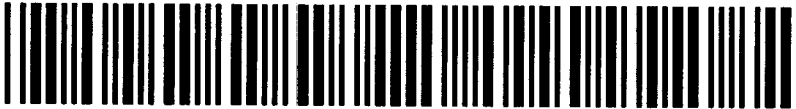


VOL: 2000 PAGE: 39583
RECORDED DOCUMENT

STATE OF OREGON
COUNTY OF DESCHUTES



*2000-39583 * Vol-Page

Printed: 09/29/2000 15:09:08

DO NOT REMOVE THIS CERTIFICATE

(This certificate constitutes a part of the original instrument in accordance with ORS 205.180(2). Removal of this certificate may invalidate this certificate and affect the admissibility of the original instrument into evidence in any legal proceeding.)

I hereby certify that the attached instrument was received
and duly recorded in Deschutes County records:

DATE AND TIME: Sep. 29, 2000; 3:06 p.m.

RECEIPT NO: 26657

DOCUMENT TYPE: Planned Community
 Subdivision Declaration

FEE PAID: \$156.00

NUMBER OF PAGES: 26

A handwritten signature in cursive script, reading "Mary Sue Penhollow".

MARY SUE PENHOLLOW
DESCHUTES COUNTY CLERK

2000-39583-1

AFTER RECORDING RETURN TO:

BC Boulder Construction
376 NW 19th Street
Redmond, OR 97756

Robert Symons Well-prep Tuesday

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR**

BOULDER BROOK

THIS DECLARATION is made this 29TH day of SEPTEMBER, 2000, by BC's BOULDER CONSTRUCTION, INC., an Oregon corporation, and DIANE N. MAY ("Declarant").

RECITALS:

A. Declarant has recorded the plat of "Boulder Brook" in the plat records of Deschutes County, Oregon.

B. Declarant desires to subject the property contained in such plat, to the conditions, restrictions and charges set forth in this Declaration for the benefit of such property and its present and subsequent owners, and to establish such property as the first phase of a rowhouse project to be known as "Boulder Brook." Additional property may be annexed to Boulder Brook in accordance with the provisions of this Declaration.

C. Boulder Brook is exempt from the Oregon Planned Community Act pursuant to ORS 94.570(2).

NOW, THEREFORE, Declarant hereby declares that the property described in the plat of Boulder Brook, shall be held, sold and conveyed subject to the following covenants, conditions and restrictions, 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 shall inure to the benefit of each owner thereof.

**ARTICLE 1.
DEFINITIONS**

1.1 "Additional Property" means any land which is made subject to this Declaration as provided in Section 2.2, below.

Page 1. Declaration of Covenants, Conditions and Restrictions
for Boulder Brook

epf\realstate\beconstruction\CC&Rs.wpd

BRYANT, EMERSON & FITCH

ATTORNEYS AT LAW
888 WEST EVERGREEN AVENUE
P.O. BOX 457
REDMOND, OREGON 97756-0103
TELEPHONE (541) 548-2151
FAX (541) 548-1895

1.2 "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 "Common Areas" means those areas of land shown or declared as such in any recorded subdivision plat of the Property and intended to be devoted to the common use and enjoyment of the Owners of the Property.

1.4 "Declarant" means BC's Boulder Construction, Inc., an Oregon corporation, and its successors and assigns.

1.5 "Initial development" means the property described in Section 2.1, below.

1.6 "Lot" means a numerically designated and platted lot with the Property (including the unit located on such Lot), with the exception of any tract or lot marked on the plat as being common, a private drive or dedicated to Deschutes County.

1.7 "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 a deed of trust.

1.8 "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 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.

1.9 "Common area" means any tract designated as private common access easement, in the Declaration on the Plat.

1.10 The "Property" or "Boulder Brook" mean the Initial development and any Additional Property annexed Pursuant to Section 2.2, below.

1.11 "Sold" means that legal title has been conveyed or that a contract of sale has been executed under which the purchase has obtained the right to possession.

1.12 This "Declaration" means all of the easements, covenants, restrictions and charges set forth in this instrument, together with any rules or regulations promulgated pursuant to this instrument, as the same may be amended or supplemented from time to time in accordance with the provisions hereof.

1.13 "Unit" 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.

**ARTICLE 2.
PROPERTY SUBJECT TO THESE COVENANTS**

2.1 Initial Development. Declarant hereby declares that all the real property described below is owned and shall be owned, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration:

All that certain property located in Deschutes County, Oregon, contained in that certain plat entitled "Boulder Brook" filed as Partition Plat 1999-01, Deschutes County, Oregon, on the _____ day of _____, 2000.

The Initial Development of Phase I contains twenty (20) Lots and will contain not more than twenty (20) Units, except accessory dwellings as defined by Deschutes County are permitted on any Lot.

2.2 Annexation of Additional Property. Declarant may from time to time and in its sole discretion annex to Boulder Brook as Additional Property any real property now or hereafter acquired by it, and may also from time to time and in its sole discretion permit other holders of real property to annex the real property owned by them to Boulder Brook. The annexation of such real property shall be accomplished as follows:

(a) The owner or owners of such real property shall record a declaration which shall be executed by or bear the approval of Declarant and shall, among other things, describe the real property to be annexed, establish land classifications of the Additional Property, establish land classifications for the Additional Property, establish any additional limitations, uses, restrictions, covenants and conditions which are intended to be applicable to such property, and declare that such property is held and shall be held, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration.

(b) The property included in any such annexation shall thereby become a part of Boulder Brook and this Declaration, and the Declarant and the Association shall have and shall accept and exercise administration of this Declaration with respect to such property.

(c) Notwithstanding any provision apparently to the contrary, a declaration with respect to any Additional Property May:

(i) establish such new land classifications and such limitations, uses, restrictions, covenants and conditions with respect thereto as Declarant may deem to be appropriate for the development of the Additional Property.

(ii) with respect to existing land classifications, establish additional or different limitations, uses, restrictions, covenants and conditions with respect thereto as Declarant may deem to be appropriate for the development of such Additional Property.

(d) There is no limitation on the number of Lots or Units which Declarant may create or annex to Boulder Brook, except as may be established by applicable ordinances of Deschutes County. Similarly, there is no limitation on the right of Declarant to annex common property, except as may be established by Deschutes County.

(e) Upon annexation, additional Lots so annexed shall be entitled to moving rights as set forth in Section 6.3, below.

(f) The formula to be used to reallocating the common expenses if additional Lots are annexed and the manner of reapportioning the common expenses if additional Lots are annexed during a fiscal year are set forth in Section 8.8, below.

ARTICLE 3. PROPERTY RIGHTS IN COMMON AREAS

3.1 Designation of Common Areas in Initial Development. Tract A as shown on the plat of the Initial Development shall be the Common Areas for purposes of this Declaration. A portion of the Development shall be retained by Declarant for future development as shown on the plat of the Initial Development for uses permitted by Deschutes County.

3.2 Owner's Easements of Access. Subject to the provisions of this Article, every Owner of a Lot shall have a right of easement and enjoyment in and to the Common Areas, and such easement shall be appurtenant to and shall pass with the title to any Lot.

3.3 Title to the Common Areas. Title to the Common Areas shall be conveyed to the Association by Declarant no later than the turnover meeting referred to in Section 6.7, below.

3.4 Extent of Owner's Rights. The rights and easements in the Common Areas created hereby shall be subject to the following and all other provisions of this Declaration:

(a) **Easements.** Declarant grant 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.

(i) An easement on all Common Areas for underground installation and maintenance of power, gas, electric, sewer, water,

irrigation and other utility and other utility and communication lines and services installed by Declarant or with the approval Of the Board of Directors of the Association and any such easement shown on any plat of the Property.

(ii) An easement for construction, maintenance, repair and use of Common Areas.

Declarant or the Association may (and to the extent required by law, shall) grant or assign easements on all Common Areas to governmental entitles 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, trash removal and communication companies serving the Property.

(b) **Use of the Common Areas.** The Common Areas shall not be partitioned or otherwise divided into parcels for residential use. Except as otherwise provided in this Declaration, no private use may be made of the Common Areas, and their use, operation and maintenance shall not be obstructed, damaged or unreasonably interfered with by any Owner. The Board of Directors of the Association 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, 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. Any partitioning or subdividing must meet applicable planning and zoning requirements and ORS Chapter 92 requirements. This provision shall not apply to the easements described in Section 3.4(a).

(d) **Limitation on Use.** Use of the Common Areas by the Owners shall be subject to the provisions of this Declaration and to the right of the Association to adopt, amend and to repeal rules and regulations in accordance with this Declaration. The rights and easements of enjoyment created hereby shall be subject to the following:

(i) Except for vehicles used for maintenance, no motorcycles, motor bikes or off-road vehicles of any type are allowed on the Common Areas.

(ii) No parking is allowed on the Common Areas, unless specifically designated as a parking area.

(iii) The right of the Association to limit the number of guests of members.

(iv) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated on the Common Areas.

(v) The right of the Association to suspend the enjoyment rights of any member for any period to exceed thirty days for any infraction of its published rules and regulations.

(vi) The right of the Declarant and the Association in accordance with its Articles and Bylaws to mortgage said property as security for any loan the purpose of which is improvement of the Common Areas. In the event of a default upon any such mortgage, the lender's rights hereunder shall be limited to a right after taking possession of such properties to charge admission and other fees as a condition of continued enjoyment by the members, and if necessary, to open the enjoyment of such property to a wider public until the mortgage debt is satisfied, whereupon the possession of such property shall be returned to the association and all rights of the members hereunder shall be fully restored.

(vii) the right of the Association to dedicate or transfer all or any part of the Common Areas to any municipal corporation, public agency or authority for such uses and purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer however, shall be effective except pursuant to a vote of the members as provided by the Articles of Incorporation.

3.5 Delegation of Use. Any Owner may delegate, in accordance with the Bylaws of the Association, his or her right of use of the Common Areas to the members of his or her family, tenants, or contract purchasers who reside on the Lot, whose use of the Common Areas shall be subject to this Declaration and all rules and regulations adopted hereunder.

3.6 Easements Reserved by Declarant. So long as Declarant owns any Lot, Declarant reserves an easement over, under and across the Common Areas in order to carry out construction, sales and rental activities necessary or convenient for the development, sale or rental of Lots.

**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 the Owner shall comply with the restrictions contained in Article 6, below, and all other provisions of this Declaration for the mutual benefit of all Owners.

4.2 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, below, 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.

4.3 Party Walls. Each wall which is built as a part of the original construction of the dwellings within the Property and placed upon the dividing line between Lots shall constitute a "party wall," and the following provisions shall apply:

(a) **General Rules to Apply.** 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 all such party walls.

(b) **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use. The word "use" as referred to in this section means ownership of a dwelling unit of other structure which incorporates such wall or any part thereof. Either Owner sharing a party wall may cause such repairs and maintenance and seek contribution of the portion of the cost attributable to other Owners using the party wall.

(c) **Destruction by Fire or Other Casualty.** If the party wall is destroyed or damaged, then any Owner who has used the wall may restore it and if the other Owner thereafter makes use of the wall, such Owner shall contribute to the cost of such restoration thereof in proportion to such use without prejudice, however, to the right of any such Owner to call for a larger contribution from the other under any rules of law regarding liability for negligent or willful acts or omissions.

(d) **Weatherproofing.** Notwithstanding any other provisions of this Section 4.3, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the cost of furnishing the necessary protection against such elements.

(e) **Right to Contribute Runs with Land.** The right of any Owner to contribution from any other Owner hereunder shall be appurtenant to the land; shall pass to such Owner's successors in title; and shall also be the personal obligation of the Owner owning a Lot at the time such costs are incurred.

(f) **Arbitration.** In the event of any disputes arising concerning a party wall, or under the provisions of this Section 4.3, the Board of Directors of the association shall act as arbitrators and their decision shall be final.

ARTICLE 5. USE RESTRICTIONS

5.1 Land Use and Building Type.

(a) Lots shall be used only for attached single-family residential purposes.

(b) No structures of a temporary or permanent character such as a trailer, recreational vehicle, tent, shack, garage, barn or other outbuildings shall be used on any Lot at any time as an additional or only residence.

(c) Exterior buildings such as a private greenhouse, storage unit, private swimming pool or similar detached structures are permitted if the location, size, design, and decoration of such structure is in conformance with the Unit as determined by the Board of Directors of the Association. No such exterior structures shall be constructed or placed on any Lot prior to the approval of the Board of Directors of the Association. The Board may also approve a maintenance or similar structure on the Common Area. No such structure shall exceed nine feet (9') in height or be placed between a Unit and a public street.

5.2 Dwelling Size. The dwelling, exclusive of uncovered porches, garage and outbuildings, shall not be less than 1,150 square feet in gross floor area.

5.3 Exterior Appearance. Each Owner shall maintain the exterior appearance of such Owner's Unit facing a public right of way in a neat and attractive condition. If in the opinion of the Board of Directors of the Association the Unit is in a state of disrepair or is otherwise unsightly due to flaking, faded or chipping paint, excessive moss on the roof, or excessively weathered roofing or siding, or rusted or leading gutters, the Association may repair or repaint the Unit at the Owner's expense in accordance with the provisions of Section 9.2, below.

5.4 Business and Commercial Uses.

(a) No commercial, trade, craft, business, or similar activity of any kind shall be conducted on any Lot or in any Unit, nor shall any goods, equipment, vehicles

vehicles larger than one ton, materials or supplies used in connection with any trade, service or business be kept or stored on any Lot outside the residence.

(b) Parking shall not be permitted within the Common Areas or in any other area unless designated as a parking area or in a Unit's individual driveway. All such Common Areas and all other non-designated areas shall be kept free of parked vehicles for purposes of fire access.

(c) The provisions of this Declaration do not prohibit the right Of any home builder to use any single family residence as a model home for purpose of sales within the Property for a period of three years following completion of the Unit.

5.5 Parking.

(a) All Units shall include a private, fully enclosed garage with two parking spaces and an area of at least 360 square feet.

(b) Parking shall not be permitted within the Common Areas or in any other area Unless designated as a parking area or in a Units individual driveway. All such Common Areas and all other non-designated areas shall be kept free of parked vehicles for purposes of fire access.

(c) Parking of boats, trailers, motor homes, recreational cars, motorcycles, trucks, truck-campers and like equipment shall be within the confines of an enclosed garage. No Owner shall permit any vehicle of any kind, including automobiles, boats, trailers, motor homes, motorcycles, trucks, campers, etc., to be abandoned or to remain parked on the street for a period in excess of 96 hours. Trucks larger than one tone shall not be parked in the Property except for the purpose of delivery, loading or unloading.

5.6 Fences. Any fences constructed along any back Lot line or side Lot line shall not be more than six feet in height as measured from ground level and shall be constructed similar in appearance to the fence on the north property line. In addition, all fences must meet with Deschutes County Standards. No fences are allowed between any Unit and a public street. Except for entry, security gates to the Common Areas, no fences are allowed within four feet (4') of a Common area. A fenced area will not be maintained by the Association, and the Owner must maintain any area so fenced.

5.7 Miscellaneous Outdoor Equipment.

(a) No exterior antenna larger than three feet (3') in diameter shall be permitted and any antenna installed shall be placed in as inconspicuously as possible

and the placement must be approved by the Association. Air conditioners, heat pumps and other service equipment are permitted outdoors, but may only be located to the rear of a Unit.

(b) All exterior equipment such as, but not limited to, air conditions or heating systems shall be sheltered, insulated or otherwise baffled as necessary to conform to county noise standards.

(c) No outdoor overhead electric or telecommunications wire, service drop, pole, tower, or other structure supporting such an overhead wire shall be erected, placed or maintained. All connections to TV cable, telephone, and electric service shall be underground.

5.8 Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, excepting only domestic dogs or cats and excepting caged pet birds kept within the dwelling Unit, provided such dogs, cats and pet birds are not permitted to run at large and are not kept, bred, or raised for commercial purposes or in unreasonable numbers.

5.9 Signs. No signs shall be placed on any Lot, except that not more than two signs, each up to six square feet (6 sq. ft.) in size, may be temporarily displayed on any Lot by the Owner, Declarant or by a licensed real estate agent for the sale of homes within the Property.

5.10 Rubbish and Trash. No Lot, open space, Common area, street or other tract of land shall be used to dump trash, rubbish, yard debris, or dirt resulting from landscaping work. All garbage and other waste shall be kept in appropriate sanitary containers for proper disposal. Such containers shall be kept out of public view except on scheduled trash collection days.

5.11 Building Match Lines. At the property line between the attached Units, the foundation is a shared structural component, the integrity of which shall not be disturbed by the Owner on either side of such common property lines. There are also some nonstructural siding and roofing pieces which are necessary to maintain protection from the weather at the property line joint. Such protective pieces shall not be distrusted by either adjoining Owner except to repair or replace such pieces.

5.12 Gates. Nothing in this Declaration precludes the Association from installing security gates openable for Owner vehicles at the ends of Common Areas if adequate emergency and service access is provided to the appropriate agencies and service providers.

5.13 Offensive or Unlawful Activities. No noxious or offensive activities shall be carried on in any Unit, Lot or Common area nor shall anything be done or placed upon any Unit, Lot or Common area which interferes with or jeopardizes the enjoyment of other Units, or which is a source

of annoyance to residents. Unit occupants shall exercise extreme care not to make noises which may disturb other Unit occupants. No garage shall at anytime be used as a residence either temporarily or permanently or as a place for any commercial enterprise. No unlawful use shall be made of the Lot nor any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. No firearms shall be discharged.

5.14 Exterior Lighting or Noise making Devices. Except with the consent of the Association, and except for exterior lighting originally installed by the Declarant, no exterior lighting or noise making devices shall be installed or maintained on any Lot.

5.15 Front Yards, Windows, Decks, Porches and Outside Walls. In order to preserve the attractive appearance of the Property, the Association may regulate the nature of items which maybe paced in or on front yards, windows, decks, entry porches, and the outside walls so as to be visible from public streets. Garments, rugs, laundry and other similar items may not be hung from windows, facades, porches or decks. Front yards may not be used for the storage of excess furniture, play equipment or other objects which are, in the sole opinion of the Board of Directors of the Association, an eyesore.

5.16 Alterations. Owners are expressly prohibited from changing the exterior construction of a unit.

5.17 Insurance. Notting shall be done or kept in any Lot which will increase the cost of insurance on the Units. No Owner shall permit anything to be done or kept in his Unit or in the Common Areas which will result in cancellation of insurance on any other Lot or any part of the Common Areas.

5.18 Landscape. All maintenance of front yard landscaping on all Lots and side yard Landscaping on all corner Lots will be performed by the Association, except that with the permission of the Board of Directors of the Association an Owner may install and maintain additional landscape or flowers in the front or corner side yard area of such Owner's Unit.

5.19 Association 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, Units and Common Areas as it may deem necessary or appropriate in order to assure 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 delivered by the Association Board of Directors promptly to each Owner and shall binding upon all Owners and occupants of all Lots from the date of delivery. The method of adoption of such rules shall be as provided in the Bylaws of the Association.

ARTICLE 6. ASSOCIATION

Declarant shall organize an association of all of the Owners within the Property. Such Association, its successors and assigns, shall be organized under the name, "Boulder Brook Owners Association," or such similar name as Declarant shall designate, 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. The Association may not be dissolved unless such dissolution has been approved by Deschutes County following a public hearing.

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 of 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, including Declarant, to the extent Declarant owns any Lots.
- Class B:** The Class B member shall be the Declarant, its successors and assigns. Class B membership shall terminate upon the happening of any of the following events, whichever occurs earlier:

(a) Two years after the date of recording of this Declaration or the date of recording of the most recent declaration annexing additional property to this Declaration, whichever is later;

(b) January 1, 2007; or

(c) such earlier date as Declarant may elect to terminate such membership.

Until the Class B membership is terminated as provided above, all voting rights in the Association shall belong to the Class B member, except to the extent otherwise expressly provided in this Declaration. Upon termination of the Class B membership, all voting rights in the Association shall belong to the Class A members, including Declarant. On all matters upon which the class A members are entitled to vote, each Class A member shall have one vote for each Lot owned by such Owner within the Property. 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.

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

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

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

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

(d) 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, 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 5.20 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.

(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.

(g) **Borrow Money, Hold Title and Make Conveyances.** The Association may borrow and repay moneys for the purpose of maintaining and improving the Common Areas, subject to Section 3.4(c), above, and 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 Areas, and shall accept any real or personal property, leasehold or other property interest 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 of any portion of the Common Areas to a person, firm or entity,

whether public or private, and dedicate or transfer all or any portion of the Common Areas 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. In addition, the Board of Directors shall have the right to discontinue any service upon nonpayment or to eliminate such service for which there is no demand or adequate funds to maintain the same.

(j) **Implied Rights and Obligations.** The Association may exercise any other right or privilege reasonably to be implied 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. A member of the Board of Directors or an officer of the Association shall not be liable to the Association or any member thereof 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, except for acts of gross negligence or intentional acts. In the event any member of the Board of Directors or any officer of the association is made a party to any proceeding because the individual is or was a director or officer of the Association, the Association shall indemnify such individual against liability and expenses incurred to the maximum extent permitted by law.

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 of the Association until replaced by Declarant or their successors have been elected by the Owners at the turnover meeting described in this section. Declarant shall call a meeting of the Association for the purpose of turning over administration responsibility for the Property to the Association not later than one hundred twenty (120) days after termination of the Class B membership in accordance with section 6.3(b), above. At the turnover meeting, the interim directors shall resign and their successors shall be elected by the Owners as provided in the Bylaws of the Association. 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.

ARTICLE 7. MAINTENANCE, SERVICES, CONDEMNATION, DAMAGE

7.1 Landscape Maintenance. The Association shall maintain the landscaping on the yards of all Lots. 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 of Common Areas. The association shall perform all maintenance upon the Common Areas and the improvements located thereon.

7.3 Maintenance of Streets. All streets as shown on the subdivision plat are private streets owned by the Association. The Association shall maintain the streets. The cost of such maintenance by the Association shall be a common expense paid out of the assessments described in Article 8, below. However, in the event the need for such maintenance or repair is caused by the willful or negligent act or omission of an Owner of the Owner's family, tenants, guests or invitees and, to the extent that such maintenance is not covered by the Association's insurance, the cost of such repair may, in the discretion of the board of directors, be charge to the Owner as an Individual Assessment.

7.4 Utilities and Services. The Association shall 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, garbage and trash removal and security services.

7.5 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.

7.6 Condemnation. If any portion of the Common Areas are 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 portion of the Common area which may be required to permit the continued use 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.

7.7 Damage or Destruction by Casualty. 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 unauthorized occupant or visitor of such Owner, damage shall be caused to the Common Areas or maintenance, repairs or replacements shall be required which 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, as an Individual Assessment.

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 Boulder Brook 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 Assessments, Special Assessments, Emergency Assessments and Individual Assessments, all as more particularly described below.

8.3 Apportionment of Assessments. Lots owned by Declarant shall not be subject to Assessments until such time as the Unit located on the Lot is occupied for residential use. All other Lots shall pay an equal pro rata share of the Assessments, Special Assessments and Emergency Assessments commencing upon the date such Lots are made subject to this Declaration.

8.4 Assessments. The Board of Directors of the Association 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 over assessment and any common profits of the Association. The budget shall provide for such reserve or contingency funds as the board deems necessary or as may be required by law. Monthly Assessments for such operating expenses and reserves ("Assessments") shall then be apportioned among the Lots as provided in Section 8.3, above. The method of adoption of the budget and the manner of billing and collection of Assessments shall be as provided in the Bylaws.

8.5 Special Assessments. In addition to the Assessments 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 or Monthly Assessments. Special Assessments which in the aggregate in any fiscal year exceed an amount equal to fifteen percent (15%) 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 with the written consent of the Class B member, if any. 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 Taxes for Common Area. Each Lot shall pay its pro rata share of the real property taxes for the Common Area. The method of adoption of the budget and the manner of billing and collection of taxes shall be as provided in the Bylaws.

8.7 Emergency Assessments. If the 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 of the Association 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"). Any Emergency Assessment which in the aggregate in any fiscal year would exceed an amount equal to five percent (5%) of the budgeted gross expenses of the Association for the fiscal year may be levied only if approved by not less than a majority of the voting rights voting on such matter, together with the written consent of the Class B member, if any. Emergency Assessments shall be apportioned as set forth in Section 8.3, above, and payable as determined by the Board of Directors.

8.8 Individual Assessments. Any common expense or any part of a common expense benefitting fewer than all of the Lots may be assessed exclusively against the Lots benefitted ("Individual Assessment"). Individual Assessments include without limitation charges for services provided under Section 6.5(i). 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 of the Association 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 thirty (30) days after the Board of Directors has given written notice thereof to the Owners subject to the Individual Assessments.

8.9 Annexation of Additional Property. When Additional Properties are annexed to the Property, the Lots included therein shall become subject to assessments from the date of such annexation. Lots owned by Declarant shall not be subject to assessments until the Unit located on such Lot is occupied for residential use. All other Lots shall pay such assessments in the amount then being paid by other Lots. The Board of Directors of the Association, however, at its option, may elect to recompute the budget based upon the additional Lots subject to assessment and additional Common Areas and recompute Assessments for all Lots, including the new Lots, for the balance of the fiscal year.

8.10 Operations Fund. The Association shall keep all funds received by it as Assessments, other than reserves described in Section 8.10, separate and apart from its other funds, in an account to be known as the "Operations Fund." The Association shall use such funds 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 which are commonly billed.
- (e) Payment of the cost of other services which 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.

8.11 Reserve Fund. The Declarant shall establish a reserve fund for replacement of those items to be maintained by the Association, all or a part of which will normally require replacement for more than three (3) and less than thirty (30) years ("Reserve Fund"). Such Reserve Fund shall be funded by that portion of Assessments representing the budgeted reserves. The amount assessed shall take into account the estimated remaining life of the items for which the reserve is created and the current replacement cost of such items. The Reserve Fund shall be established in the name of the Association and shall be adjusted at regular intervals to recognize changes in current replacement costs over time. The Reserve Fund shall be used only for replacement of common property as determined by the Board of Directors and shall be kept separate from the Operations Fund. After the turnover meeting described in Section 6.7, 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 other temporary expenses which will later be paid from Assessments, Special Assessments, or Emergency Assessments. Nothing in this section shall prohibit prudent investment of the reserve account. Following the second year after the turnover meeting, future Assessments for the Reserve Fund may be reduced, eliminated or decreased by an affirmative vote of not less than seventy-five percent (75%) of the voting power of the Association. Assessments paid in 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.

8.12 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, 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 obligation shall be enforced in the manner set forth in Article 9, below.

ARTICLE 9. ENFORCEMENT

9.1 Use of Common Areas. In the event any Owner shall violate any provision of this Declaration, the Bylaws of the Association, or other rules adopted by the Association governing the use of Common Areas then the Association, acting through its Board of Directors, shall notify the Owner in writing that the violations or nuisances exist, and that he is responsible for them and may, after reasonable notice and opportunity to be heard, do any or all of the following: (a) suspend his voting rights for the period of that the violations or nuisances remain unabated, or for any period not to exceed sixty (60) days for any infraction of its rules and regulations, (b) impose reasonable fines upon the Owner, in the manner and amount the Board deems appropriate in relation to the violation, which fines shall be paid into the Operations Fund, or (c) bring suit or action against such Owner to enforce this Declaration. Nothing in this section, however, shall give the Association the right to deprive any Owner of access to and from his Unit.

9.2 Violation of General Protective Covenants. In the event any Owner constructs or permits to be constructed on his Lot or Unit an improvement contrary to the provisions of this Declaration, or causes or permits any improvement, activity, condition or nuisance contrary to the provisions of this Declaration to remain uncorrected or unabated on his Lot or Unit, then the Association acting through its Board of Directors shall notify the Owner in writing of any such specific violations of this Declaration and shall require the Owner to remedy or abate the same in order to bring his Lot and Unit, the improvements thereon and his use thereof, into conformance with this Declaration. If the Owner is unable, unwilling or refuses to comply with the Association's specific directive 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, after notice and opportunity to be heard and within sixty (60) days of written notice to the Owner, then the

association acting through its Board of Directors shall have the right to do any or all of the following:

- (a) Impose reasonable finds against such Owner in the manner and amount the Board deems appropriate in relation to the violation;
- (b) Enter the offending Lot and remove the cause of such violation, or alter, repair or change the item which is in violation of this Declaration 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 payable to the Operations Fund, provided that no items of construction shall be altered or demolished in the absence of judicial proceedings; or
- (c) Bring suit or action against the Owner on behalf of the Association and other Owners to enforce this Declaration.

9.3 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 of its due date, such assessment or charge shall become delinquent and shall bear interest from the due date of 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 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 any assessment levied against the Lot and any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Lot from the date on which the assessment, fine or charge is due. The provisions regarding the attachment, notice, recordation and duration of liens established on real property under ORS 94.704 to 94.716, as the same may be amended, shall apply to the Association's lien. The lien shall be foreclosed in accordance with the provisions regarding the foreclosure of liens under ORS Chapter 88. The Association, through its duly authorized agents, may bid on the Lot at such foreclosure sale, and may acquire and hold, lease, mortgage and convey the Lot.
- (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.

9.4 Notification of First Mortgagee. The Board of Directors shall notify any first mortgagee of any individual Lot of any default in performance of this Declaration by the Lot Owner which is not cured within sixty (60) days.

9.5 Subordination of Lien to Mortgage. The lien or the assessments or charges provided for in this Declaration shall be subordinate to the lien of any mortgage or deed of trust on such Lot which was made in good faith and for value and which was recorded prior to the recordation of the notice of lien. Sale or transfer of any Lot shall not affect the assessment lien, but the sale or transfer of any Lot which is subject to any mortgage or deed of trust pursuant to a decree of 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 mortgage or trust deed. Such sale or transfer, however, shall not release the Lot from liability for any assessments or charges thereafter becoming due or from the lien of such assessments or charges.

9.6 Interest, Expenses and Attorney's Fees. 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 of one-and-one-half percent (1-1/2%) per month (18% per annum), or such other rate as may be established by the Board of Directors, but not to exceed the lawful rate of interest under the 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 of the Association not to exceed thirty percent (30%) of such assessment. 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 of the Association. In the event the Association shall bring any suit or action to enforce this Declaration, or to collect any money due hereunder or to foreclose a lien, the Owner-defendant shall pay to the Association all cost and expenses incurred by it in connection with such suit or action, including a foreclosure title report, and the prevailing party in such suit or action shall recover such amount as the court may determine to be reasonable attorney's fees at trial and upon any appeal or petition for review thereof.

9.7 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. MORTGAGEES

10.1 Reimbursement of First Mortgagees. First mortgagees of Units may, jointly or singly, pay taxes or other charges which are in default and which 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 Unit. First mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

10.2 Right of First Mortgagees Relating to Maintenance. At any time that the Common Areas are 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 Unit 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 10.2, and shall be sent postage prepaid by certified United States mail, return receipt requested, to the Owner with a copy by regular mail to the Association at the last known address of each.

ARTICLE 11. MISCELLANEOUS PROVISIONS

11.1 Amendment and Repeal. 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 owning not less than seventy-five percent (75%) of the Lots in the Property, together with the written consent of the Class B Member, if such membership has not been terminated as provided herein. 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 or secretary of the Association setting forth in full the amendment, amendments or repeal so approved and certifying that said amendment, amendments or repeal have been approved in the manner required by this Declaration. In no event shall an amendment under this section create, limit or diminish special Declarant rights, increase the number of Lots or Units or change the boundaries of any Lot or any uses to which any Lot or Unit is restricted unless the Owners of the affected Lots unanimously consent to the amendment. Such amendment or repeal shall not have the effect of denying any Owner access to his Lot unless such Owner and any mortgagee of such Lot have

consented thereto. Any provisions must meet applicable planning and zoning requirements and ORS Chapter 92 requirements.

11.2 Regulatory Amendments. Notwithstanding the provisions of Section 11.1, above, until termination of the Class B membership, 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 U.S. Department of Housing and Urban Development, the Veterans Administration, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage 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 which insures, guarantees or provides financing for a planned community or lots in a planned community.

11.3 Duration. This Declaration shall run with the land and shall be and remain in full force and effect at all times with respect to all property included within the Property and the Owners thereof for an initial period of thirty (30) years commencing with the date on which this document is recorded. Thereafter, this Declaration shall continue to run with the land and be and remain in full force and effect at all times with respect to all property within the Property and the Owners thereof for successive additional periods of ten (10) years each. The continuation from the initial or any additional period into the next subsequent period shall be automatic and without the necessity of any notice, consent or other action whatsoever; provided, however, that this Declaration may be terminated at the end of the initial or any additional period by resolution approved not less than six (6) months prior to the intended termination date by the vote or written consent of Owners owning not less than seventy-five percent (75%) of the Lots within the Property. Any such termination shall become effective only if a certificate of the President or Secretary of the Association, certifying that termination as of a specified termination date has been approved in the manner required herein, is duly acknowledged and recorded in the Deed Records of Deschutes County, Oregon, not less than six (6) months prior to the intended termination date. Such termination shall not have the effect of denying any Owner access to his Lot unless such Owner and any mortgagee of such Lot have consent to such termination.

11.4 Joint Owners. In any case in which two or more persons share the ownership of any Lot, regardless of the form of ownership, the responsibility of such persons to comply with this Declaration shall be a joint and several responsibility, and the act or consent of any one or more of such persons shall constitute the act or consent of the entire ownership interest; provided, however, that in the event such persons disagree among themselves as to the manner in which any vote or right of consent held by them shall be exercised with respect to a pending matter, any such person may deliver written notice of such disagreement to the Association, and the vote or right of consent involved shall then be disregarded completely in determining the proportion of votes or consents given with respect to such matter.

11.5 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. All leases must be on not less than a month-to-month tenancy basis.

11.6 Enforcement. The Association, or any Owner or the owner of any recorded mortgage on any part of said Property shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, 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 herein contained shall in no event be deemed a waiver of the right to do so thereafter.

11.7 Construction; Severability; Number; Caption. This Declaration shall be liberally construed as an entire document to accomplish the purposes thereof 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, feminine 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.

11.8 Notices and Other Documents. Any notice of other document permitted or required by this Declaration may be delivered either personally or by mail. Delivery by mail shall be deemed made twenty-four (24) hours after having been deposited in the United States mail, with postage prepaid, addressed as follows:

If to Declarant, BC's Boulder Construction, Inc., 2150 Condor Court, Redmond, OR 97756; if to an Owner, at the address given by the Owner at the time of his or her purchase of a Lot, or at the Unit; if to the Association, to the mailing address of the Association as filed with the Oregon Secretary of State. The address of a party may be changed at any time by notice in writing delivered to the Association as provided herein.

2000-39583-26

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date first above written.

DECLARANT:

Diane N. May
DIANE N. MAY

BC'S BOULDER CONSTRUCTION, INC.,
an Oregon corporation

By: Carl A. Kittelson
Carl A. Kittelson, President

By: Robert L. Symank
Robert L. Symank, Vice President

STATE OF OREGON)
: ss.
County of Deschutes)



On this 29th day of September 2000, before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named Carl A. Kittelson and Robert L. Symank, President and Vice President, respectively, of BC's Boulder Construction, Inc., an Oregon corporation, known to me to be the identical individuals described in and who executed the within instrument and acknowledged to me that they executed the same freely and voluntarily on behalf of the corporation.

Jerry D. Stichler
Notary Public for Oregon

STATE OF OREGON)
: ss.
County of Deschutes)

On this 29th day of September 2000 before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named Diane N. May, and acknowledged the foregoing instrument to be her voluntary act and deed.



Susan Denham
Notary Public for Oregon