

AFTER RECORDING, RETURN TO:

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**DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
1925 TOWNHOMES**

**1925 Townhomes, LLC
Declarant**

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**DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS FOR
1925 TOWNHOMES**

THIS DECLARATION is made this _____ day of _____, 20____, by 1925 Townhomes, LLC, an Oregon limited liability company (“**Declarant**”).

R E C I T A L S:

A. Declarant has recorded the plat of “**1925 Townhomes**” in the plat records of Deschutes County, Oregon.

B. Declarant desires to subject the property described in “**Exhibit A**” attached hereto and made a part hereof, to the conditions, restrictions and charges set forth herein for the benefit of such property and its present and subsequent owners, and to establish such property under the Oregon Planned Community Act, ORS 94.550 to 94.783, as a Class I planned community townhouse project to be known as “**1925 Townhomes**.”

NOW, THEREFORE, Declarant hereby declares that the property described in Exhibit A, shall be held, sold and conveyed subject to the following easements, covenants, restrictions and charges, which shall run with such property and shall be binding upon all parties having or acquiring any right, title or interest in such property or any part thereof, and all persons who occupy any portion of the Property, and shall inure to the benefit of Declarant, each Owner and the Association (as such terms are defined below).

Article 1

DEFINITIONS

As used in this Declaration, the terms set forth below shall have the following meanings:

1.1 “Assessments”

“Assessments” mean all assessments and other charges, fines and fees imposed by the Association on an Owner in accordance with this Declaration, the Bylaws of the Association or the provisions of the Oregon Planned Community Act, including, without limitation, Annual Assessments, Special Assessments, Emergency Assessments, and Individual Assessments as described in Article 8 below.

1.2 “Association”

“Association” means the nonprofit corporation to be formed to serve as an Owners’ association as provided in Article 6 of this Declaration, and its successors and assigns.

1.3 “Board of Directors” or “the Board”

“**Board of Directors**” or “**the Board**” means the duly appointed or elected board of directors of the Association, which is invested with the authority to operate the Association and to appoint the officers of the Association. Prior to the Turnover Meeting, Declarant will appoint the Board of Directors. After the Turnover Meeting, the Board of Directors will be elected by the Owners.

1.4 “Bylaws”

“Bylaws” means the duly adopted bylaws of the Association set forth in the attached Exhibit A as the same may hereafter be amended or replaced.

1.5 “Declarant”

“Declarant” means 1925 Townhomes LLC, an Oregon limited liability company, and its successors and assigns who acquire any of the rights or assume any of the obligations of Declarant under this Declaration. If less than all of Declarant’s rights or obligations are transferred to a successor or assign, then the successor or assign shall only be deemed a Declarant with respect to those rights or obligations that are specifically assigned to or assumed by the successor or assign. One or more persons or entities may be a Declarant.

1.6 “Property”

“Property” means the property referred to in Section 2.1 below.

1.7 “Lot”

“Lot” means a numerically designated and platted lot within the Property (including the Townhome located on such Lot), with the exception of the Common Areas and any tract marked on the plat as being dedicated to a public body.

1.8 “Mortgage”

“Mortgage” means a mortgage or a deed of trust; “mortgagee” means a mortgagee or a beneficiary of a deed of trust; “**mortgagor**” means a mortgagor or a grantor of a deed of trust.

1.9 “Common Areas”

“Common Areas” means those lots or tracts designated as such on any plat of the Property or in this Declaration, including any improvements thereon, and shall also include Common Easement Areas and all other real and personal property that the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners.

1.10 “Common Easement Areas”

“Common Easement Areas” means those easements established for the benefit of all property within the 1925 Townhomes pursuant to this Declaration.

1.11 “Occupant”

“Occupant” means the occupant of a Townhome who is the Owner, lessee or any other person authorized by the Owner to occupy the premises.

1.12 “Owner”

“Owner” means the person or persons, including Declarant, owning any Lot in the Property, but does not include a tenant or holder of a leasehold interest or a contract vendor or other person holding only a security interest in a Lot. The rights, obligations and other status of being an Owner commence upon acquisition of the ownership of a Lot and terminate upon disposition of such ownership, but termination of ownership shall not discharge an Owner from obligations incurred prior to termination.

1.13 “Party Wall”

“Party Wall” means each wall that is built as part of the original construction of the Townhomes and placed upon the dividing line between Lots, including any replacements or reconstructions thereof constructed with the approval of the Board of Directors.

1.14 “Rules and Regulations”

“Rules and Regulations” means those policies, procedures, rules and regulations adopted by the Association pursuant to the authority granted in this Declaration, as the same may be amended from time to time.

1.15 “Sold”

“Sold” means that legal title has been conveyed or that a contract of sale has been executed under which the purchaser has obtained the right to possession.

1.16 “1925 Townhomes”

“1925 Townhomes” means the Property annexed to this Declaration.

1.17 “This Declaration”

“This Declaration” means all of the easements, covenants, restrictions and charges set forth herein, together with any rules or regulations promulgated hereunder, as the same may be amended or supplemented from time to time in accordance with the provisions hereof.

1.18 **“Turnover Meeting”**

“Turnover Meeting” means the meeting called by Declarant pursuant to Section 6.7 below, at which Declarant will turnover administrative responsibility for the Property to the Association.

1.19 **“Townhome”**

“Townhome” means a building or a portion of a building located upon a Lot within the Property and designated for separate occupancy as a dwelling, together with any attached deck or patio.

Article 2

PROPERTY SUBJECT TO THESE COVENANTS

2.1 Property.

Declarant hereby declares that all the real property described in Exhibit B is owned and shall be owned, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration.

2.2 Improvements.

Declarant does not agree to build any improvements on the Property other than as required by the City of Bend, Oregon or if applicable, Deschutes County, but may elect, at Declarant’s option, to build additional improvements.

2.3 Withdrawal of Property.

Property may be withdrawn from 1925 Townhomes only by a duly adopted amendment to this Declaration, except that Declarant may withdraw all or a portion of the Property pursuant to a declaration described in Article 13 at any time prior to the sale of the first Lot in the plat of the Property. Such withdrawal shall be by a declaration executed by Declarant and recorded in the deed records of Deschutes County, Oregon. If a portion, or all, of the Property is withdrawn, all voting rights otherwise allocated to Lots being withdrawn shall be eliminated, and the common expenses shall be reallocated as provided in Section 8.3 (b) below.

Article 3

PROPERTY RIGHTS IN COMMON AREAS

3.1 Designation of Common Areas.

Tracts A through F, inclusive, as shown on the plat, shall be Common Areas for purposes of this Declaration, along with the Common Easement Areas referred to below.

3.2 Owner's Easements of Enjoyment.

Subject to the provisions of this Article, every Owner and his or her invitees shall have a right and easement of enjoyment in and to the Common Areas, which easement shall be appurtenant to and shall pass with the title to every Lot.

3.3 Title to the Common Areas.

Title to the Common Areas, except Common Easement Areas, shall be conveyed by deed or other instrument to the Association by Declarant no later than the Turnover Meeting, and the Association shall unconditionally accept the conveyance. Title to Common Easement Areas, subject to the easements set forth in this Declaration, shall rest in the Owners of the respective Lots within which such areas are located, to the public if part of dedicated street rights-of-way, or in the owner of the real property within which such areas are located.

3.4 Extent of Owners' Rights

The rights and easements of enjoyment in the Common Areas created hereby shall be subject to the following and to all other provisions of this Declaration:

(a) Easements.

Declarant grants to the Association for the benefit of the Association and all Owners of Lots within the Property the following easements over, under and upon the Common Areas, including the Common Easement Areas:

(1) An easement on all Common Areas for underground installation and maintenance of power, gas, electric, water, drainage and other utility and communication lines and services installed by Declarant or with the approval of the Board of Directors and any such easement shown on any plat of the Property.

(2) An easement over all roadways for vehicular access within the Property and to adjacent areas.

(3) An easement for construction, maintenance, repair and use of Common Areas, including common facilities thereon.

(4) An easement as necessary to enable the Association to fulfill its maintenance responsibilities.

The Common Areas shall be subject to public and private utility easements for the installation and maintenance of sanitary sewers, waterlines, surface water management, storm drainage and access over their entirety. In addition, Declarant or the Association may (and to the extent required by law, shall) grant or assign easements on all Common Areas to governmental bodies or other utilities performing utility services and to communications companies, and may

grant free access over the Common Areas to police, fire and other public officials and to employees of utility companies and communication companies serving the Property.

(b) Use of the Common Areas.

Subject to Declarant's rights under Article 12, the Common Areas shall not be partitioned or otherwise divided into parcels for residential use. Except as otherwise provided in this Declaration, the Common Areas shall be reserved for the use and enjoyment of all Owners and no private use may be made of the Common Areas, including the Common Easement Areas. The Common Areas and facilities thereon shall be used for the purposes for which the same are reasonably intended, and their use, operation and maintenance shall not be obstructed, damaged or unreasonably interfered with by any Owner. Nothing herein shall prevent the placing of a sign or signs upon the Common Areas identifying 1925 Townhomes or identifying items of interest, including directional signs, provided that such signs comply with any applicable sign ordinances. The Board of Directors shall have authority to abate any trespass or encroachment upon the Common Areas at any time, by any reasonable means and with or without having to bring legal proceedings.

(c) Alienation of the Common Areas.

The Association shall not by act or omission seek to abandon, partition, subdivide, encumber as security for a debt, sell or transfer the Common Areas owned directly or indirectly by the Association for the benefit of the Lots unless the holders of at least eighty percent (80%) of the Class A Association voting rights and the Class B member, if any, have given their prior written approval.

(d) Association Authority to Grant Easements and Other Property Interests in Common Areas.

The Association may execute, acknowledge and deliver leases, easements, rights of way, licenses, and other similar interest affecting the Common Areas and consent to vacation of roadways within and adjacent to the Common Areas. Except for those matters described in ORS 94.665(4)(b), which the Board of Directors may approve without Owner consent, the granting of any interest pursuant to this Section 3.4 must be approved by at least seventy-five percent (75%) of the Owners present at a meeting of the Association or with the consent of at least seventy-five percent (75%) of all Owners solicited by any means the Board determine is reasonable. If a meeting is held to conduct the vote, the meeting notice shall include a statement that the approval of the granting of an interest in the Common Areas will be an item of business on the agenda of the meeting.

(e) Limitation on Use.

Use of the Common Areas by the Owners shall be subject to the provisions of this Declaration and to the following:

(1) The right of the Association to suspend such use rights of an Owner and his or her family members, guests, tenants and contract purchasers to the extent provided in Article 9 below.

(2) The right of the Association to adopt, amend and to repeal rules and regulations in accordance with this Declaration.

3.5 Delegation of Use.

Any Owner may delegate, in accordance with the Bylaws of the Association, his or her right of enjoyment to the Common Areas to members of his or her family, tenants, or contract purchasers who reside on the Property, whose use of the Common Areas shall be subject to this Declaration and the Rules and Regulations.

3.6 Easements Reserved by Declarant.

So long as Declarant owns any Lot, Declarant reserves an easement over, under and across the Common Areas to carry out sales activities necessary or convenient for the sale of Lots, including, without limitation, advertising and “For Sale” signs. In addition, Declarant hereby reserves to itself and for the Owners of Lots a perpetual easement and right-of-way for access over, upon and across the Common Areas for construction, utilities, communication lines, drainage, and ingress and egress for the benefit of other property owned by Declarant. Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under and across the Common Areas and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the improvements on the Property or other real property owned by Declarant; provided, however, that no such rights shall be exercised by Declarant in such a way as to unreasonably interfere with the occupancy of, use of, enjoyment of or access to an Owner’s Lot by that Owner or his or her family, tenants, employees, guests or invitees.

Article 4

PROPERTY RIGHTS IN LOTS

4.1 Use and Occupancy.

The Owner of a Lot in the Property shall be entitled to the exclusive use and benefit of such Lot, except as otherwise expressly provided in this Declaration, but the Lot shall be bound by and each Owner and Declarant shall comply with the restrictions contained in Article 5 below and all other provisions of this Declaration for the mutual benefit of all Owners.

4.2 Easements Reserved.

In addition to any utility and drainage easements shown on the recorded plat, Declarant hereby reserves the following easements for the benefit of Declarant, the Association and Owners, as applicable:

(a) Right of Entry.

The Association and any person authorized by the Association may at any reasonable time, and from time to time at reasonable intervals, enter upon any Lot for the purpose of performing the maintenance referred to in Article 7 and determining whether or not the Lot is then in compliance with this Declaration. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Lot.

(b) Encroachments.

Each Lot and all Common Areas shall have an easement over all adjoining Lots and Common Areas for the purpose of accommodating any present or future encroachment as a result of engineering errors, construction, reconstruction, repairs, settlement, shifting or movement of any portion of the Property, or any other similar cause, and any encroachment due to building overhang or projection. There shall be valid easements for the maintenance of the encroaching Townhomes and Common Areas so long as the encroachments shall exist, and the rights and obligations of Owners shall not be altered in any way by the encroachment. The encroachments described in this paragraph shall not be construed to be encumbrances affecting the marketability of title to any Lot. Nothing in this section shall relieve an Owner of liability in the case of the Owner's willful misconduct.

(c) Utilities.

Each Lot shall be subject to an easement under and across that portion of the Lot not occupied by the Townhome for installation, maintenance and use of power, gas, electric, water and other utility and communication lines, facilities and services and for meters measuring such services installed by or at the direction of Declarant or with approval of the Board of Directors. Maintenance and repair of any utilities installed pursuant to this easement shall be the responsibility of the Owner whose Townhome is served by the utilities, unless otherwise required to be maintained by the Association pursuant to this Declaration. The Owner or the Association, as the case may be, performing the maintenance and repair work, or otherwise causing the maintenance and repair work to be performed, shall be responsible for any and all damages resulting therefrom.

(d) Rain Drains and Storm Sewers.

Each Lot shall be subject to an easement for installation and maintenance of such rain drains and connected storm sewers installed or to be installed (as required by governmental regulatory authorities or as otherwise authorized by the Board of Directors) in or around any Townhome or under the surface of any Lot.

(e) Easements Reserved by Declarant.

Declarant and Declarant's agents, successors and assigns shall have an easement over and upon the Lots as may be reasonably necessary for the purpose of completing or making repairs to existing structures and for the purpose of discharging any other obligation of Declarant or exercising any other special Declarant right, whether arising under the Oregon Planned Community Act or reserved in this Declaration or the Bylaws.

(f) Land Outside Townhomes

The Association shall have an easement over all portions of each Lot, other than the portion occupied by a Townhome, for installation, operation, maintenance and use of landscaping, maintenance of Association proscribed Townhome exteriors and other facilities for the use and benefit of the Owners within the 1925 Townhomes.

4.3 Party Walls.

The general rules of law of the State of Oregon regarding party walls and of liability for property damage due to negligence or willful acts or omissions shall apply to each Party Wall, to the extent such rules are not inconsistent with the provisions of this Declaration. Any maintenance, repair or reconstruction of a Party Wall shall be performed in accordance with Article 7. A Party Wall shall not be punctured or otherwise breached by any party, except in connection with maintenance, repair or reconstruction work performed in accordance with Article 7. Additionally, no Owner shall install speakers or audio equipment on, or against a Party Wall or otherwise use a Party Wall in a manner so as to interfere with the use and enjoyment of the Party Wall by the Owner of the other adjoining Townhome.

Article 5

RESTRICTIONS ON USE

5.1 Residential Use.

Townhomes shall only be used for residential purposes. Except with the consent of the Board, no trade, craft, business, profession, commercial or similar activity of any kind shall be conducted on any Lot, nor shall any goods, equipment, vehicles, materials or supplies used in connection with any trade, service or business be kept or stored on any Lot. The mere parking on a Lot of a vehicle bearing the name of a business shall not, in itself, constitute a violation of this provision. Nothing in this paragraph shall be deemed to prohibit (a) activities relating to the rental or sale of Townhomes, (b) the right of Declarant to use Townhomes as sales or rental offices or model homes for purposes of sales or rental in 1925 Townhomes, and (c) the right of the Owner of a Townhome to maintain his or her professional personal library, keep his personal business or professional records or accounts, handle his or her personal business or professional telephone calls or confer with business or professional associates, clients or customers, in his or her Townhome by appointment only. The Board shall not approve commercial activities otherwise prohibited by this paragraph unless the Board determines that only normal residential

activities would be observable outside of the Townhome (which activities may be specified in rules and regulations adopted by the Board) and that the activities would not be in violation of applicable governmental ordinances.

5.2 No Timeshares.

No Lot and/or Townhome may be sold to or owned by more than four (4) people or entities jointly. Pursuant to ORS 94.811, in no event shall any Lot and/or Townhome be used as a “timeshare” (as that term is defined by Oregon law, ORS 94.803).

5.3 Rental of Townhomes.

An Owner shall be entitled to rent or lease his/her Townhome subject to the following:

(a) Transient Occupancy.

No Owner or Owners of any Townhome may Lease (as defined herein) her/his Townhome for Transient Occupancy (as defined herein). As used in this Section 5.3, “Lease” shall mean an arrangement pursuant to which a Townhome is made available for use by someone other than the Owner or an immediate family member of the Owner in exchange for rental payments or other items of value; provided, however, the following shall not constitute a “Lease” for purposes of this Section 5.3: (i) live-in domestic help, such as a housekeeper or nanny who receives room and board as part or all of his or her compensation for work; (ii) a house-sitter who occupies the Townhome in the Owner’s absence for security purposes and who pays nothing and provides nothing of value to the Owner for the occupancy other than occupancy and payment of actual expenses such as utilities; (iii) friends or extended family members who pay nothing and provide nothing of value to the Owner for the occupancy other than actual expenses such as utilities; or (iv) temporary occupancy of a Townhome by a seller after closing of the sale of the Townhome or early occupancy of a Townhome by a buyer of the Townhome before the closing of the sale, in either case, regardless of the length of the occupancy or whether the occupant pays rent or other amounts. As used herein, “Transient Occupancy” shall mean a period of thirty (30) consecutive calendar days or less.

(b) No Partial Leases; No Multiple Leases.

No Owner of any Townhome may execute a Lease of less than his or her entire interest in the Lot and the Townhome; the entire Townhome must be rented together pursuant to one Lease or not at all.

(c) Maximum Occupancy.

The maximum occupancy for any Townhome for rentals, regardless of the length, shall be either the lesser of the maximum permitted under the City of Bend ordinances and regulations

or four (4) unrelated individuals which may occupy any Lot. As used herein, “unrelated” means that the individuals are not related by blood, adoption or marriage. In no event shall the restriction on unrelated individuals prohibit occupancy by legally-placed foster children or by a married or unmarried couple, each of whom have children from previous relationships.

(d) Compliance by Invitees.

Each Owner shall be responsible for compliance by all of such Owner’s visitors, tenants or invitees, whether such visitor, tenant or invitee is occupying the Owner’s Townhome or otherwise visiting or using any portion of the Property, with all provisions of this Declaration, any and all rules and regulations, and all applicable laws.

(e) Written Lease Agreements Required.

There is a written rental or lease agreement specifying that: (i) the tenant shall be subject to all provisions of this Declaration, the Bylaws and the Rules and Regulations, and (ii) failure to comply with any provision of this Declaration, the Bylaws or the Rules and Regulations shall constitute a default under the rental agreement;

(f) Tenant Must Be Given Documents.

The Owner gives each tenant a copy of the Declaration, the Bylaws and the Rules and Regulations.

5.4 Pets, Livestock and Poultry.

No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except for a reasonable number of generally recognized household pets that are not kept, bred, or raised for commercial purposes and which are reasonably controlled so as not to be a nuisance. In clarification, neither chickens nor roosters will be permitted under any circumstances. In the event of a dispute, the Board shall make the final decision as to what constitutes “recognized household pets” and “a reasonable number” under particular circumstances. All such animals shall be kept in strict accordance with all applicable laws and ordinances (including leash laws) and in accordance with all rules established by the Association. No animal shall be allowed to roam the Common Area unattended, and all pets shall be kept on a leash while outside a Lot. Any animal enclosures shall be constructed in accordance with plans approved by the Board of Directors, shall be of reasonable design and construction to adequately contain such animals in accordance with the provisions hereof, and shall be subject to the Board of Directors approval. Each Owner is solely responsible for his or her animals, shall assure that such animals do not create a nuisance or otherwise damage any portion of the Property, and shall clean up after such animals.

5.5 Offensive or Unlawful Activities.

No noxious or offensive activities shall be carried on upon any Lot, nor shall anything be done or placed on any Lot that interferes with or jeopardizes the enjoyment of other Lots or the Common Areas, or that is a source of annoyance to occupants. Occupants shall use extreme care

about creating disturbances, making noises or using musical instruments, radios, televisions, amplifiers and audio equipment that may disturb other Occupants of Townhomes. No unlawful use shall be made of a Lot nor any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. Owners and other Occupants shall not engage in any abusive or harassing behavior, either verbal or physical, or any form of intimidation or aggression directed at other Owners, Occupants, guests, or invitees, or directed at the managing agent, its agents or employees, or vendors.

5.6 Appearance.

Except to the extent of the Association's responsibility under Section 7.1 below, each Owner shall maintain such Owner's Townhome and Lot in a clean and attractive condition, in good repair and in such a fashion as not to create a fire hazard. Damage caused by fire, flood, storm, earthquake, riot, vandalism, or other causes shall be the responsibility of each Owner and shall be restored within a reasonable period of time. No part of any Lot or any part of the Common Areas shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste. Trash, garbage or other wastes shall be kept only in sanitary containers in the garages, except when outside awaiting pickup during garbage pickup days.

5.7 Windows, Decks, Porches and Outside Walls.

To preserve the attractive appearance of the Property, the Association may regulate the nature of items that may be placed in or on windows, decks, porches, and the outside walls so as to be visible from the street or Common Areas. Window coverings, curtains, shutters, drapes or blinds, other than those of commercially produced quality, shall not be permitted to be visible from any public or private street, pathway, Common Area or adjacent property. Garments, rugs, laundry and other similar items may not be hung from windows, facades, porches, or decks. No window air conditioners will be permitted.

5.8 Alterations.

Exterior painting, maintenance and roof repair or replacement will be performed by the Association to the extent provided in Section 7.1 below. Owners are expressly prohibited from painting or changing the exterior of a building or other structure after original construction without the written permission of the Board of Directors. To guard against moisture intrusion, no penetration of or attachments to the exterior surfaces is allowed without the prior written approval of the Board of Directors. No structure may be installed outside of Townhomes except structures, including without limitation fences, installed by Declarant or the Association or installed by an Owner with written approval of the Board of Directors.

5.9 Exterior Lighting.

Seasonal holiday lighting and decorations are permissible if consistent with any applicable rules and regulations, may be installed up to thirty (30) days in advance of the celebrated holiday, and must be removed within thirty (30) days after the celebrated holiday. The

Association may regulate the shielding or hours of use of lighting in order to reduce annoyance to neighboring properties.

5.10 Insurance.

Nothing shall be done or kept in any Lot or Common Area that will increase the cost of insurance on the Townhomes or Common Areas. No Owner shall permit anything to be done or kept in his Townhome or in the Common Areas that will result in cancellation of insurance on any Lot or any part of the Common Areas.

5.11 Garages.

All garage doors shall remain closed except to permit entrance and exit and in connection with outside activities. Garages shall be used primarily for parking of vehicles, and only secondarily for storage, and shall not be used as office or living space, except that Declarant may use garages as sales offices prior to permanent occupancy of the Townhomes.

5.12 Recreational Equipment.

Playground, athletic or recreational equipment or structures, including without limitation, basketball backboards, hoops and related supporting structures, may only be placed, installed or utilized on any Lot if so approved by the Board of Directors. No such equipment or structures may be placed on sidewalks or streets at any time.

5.13 Landscape.

All exterior landscape installation and maintenance will be performed by the Association and the Owners shall not make any alterations to the landscaping maintained by the Association. Landscape modifications including, but not limited to, the addition and removal of trees and shrubs, may be made by the Association in the sole discretion of the Board of Directors. Landscape irrigation settings, which clocks may be set on each individual townhome, shall be set by the Association and no Owner shall tamper with or change such settings. The Association shall have right of access to each control box. Notwithstanding the foregoing, installation and maintenance of any landscaping within any enclosed courtyards or patios, or decks shall be the sole responsibility of the Owner and shall be carried out in compliance with this Declaration.

5.14 Rain Drains and Sewers.

All rain drains and storm sewers shall be kept free of debris, and Owners shall not cause any such drains or sewers to become blocked, clogged or otherwise to back up into any Lot. Drainage systems have been designed to meet the drainage requirements of local jurisdictions and may not be changed so as to fail to comply with such requirements or to adversely affect drainage.

5.15 Clothes Hanging Devices.

Outdoor clothes hanging devices shall be temporary, unaffixed structures not exceeding six (6) feet in height and shall not be visible from any public or private street.

5.16 Lot Consolidation and Division.

No Lot may be consolidated with another Lot and no Lot may be partitioned or subdivided except by Declarant.

5.17 Campers, Boats, Recreational Vehicles, Certain Trucks, Commercial Vehicles, and other Non-Passenger Vehicles.

No campers, boats, boat trailers, recreational vehicles, motor homes, commercial vehicles, trucks weighing more than 10,000 pounds GVW, or other types of non-passenger vehicles, equipment, implements, or accessories shall be kept or stored on any Lot for more than forty-eight (48) hours or such other period as may be permitted pursuant to the Association Rules and Regulations. No dismantling or assembling of motor vehicles, boats, trailers, recreational vehicles, or other machinery or equipment shall be permitted in the streets within the Property, or in any driveway or yard adjacent to a street, or that is not screened from public view and from the view from any portion of the Property other than the applicable Lot.

5.18 Signs.

Except as permitted in this Section 5.18, no sign or emblem of any kind may be kept or placed upon any Lot or mounted, painted or attached to any Townhome or other improvement upon such Lot or carried by any person or by any other means displayed within the Property except with the written approval of the Board of Directors. Notwithstanding the foregoing, "for sale" or political signs shall be permitted on a Lot provided the same complies with design standards established by the Association and the size does not exceed 24" wide and 18" high. Political signs may be placed on a Lot no earlier than thirty (30) days prior to an election date and must be removed within two (2) days following the election. No "for rent" signs shall be permitted on a Lot at any time. In addition, until the Turnover Meeting, Declarant may erect signs or billboards, and at any time, Declarant or the Association shall have the right to erect signs or monuments that identify 1925 Townhomes. This Section 5.18 shall not be construed to prohibit flags; flags shall be subject to such restrictions and/or prohibitions as may be contained in the rules and regulations.

5.19 Picketing and Demonstrations.

By acceptance of the deed to any Lot covered by this Declaration, the Owner covenants and agrees with the Owners of all other Lots within the Property, that no Owner or resident of any Lot shall engage in picketing, protest marches, sit-in demonstrations, protest speeches or other forms of public protest, including without limitation, displaying signs or placards (other than political signs permissible under Section 5.18) within public view, upon any Lot or within any Common Property, easement or street right-of way adjacent to any Lot, or affixed to any

vehicle or apparatus upon or adjacent to any Lot. This prohibition shall not affect the right of any person to participate in any other form of public protest conducted outside of the Property. Each Owner, by acceptance of the deed to any Lot, shall be deemed to have accepted the foregoing prohibitions as reasonable limitations on his or her constitutional right of free speech and to recognize and agree that all Owners have the right to the peaceful enjoyment of their property; the right of privacy; the right to practice their own religion; the freedom of association; the right to engage in a profession, business or life-style of their own choosing provided that the conduct of such profession, business or life-style is not illegal and does not otherwise violate any provision of this Declaration.

5.20 Antennae, Satellite Dishes.

No Owner may erect or maintain a television or radio receiving or transmitting antenna, satellite dish or similar implement or apparatus upon any Lot without the prior written consent of the Board of Directors. The authority of the Board of Directors in this matter shall be subject to any regulations issued by the Federal Communications Commission ("FCC") or any other applicable governmental authority. To the extent that applicable law requires the Association to permit an antenna, satellite dish or similar implement or apparatus, the applicable Owner shall shield such implement or apparatus from view in a manner approved by the Association.

5.21 Rules and Regulations.

In addition, the Association from time to time may adopt, modify or revoke such Rules and Regulations governing the conduct of persons and the operation and use of the Lots, Townhomes and the Common Areas as it may deem necessary or appropriate to ensure the peaceful and orderly use and enjoyment of the Property. A copy of the Rules and Regulations, upon adoption, and a copy of each amendment, modification or revocation thereof, shall be furnished by the Board of Directors to each Owner. The Rules and Regulations may be adopted by the Board of Directors, except as may be otherwise provided in the Bylaws of the Association.

5.22 Golf Course Property.

The Property is located adjacent to the Bend Country Club Golf Course ("Golf Course Property"). Each Owner, by acceptance of a deed to a Lot, acknowledges and agrees that neither Declarant, the Association, nor any of their respective successors or assigns has made any representations, warranties or guarantees with regard to: (i) the continuing existence, ownership or operation of the Golf Course Property or (ii) the preservation, without impairment, of any view of, over and across the Golf Course Property from a Townhome. Each Owner, by acceptance of a deed to a Lot, also acknowledges and agrees that owning property adjacent to a golf course has benefits as well as detriments and that the detriments include: (a) the risk of damage to property or injury to persons and animals from golf balls which are hit onto an Owner's Lot or other portions of the Property utilized by an Owner; (b) the entry of golfers onto an Owner's Lot or other portions of the Property utilized by an Owner to retrieve golf balls; (c) overspray in connection with the watering of roughs, fairways and greens on the golf course; (d) noise from golf course maintenance and operation equipment (including, without limitation,

irrigation systems, compressors, blowers, mulchers, tractors, utility vehicles and pumps, all of which may be operated at all times of the day and night and/or continuously); (e) odors arising from irrigation and fertilization of the turf situated on the golf course; (f) the application of pesticides and chemicals to the golf course throughout the year and the use of reclaimed water, treated waste water or other sources of non-potable water for the irrigation of the golf course; (g) disturbance and loss of privacy resulting from golf cart traffic and golfers; and (h) noise, vehicular and pedestrian traffic, congestion and loss of privacy as a result of tournaments held on the golf course. Each Owner expressly assumes such detriments and risks and agrees that neither the Association, Declarant, nor any of their respective successors or assigns, shall be liable to the Owner or anyone claiming any loss or damage, including, without limitation, indirect, special or consequential loss or damage arising from personal injury, destruction of property, trespass or any other alleged wrong or entitlement to remedy based upon, due to, arising from or otherwise related to the proximity of the Owner's Lot or Townhome to the Golf Course Property, including, without limitation, any claim arising in whole or in part from the negligence of the Association, Declarant, or any of their respective successors or assigns. Each Owner hereby agrees to indemnify and hold harmless the Association, Declarant, and each of their respective successors and assigns, against any and all such claims by the Owner's invitees.

Article 6

ASSOCIATION

Declarant has organized, or before conveyance of the first Lot shall organize an association of all of the Owners within the Property. Such Association, and its successors and assigns, shall be organized as an Oregon nonprofit corporation under the name “**1925 HOA**” and shall have such property, powers and obligations as are set forth in this Declaration for the benefit of the Property and all Owners of property located therein.

6.1 Organization.

Declarant shall, before the first Lot is conveyed to an Owner, organize the Association as a nonprofit corporation under the general nonprofit corporation laws of the State of Oregon. The Articles of Incorporation of the Association shall provide for its perpetual existence, but in the event the Association is at any time dissolved, whether inadvertently or deliberately, it shall automatically be succeeded by an unincorporated Association of the same name. In that event the assets of the Association shall be dedicated to a public body, or all of the property, powers and obligations of the incorporated Association existing thereupon shall automatically vest in a successor unincorporated nonprofit association. Such vesting shall thereafter be confirmed and evidenced by appropriate conveyances and assignments by the incorporated Association. To the greatest extent possible, any successor unincorporated association shall be governed by the Articles of Incorporation and Bylaws of the Association as if they had been made to constitute the governing documents of the unincorporated association.6.2

6.2 Membership.

Every Owner of one or more Lots within the Property shall, immediately upon creation of the Association and thereafter during the entire period of such Owner's ownership of one or more Lots within the Property, be a member of the Association. Such membership shall commence, exist and continue simply by virtue of such ownership; shall expire automatically upon termination of such ownership; and need not be confirmed or evidenced by any certificate or acceptance of membership.

6.3 Voting Rights.

The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Class B member and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member shall be Declarant and shall be entitled to thirty-four (34) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

- (a) When all of the Lots in the 1925 Townhomes have been sold and conveyed to Owners other than a successor Declarant;
- (b) At such earlier time as Declarant may elect to terminate such special voting rights.

6.4 General Powers and Obligations.

The Association shall have, exercise and perform all of the following powers, duties and obligations:

- (a) Granted to this Association.

The powers, duties and obligations granted to the Association by this Declaration.

- (b) Pursuant to General Non-Profit Laws State of Oregon.

The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Oregon.

- (c) Pursuant to Oregon Planned Community Act.

The powers, duties and obligations of a homeowner's association pursuant to the Oregon Planned Community Act.

(d) Future Amendments.

Any additional or different powers, duties and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to this Declaration or otherwise promoting the general benefit of the Owners within the Property.

The powers and obligations of the Association may from time to time be amended, repealed, enlarged or restricted by changes in this Declaration made in accordance with the provisions herein, accompanied by changes in the Articles of Incorporation or Bylaws of the Association made in accordance with such instruments and with the nonprofit corporation laws of the State of Oregon.

6.5 Specific Powers and Duties.

The powers and duties of the Association shall include, without limitation, all of the following:

(a) Maintenance and Services.

The Association shall provide maintenance and services for the Property as provided in Article 7 and other provisions of this Declaration.

(b) Insurance.

The Association shall obtain and maintain in force policies of insurance as provided in this Declaration or the Bylaws of the Association.

(c) Rulemaking.

The Association shall make, establish, promulgate, amend and repeal Rules and Regulations as provided in Section 5.21 of this Declaration.

(d) Assessments.

The Association shall adopt budgets and impose and collect assessments as provided in Article 8 of this Declaration.

(e) Enforcement.

The Association shall perform such acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce the provisions of this Declaration and the Rules and Regulations adopted by the Association. Nothing in this Declaration shall be construed as requiring the Association to take any specific action to enforce violations.

(f) Employment of Agents, Advisers and Contractors

The Association, through its Board of Directors, may employ the services of any person or corporation as manager; hire employees to manage, conduct and perform the business, obligations and duties of the Association; employ professional counsel and obtain advice from such persons or firms or corporations such as, but not limited to, landscape architects, recreational experts, architects, planners, lawyers and accountants; and contract for or otherwise provide for all services necessary or convenient for the management, maintenance and operation of the Property; provided, however, the Association may not incur or commit to incur legal fees in excess of \$5,000 for any specific litigation or claim matter or enter into any contingent fee contract on any claim in excess of \$100,000 unless the Owners have enacted a resolution authorizing the incurring of such fees by a vote of seventy-five percent (75%) of the voting rights of the Association; provided, however, that the foregoing limitations shall not apply to any of the following actions: (i) the defense of claims or litigation asserted against the Association or the Board of Directors, including the assertion of counterclaims by the Association or the Board of Directors in any proceedings instituted against either of them; (ii) actions by the Association for the collection of delinquent assessments, fines or other charges due and payable under this Declaration, the Bylaws, or the Rules and Regulations; (iii) actions initiated by the Association during Declarant's period of administrative control; (iv) actions challenging condemnation proceedings; (v) actions initiated against any contractor or vendor hired by the Association or supplier of goods and services to the Association; and (vi) actions to summarily abate, enjoin and remove a structure or condition that violates this Declaration, the Bylaws, or the Rules and Regulations. The limitations set forth in this paragraph shall increase by ten percent (10%) on each fifth (5th) anniversary of the recording of this Declaration.

(g) Borrow Money, Hold Title and Make Conveyances.

The Association may borrow and repay moneys for the purpose of performing its duties under this Declaration and, subject to Section 3.4(c) above, encumber the Common Areas as security for the repayment of such borrowed money. The Association may acquire, hold title to and convey, with or without consideration, real and personal property and interests therein, including, but not limited to easements across all or any portion of the Common Area, and shall accept any real or personal property, leasehold or other property interests within the Property conveyed to the Association by Declarant.

(h) Transfer, Dedication and Encumbrance of Common Area.

Except as otherwise provided in Section 3.4(c) above, the Association may sell, transfer or encumber all or any portion of the Common Area to a person, firm or entity, whether public or private, and dedicate or transfer all or any portion of the Common Area to any public agency, authority, or utility for public purposes.

(i) Create Classes of Service and Make Appropriate Charges.

The Association may, in its sole discretion, create various classes of service and make appropriate Individual Assessments or charges therefor to the users of such services without

being required to render such services to those of its members who do not assent to such charges, subject to such Rules and Regulations as the Board of Directors deems proper. In addition, the Board of Directors shall have the right to discontinue any service upon nonpayment of Assessments or to eliminate any service for which there is no demand or for which there are inadequate funds to maintain the same.

(j) **Implied Rights and Obligations.**

The Association may exercise any other right or privilege reasonably to be inferred from the existence of any right or privilege expressly given to the Association under this Declaration or reasonably necessary to effectuate any such right or privilege.

6.6 Liability.

Neither a member of the Board of Directors nor an officer or committee member of the Association shall be liable to the Association or any Owner or third party for any damage, loss or prejudice suffered or claimed on account of any action or failure to act in the performance of his or her duties, so long as the individual acted in good faith, believed that the conduct was in the best interests of the Association, or at least was not opposed to its best interests, and in the case of criminal proceedings, had no reason to believe the conduct was unlawful. In the event any member of the Board of Directors or any officer of the Association is threatened with or made a party to any proceeding because the individual was or is a director or officer of the Association, the Association shall defend such individual against such claims and indemnify such individual against liability and expenses incurred to the maximum extent permitted by law. The managing agent of the Association, and its officers and employees, shall not be liable to the Association, the Owners or any third party on account of any action or failure to act in the performance of its duties as managing agent, except for acts of gross negligence or intentional acts, and the Association shall indemnify the managing agent and its officers and employees from any such claims, other than for gross negligence or intentional misconduct.

6.7 Interim Board, Turnover Meeting.

Declarant shall have the right to appoint an interim board of one to three directors, who shall serve as the Board of Directors until replaced by Declarant or their successors have been elected by the Owners at the Turnover Meeting. Declarant shall call a meeting of the Association for the purpose of turning over administrative responsibility for the Property to the Association not later than ninety (90) days after termination of the Class B membership as provided in Section 6.3 above. At the Turnover Meeting, the interim directors shall resign and their successors shall be elected by the Owners as provided in the Bylaws. If the Declarant fails to call the Turnover Meeting as required by this section, any Owner or mortgagee of a Lot may call the meeting by giving notice as provided in the Bylaws.

6.8 Managing Agent or Manager.

On behalf of the Association, the Board of Directors may employ or contract for a professional managing agent or a manager at a compensation to be established by the Board of

Directors. The Board of Directors may delegate to the managing agent or manager such duties and powers as the Board of Directors may authorize.

6.9 Contracts Entered into by Declarant or Prior to Turnover Meeting.

Notwithstanding any other provision of this Declaration, any management contracts, service contracts and employment contracts entered into by the Declarant or the Board of Directors on behalf of the Association prior to the Turnover Meeting shall have a term of not more than of three (3) years. In addition, any such contract, unless otherwise exempted under ORS 94.700(2), shall provide that it may be terminated without cause or penalty by the Association or Board of Directors upon not less than thirty (30) days written notice of termination given to the other party not later than sixty (60) days after the Turnover Meeting.

6.10 Bylaws.

The Bylaws of the Association and any amendment or modification of the Bylaws shall be recorded in the Deed Records of Deschutes County, Oregon. Declarant hereby adopts, on behalf of the Association, the initial Bylaws attached as Exhibit B to this Declaration.

Article 7

MAINTENANCE, SERVICES, CONDEMNATION, DAMAGE

7.1 Exterior Maintenance and Lot Landscaping.

The Association shall provide exterior maintenance upon each Townhome as follows: paint, caulk, repair of exterior siding, facia and garage doors. Additionally, the Association shall repair sidewalks and roadways as needed inclusive of asphalt seal coating. Such exterior maintenance does not include repair or replacement of exterior light bulbs, windows and other glass surfaces, roofs and any gutters or downspouts, front or rear doors, except to the extent of the proceeds of the Associations insurance or to prevent water intrusion at the expense of the Owner (subject to insurance reimbursement). The Association shall maintain all landscaping within the Property, with the exception of any landscaping within any enclosed courtyards or patios or decks. The cost of such maintenance by the Association shall be a common expense paid out of assessments described in Article 8. In the event, however, the need for such maintenance or repair is caused by the willful or negligent act or omission of an Owner, his or her family, tenants, guests or invitees, and to the extent such maintenance or repair is not covered by the Association's insurance policy, the costs of such maintenance and repair may, in the discretion of the Board of Directors, be charged to the Owner as an Individual Assessment.

7.2 Maintenance and Lighting of Common Areas.

In addition to the exterior maintenance as set forth in Section 7.1, the Association shall maintain any exterior lighting for and perform all maintenance upon the Common Areas, including Common Easement Areas and the improvements located thereon, including, without limitation, perimeter fences and walls.

7.3 Maintenance of Utilities.

The Association shall perform or contract to perform maintenance of any utilities, such as sanitary sewer service lines, domestic water service lines and storm drainage lines, located in the Common Areas. Each Owner shall maintain at such Owner's expense utility lines to the extent located within the Lot or any other Lot which serve the Owner's Townhome.

7.4 Maintenance Plan and Inspections.

The Association shall maintain those portions of the Property to be maintained by the Association in as good or better condition as at the time of the Turnover Meeting. Declarant shall initially prepare and thereafter the Board of Directors shall implement, review and update a maintenance plan (the "Maintenance Plan") for the maintenance, repair and replacement of all property for which the Association has maintenance, repair or replacement responsibility under this Declaration or the Bylaws or the Oregon Planned Community Act. The Maintenance Plan shall describe the maintenance, repair or replacement to be conducted, include a schedule for maintenance, repair or replacement, be appropriate for the size and complexity of the maintenance, repair and replacement responsibility of the Association and address issues that include, but are not limited to, warranties and the useful life of the items of which the Association has maintenance, repair or replacement responsibility. The operating and reserve budgets of the Association shall take into account such costs. The Board of Directors shall review and update the Maintenance Plan as necessary. Changes or updates to the Maintenance Plan shall be based upon the advice of competent subcontractors, experts or consultants. In addition, the Board of Directors shall cause a professional inspection of those portions of the Property to be maintained by the Association pursuant to this Declaration for the purposes of identifying any items needing repair or preventive maintenance and shall cause such repair or preventive maintenance to be implemented. If the Association fails to follow such maintenance and inspection requirements, then neither the Association nor any unit owner shall have any claim against Declarant or its design professionals, contractors and subcontractors and their consultants, including without limitation, all of their officers, members, managers, directors, employees, agents and brokers, for loss or damage to the extent that they result from such failure to follow the Maintenance Plan, and shall indemnify such persons and entities from and against claims by unit owners or other persons or entities for loss or damage resulting from such failure. For a period of 10 years following recording of the Declaration, any changes to the Maintenance Plan without the approval of the Declarant and the original general contractor may void any applicable warranty and will release them from liability for any damage resulting from such change.

7.5 Utilities and Services.

The Association may provide or contract for such utilities and services as the Board of Directors may reasonably deem to be of benefit to the Property, including, without limitation, cable, telecommunications, garbage and trash removal and security services.

7.6 Security.

The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to make the Property safer than it otherwise might be. **Neither the Association, any managing agent retained by the Association, Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Property, 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, any managing agent retained by the Association, Declarant, and any successor Declarant are not insurers and that each person using the Property assumes all risks for loss or damage to persons, to property and to the contents of Lots resulting from acts of third parties and releases such parties from any liability therefor.**

7.7 Access at Reasonable Hours.

For the purpose solely of performing the maintenance and services provided for in this Article 7, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot or exterior of the dwelling thereof at reasonable hours. The Association shall also have a right of entry into Townhomes for purposes of effecting emergency repairs or action to prevent imminent damage or injury to other Townhomes, to other Owners and their guests or invitees, or to the Common Areas. In such instances, the Association shall give notice by telephone if reasonably possible prior to entry. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Lot.

7.8 Condemnation.

If any portion of the Common Areas is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, notice of the proceeding or proposed acquisition shall promptly be given to each Owner and to each mortgagee. The Association shall represent the Owners in any condemnation proceeding or in negotiations, settlements and agreements with the condemning authority for acquisition of any portion of the Common Areas and each Owner appoints the Association to act as his other attorney-in-fact for such purposes. All compensation, damages or other proceeds of the taking of Common Areas shall be payable to the Association. Proceeds shall first be applied to restore or repair any remaining Common Area, including a structure on Common Area, which may be required to permit the continued enjoyment of such Common Area. Thereafter, the Association shall deposit such sums in the Operations Fund or apply these sums to such capital improvements as shall be authorized pursuant to Section 8.5 of this Declaration.

7.9 Damage or Destruction by Casualty.

In the event of damage or destruction that affects a material portion of the Property, timely written notice shall be given to the Owners and their mortgagees, and the following provisions shall apply:

(a) In the event of damage or destruction by casualty of any structures erected on the Common Areas or to the structure, roof or exterior of any Townhome, the damage or destruction shall be repaired, reconstructed, or rebuilt unless, within fourteen (14) days of such damage or destruction, the Board of Directors or more than ten percent (10%) of the Owners shall have requested a special meeting of the Association. Such special meeting must be held within thirty (30) days of the date of damage or destruction. At the time of such meeting, unless seventy-five percent (75%) of the Owners, whether in person, by writing or by proxy, with the approval of seventy-five percent (75%) or more of the mortgagees if and as required by this Declaration, vote not to repair, reconstruct or rebuild the damaged property, the damage or destruction shall be repaired, reconstructed or rebuilt, with the work commencing as soon as reasonably possible. In the event any portion of the insurance proceeds paid to the Association are not used to repair, reconstruct or rebuild the damaged or destroyed Common Areas or Townhomes, the Association shall distribute the proceeds attributable to Townhomes to the Owners and mortgagees thereof, as their interests may appear. The proceeds attributable to Common Areas shall be deposited in the Operations Fund or applied to such capital improvements as shall be authorized pursuant to Section 8.5 of this Declaration. If the insurance proceeds are not sufficient to pay the entire cost, the Board of Directors, if necessary, may assess the Owner of each Townhome such additional amounts as required to pay the cost of restoration. The responsibility for payment of the amount of the deductible in the Association's insurance policy may be prescribed by resolution adopted by the Board of Directors.

(b) If, due to act or neglect of an Owner or a member of his or her family or his or her household pet or of a guest or other Occupant or visitor of such Owner, damage shall be caused to the Common Areas or maintenance, repairs or replacements shall be required that would otherwise be a common expense, then such Owner shall pay for such damage and such maintenance, repairs or replacements as may be determined by the Association, to the extent not covered by the Association's insurance (including any deductible), as an Individual Assessment.

7.10 Owner's Maintenance Responsibilities.

Each Owner shall be responsible for maintaining such Owner's Townhome and Lot, to the extent such maintenance is not the responsibility of the Association under Sections 7.1 and 7.9 above, in a clean and attractive condition, in good repair and in such fashion as not to create a hazard. Such maintenance responsibility shall include, but not be limited to, the following:

(a) Repair, replace, restore and clean the interior of the Townhome, including, but not limited to interior and exterior glass;

(b) Keep all mechanical and electrical systems and hardware in the Townhome and on the exterior of the Townhome in good repair and working order, including, without limitation,

maintaining, repairing and replacing as necessary electrical wiring, fixtures, plumbing, appliances, heating, air conditioning, sewage disposal and fire protection systems.

(c) Keep all patios, decks, sidewalks and driveways in a neat and attractive condition free from snow, ice, debris and obstruction.

The Association shall have the authority to require each Owner to keep his or her respective Lot and Townhome at a high standard of maintenance. In the event an Owner fails to maintain his or her Townhome or Lot to the standards established by the Board of Directors pursuant to the authority of this section, the Association will have the right and the authority at its option, after giving reasonable notice and opportunity to be heard to the respective Owner, to cause such repairs and maintenance to be performed as are necessary to meet the foregoing standard and charge the respective Owner for such repairs and maintenance.

7.11 Party Wall.

Damage to or destruction of a Party Wall by fire or other casualty shall be repaired, restored or replaced by the Association in accordance with Section 7.9 above. Any other maintenance, repair, alteration, or reconstruction of a Party Wall (the “**Party Wall Work**”) shall be performed in accordance with this section. Each Owner shall provide the other Owner sharing the Party Wall with notice of any Party Wall Work the Owner believes is necessary. The Owners sharing the Party Wall shall agree on the Party Wall Work to be performed before the Party Wall Work commences. If the Owners are unable to agree on the Party Wall Work to be performed, such disagreement shall be resolved in accordance with the dispute resolution procedures set forth in Section 10.1. The cost of all Party Wall Work shall be borne equally by the Owners of the Townhomes sharing the Party Wall, except that any Party Wall Work that is required by the act or omission of an Owner or the Owner’s family members, tenants, occupants, contractors or invitees or is the result of an item required to be maintained, repaired or replaced by a particular Owner (e.g., electrical wiring or plumbing installations) shall be the sole responsibility of such Owner. The Owner of each Lot, by acceptance of a deed therefor, regardless of whether it shall be expressed in such deed, is deemed to covenant and hereby agrees to pay for such Owner’s share of the cost of any Party Wall Work as provided in this section. If any Owner fails to pay such Owner’s share of the cost of the Party Wall Work as required herein, then such Owner’s share, together with interest thereon at a rate of the lesser of twelve percent (12%) per annum or the maximum rate allowed by the applicable laws of the State of Oregon, and all other costs, fees and charges allowed by law, including without limitation, costs and attorney’s fees incurred in the collection of the same, shall be a continuing obligation of the delinquent Owner.

7.12 Option to Provide Maintenance Services through Association.

Upon request of an Owner, the Association may provide maintenance and repair services which would otherwise be the responsibility of such Owner under this Article, provided that the respective Owner shall reimburse the Association, as an Individual Assessment, for such services immediately upon completion. Alternatively, upon proposal by the Board of Directors and approval by fifty-one percent (51%) of the total voting power of the Association, the charge for

such maintenance and repair services may be designated a common expense of the Association to be paid with funds collected from the Owners pursuant to the assessment procedures set forth in Article 8 below. In the event the Owners elect to designate any such maintenance and repair services as a common expense of the Association, (i) such designation shall identify specifically which services are to become included as common expenses (with any maintenance and repair responsibilities not so included to remain the obligation of the Owners under Section 7.10 above); and (ii) the Association may add a charge to such common expenses sufficient to cover the costs of administering, coordinating and invoicing for such additional maintenance and repair services.

Article 8

ASSESSMENTS

8.1 Purpose of Assessments.

The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners and Occupants of the Property and for the improvement, operation and maintenance of the Common Areas and other areas to be maintained by the Association.

8.2 Types of Assessments.

The Association may levy Annual Assessments, Special Assessments, Emergency Assessments and Individual Assessments, all as more particularly described below.

8.3 Commencement and Apportionment of Assessments.

(a) When Subject to Assessment.

Each Lot shall become subject to Annual Assessments (including Assessments for reserves), Special Assessments, Individual Assessments or Emergency Assessments upon the sale of the Lot to an Owner other than Declarant or a successor Declarant. Lots owned by Declarant or a successor Declarant shall not be subject to Assessments. It is the intent of the foregoing provision to exempt Lots owned by Declarant or a successor Declarant from all Assessments (including Assessments for reserves). However, if any portion or all of the exemption from Assessments for reserves is rendered unenforceable or otherwise invalid by any applicable law, then Declarant hereby reserves the right, for itself and any successor Declarant, to defer payment of accrued Assessments for reserves on each Lot owned by Declarant or a successor Declarant until the date on which the Lot is conveyed to an Owner other than Declarant or a successor Declarant, but in no event beyond the date of the Turnover Meeting or, if no Turnover Meeting is held, the date the Owners assume administrative control of the Association.

(b) Apportionment.

All Lots subject to assessment shall pay an equal share of the Annual Assessments, Special Assessments and Emergency Assessments. No Owner by the Owner's own action may claim exemption from liability for contribution towards common expenses by waiver by the Owner of use of enjoyment of any of the Common Area or by abandonment by the Owner of the Owner's Lot. An Owner may not claim an offset against an Assessment for failure of the Association to perform its obligations, and no Owner may offset amounts owing or claimed to be owing by the Association or Declarant to the Owner.

8.4 Annual Assessments.

The Board of Directors shall from time to time and at least annually prepare an operating budget for the Association, taking into account the current costs of maintenance and services and future needs of the Association, any previous overassessment and any common profits of the Association. The budget shall take into account the number of Lots subject to assessment as of the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to assessment during the fiscal year. The budget may be based upon a greater number of Lots than those reasonably anticipated to be subject to assessment during the fiscal year if the Declarant agrees to subsidize the Association for any shortfall in the Operations Fund until the assumed number of Lots is subject to assessment. The budget shall provide for such reserve or contingency funds as the Board deems necessary or as may be required by law, but not less than the reserves required by Section 8.9 below and shall take into account the Maintenance Plan adopted pursuant to Section 7.4 above. Annual Assessments for such operating expenses and reserves ("**Annual Assessments**") shall then be apportioned among the Lots as provided in Section 8.3 above. Within thirty (30) days after adopting the annual budget, the Board of Directors shall provide a summary of the budget to all Owners. If the Board of Directors fails to adopt an annual budget, the last adopted budget shall continue in effect. The manner of billing and collection of Assessments shall be as provided in the Bylaws.

8.5 Special Assessments.

In addition to the Annual Assessment authorized above, the Board of Directors may levy during any fiscal year a Special Assessment ("**Special Assessment**"), applicable to that year only, for the purpose of deferring all or any part of the cost of any construction or reconstruction, unexpected repair, or acquisition or replacement of a described capital improvement, or for any other one-time expenditure not to be paid for out of Annual Assessments. Special Assessments for acquisition or construction of new capital improvements or additions that in the aggregate in any fiscal year exceed an amount equal to fifteen (15%) percent of the budgeted gross expenses of the Association for the fiscal year may be levied only if approved by a majority of the voting rights voting on such matter, together for acquisition or construction of new capital improvements or additions with the written consent of the Class B member, if any. Prior to the Turnover Meeting, any Special Assessment for acquisition or construction of new capital improvements or additions must be approved by not less than fifty percent (50%) of the Class A voting rights, together with the written consent of the Class B member. Special Assessments

shall be apportioned as provided in Section 8.3 above and may be payable in lump sum or in installments, with or without interest or discount, as determined by the Board of Directors.

8.6 Emergency Assessments.

If the Annual Assessments levied at any time are, or will become, inadequate to meet all expenses incurred under this Declaration for any reason, including nonpayment of any Owner's Assessments on a current basis, the Board of Directors shall immediately determine the approximate amount of such inadequacy and issue a supplemental budget, noted as to the reason therefor, and levy an Emergency Assessment for the amount required to meet all such expenses on a current basis ("**Emergency Assessment**"). Emergency Assessments shall be apportioned as set forth in Section 8.3 above and payable as determined by the Board of Directors.

8.7 Individual Assessments.

Any common expense or any part of a common expense benefiting fewer than all Lots may be assessed exclusively against the Lots benefited ("**Individual Assessment**"). Individual Assessments include, without limitation, charges for services provided under Section 6.5(i) and any common expense that the Board of Directors determines is the fault of the Owner and not paid by insurance. Individual Assessments shall also include default Assessments levied against any Lot to reimburse the Association for costs incurred in bringing such Lot or its Owner into compliance with the provisions of this Declaration or the Rules and Regulations and for fines or other charges imposed pursuant to this Declaration for violation thereof. Unless otherwise provided by the Board of Directors, Individual Assessments shall be due 30 days after the Board of Directors has given written notice thereof to the Owners subject to the Individual Assessments.

8.8 Operations Fund.

The Association shall keep all funds received by it as Assessments, other than reserves described in Section 8.9 separate and apart from its other funds, in a bank account in the name of the Association to be known as the "**Operations Fund.**" All expenses of the Association shall be paid from the Operations Fund or from the Reserve Fund referred to in Section 8.9. The Association shall use such fund exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents within the Property and in particular for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas and of the Lots situated upon the Property, including but not limited to:

- (a) Payment of the cost of maintenance, utilities and services as described in Article 7.
- (b) Payment of the cost of insurance as described in the Bylaws of the Association.
- (c) Payment of taxes assessed against the Common Areas and any improvements thereon.

(d) Payment of the cost of water service, sewer service and garbage and trash disposal for the Common Areas or that are commonly billed.

(e) Payment of the cost of other services that the Association deems to be of general benefit to the Owners, including but not limited to accounting, legal and secretarial services.

(f) In the event any condemnation of a portion of the Common Areas should result in a surplus in the Operations Fund not needed for payment of the other items described in this section, such surplus shall be divided by the number of units within the Property and such amounts paid equally to the holder of any first mortgage or deed of trust on each Lot, or if none, to the Owner of the Lot.

8.9 Reserve Fund.

(a) Establishment of Account.

Declarant, on behalf of the Association, shall conduct an initial reserve study as described in paragraph (c) of this section and establish a bank account in the name of the Association (the “**Reserve Fund**”) to fund major maintenance, repair or replacement of common properties that will normally require replacement in whole or in part in more than one (1) and less than thirty (30) years. For exterior painting of the Common Areas or other property to be maintained by the Association include exterior painted surfaces, and for other items, whether or not involving Common Areas, if the Association has responsibility to maintain the items, including items required by the Maintenance Plan established pursuant to Section 7.4. The Reserve Fund need not include those items that can reasonably be funded from the general budget or other funds of the Association or for those items for which one or more, but less than all, Owners are responsible for maintenance and replacement under the provisions of this Declaration or the Bylaws.

(b) Funding of Reserve Fund.

The Reserve Fund shall be funded by Assessments against the individual Lot assessed for maintenance of the items for which the Reserve Fund is being established, which sums shall be included in the regular Annual Assessment for the Lot. The Reserve Fund shall be established in the name of the Association. The Association is responsible for administering the Reserve Fund and making periodic payments into it.

(c) Reserve Studies.

The reserve portion of the initial Assessment determined by Declarant shall be based on a reserve study described in this paragraph (c) or other sources of information. The Board of Directors annually shall conduct a reserve study, or review and update an existing study, to determine the Reserve Fund requirements and may adjust the amount of payments as indicated by the study or update and provide other reserve items that the Board of Directors, in its discretion, may deem appropriate. The reserve study shall:

- (1) Identify all items for which reserves are to be established;
 - (2) Include the estimated remaining useful life of each item as of the date of the reserve study; and
 - (3) Include for each item, as applicable, an estimated cost of maintenance, repair and replacement at the end of its useful life.
- (d) Use of Reserve Fund.

The Reserve Fund shall be used only for the purposes for which the reserves have been established and shall be kept separate from other funds. After the Turnover Meeting, however, the Board of Directors may borrow funds from the Reserve Fund to meet high seasonal demands on the regular operating funds or to meet unexpected increases in expenses if the Board of Directors has adopted a resolution, which may be an annual continuing resolution, authorizing the borrowing of funds. Not later than the adoption of the budget for the following year, the Board of Directors shall adopt by resolution a written payment plan providing for repayment of the borrowed funds within a reasonable period. Nothing in this section shall prohibit prudent investment of the Reserve Fund, subject to the requirements set forth in ORS 94.670(2). If, after reviewing the reserve study or reserve study update, the Board of Directors determines that the Reserve Fund will be adequately funded for the following year, then the Board may vote to reduce or eliminate the reserve portion of the Annual Assessments for that particular year. Additionally, following the Turnover Meeting, on an annual basis, the Board, with the approval of all Owners, may elect not to fund the Reserve Fund for the following year regardless of whether or not the Reserve Fund is fully funded. Assessments paid into the Reserve Fund are the property of the Association and are not refundable to sellers or Owners of Lots. Sellers of the Lots, however, may treat their outstanding share of the Reserve Fund as a separate item in any sales agreement.

8.10 Creation of Lien and Personal Obligation of Assessments.

Declarant, for each Lot owned by it within the Property, does hereby covenant, and each Owner of any Lot by acceptance of a conveyance thereof, whether or not so expressed in any such conveyance, shall be deemed to covenant to pay to the Association all Assessments or other charges as may be fixed, established and collected from time to time in the manner provided in this Declaration or the Association Bylaws. Such Assessments and charges, together with any interest, late charges, expenses or attorneys' fees imposed pursuant to Section 9.6, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment or charge is made. Such assessments, charges and other costs shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment or charge fell due. Such liens and personal obligations shall be enforced in the manner set forth in Article 9 below.

8.11 Voluntary Conveyance

In a voluntary conveyance of a Lot the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments against the grantor of the Lot up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, upon request of an Owner or Owner's agent for the benefit of a prospective purchaser, the Board of Directors shall make and deliver a written statement of the unpaid Assessments against the prospective grantor of the Lot effective through a date specified in the statement, and the grantee in that case shall not be liable for any unpaid Assessments against the grantor not included in the written statement.

Article 9

ENFORCEMENT

9.1 Violation of Protective Covenants.

If an Owner violates any provision of this Declaration, the Bylaws of the Association or the Rules and Regulations, then the Association acting through its Board of Directors shall notify the Owner in writing of any such specific violations. If the Owner is unable, is unwilling, or refuses to comply with the Association's specific directives for remedy or abatement, or the Owner and the Association cannot agree to a mutually acceptable solution within the framework and intent of this Declaration, then the Association acting through its Board of Directors shall, after notice and opportunity to be heard as provided in the Bylaws, have the right to do any or all of the following:

(a) Assess reasonable fines against such Owner, based upon a resolution adopted by the Board of Directors that is delivered to each Lot, mailed to the mailing address of each Lot or mailed to the mailing address designated by the Owner of each Lot in writing, which fines shall constitute Individual Assessments for purposes of this Declaration;

(b) Enter the offending Lot and remove the cause of such violation, or alter, repair or change the item that is in violation of this Declaration, the Bylaws or the Rules and Regulations in such a manner as to make it conform thereto, in which case the Association may assess such Owner for the entire cost of the work done, which amount shall be levied against the Owner as an Individual Assessment, provided that no items of construction shall be altered or demolished in the absence of judicial proceedings;

(c) Cause any vehicle parked in violation of this Declaration, the Bylaws, or of the Rules and Regulations to be towed and impounded at the Owner's expense;

(d) Suspend the voting rights and the right to use the Common Areas for the period that the violations remain unabated, provided that the Association shall not deprive any Owner of access to and from his Townhome;

(e) Bring suit or action against the Owner on behalf of the Association and other Owners to enforce this Declaration, the Bylaws or the Rules and Regulations.

9.2 Default in Payment of Assessments; Enforcement of Lien.

If an assessment or other charge levied under this Declaration is not paid within thirty (30) days after its due date, such assessment or charge shall become delinquent and shall bear interest from the due date at the rate set forth below. In such event the Association may exercise any or all of the following remedies:

(a) The Association may suspend such Owner's voting rights, any utility services paid for out of Assessments and right to use the Common Areas until such amounts, plus other charges under this Declaration, are paid in full and may declare all remaining periodic installments of any Annual Assessment immediately due and payable. In no event, however, shall the Association deprive any Owner of access to and from his Lot.

(b) The Association shall have a lien against each Lot in accordance with ORS 94.709 for any assessment levied against the Lot, including any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Lot, and may foreclose such lien in the manner provided in ORS 94.709.

(c) The Association may bring an action to recover a money judgment for unpaid assessments, fines and charges under this Declaration without foreclosing or waiving the lien described in paragraph (b) above. Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.

(d) The Association shall have any other remedy available to it by law or in equity.

9.3 Notification of First Mortgagee.

The Board of Directors will send notice of any default in performance of this Declaration by a Lot Owner that is not cured within sixty (60) days to any first mortgagee of such Lot who has given written notice to the Association requesting notices of defaults.

9.4 Subordination of Lien to Mortgages.

The lien of the assessments or charges provided for in this Declaration shall be subordinate to the lien of any first, or primary mortgage or deed of trust on such Lot that was made in good faith and for value and that was recorded prior to the recordation of the notice of lien. This provision specifically disallows subordination of liens to non-primary or first mortgages or other forms of secured indebtedness. Sale or transfer of any Lot shall not affect the assessment lien, but the sale or transfer of any Lot that is subject to any mortgage or deed of trust pursuant to a decree of foreclosure or non-judicial foreclosure thereunder or any deed or proceeding, deed or assignment in lieu of foreclosure shall extinguish any lien of an assessment notice of which was recorded after the recording of the primary mortgage or trust deed. The unpaid Assessments as a result of such foreclosure or sale shall become a common expense of all Owners, including the mortgagee or purchaser, and such sale or transfer shall not release the Lot

from liability for any assessments or charges thereafter becoming due or from the lien of such assessments or charges.

9.5 Interest, Late Charges and Expenses.

Any amount not paid to the Association when due in accordance with this Declaration shall bear interest from the due date until paid at a rate equal to the lesser of twelve percent (12%) per annum or the maximum rate allowed by the applicable laws of the State of Oregon. A late charge may be charged for each delinquent assessment in an amount established from time to time by resolution of the Board of Directors, which resolution is delivered to each Lot, mailed to the mailing address of each Lot or mailed to the mailing address designated by the Owner in writing, together with all expenses incurred by the Association in collecting such unpaid assessments, including attorneys' fees (whether or not suit is instituted). In the event the Association shall file a notice of lien, the lien amount shall also include the recording fees associated with filing the notice and a fee for preparing the notice of lien established from time to time by resolution of the Board of Directors.

9.6 Costs and Attorneys' Fees.

In the event of any suit or action to enforce this Declaration, the Bylaws, the Rules and Regulations or the Oregon Planned Community Act, or to collect any money due hereunder or to foreclose a lien, the prevailing party in such suit or action shall be entitled to recover all costs and expenses incurred by it in connection with such suit or action, including a foreclosure title report, and shall recover such amount as the court may determine to be reasonable as attorneys' fees at trial and upon any appeal or petition for review thereof.

9.7 Assignment of Rents.

As security for the payment of all liens arising pursuant to this Article 9, each Owner hereby gives to and confers upon the Association the right, power and authority, during the continuance of such ownership, to collect the rents, issues and profits of the Owner's Lot, reserving unto the Owner the right, prior to any default by such Owner in performance of that Owner's obligation under this Declaration or the Bylaws to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, the Association may, at any time after ten (10) days written notice to such Owner, either in person, by agent or by a receiver to be appointed by a court of competent jurisdiction, and without regard to the adequacy of any security for such indebtedness, enter upon and take possession of such Owner's Lot or any part thereof, in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, in payment of any indebtedness to the Association or in performance of any agreement under this Declaration, and in such order as the Association may determine. Such action shall not cure nor waive any default under this Declaration or invalidate any act done pursuant to this Declaration. The assignment of rents and powers described in this section shall not affect, and shall in all respects be subordinate to, the

rights and powers of the holder of any first or second mortgage on any Lot to do the same or similar acts.

9.8 Nonexclusiveness and Accumulation of Remedies.

An election by the Association to pursue any remedy provided for violation of this Declaration shall not prevent concurrent or subsequent exercise of another remedy permitted hereunder. The remedies provided in this Declaration are not exclusive but shall be in addition to all other remedies, including actions for damages and suits for injunctions and specific performance, available under applicable law to the Association. In addition, any aggrieved Owner may bring an action against another Owner or the Association to recover damages or to enjoin, abate or remedy any violation of this Declaration by appropriate legal proceedings.

Article 10

DISPUTE RESOLUTION

10.1 Applicability.

The following provisions of this Section 10.1 shall apply to any claim, controversy or dispute by or among Declarant (including members, officers, directors, shareholders and affiliates of Declarant), the Association, the manager or one or more Owners, or any of them, arising out of or related to this Declaration, the Bylaws or the Property, other than the excluded matters set forth in Section 10.1(f) below:

(a) Mediation.

(1) Except as otherwise provided in this section, before initiating litigation, arbitration or an administrative proceeding in which the Association and an Owner have an adversarial relationship, the party that intends to initiate litigation, arbitration or an administrative proceeding shall offer to participate in mediation. The written offer must be hand-delivered or mailed by certified mail, return receipt requested, to the address, contained in the records of the Association, for the other party.

(2) If the party receiving the offer does not accept the offer within ten (10) days after receipt of the offer, such acceptance to be made by written notice, hand-delivered or mailed by certified mail, return receipt requested, to the address, contained in the records of the Association, for the other party, the initiating party may commence the litigation, arbitration or administrative proceeding. The notice of acceptance of the offer to participate in the program must contain the name, address and telephone number of the body administering the dispute resolution program.

(3) If a qualified dispute resolution program exists within Deschutes County, Oregon and an offer to use the program is not made as required under paragraph (1) of this section, then litigation, arbitration or an administrative proceeding may be stayed for thirty (30) days upon a

motion of the non-initiating party. If the litigation, arbitration or administrative action is stayed under this paragraph, both parties shall participate in the dispute resolution process.

(4) Unless a stay has been granted under paragraph (3) of this section, if the dispute resolution process is not completed within thirty (30) days after receipt of the initial offer, the initiating party may commence litigation, arbitration or an administrative proceeding without regard to whether the dispute resolution is completed.

(5) Once made, the decision of the court, arbitrator or administrative body arising from litigation, arbitration or an administrative proceeding may not be set aside on the grounds that an offer to use a dispute resolution program was not made.

(6) The requirements of this section do not apply to circumstances in which irreparable harm to a party will occur due to delay or to litigation, arbitration or an administrative proceeding initiated to collect Assessments, other than Assessments attributable to fines.

(b) Arbitration.

Any claim, controversy, or dispute by or among Declarant (including members, officers, directors, shareholders and affiliates of Declarant), Association, or one or more Owners, or any of them, arising out of or related to this Declaration, the Bylaws of the Association, the Rules and Regulations, or the Property shall be first subject to mediation as described in Section 10.1(a) above or otherwise, and if not timely settled by mediation, resolved by arbitration in accordance with this Article 10. The decisions and award of the arbitrator shall be final, binding and non-appealable. The arbitration shall be conducted in Bend, Oregon, or at such other location as may be agreed upon by the parties, pursuant to the arbitration statutes of the State of Oregon and any arbitration award may be enforced by any court with jurisdiction. Filing for arbitration shall be treated the same as filing in court for purposes of meeting any applicable statute of limitations or for purposes of filing a notice of pending action ("lis pendens").

(c) Intentionally Deleted.

(d) Consolidated Arbitration.

Upon demand by any party, claims between or among the parties and third parties shall be submitted in a single, consolidated arbitration. Notwithstanding the provision of this Article 10, in the event any claim, controversy or dispute involves a claim by either party against a third party who is not required to and does not voluntarily agree to submit such claim to arbitration, then either party may elect to have the matter determined by a court of law in a consolidated proceeding, rather than by arbitration. In such case, the parties hereby waive trial by jury and agree that the matter shall be determined by a judge sitting without a jury.

(e) Rules.

Any arbitration initiated pursuant to this Article 10 shall be governed by then applicable rules of the Arbitration Service of Portland, Inc.

(f) Excluded Matters.

Notwithstanding the foregoing, the following matters shall not be subject to mediation or arbitration under this Article 10 (but shall be subject to the applicable provisions of Section 10.1(g) below): (i) actions relating to the collection of fees, Assessments, fines and other charges imposed or levied by the Association (other than disputes as to the validity or amount of such fees, Assessments, fines or charges, which disputes shall be subject to mediation/arbitration as provided above); (ii) actions by the Association or any Owner related to the removal of a structure or correction of any other condition that violates this Declaration, the Bylaws of the Association, or the Rules and Regulations and where irreparable harm will occur due to delay; and (iii) actions to enforce any order, decision or award rendered by arbitration pursuant to this Article 10. The filing of a lis pendens or the application to any court for the issuance of any provisional process or similar remedy described in the Oregon or Federal Rules of Civil Procedure shall not constitute a waiver of the right or duty to utilize the procedures specified in this Article 10.

(g) Costs and Attorneys' Fees.

The fees of any mediator and the costs of mediation shall be divided and paid equally by the parties. Each party shall pay its own attorneys' fees and costs in connection with any mediation. The fees of any arbitrator and the costs of arbitration shall be paid by the non-prevailing party or parties; if none, such fees and costs shall be divided and paid equally by the parties. Should any suit, action or arbitration be commenced in connection with any dispute related to or arising out of this Declaration, the Bylaws, the Rules and Regulations or the Oregon Planned Community Act; to obtain a judicial construction of any provision of this Declaration, the Bylaws or the Rules and Regulations, to rescind this Declaration, or to enforce or collect any judgment or decree of any court or any award obtained during arbitration, the prevailing party shall be entitled to recover its costs and disbursements, together with such investigation, expert witness and attorneys' fees incurred in connection with such dispute as the court or arbitrator may adjudge reasonable, at trial, in the arbitration, upon any motion for reconsideration, upon petition for review, and on any appeal of such suit, action or arbitration proceeding. The determination of who is the prevailing party and the amount of reasonable attorneys' fees to be paid to the prevailing party shall be decided by the arbitrator (with respect to attorneys' fees incurred before and during the arbitration proceeding) and by the court or courts, including any appellate or review court, in which such matter is tried, heard or decided, including a court that hears a request to compel or enjoin arbitration or that hears exceptions made to an arbitration award submitted to it for confirmation as a judgment (with respect to attorneys' fees incurred in such proceedings).

10.2 Survival.

The mediation and arbitration agreement set forth in this Article 10 shall survive the transfer by any party of its interest or involvement in the Property and any Lot therein and shall survive the termination of this Declaration.

Article 11

MORTGAGEES

11.1 Reimbursement of First Mortgagees.

First mortgagees of units may, jointly or singly, pay taxes or other charges that are in default and that may or have become a charge against any Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for such Common Areas or any Townhome. First mortgagees making such payments shall be owed immediate reimbursement therefor from the Association, to the extent the same was the responsibility of the Association.

11.2 Right of First Mortgagees Relating to Maintenance.

At any time that the Common Areas or the exterior of a Townhome is not maintained or repaired by the Association pursuant to Article 7 to the extent reasonably necessary to protect and preserve the value of the Property for security purposes, then the record mortgagee, upon giving written notice as hereinafter provided, shall be entitled to exercise the rights of the Owner of the Townhome as a member of the Association to vote at all regular and special meetings of the members of the Association for a period of one (1) year following the date of such notice. During this one (1) year period, the Association shall give notice of all regular and special meetings to both the Owner and the mortgagee, and the Owner may attend such meetings as an observer. Notice from the mortgagee under this section shall quote this Section 11.2 and shall be sent postage prepaid by certified United States mail, return receipt requested, to the Owner with a copy sent by regular mail to the Association at the last known address of each.

Article 12

DECLARANT'S SPECIAL RIGHTS

12.1 General.

Declarant is developing Lots and other improvements within the 1925 Townhomes. The completion of the development work and the marketing and sale of the Townhomes is essential to the establishment and welfare of the Property as a residential community. Until the Townhomes on all Lots on the Property have been constructed, fully completed and sold, with respect to the Common Area and each Lot on the Property, the Declarant shall have the special rights set for in this Article 12.

12.2 Voting Rights.

Voting rights shall be as set forth in Section 6.3 and the Bylaws.

12.3 Marketing Rights.

Declarant shall have the right to maintain any signage of any size at any location, a sales office and model on one or more of the Lots which Declarant may or may not own, to be staffed by the employees of Declarant or any licensed real estate sales agents. Declarant and its agents shall have the right to use and occupy the sales office and models during reasonable hours any day of the week. Declarant may maintain a reasonable number of "For Sale" signs at reasonable locations of the Property, including, without limitation, the Common Area.

12.4 Right to Approve Changes in the Standards within 1925 Townhomes.

For a period of ten (10) years from the date of the Turnover Meeting, no supplemental declaration and no amendment to or modification of this Declaration or any supplemental declaration and no amendment to or modification of the Bylaws of the Association shall be effective without the prior notice to and the written consent of Declarant.

12.5 Right to Approve Special Assessments.

For so long as the Declarant owns any land subject to this Declaration, no Special Assessment shall be levied for capital improvements or capital additions without the prior, written consent of Declarant. No Special Assessment shall be levied against Declarant or a Lot owned by Declarant unless approved by Declarant in writing.

12.6 Right to Receive Notice of and Attend Owner and Board Meetings.

The Declarant shall have the right to receive notice of and to attend all Owner meetings and all Board meetings for a period of ten (10) years following the Turnover Meeting, regardless of whether Declarant still owns a Lot. Meeting notices to Declarant shall be given in the same manner as notices to the Owners; provided, however, any notice of a Board meeting that is posted at the Property pursuant to the Bylaws must also be given to Declarant by U.S. Mail or recognized third party overnight delivery service within the time period prescribed in the Bylaws.

12.7 Right to Inspect.

The Declarant shall have the right to inspect the Property for a period of ten (10) years following the Turnover Meeting, regardless of whether Declarant still owns a Lot, for purposes of determining whether the Association is performing appropriate and sufficient maintenance and repairs.

12.8 Right to Review and Copy Records.

The Declarant shall have the right, for a period fifteen (15) years following the Turnover meeting, to review and make copies of all inspection, maintenance and other records of the Association, regardless of whether the Declarant still owns a Lot.

12.9 Declarant's Easements.

Declarant has reserved easements over the Property as more fully described in Article 3.

12.10 Appearance and Design of the 1925 Townhomes.

Declarant shall not be prevented from changing the exterior appearance of the Property, including the landscaping or any other matter directly or indirectly connected with project in any manner deemed desirable by Declarant, provided that Declarant obtains governmental consents required by law. Declarant may change exterior and/or interior designs from initial plans, any previous phases or construction, and provisions in this document, without notice. This may include designs, colors, and type of materials, provided Declarant obtains any necessary governmental consent.

12.11 Construction by Declarant.

All construction by Declarant is presumed to have been approved by the Board and Association and to meet any applicable architectural standards.

12.12 Exemptions from Assessments.

To the maximum extent allowed by law, Declarant shall be exempted from Assessments as set forth in Article 8.

12.13 Conversion of Property Classifications.

Declarant reserves the right to convert Lots into Common Area and Common Area into Lots, change the plan of development for the 1925 Townhomes and to amend this Declaration at any time prior to the sale or transfer of any Lot to any person or entity other than Declarant or a successor declarant.

12.14 Other Rights.

Any and all rights of Declarant under the Oregon Planned Community Act, and all other rights, powers, easements, exemptions and entitlements reserved for Declarant elsewhere in this Declaration or the Bylaws.

Article 13

AMENDMENT AND REPEAL

13.1 How Proposed.

Amendments to or repeal of this Declaration shall be proposed by either a majority of the Board of Directors or by Owners holding thirty percent (30%) or more of the Association's voting rights. The proposed amendment or repeal must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon or attached to any request for consent to the amendment or repeal.

13.2 Approval Required.

This Declaration, or any provision thereof, as from time to time in effect with respect to all or any part of the Property, may be amended or repealed by the vote or written consent of Owners representing not less than seventy-five percent (75%) of the Lots, based upon one vote for each such Lot, together with the written consent of the Class B member, based upon **three** votes for each such lot, if such Class B membership has not been terminated as provided in this Declaration. In no event shall an amendment under this section create, limit or diminish special Declarant rights without Declarant's written consent, or change the boundaries of any Lot or any uses to which any Lot is restricted under this Declaration or change the method of determining liability for common expenses, the method of determining the right to common profits or the method of determining voting rights of any Lot, unless the Owners of the affected Lots unanimously consent to the amendment. Declarant may not amend this Declaration to increase the scope of special Declarant rights reserved in this Declaration after the sale of the first Lot unless Owners representing seventy-five percent (75%) of the total vote, other than Declarant, agree to the amendment. To the extent any amendment relates to the preservation or maintenance of the Common Areas or private utility lines, or the existence of an entity responsible for accomplishing the same, such amendment shall be approved by the zoning administrator of Deschutes County.

13.3 Recordation.

Any such amendment or repeal shall become effective only upon recordation in the Deed Records of Deschutes County, Oregon of a certificate of the president and secretary of the Association setting forth in full the amendment, amendments or repeal so approved and certifying that such amendment, amendments or repeal have been approved in the manner required by this Declaration and ORS 94.590, and acknowledged in the manner provided for acknowledgment of deeds.

13.4 Regulatory Amendments.

Notwithstanding the provisions of Section 13.1 above, until the Turnover Meeting, Declarant shall have the right to amend this Declaration or the Bylaws of the Association in order to comply with the requirements of the Federal Housing Administration, the United States

Department of Veterans Affairs, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Mortgage Loan Corporation, any department, bureau, board, commission or agency of the United States or the State of Oregon, or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon that insures, guarantees or provides financing for a planned community or lots in a planned community. After the Turnover Meeting, any such amendment shall require the approval of a majority of the voting rights of the Association voting in person, by proxy or by ballot at a meeting or ballot meeting of the Association at which a quorum is represented.

Article 14

MISCELLANEOUS PROVISIONS

14.1 Lessees and Other Invitees.

Lessees, invitees, contractors, family members and other persons entering the Property under rights derived from an Owner shall comply with all of the provisions of this Declaration restricting or regulating the Owner's use, improvement or enjoyment of his unit and other areas within the Property. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner himself or herself.

14.2 Enforcement.

The Association, or any Owner or the owner of any recorded mortgage on any part of the Property shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

14.3 Construction; Severability; Number; Caption.

This Declaration shall be liberally construed as an entire document to accomplish the purposes hereof as stated in the introductory paragraphs hereof. Nevertheless, each provision of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision shall not affect the validity or enforceability of the remaining part of that or any other provision.

As used herein, the singular shall include the plural and the plural the singular, and the masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration.

14.4 Notices.

All notices to the Association or to the Board of Directors shall be sent care of the manager, or if there is no manager, to the principal office of the Association or to such other address as the Board of Directors may designate from time to time. All notices to any Owner shall be sent to such address as may have been designated by such Owner from time to time, in writing, to the Board of Directors, or, if no address has been designated, then to the Owner's Lot. In the discretion of the Board of Directors, any notice, information or other written material required to be given to an Owner or director under this Declaration or the Bylaws or pursuant to the Oregon Planned Community Act, may be given by electronic mail, facsimile or other form of electronic communication acceptable to the Board of Directors, except for the following notices: failure to pay an assessment; foreclosure of an association lien under ORS 94.709; or an action the Association may take against an Owner. An Owner or director may decline to receive notice by electronic mail, facsimile or other form of electronic communication and may direct the Board of Directors to provide notice in any other manner permitted under this Declaration or the Bylaws or the Oregon Planned Community Act.

14.5 Resolution of Document Conflicts.

In the event of a conflict among any of the provisions in the documents governing the 1925 Townhomes, such conflict shall be resolved by looking to the following documents in the order shown below:

- (a) This Declaration;
- (b) The Articles;
- (c) The Bylaws; and
- (d) The Rules and Regulations.

14.6 Private Agreement.

This Declaration and the covenants and agreements contained herein constitute a private agreement among the Owners of Lots in the 1925 Townhomes. This Declaration does not restrict Deschutes County's authority to adopt or amend its development regulations. There may be conflicting requirements between this Declaration and regulations of Deschutes County, which will limit its review of a development application to the requirements of its regulations. It is the duty of every person engaged in development or remodeling of a Lot and/or improvement in the 1925 Townhomes to know the requirements of this Declaration and the covenants and agreements contained herein. In the event there is a conflict between a regulation of the City of Bend, Oregon and or Deschutes County and this Declaration, any question regarding which provision controls shall be directed to the Association. In no event will the City of Bend, Oregon, and or Deschutes County be liable for any approvals or permits that are granted in compliance with the regulations of the City of Bend, Oregon, and/or Deschutes County and or the State of Oregon or any other jurisdiction, but that are not in compliance with this Declaration. Declarant and/or the Association will not be liable for any approvals that are granted in

compliance with this Declaration, but that are not in compliance with the regulations of the City of Bend, Oregon, and/or Deschutes County and/or the State of Oregon or any other jurisdiction.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date set forth above.

1925 Townhomes, LLC, an Oregon limited liability company

By:
John P. Lietz, President

STATE OF OREGON)
) ss.
County of)

The foregoing instrument was acknowledged before me this _____ day of _____, 2019 by John P. Lietz, as Managing Member of 1925 Townhomes, LLC, an Oregon limited liability company, on behalf of said limited liability company.

Notary Public for Oregon
My commission expires:
Commission No.:

EXHIBIT A

Lots 1 through 34 inclusive, and Tracts A through F, inclusive, in that certain plat entitled "1925 Townhomes" filed in the Plat Records of Deschutes County, Oregon, on the ____ day of _____, 201__ in Plat Book _____, at Pages _____ through _____, inclusive.