

89-07032

DECLARATIONS, RESTRICTIONS,
PROTECTIVE COVENANTS AND CONDITIONS
FOR
HILLSIDE PARK ADDITION

This Declaration of Covenants, Conditions, and Restrictions is made this 30th day of March, 1989, by WILLIAM L. SMITH, hereinafter referred to as "Declarant".

WHEREAS, Declarant is the owner of the real property described in Exhibit "A", attached hereto and incorporated herein by reference. Declarant intends by this Declaration to impose upon the Properties mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of residential property within HILLSIDE PARK ADDITION, the planned unit development made subject to this Declaration and amendments thereto by the recording of this Declaration.

NOW, THEREFORE, Declarant hereby declares that all the Properties described in Exhibit "A" and any additional property as may by subsequent amendment be added to and subjected to this Declaration shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of and which shall run with the real property subjected to this Declaration and which shall be binding on all parties having any right, title, or interest in the described Properties or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I: DEFINITIONS

Section 1. "Additional Land" shall mean and refer to additional real property subject to Declarant's unilateral right of annexation as provided elsewhere in this Declaration.

Section 2. "Area of Common Responsibility" shall mean and refer to the Common Area;

Section 3. "Bylaws" shall refer to the Bylaws of HILLSIDE PARK ADDITION PROPERTY OWNERS ASSOCIATION, INC.

Section 4. "Common Area" shall mean all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the Owners. The initial Common Area is described on Exhibit "C", attached hereto.

Section 5. "Common Expenses" shall mean and include the

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Bend Title Company

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actual and estimated expenses of operating the Association, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to the Declaration, the Bylaws, and the Articles of Incorporation of the Association.

Section 6. "Eligible Mortgage Holder" shall mean a holder, insurer, or guarantor of a first mortgage on a unit who has requested notice of certain matters from the Association as hereinafter and in the Association's By-laws provided.

Section 7. "Eligible Votes" shall mean those votes available to be cast on the issue at hand. A vote which is for any reason suspended is not available to be cast.

Section 8. "Lot" shall mean a portion of the Properties other than the Common Area intended for any type of independent ownership and use as may be set out in this Declaration and as shall be shown on the plats of survey filed with this Declaration or amendments thereto. Where the context indicates or requires, the term Lot includes any structure on the Lot.

Section 9. "Majority" means those eligible votes, Owners, or other groups as the context may indicate totalling more than fifty (50%) percent of the total eligible number.

Section 10. "Member" shall mean and refer to a person or entity entitled to membership in the Association, as provided herein.

Section 11. "Mortgage" means any mortgage, deed to secure debt, and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

Section 12. "Mortgagee" shall include a beneficiary or holder of a deed of trust, as well as a mortgagee.

Section 13. "Mortgagor" shall include the trustor of a deed of trust, as well as a mortgagor.

Section 14. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of any Lot which is part of the Properties, but excluding any party holding the fee simple title merely as security for the performance of an obligation. Owner shall include the Declarant.

Section 15. "Person" means a natural person, a corporation, a partnership, trustee, or other legal entity.

Section 16. "Property or Properties" shall mean and refer to the real property described on page one of this Declaration

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and such additional real property as may be added in accordance with Article VIII. The initial first phase of the Property consists of 21 lots.

Section 17. "Subsequent Amendment" shall mean an amendment to this Declaration which adds additional property to that covered by this Declaration. Such Subsequent Amendment may, but is not required to impose, expressly or by reference, additional restrictions and obligations on the land submitted by that Amendment to the provisions of this Declaration.

ARTICLE II: PROPERTY RIGHTS

Section 1. OWNER'S EASEMENT OF ENJOYMENT. Every Owner shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Declarant, with regard to the Properties which may be owned for the purpose of development, to grant easements in and to the Common Area contained within the respective Properties to any public agency, authority, or utility for such purposes as benefits only the Properties or portions thereof and Owners or Lots contained therein;

(b) The right of the Association to borrow money for the purpose of improving the Common Area, or any portion thereof, for acquiring additional Common Area, or for constructing, repairing, or improving any improvements located or to be located thereon, and to give as security for the payment of any such loan a mortgage conveying all or any portion of the common Area, provided eighty percent (80%) of each Class of members present at a meeting called for such purpose shall approve; provided, however, the lien and encumbrance of any such mortgage given by the Association shall be subject and subordinate to any and all rights, interests, options, easements, and privileges reserved or established in this Declaration for the benefit of Declaration or any Owner, or the holder of any mortgage, irrespective of when executed, given by Declarant or any Owner encumbering any Lot or other property located within HILLSIDE PARK ADDITION; and

(c) The right of the Association to dedicate or transfer all or any portion of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by

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the members of the Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved (i) by at least two-thirds (2/3) of the votes which those Class A members of the Association which are present or represented by proxy are entitled to cast at a meeting duly called for such purpose, and (ii) by the Class B member of the Association, so long as such membership shall exist.

Article II, Section 1(c) may not be amended without the written consent of Declarant.

Section 2. OWNER'S RIGHT TO INGRESS, EGRESS, AND SUPPORT. Each Owner shall have the right to ingress and egress over, upon, and across the Common Area necessary for access to his or her Lot.

Section 3. USE OF LOTS. Except as may be otherwise expressly provided in this Declaration, each Lot shall be used for residential purposes only as a residence for a single family related by blood, adoption, or marriage; no trade or business of any kind may be conducted. Lease or rental of a Lot or any building thereon for residential purposes shall not be considered to be a violation of this covenant, so long as the lease is in compliance with reasonable rules and regulations as the Board of Directors may promulgate. Any lessee or tenant shall in all respects be subject to the terms and conditions of this Declaration, the By-laws, and the rules and regulations adopted hereunder.

Section 4. RULES AND REGULATIONS. The Board of Directors may establish reasonable rules and regulations concerning the use of the Common Area, facilities located thereon, and individual Lots. Copies of such regulations and amendments thereto shall be furnished by the Association to all Owners prior to the rule's effective date. Such regulations shall be binding upon the Owners, their families, tenants, guests, invitees, and agents until and unless such regulation, rule, or requirement shall be specifically overruled, cancelled, or modified by the Board or the Association in a regular or special meeting by the vote of Class A members holding a majority of the total votes in the Association and by the vote of the Class B member, so long as such membership shall exist. The Board shall have the authority to impose reasonable monetary fines and other sanctions, and monetary fines may be collected by lien and foreclosure as provided in Article X.

Section 5. TRANSIENT RENTAL USE. No owner or owners of any unit within HILLSIDE PARK ADDITION shall be permitted to rent their unit to any person or persons for transient occupancy which shall be for a period of 30 days or less. A rental shall be

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defined as the use or possession or the right to use or possess for lodging or sleeping purposes any unit in HILLSIDE PARK ADDITION and rent shall mean the consideration charged whether or not received by the owner for the occupancy of the unit any money, goods, labor, credits, property or other consideration valued in money without any deduction. Transient use shall not include a rental of any unit for a period of in excess of 30 consecutive calendar days.

ARTICLE III. MEMBERSHIP AND VOTING RIGHTS

Section 1. MEMBERSHIP. Every person or entity who is the record owner of a fee interest, or contract vendee, in any Lot that is subject to this Declaration shall be deemed to have a membership in the Association. Membership shall be appurtenant to and may not be separated from such ownership. The foregoing is not intended to include persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more persons, shall have more than one (1) membership per Lot owned. In the event the Owner of a Lot is more than one person or entity, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership, including the right to vote, may be exercised by a Member or the Member's spouse, but in no event shall more than one (1) vote for each class of membership applicable to a particular Lot be cast for each Lot.

Section 2. VOTING. The Association shall have two (2) classes of membership, Class A and Class B, as follows:

(a) Class A. Class A Members shall be all Owners with the exception of the Class B Members if any.

Class A Members shall be entitled on all issues to one (1) vote for each Lot in which they hold the interest required for membership by Section 1 hereof; there shall be only one (1) vote per Lot; provided, however, no vote shall be cast or counted for any Lot not subject to assessment. When more than one person or entity holds such interest in any Lot, the vote for such Lot shall be exercised as those persons or entities themselves determine and advise the Secretary of the Association prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended in the event more than one person or entity seeks to exercise it.

Any Owner of Lots which are leased may, in the lease or other written instrument, assign the voting right appurtenant to that Lot to the lessee, provided

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that a copy of such instrument is furnished to the Secretary prior to any meeting.

(b) Class B. Class B Members shall be the Declarant and any successor of Declarant who takes title for the purpose of development and sale and who is designated as such in a recorded instrument executed by Declarant. The Class B Member shall originally be entitled to thirty votes; this number shall be decreased by one (1) vote for each Class A Member existing at any one time. The Class B membership shall terminate and become converted to Class A membership upon the happening of the earlier of the following:

(i) When the total outstanding Class A votes equal or exceed twenty;

(ii) January 1, 1994; or

(iii) When in its discretion, the Declarant so determines.

From and after the happening of these events, whichever occurs earlier, the Class B Member shall be deemed to be a Class A Member entitled to one (1) vote for each Lot in which it holds the interest required for membership under Section 1 hereof. At such time, the Declarant shall call a meeting, as provided in the By-laws of the Association for special meetings, to advise the membership of the termination of Class B status, and to turn over administrative responsibility for the property to the Association.

Section 3. TURNOVER COMMITTEE: The Declarant shall form a transitional advisory committee to provide for the transition of administrative responsibility by the Declarant to the Association. Not later than the 60th day after the Declarant has conveyed the lots representing fifty percent (50%) of the votes in the Association, the Declarant shall call a meeting of owners for the purpose of selecting a transitional advisory committee. This process shall comply with the provisions of ORS 94.604.

ARTICLE IV. MAINTENANCE

Section 1. ASSOCIATION'S RESPONSIBILITY: The Association shall maintain and keep in good repair the Area of Common Responsibility, such maintenance to be funded as hereinafter provided. This maintenance shall include, but not be limited to, maintenance, repair and replacement, subject to any insurance then in effect, of all roadways, including snow plowing, of all landscaping and other flora, structures, and improvements

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situated upon the Area of Common Responsibility. Declarant does not contemplate making any improvements to the Common Area except the roadways, sidewalks and landscaping improvements. The deed to the Common Area shall be delivered upon filing of the official plat of Hillside Park Addition or any additions thereto.

Section 2. OWNER'S RESPONSIBILITY: Except as provided in Section 1 of this Article, all maintenance of the Lot and all part of the residence thereon shall be the responsibility of the Owner, and each Owner shall maintain and keep in good repair such property and improvements.

ARTICLE V. ANNEXATION OF ADDITIONAL PROPERTY

Section 1. ANNEXATION WITHOUT APPROVAL OF CLASS A MEMBERSHIP. As the owner thereof or, if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege, and option, from time to time at any time until December 31, 1995, to subject to the provisions of this Declaration and the jurisdiction of the Association addition contiguous improved or unimproved real property by filing in the Deschutes County, Oregon, records, an amendment annexing such property. Such amendment to this Declaration shall not require the vote of Class A members. Any such annexation shall be effective upon the filing for record of such amendment unless otherwise provided therein.

Declarant shall have the unilateral right to transfer to any other person the right, privilege, and option to annex additional property which is herein reserved to Declarant, provided that such transferee or assignee shall be the developer of at least a portion of the real property described in Exhibit "A", attached hereto, which, at the time of such transfer and assignment (or contemporaneously therewith), is subjected to the provisions of this Declaration.

There is no limit as to the number of lots Declarant may annex or no limitation on the right of Declarant to annex Common Property except as set forth in this article.

Section 2. The rights reserved unto Declarant to subject additional land to the Declaration shall not be implied or construed so as to impose any obligation upon Declarant to subject any of such additional and to this Declaration or to the jurisdiction of the Association nor any obligation, if subjected, to build housing of the same type, design, or materials. If such additional land is not subjected to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such additional and, nor shall such rights in any manner limit or restrict the use to which such additional land

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may be put by Declarant or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

Section 3. ANNEXATION WITH APPROVAL OF CLASS A MEMBERSHIP. Subject to the consent of the owner thereof, upon the written consent or affirmative vote of a majority of the Class A Members other than Declarant of the Association present or represented by proxy at a meeting duly called for such purpose and of the Declarant, so long as Declarant owns property subject to this Declaration or which may become subject in accordance with Section 1 of this Article, the Association may annex real property other than that shown on Exhibit "B", and following the expiration of the right in Section 1, the properties shown on Exhibit "B" to the provisions of this Declaration and the jurisdiction of the Association by filing of record in the Official Records of the County of Deschutes, Oregon, a Subsequent Amendment in respect to the Properties being annexed.

Any such Subsequent Amendment shall be signed by the President and the Secretary of the Association, and the owner of the properties being annexed, and any such annexation shall be effective upon filing unless otherwise provided therein. The time within which and the manner in which notice of any such meeting of the Class A Members of the Association, called for the purpose of determining whether additional property shall be annexed, and the quorum required for the transaction of business at any such meeting, shall be as specified in the By-laws of the Association for regular or special meetings, as the case may be.

Section 4. ACQUISITION OF ADDITION COMMON AREA. Declarant may convey to the Association additional real estate, improved or unimproved, located within the properties described in Exhibits "A" or "B" which upon conveyance or dedication shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of all its Members.

Section 5. AMENDMENT. This Article shall not be amended without the written consent of Declarant, so long as the Declarant owns any property described in Exhibits "A" or "B".

ARTICLE VI. RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 1. COMMON AREA. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements therein, and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions of this Declaration and the By-laws.

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Section 2. SERVICES. The Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Properties, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or with which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Properties or the enforcement of this Declaration.

Section 3. PERSONAL PROPERTY AND REAL PROPERTY FOR COMMON USE. The Association, through action of its Board of Directors, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold, or other property interests located within the properties described in Exhibit "A" or "B" conveyed to it by the Declarant.

Section 4. IMPLIED RIGHTS. The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-laws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

Section 5. SELF-HELP. In addition to any other remedies provided for herein, the Association or its duly authorized agent shall have the power to enter upon a lot or any portion of the Common property to abate or remove, using such force as may be reasonably necessary, any erection, thing or condition which violates this Declaration, the By-laws, the rules and regulations, or the use restrictions. Unless an emergency situation exists, the Board shall give the violating Lot Owner ten (10) days' written notice of its intent to exercise self-help. All costs of self-help, including reasonable attorney's fees actually incurred shall be assessed against the violating Lot Owner and shall be collected as provided for herein for the collection of assessments.

Section 6. RIGHT OF ENTRY. The Association shall have the right, in addition to and not in limitation of all the rights it may have, to enter into units for emergency, security, or safety purposes, which right may be exercised by the association's Board of Directors, officers, agents, employees, managers and all policy officers, firefighters, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be

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during reasonable hours and after reasonable notice to the owner or occupant of the unit.

ARTICLE VII. ASSESSMENTS

Section 1. PURPOSE OF ASSESSMENT. The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

Section 2. CREATION OF ASSESSMENTS. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association; (a) annual assessments or charges; (b) special assessments, such assessments to be established and collected as hereinafter provided; and (c) specific assessments against any particular Lot which are established pursuant to the terms of this Declaration, including, but not limited to, reasonable fines as may be imposed in accordance with the terms of this Declaration. All such assessments, together with late charges, interest, not to exceed the maximum legal rate, costs, and reasonable attorney's fees actually incurred, shall be charge on the land and shall be a continuing lien upon the Unit against which each assessment is made.

Section 3. COMPUTATION OF ASSESSMENT. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year, which shall include a reserve account as required by ORS 94.595. The Board shall cause the budget and the assessments to be levied against each Lot for the following year to be delivered to each member at least thirty (30) days prior to the end of the current fiscal year. The budget and the assessment shall become effective unless disapproved at a meeting by a Majority of the Owners. Notwithstanding the foregoing, however, in the event the membership disapproved the proposed budget or the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the then current year shall continue for the succeeding year. Each Lot shall be responsible for its prorata share of the annual assessment based on the total number of units subject to this Declaration including any annexations thereto. Any common profits will also be distributed pro rata based on the total number of lots subject to this Declaration, including any annexations thereto to the extent authorized by the Oregon Non-Profit Corporation Act, or its successor.

Section 4. SPECIAL ASSESSMENTS. In addition to the other

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assessments authorized herein, the Association may levy special assessments in any year, which shall be assessed on a prorata basis based on the total number of lots subject to this Declaration, including any annexations thereto. So long as the total amount of special assessments allocable to each Lot does not exceed Five Hundred Dollars (\$500) in any one fiscal year, the Board may impose the special assessment. Any special assessment which would cause the amount of special assessments allocable to any Lot to exceed this limitation shall be effective only if approved by a Majority of the Class A members. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

Section 5. LIEN FOR ASSESSMENTS. All sums assessed against any Lot pursuant to this Declaration, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, as provided herein, shall be secured by a lien on such Unit in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Unit, except for (a) liens for real property taxes; or (b) liens for all sums unpaid on a first Mortgage or on any Mortgage to Declarant duly recorded in the land records of Deschutes County, Oregon, and all amounts advanced pursuant to such Mortgage and secured thereby in accordance with the terms of such instrument.

All other persons acquiring liens or encumbrances on any Lot after this Declaration shall have been recorded in such records shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

Section 6. EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION. Any assessments which are not paid when due shall be delinquent. Any assessment delinquent for a period of more than ten (10) days shall incur a late charge in an amount as the Board may from time to time determine. The Association shall cause a notice of delinquency to be given to any member who has not paid within ten (10) days following the due date. If the assessment is not paid within thirty (30) days, a lien, as herein provided, shall attach and, in addition, the lien shall include the late charge, interest, not to exceed the maximum legal rate, on the principal amount due, and all late charges from the date first due and payable, all costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. In the event that the assessment remains unpaid after sixty (60) days, the Association may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association

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or its agents the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage, or convey the unit. No Owner may waive or otherwise except liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot.

All payments shall be applied first to costs and attorneys' fees, then to late charges, then to interest, then to delinquent assessments, then to any unpaid installments of the annual assessment or special assessments which are not the subject matter of suit in the order of their coming due, and then to any unpaid installments of the annual assessment or special assessments which are the subject matter of suit in the order of their coming due.

Section 7. RESERVE FUND BUDGET AND CONTRIBUTION. The Board of Directors shall annually prepare a reserve fund budget which shall take into account the number and nature of replaceable assets, the expected life of each assets, and the expected repair or replacement cost. The Board shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget, with respect to both amount and timing by annual assessments over the period of the budget. The capital contribution required shall be fixed by the Board and included within the budget and assessments, as provided in Section 3 of this Article. A copy of the reserve fund budget shall be distributed to each member in the same manner as the operating budget.

Section 8. SUBORDINATION OF THE LIEN TO FIRST DEEDS OF TRUST AND FIRST MORTGAGES. The lien of the assessments, including interest, late charges, costs (including attorneys' fees) provided for herein, shall be subordinate to the lien of any first Mortgage upon any Lot. The sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from lien rights for any assessments thereafter becoming due. Where the Mortgagee of a first Mortgage of record or other purchaser of a S/Lot obtains title, his or her successors and assigns shall not be liable for the share of the common expenses or assessments by the Association chargeable to such Lot which became due prior to

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the acquisition of title to such Lot by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all the Lots, including such acquirer, his or her successors and assigns.

Section 9. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS. The annual assessments provided for herein shall commence as to all Lots then existing and subject to assessment under the Declaration on the first day of the month following the conveyance of the first Unit by the Declarant to a Class A member and shall be due and payable in a manner and on a schedule as the Board of Directors may provide. The first annual assessment shall be adjusted according to the number of months then remaining in that fiscal year. The date any Lot becomes subject to assessment hereunder shall be the date on which the Lot becomes subject to the Declaration.

Section 10. ASSESSMENTS BY DECLARANT.

(a) After the commencement of assessment payments as to any Lot, Declarant, if any, covenants and agrees to pay the full amount of the annual assessment for each occupied Unit it owns; notwithstanding anything contained herein to the contrary, the Declarant shall be required to pay only fifty percent (50%) of the annual assessment for unoccupied Lots that it owns.

(b) Notwithstanding anything to the contrary herein, the Declarant may contribute assessments due from it in services or materials or a combination of services and materials, rather than in money, (herein collectively called in-kind contribution). The amount by which monetary assessments shall be decreased as a result of any in-kind contribution shall be the fair market value of the contribution. If the Declarant and the Association agree as to the value of any contribution, the value shall be as agreed. If the Association and the Declarant cannot agree as to the value of any contribution, the Declarant shall supply the Association with a detailed explanation of the service performed and material furnished, and the Association shall acquire bids for performing like services and furnishing like materials from three (3) independent contractors approved by the Declarant who are in the business of providing such services and materials. If the Association and the Declarant are still unable to agree on the value of the contribution, the value shall be deemed to be the average of the bids received from the independent contractors.

ARTICLE VIII. ARCHITECTURAL STANDARDS

The Board of Directors shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdictions decisions of either Committee established in subsections a) and (b) of this Section 10. This Article may not be amended without the Declarant's written consent, so long as the Declarant owns any land subject to this Declaration or subject to annexation to this Declaration.

No construction, which term shall include within its definition staking, clearing, excavation, grading, and other site work, and no plantings or removal of plants, trees, or shrubs shall take place except in strict compliance with this Section, until the requirements thereof have been fully met, and until the approval of the appropriate Committee has been obtained.

Section 1. ARCHITECTURAL REVIEW COMMITTEE. The Architectural Review Committee (ARC) shall have exclusive jurisdiction over all construction on any portion of the Properties. The ARC shall prepare and, on behalf of the Board of Directors, shall promulgate design guidelines and application procedures. The standards and procedures shall be those of the Association, and the ARC shall have sole and full authority to prepare and to amend the standards and procedures. It shall make both available to Owners, builders, and developers who seek to engage in development of or construction upon all or any portion of the Properties and who shall conduct their operations strictly in accordance therewith. Until all the Properties contained in Exhibits "A" and "B" have been conveyed to purchasers in the normal course of development and sale, or until the right of the Declarant to submit such properties expires, the Declarant retains the right to appoint all members of the ARC, which shall consist of at least three (3), but no more than five (5), persons. There shall be no surrender of this right prior to that time, except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the Board of Directors shall appoint the members.

In the event the ARC fails to approve or to disapprove any plans submitted pursuant to its rules or to request additional information reasonably required within forty-five (45) days after submission, the plans shall be deemed approved.

ARTICLE IX. MORTGAGEE RIGHTS

The following provisions are for the benefit of holders, insurers, or guarantors of first mortgages on Lots in HILLSIDE PARK ADDITION. To the extent applicable, necessary, or proper, the provisions of this Article XII apply to both this Declaration and to the By-laws of HILLSIDE PARK ADDITION OWNERS

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ASSOCIATION, INC. Where indicated, these provisions apply only to eligible holders, as hereinafter defined.

Section 1. NOTICES OF ACTION. Any institutional holder, insurer, or guarantor of a first mortgage, who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the unit number), (therefore becoming an eligible holder), will be entitled to timely written notice of:

- (a) Any proposed termination of the Association;
- (b) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Lot on which there is a first mortgage held, insured, or guaranteed by such eligible holder;
- (c) Any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the mortgage of such eligible holder, insurer, or guarantor, where such delinquency has continued for a period of sixty (60) days;
- (d) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or
- (e) Any proposed action which would require the consent of eligible holders, as required in Section 2 and 3 of this Article.

Section 2. OTHER PROVISIONS FOR FIRST LIEN HOLDERS. To the extent possible under Oregon law:

- (a) Any restoration or repair of the Properties after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with this Declaration and the original plans and specifications unless the approval of the eligible holders of first mortgages on Lots to which at least fifty-one percent (51%) of the votes of Lots, subject to mortgages held by such eligible holders are allocated, is obtained.
- (b) Any election to terminate the Association after substantial destruction or a substantial taking in condemnation must require the approval of the eligible holders of first mortgages on Lots to which at least fifty-one percent (51%) of the votes of Lots, subject to mortgages held by such eligible holders, are allocated.

Section 3. AMENDMENTS TO DOCUMENTS. The following

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provisions do not apply to amendments to the constituent documents or termination of the Association made as a result of destruction, damage, or condemnation pursuant to Section 2(a) and (b) in this Article, or to the addition of land in accordance with Article VIII.

(a) The consent of at least seventy-five percent (75%) of the Class A votes and of the Declarant so long as it owns any land subject to this Declaration and the approval of the eligible holders of first mortgages on units to which at least sixty-seven percent (67%) of the votes of units subject to a mortgage appertain, shall be required to terminate the Association.

(b) The consent of at least seventy-five percent (75%) of the Class A votes and of the Declarant so long as it owns any land subject to this Declaration and the approval of eligible holders of first mortgages on Lots to which at least fifty-one percent (51%) of the votes of Lots subject to a mortgage appertain, shall be required materially to amend any provisions of the Declaration, By-laws, or Articles of Incorporation of the Association, or to add any material provisions thereto, which establish, provide for, govern, or regulate any of the following:

- (i) Voting;
- (ii) Assessments, assessment liens, or subordination of such liens;
- (iii) Reserves for maintenance, repair, and replacement of the Common Area;
- (iv) Insurance or fidelity bonds;
- (v) Rights to use of the Common Area;
- (vi) Responsibility for maintenance and repair of the Properties;
- (vii) Expansion or contraction of the Properties or the addition, annexation, or withdrawal of Properties to or from the Association;
- (viii) Boundaries of any Lot;
- (ix) Leasing of Lots;
- (x) Imposition of any right of first refusal or similar restriction of the right of

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any Owner to sell, transfer, or otherwise convey his or her Lot;

(xi) Establishment of self-management by the Association where professional management has been required by an eligible holder; or

(xii) Any provisions included in the Declaration, By-laws, or Articles of Incorporation which are for the express benefit of holders, guarantors, or insurers of first mortgages on Lots.

Section 4. SPECIAL FHLMC PROVISION: So long as required by the mortgage corporation, the following provisions apply in addition to and not in lieu of the foregoing three Sections of this Article. Unless two-thirds (2/3) of the first mortgagees or Owners give their consent, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Area which the Association owns, directly or indirectly (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Properties shall not be deemed a transfer);

(b) Change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner;

(c) By act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Lots and of the Common Area;

(d) Fail to maintain fire and extended coverage insurance, as required by this Declaration; or

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

The provisions of this Section 4 shall not be construed to reduce the percentage vote that must be obtained from mortgagees or Owners where a larger percentage vote is otherwise required for any of the actions contained in this Section.

First mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on casualty insurance policies, or secure new casualty insurance

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coverage upon the lapse of a policy, for the Common Area, and first mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

It is Declarant's intention that the development qualify for the possible sale of mortgages encumbering Lot to the Federal National Mortgage Association and/or the Federal Home Loan Mortgage Corporation. The requirements contained in this Section are to effectuate that purposes. Should either the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association subsequently delete any of their respective requirements which necessitate the provisions of this Section or make any such requirements less stringent, this Section shall automatically be amended to reflect such changes.

ARTICLE X. GENERAL PROVISIONS

Section 1. DURATION. The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall insure to the benefit of and shall be enforceable by the Association or the Owner of any Properties subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same.

Section 2. AMENDMENT. This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Units subject to this Declaration; or (c) if such amendment is necessary to enable any governmental agency to insure mortgage loans on units subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's unit Owner shall consent thereto in writing. Further, so long as the Class B membership exists, Declarant may unilaterally amend this Declaration for any other purposes; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Lot Owner hereunder, nor shall it

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adversely affect title to any Lot without the consent of the affected Lot Owner.

In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of at least a majority of the Class A members and the consent of the Declarant, so long as declarant has an unexpired option to subject property to this Declaration. Amendments to this Declaration shall become effective upon recordation in the Deschutes County, Oregon records, unless a later effective date is specified therein.

Section 3. INDEMNIFICATION. The Association shall indemnify every officer and director against any and all expenses, including counsel fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or directors, may be entitled. The Association may, as a common expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 4. EASEMENTS FOR UTILITIES. There is hereby reserved to the Association blanket easements upon, across, above, and under all property within Hillside Park Addition for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving the Property or any portion thereof, including, but not limited to, gas, water sanitary sewer, telephone, television cable and electricity, as well as storm drainage. It shall be expressly permissible for the Association or its designee, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wire, conduits, cables, and other equipment related to the providing of any such utility or service. Should any part furnishing any such utility or service request a specific license or easement by separate

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recordable document, the Board shall have the right to grant such easement.

Section 5. CONSTRUCTION AND SALE. Notwithstanding any provisions contained in the Declaration to the contrary, so long as construction and initial sale of Lots shall continue, it shall be expressly permissible for Declarant to maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such Lots, including, but not limited to, business offices, signs, model units, and sale offices, and the Declarant shall have an easement for access to such facilities. The right to maintain and carry on such facilities and activities shall include specifically the right to use residences owned by the Declarant as models and sales offices. This Section may not be amended without the express written consent of the Declarant; provided, however, the rights contained in this Section 7 shall terminate upon the earlier of (a) twenty-five (25) years from the date this Declaration is recorded or (b) upon the Declarant's recording a written statement that all sales activity has ceased.

Section 6. GENDER AND GRAMMAR. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

Section 7. SEVERABILITY. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

Section 8. CAPTIONS. The captions of each Article and Section hereof, as to the contents of each Article and Section are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

Section 9. PERPETUITIES. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now-living descendants of Elizabeth, Queen of England.

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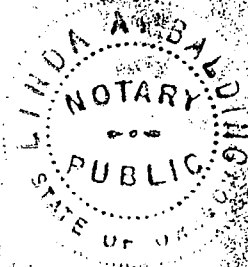
IN WITNESS WHEREOF, the undersigned Declaration has
executed this Declaration this 30th day of March, 1989.

William L. Smith
WILLIAM L. SMITH

STATE OF OREGON, County of Deschutes, ss:

On March 30, 1989, the undersigned, a Notary
Public in and for said County and State, personally appeared
WILLIAM L. SMITH known to me and that he executed the within
instrument.

Linda A. Balding
Notary Public for Oregon
My Commission Expires 4/17/91



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EXHIBIT "A"

All lots as shown on the offered plat of Hillside Park Addition,
City of Bend, recorded January 31, 1989, in Book 19, Page 109,
Deed Records of Deschutes County, Oregon

- 22 - EXHIBIT "A"

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EXHIBIT "B"

IN DESCHUTES COUNTY, OREGON:

TOWNSHIP 17 SOUTH, RANGE 12 EAST OF THE WILLAMETTE
MERIDIAN:

Section 30: NE $\frac{1}{4}$ SE $\frac{1}{4}$ EXCEPT the southerly 300 feet and
lands included in the Plat of Hillside
Park Addition, City of Bend, recorded
January 31, 1989 in Book 19, Page 109,
Deed Records, Deschutes County, Oregon.

Section 29: NW $\frac{1}{4}$ SW $\frac{1}{4}$, EXCEPT the Plat of the Heights of
Bend, Deschutes County, Oregon.

- 23 - EXHIBIT "B"

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EXHIBIT "C"

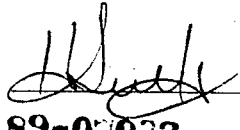
All roadways, sidewalks and common areas as shown on the official plat of Hillside Park Addition, City of Bend, recorded January 31, 1989, in Book 19, Page 109, Deed Records, Deschutes County, Oregon.

STATE OF OREGON)
COUNTY OF DESCHUTES) SS.

I, MARY SUE PENHOLLOW, COUNTY CLERK AND
RECORDER OF CONVEYANCES, IN AND FOR SAID
COUNTY, DO HEREBY CERTIFY THAT THE WITHIN
INSTRUMENT WAS RECORDED THIS DAY:

89 MAR 30 PM 4:01

MARY SUE PENHOLLOW
COUNTY CLERK

BY  DEPUTY

NO. 89-07032 FEE 120.00

DESCHUTES COUNTY OFFICIAL RECORDS

- 24 - EXHIBIT "C"

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