance with Section 18.2(b).

(b) **By Owners.** Unless the Declarant has the right to amend this Declaration in accordance with Section 18.2(a), this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing 75% of each class of Members. After conversion of the Class "B" membership to Class "A" membership, the Declaration may be amended by the vote or

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written consent of the Members representing at least (a) 75% of the Members; and (b) 75% of the Members other than the Declarant. However, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing.

In addition, the approval requirements set forth in Article XIV shall be met if applicable and the consent of the Golf Course shall be obtained if required as provided herein. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) **Validity and Effective Date of Amendments.** Amendments to this Declaration shall become effective upon recordation in the Office of the County Clerk unless a later effective date is specified therein. Any procedural challenge to an amendment must be made, within one year of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke or modify any right or privilege of the Declarant without the written consent of the Declarant or the assignee of such right or privilege.

18.3 Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

18.4 Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until the expiration of 90 years after the recording of this Declaration with the Office of the County Clerk.

18.5 Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a majority of a quorum of the Class "A" Members. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article X; (c) proceedings involving challenges to *ad valorem* taxation; or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above. This provision shall apply in addition to the provisions of Article XVII, if applicable.

18.6 Cumulative Effect: Conflict. The covenants, restrictions and provisions of this Declaration shall be cumulative with those of any Neighborhood and the Association may, but shall not be required to, enforce the covenants, conditions and restrictions of any Neighborhood; provided, however, in the event of conflict between or among such covenants and restrictions and provisions of any Articles of Incorporation, By-Laws, rules and regulations, policies or practices adopted or carried out pursuant thereto, those of any Neighborhood shall be subject and subordinate to those of the Association. The foregoing priorities shall apply, but not be limited to, the liens for assessments created in favor of the Association.

18.7 Use of the Words "Eagle Point Golf Community". No Person shall use the words "Eagle Point Golf Community", or any derivative, or any other term which Declarant may select as the name of this development or any component thereof in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the words "Eagle Point Golf Community" in printed or promotional matter solely to specify that particular property is located within the Properties and the Association shall be entitled to use the words "Eagle Point Golf Community" in its name.

18.8 Compliance. Every Owner and occupant of any Unit shall comply with this Declaration, the By-Laws and the rules of the Association. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, by the Association or, in a proper case, by any aggrieved Unit owner(s).

18.9 Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board written notice of the name and address of the purchaser or transferee, the date of such transfer of title and such other information as the Board may reasonably require. The notice shall be given immediately upon any such transfer and the transferring Owner shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

18.10 Attorneys' Fees. In the event of an action instituted to enforce any of the provisions contained in this Declaration, the Articles of Incorporation or the By-Laws, the party prevailing in such action shall be entitled to recover from the other party thereto as a part of the judgment; reasonable attorneys' fees and costs of such suit. In the event the Association is a prevailing party in such action, the amount of such attorneys' fees and costs shall be a Special Assessment with respect to the Unit(s) involved in the action.

18.11 Enforcement of Bonded Obligations. In the event the improvements to the Common Area have not been completed prior to the conveyance of the first Unit to a Retail Owner and the Association is an obligee under a bond or other arrangement ("Bond"), to secure performance of the commitment of the Declarant or a Builder to complete such improvements, the following provisions shall apply.

(a) the Board shall consider and vote upon the question of action by the Association to enforce the obligations under the Bond with respect to any improvements for which a "Notice of Completion" has not been filed within 60 days after the completion date specified for such improvement in the "Planned Construction Statement" appended to the bond. If the Association has given an extension in writing for the completion of any Common Area improvement, the Board shall consider and vote on the aforesaid question if a "Notice of Completion" has not been filed within 30 days after the expiration of such extension.

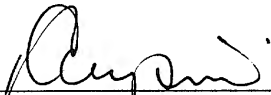
(b) In the event the Board determines not to initiate action to enforce the obligations under the bond or in the event the Board fails to consider and vote upon such question, as provided above, the Board shall call a special meeting of the Members for the purpose of voting to override such decision or such failure to act by the Board. Such meeting shall be called according to the provisions of the By-Laws dealing with meetings of the Members, but in any event such meeting shall be held not less than 35 nor more than 45 days after receipt by the Board of a petition for such meeting, signed by Members representing not less than 5% of the Members of the Association.

(c) The only Members entitled to vote at such a meeting shall be those other than the Declarant. A vote at such meeting of a majority of the Members, other than the Declarant, to take action to enforce the obligations under the Bond shall thereafter implement such decision by initiating and pursuing appropriate action in the name of the Association.

18.12 **Enforcement by Golf Course.** Since important interests which benefit the Golf Course are created by this Declaration, all parties having any right, title, or interest in the Golf Course, or any part thereof, are authorized and have standing to defend and enforce such interests through judicial and administrative proceedings and shall not be bound by or subject to the Dispute Resolution and Limitation on Litigation provisions of Article XVII of this Declaration.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 1st day of November, 2000.

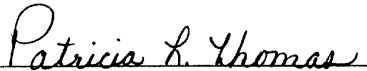
DECLARANT:



Eagle Point Developments, L.L.C.
By: C. A. Galpin, member

State of Oregon }
 } ss.
County of Jackson }

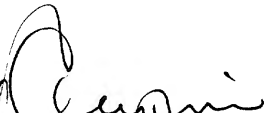
On this 1st day of November, 2000, personally appeared before me the above-named C.A. Galpin, who being duly sworn, states he is a member of Eagle Point Developments L.L.C., and Oregon limited liability company, and acknowledged that the foregoing instrument was signed and sealed on behalf of Eagle Point Developments L.L.C., and acknowledged said instrument to be the voluntary act and deed of said company.



Notary Public for Oregon



DECLARANT:



Alta Vista Development Company
By: C. A. Galpin, partner

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State of Oregon }
 } ss.
County of Jackson }

Patricia L. Thomas
Notary Public for Oregon



On this 1st day of November, 2000, personally appeared before me the above-named C.A. Galpin, who being duly sworn, states he is a member of Alta Vista Development Company, and Oregon corporation, and acknowledged that the foregoing instrument was signed and sealed on behalf of Alta Vista Development Company, and acknowledged said instrument to be the voluntary act and deed of said corporation.

Jackson County, Oregon
Recorded
OFFICIAL RECORDS
NOV 02 2000
9:41 AM
Spencer S. [Signature]
COUNTY CLERK