

36 173957-11  
When recorded mail to:  
D.R. Horton, Inc. - Portland  
Attn: Michael Loomis  
4386 SW Macadam Ave. Ste. 102  
Portland, OR 97239

DESCHUTES COUNTY OFFICIAL RECORDS  
NANCY BLANKENSHIP, COUNTY CLERK

2008-16066



\$36.00

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**SECOND AMENDMENT TO THE DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR SUMMIT  
CREST**

**Recitals**

THIS SECOND AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR SUMMIT CREST (this "Second Amendment") is made and entered into effect this 9<sup>th</sup> day of Apr. 1, 2008, by D. R. Horton, Inc.-Portland a Delaware corporation (the "Declarant") and by "Summit Crest Homeowners Association" (the "Association").

WHEREAS, the Declarant caused that certain Declaration of Covenants, Conditions and Restrictions for Summit Crest to be recorded on the 23<sup>rd</sup> day of February, 2007 as Document No. 2007-11054 in the records of Deschutes County, Oregon. Declarant caused that certain First Amendment to Declaration of Covenants, Conditions and Restrictions for Summit Crest to be recorded on the 24<sup>th</sup> day of September, 2007 as Document No. 2007-51643 in the records of Deschutes County, Oregon.

WHEREAS, pursuant to Section 11.6 of the Declaration, Declarant desires to amend the Declaration as provided herein. Declarant may unilaterally amend the Declaration pursuant to Section 11.6 as this amendment is prior to the Turnover Meeting.

Capitalized terms not defined herein shall have the meaning given in the Declaration, except as otherwise indicated.

The Declaration is hereby amended as follows:

1. Section 4.13 (b) is hereby amended and restated as follows:

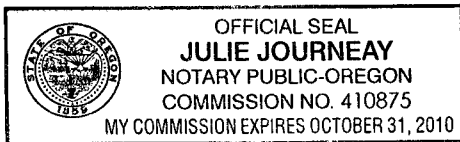
4.13.

(b) Floor Area. The square footage area of a Home shall not be less than seventeen hundred (1700) square feet exclusive of attics, patios, decks, porches, balconies, roof overhangs, and garages;

2. Except as expressly amended hereby the Declaration remains in full force and effect.

3. The undersigned Declarant certifies that this Second Amendment has been approved in the manner required by Article 11.6 of the Declaration.

IN WITNESS HEREOF, the undersigned hereby execute this document as of,  
April 9, 2008.



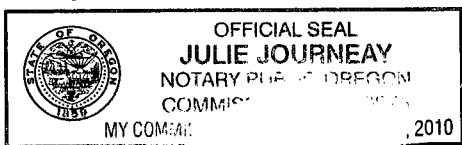
**D.R. HORTON, INC.-PORTLAND**  
a Delaware corporation

By: [Signature]  
Mike Loomis  
Its: Vice President, Land Development

STATE OF OREGON           )  
                                          ) ss  
County of Multnomah       )

The foregoing instrument was acknowledged before me on April 9, 2008, by Mike Loomis, Vice President Land Development for D.R. Horton, Inc.-Portland, a Delaware corporation, on behalf of the corporation.

[Signature]  
Notary Public for Oregon  
My commission expires: October 31, 2010



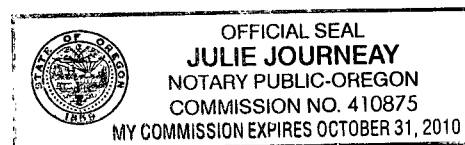
**Summit Crest Homeowner's Association**

By: [Signature]  
Michael Loomis  
Its: President on behalf of the Association

STATE OF OREGON           )  
                                          ) ss  
County Of Multnomah       )

The foregoing instrument was acknowledged before me on April 9, 2008, by Michael Loomis who is the President of "Summit Crest Homeowner's Association" on behalf of the Association.

[Signature]  
Notary Public for Oregon  
My commission expires: October 31, 2010



DESCHUTES COUNTY OFFICIAL RECORDS  
NANCY BLANKENSHIP, COUNTY CLERK

2007-11054



\$251.00

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\$205.00 \$11.00 \$10.00 \$5.00 \$20.00

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After recording return to:  
Maggie Gazdagh  
D.R. Horton, Inc.-Portland  
4386 SW Macadam Avenue, Suite 102  
Portland, OR 97239

FIRST AMERICAN TITLE  
INSURANCE COMPANY OF OREGON  
P.O. BOX 323  
BEND, OR 97709

41

**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
SUMMIT CREST  
PHASE I**

RECORDED BY FIRST AMERICAN TITLE  
INSURANCE COMPANY OF OREGON AS AN  
ACCOMMODATION ONLY NO LIABILITY IS  
ACCEPTED FOR THE CONDITION OF TITLE  
OR FOR THE VALIDITY, SUFFICIENCY, OR  
EFFECT OF THIS DOCUMENT.

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

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF SUMMIT CREST ("Declaration") is made this \_\_\_\_ day of \_\_\_\_\_, 2007 by D.R. Horton, Inc.-Portland, a Delaware Corporation, as the Declarant.

**RECITALS**

WHEREAS, Declarant is the owner, or controls, all that certain real property and improvements thereon located in the City of Redmond, County of Deschutes, State of Oregon, described and also referred to as the Plat of "Summit Crest Subdivision", recorded on 2-22-, 2007 in Book 2007, Document No. 10858; this Declaration shall apply to that subdivision.

WHEREAS, Declarant intends to develop the Property as a Class I planned community subject to provisions of the Oregon Planned Community Act ORS 94.550 to 94.783, and to establish the planned development project of Summit Crest. Declarant desires to impose these mutually beneficial covenants, conditions, restrictions, easements, assessments and liens on the Property under a comprehensive general plan of improvement and development for the benefit of all of the Owners, the Lots and Common Area within Summit Crest.

WHEREAS, Declarant has deemed it desirable for the preservation of the values and amenities within the Property to create a Homeowners Association, to which will be delegated and assigned the powers and authority to own, maintain and administer the Association and the Common Area and facilities, and administer and enforce the covenants, conditions, and restrictions of this Declaration, and collect and disburse the assessments and charges hereinafter created.

NOW THEREFORE, the Declarant declares that the Property shall be held, transferred, sold, conveyed and occupied subject to the following covenants, conditions, restrictions, easements, charges and liens, or as noted herein, which shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in the Property or any part thereof and shall inure to the benefit of the Association and of each Lot Owner.

## ARTICLE 1

### DEFINITIONS

1.1. "Architectural Review Committee" or "ARC" shall mean the Declarant until Turnover Meeting and thereafter shall refer to the Board of Directors unless the Board has appointed a separate body to carry out the functions described in Article 6 in which case "ARC" shall refer to this body.

1.2. "Articles" shall mean the Articles of Incorporation for the non-profit corporation, Summit Crest Homeowners Association, or such similar name approved by and which have been or shall be filed by Declarant with the Oregon Corporation Commissioner on or prior to conveyance of the first Lot to an Owner other than Declarant.

1.3. "Association" shall mean and refer to Summit Crest Homeowners Association, its successors and assigns.

1.4. "Board" or "Board of Directors" shall mean the Board of Directors of the Association.

1.5. "Bylaws" shall mean and refer to the Bylaws of the Association, which have been or shall be recorded as required by Oregon law, which have been or shall be recorded by Declarant on or prior to conveyance of the first Lot to an Owner other than Declarant as required by Oregon law.

1.6. "Common Area" shall mean and refer to any areas of land shown on the Plat of the Property, including any improvements thereon, which are intended to be devoted to the common use and enjoyment of the members of the Association, and areas outlines herein as the maintenance responsibility of the Association, including but not limited to any Tracts as show on the Plat.

1.7. "Declarant" shall mean and refer to D.R. Horton, Inc.-Portland, its successors or assigns, or any successor or assign to all remainder of their interests in the development of the Property. All successors to Declarant shall have the same rights and interest as the initial Declarant. "Declarant" shall not refer to any other subsequent purchaser of a Lot or Home.

1.8. "Declaration" shall mean the covenants, conditions, restrictions, and all other provisions set forth in this Declaration of Covenants, Conditions and Restrictions for Summit Crest.

1.9. "General Common Expenses" shall mean those Common Area expenses incurred by the Association for the benefit of all of the Owners of the Lots within the Property. Such definition shall also apply to the words "Common Expenses" as used in this Declaration.

1.10. "General Plan of Development" shall mean the Declarant's general plan of development of the Property as approved by appropriate governmental agencies, as may be amended from time to time.

1.11. "Home" shall mean and refer to any portion of a structure situated on a Lot designed and intended for use and occupancy as a residence by a single family or household.

1.12. "Investment Property" shall mean any Lot in which the primary Occupant of the Home located upon such Lot is not an Owner of such Lot and Home.

1.13. "Lot" shall mean and refer to any plot of land indicated upon the recorded Plat of the Property or any part thereof creating individual home sites, including any annexations to Lots 1 through 78 of Summit Crest. These do not include Common Areas and areas deeded to a government authority or utility.

1.14. "Lot Easement Area" shall mean and refer to those portions of any Lot subject to any easement benefiting the Association. The term "Lot Easement Area" shall not refer to any portions of any Lot encumbered by an easement to any other party, including without limitation, any governmental entity.

1.15. "Members" shall mean and refer to the Owners of Lots within the Property who are Members of the Association.

1.16. "Occupant" shall mean and refer to the occupant of a Home who shall be the Owner, lessee or any other person authorized by the Owner to occupy the premises.

1.17. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of the fee simple title to any Lot within the Property or a purchaser in possession under a land sale contract. The foregoing does not include persons or entities whom hold an interest in any Lot merely as security for the performance of an obligation.

1.18. "Plat" shall mean and refer to the Lots 1 through 78 of the recorded Plat of Summit Crest and any annexations to the original Plat.

1.19. "Property" shall mean and refer to all real property described on the Plat, and any annexations of additional property, including the Common Areas, and all improvements located on the real property, as may be brought within the jurisdiction of the Association and be made subject to this Declaration.

1.20. "Rules and Regulations" shall mean and refer to the documents containing rules and regulations and policies adopted by the Board of the Association or the Architectural Review Committee ("ARC") and as may be from time to time amended by the Board and/or ARC.

1.21. "Summit Crest" shall mean the real property and all Common Areas described on the recorded Plat for the Property, as well as any annexations of additional lands.

1.22. "Tract" shall mean a parcel of land shown on the Plat and denoted by the word "Tract".

1.22. "Turnover Meeting" shall be the meeting called by the Declarant to turn over control of the Association to the Class A members.

## ARTICLE 2

### PROPERTY SUBJECT TO THIS DECLARATION

2.1. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the City of Redmond, Deschutes County, Oregon, in that certain plat map entitled, Summit Crest, Phase I, filed in the plat records of Deschutes County, Oregon, more particularly described as Lots 1 through 78, of Summit Crest.

2.2. At any time during the initial term of this Declaration, the Declarant may, at its sole option, annex additional property into the Association to be subject to the terms hereof to the same extent as if originally included herein and subject to such other terms, covenants, conditions, easements and restrictions as may be imposed thereon by Declarant. Declarant currently anticipates that there will be a total of approximately 207 Lots in the subdivision, including the Lots on this Plat, and Lots expected to be created in property to be annexed to the subdivision, but this number may be adjusted at the sole discretion of Declarant.

(a). Eligible Property. There is no limitation on the number of Lots which Declarant may annex to the Property, or the right of Declarant to

annex common property, except as may be established by applicable ordinances, agreements, or land use approvals.

(b). Consent or Joinder Not Required. No consent or joinder of any Class A member as defined in this Declaration or other party except the record owner of the land being annexed shall be necessary to effect any annexation made pursuant to this Article.

(c). Declaration of Annexation. Annexation shall be evidenced by a written Declaration of Annexation executed by the Declarant, or (in the case of an annexation by action of members) by the Board and the owners of the property being annexed, setting forth the legal description of the property being annexed and any additional covenants, conditions and restrictions to be applied to such annexed property. Notwithstanding any provision apparently to the contrary, a declaration with respect to any annexed 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 annexed 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 annexed property; and/or

(iii). contain provisions necessary or appropriate to comply with any condition, requirement, or imposition of any governmental or regulatory authority.

Without limitation of the meaning of the foregoing provisions of this Section, in any Declaration of Annexation the Declarant may, but shall not be obligated to, establish different Types of Lots and have particular rights and obligations pertain to different Types of Lots, establish easements particular to different Lots, establish assessments that pertain only to certain Types of Lots, establish maintenance obligations of the Association or of Owners that vary in accordance with different Types of Lots or different tracts of Common Area, establish insurance and casualty provisions that relate to certain Types of Lots and not others, and establish limited Common Areas that benefit particular Lots to the exclusions of other Lots and provisions particular to such limited Common Areas.

(d). Voting Rights; Allocation of Assessments. Upon annexation, additional lots so annexed shall be entitled to voting rights and shall be responsible for payments or assessments as required for that fiscal year. At the beginning of the next fiscal year, assessments shall be reallocated and reapportioned equally based on the total number of lots following such annexations.

(e). No Duty to Annex. Nothing herein contained shall establish any duty or obligation on the part of the Declarant or any member to annex any property into the Association and no owner of property excluded from the Association shall have any right to have such property annexed thereto.

### ARTICLE 3

#### OWNERSHIP AND EASEMENTS

3.1. Non-Severability. The interest of each Owner in the use and benefit of the Common Area shall be appurtenant to the Lot owned by the Owner. No Lot shall be conveyed by the Owner separately from the interest in the Common Area, subject to the provisions of this Declaration. Any conveyance of any Lot shall automatically transfer the right to use the Common Area without the necessity of express reference in the instrument of conveyance. There shall be no judicial partition of the Common Area. Each Owner, whether by deed, gift, devise or operation of law, for his own benefit and for the benefit of all other Owners, specifically waives and abandons all rights, interests and causes of action for judicial partition of any interest in the Common Area and does further agree that no action for judicial partition shall be instituted, prosecuted or reduced to judgment. The ownership interest in the Common Area and Lots described in this Article are subject to the easements granted and reserved in this Declaration. Each of the easements reserved or granted herein shall be deemed to be established upon the recordation of this Declaration and shall forever be deemed to be covenants running with the land for the use and benefit of the Owners and their Lots and shall be superior to all other encumbrances applied against or in favor of any portion of Summit Crest.

3.2. Ownership of Lots. Title to each Lot within the Property shall be conveyed in fee to an Owner. If more than one person and/or entity owns an undivided interest in the same Lot, such person and/or entities shall constitute one Owner. No Lot shall be divided or combined with any other Lot without the prior written approval of the ARC, and of the Declarant so long as Declarant owns any Lot.

3.3. Ownership of Tracts and/or Common Areas. Title to any future Tracts and/or Common Areas shall be conveyed to the Association not later than sixty (60) days after eighty percent (80%) of the Lots have been conveyed to Owners or seven years from the date this Declaration is recorded, whichever is earlier. The Declarant or Board of Directors may convey title to any or all Common Areas to the City, County or other government agency.

3.4. Easements. Individual deeds to Lots may, but shall not be required to, set forth the easements specified in this Article.

(a) Easements on Plat. The Property is subject to the easements and rights of way shown on, or noted, on the Plat of Summit Crest.

(b) Easements for Common Area. Every Owner shall have a non-exclusive right and easement of use and enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot.

(c) Central Oregon Irrigation District Easement. Lots 45 through 62 are subject to the C.O.I.D. easement (water pipeline easement) as shown on the Plat. Pursuant to the "Piping Easement" and "License" agreements, Document Numbers 2006-19306 and 2007- 2007-11053, no structures, fences, trees or shrubs will be allowed within the easement area, and if Lot Owner-installed improvements and/or maintenance cause any damage to the C.O.I.D. improvements, the Lot Owner will be responsible for any necessary repairs. Neither the HOA, nor C.O.I.D. will be liable for any such damage.

(d) Drainage Easement. Lots 1, 44 and 45 are subject to the C.O.I.D. easement (drainage easement) as shown on the Plat. The easement includes piping and a drainage swale for the purpose of draining C.O.I.D. lines. Lot Owners shall not cause damage and/or impairment to such improvements, nor make modifications to and/or interfere with the established grading and/or drainage patterns. Neither the HOA, nor C.O.I.D. will be liable for any Lot Owner caused damage, impairment and/or interference.

(e) Public Sewer/Water/Pedestrian Access Easement. Lots 5 and 6 are subject to a public sewer/water/pedestrian access easement in favor of the City of Redmond, as shown on the plat; and Lots 21 and 22 are subject to a public sewer/pedestrian access easement in favor of the City of Redmond as shown on the plat. Pursuant to the "Easement Agreements", Document Numbers 2007- 02562 and 2007- 02561, (respectively) recorded in Deschutes County, no obstruction shall be placed on these

properties to impede the intended use. The City of Redmond shall be responsible for the maintenance of water and sewer equipment, paved path, and related facilities located within the easement. The Summit Crest Homeowners Association shall be responsible for maintaining and/or restoring any landscaping, or other surface improvements that may be removed or damaged.

(f) Public Storm Water Easement. Lots 2 and 3 shall be subject to a Storm Drain Utility Easement, as shown on the plat, in favor of the City of Redmond. Owners of said Lots shall be responsible for maintaining and/or restoring any landscaping, or other surface improvements that may be removed or damaged. Pursuant to the "Easement Agreement", Document Number 2007- 02563 recorded in Deschutes County, no obstruction shall be placed on these properties to impede the intended use.

(g) Lot 2 shall be subject to an easement, as shown on the plat, to Qwest Corporation for installation, operation, and maintenance of communication facilities.

(h) 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 sales activities necessary or convenient for the sale of Lots. In addition, Declarant hereby reserves to itself, and for its successors and assigns, a perpetual easement and right-of-way for access over, upon and across the Common Areas for construction, utilities, communication lines, drainage, and ingress and egress for the benefit of the Lots or other property owned by Declarant. Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under and across the Common Area and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the improvements on the Property or other real property owned by Declarant in such a way as to not unreasonably interfere with the occupancy, use, enjoyment or access to an Owner's Lot by that Owner or his/her/their family, tenants, guests or invitees. Further, the Declarant reserves the right to install and maintain landscape improvements and hereby reserves a landscape maintenance easement on any Lot(s) or Common Area as Declarant deems necessary for sales and marketing purposes. Declarant is not obligated to provide any landscaping in said areas noted in this Article.

(i) Additional Easements. Notwithstanding anything expressed or implied to the contrary, this Declaration shall be subject to all easements granted by Declarant for the installation and maintenance of utilities and

drainage facilities necessary for the development of the Property. No structure, planting or other material shall be placed or permitted to remain within any easement area which may damage or interfere with the installation or maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements thereon shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority, utility company or the Association is responsible.

(j) Association's Easements. In addition to any HOA obligations listed in the above listed easements, there are hereby reserved to the Association and its duly authorized agents and representatives such easements as are necessary to perform the duties and obligations of the Association set forth in this Declaration, the Bylaws and Articles, as the same may be amended or supplemented.

(i) Fence Easement. Lots 1 – 17, 19 – 23, 25 – 27 and 61 are subject to a “fence easement” as shown on the Plat. The fence easement benefits the Association and includes improvements such as fencing, irrigation, landscaping, and entry monument. The Association shall be responsible for the maintenance and upkeep associated with all such improvements within the easement area.

(ii) Common Area Tracts and Lot Easement Areas. The Association reserves an easement and except as otherwise provided in this Declaration shall pay for maintenance, upkeep and replacement of any improvements including, but not limited to landscape, irrigation, play equipment, benches, paving, curbs, utilities, and related improvements within the boundaries of any Tracts or Common Areas. The aforementioned Tracts are subject to the easements and rights of way as shown on the Plat.

(k) Easement to Governmental Entities. There is hereby reserved and granted a non-exclusive easement over the Common Area to all governmental and quasi-government entities, agencies, utilities, and their agents for the purposes of performing their duties within the Property.

(l) Maintenance Obligations/Owner Restrictions. Except as otherwise noted in this document, the Owner, at his/her expense, shall maintain, repair and replace the improvements and utility installations on any Lot in a condition acceptable by the Board and shall hold the Association harmless from any such costs.

## ARTICLE 4

### LOTS AND HOMES

4.1. Residential Use. Lots shall be used for residential purposes only. Except with the consent of the Board of Directors of the Association, no trade, craft, business, profession, commercial or similar activity of any kind shall be conducted on any Lot, nor shall any goods, equipment, vehicles, materials or supplies used in connection with any trade, service or business be kept or stored on any Lot. Nothing in this paragraph shall be deemed to prohibit (a) activities relating to the sale of residences, (b) the right of Declarant or any contractor or homebuilder to construct residences on any Lot, to store construction materials and equipment on such Lots in the normal course of construction, to use any residence as a sales office or model home for purposes of sales, and to maintain on site a temporary construction office or trailer, and (c) the right of the Owner of a Lot to maintain his professional or personal library, keep his personal business or professional records or accounts, handle his personal business or professional telephone calls or confer with business or professional associates, clients or customers, in his residence, so long as such activity is not observable outside of the residence, does not significantly increase parking or vehicular traffic, or is in violation of applicable local government ordinances. The Board of Directors shall not approve commercial activities otherwise prohibited by this paragraph unless the Board determines that only normal residential activities would be observable outside of the residence and that the activities would not be in violation of applicable local government ordinances.

4.2. Construction. Except for construction performed by or contracted for by Declarant, no construction, reconstruction or exterior alterations shall occur on any Lot, unless approval of the ARC is first obtained pursuant to Article 6. Consideration such as siting or location on the Lot, shape, size, color, design, height, solar access, or material may be taken into account by the ARC in determining whether or not to consent to any proposed work. Such work includes, but is not limited to Homes, storage shelters, swimming pools, spas, landscaping, greenhouses, patios, patio covers, fencing, water features, basketball hoops or remodeling. The intent of this covenant is to ensure quality of workmanship and material, harmony of

external design with the existing and planned structures as to location and visual compatibility and finish grade elevations. Original construction designs, materials and product specifications by Declarant may vary from any or all specified in this document. All construction performed by or contracted for by Declarant, shall be presumed to have met these minimum requirements or have been granted a variance thereto.

4.3 Design Guidelines. The following restrictions are minimum standards applicable to all Lots:

(a) Height. No Home shall exceed two (2) stories, excluding basement and/or garage levels, in height above the ground;

(b) Floor Area. The square footage area of a Home shall not be less than nineteen hundred (1900) square feet exclusive of attics, patios, decks, porches, balconies, roof overhangs, and garages;

(c) Garages. A garage must be constructed on each Lot. Garages may be used as a sales office by Declarant, but must be converted to a garage before permanent occupancy. Garages are to be maintained primarily for the storage of automobiles or similar vehicles. No garage may be enclosed or otherwise used for habitation, nor may any garage door be removed except when necessary to repair or replace a garage door with the same type of garage door.

(d) Security Doors/Windows and Screen Doors. No security doors and no exterior security bars or devices on windows and doors shall be installed without the prior written approval of the ARC. If the ARC approves any type security door or window security, such approval shall encourage or require a single style for all Homes so they will maintain a uniform and aesthetic appearance.

4.4. Completion of Construction. The construction of any building on any Lot, including painting and all exterior finish, shall be completed within six (6) months from the beginning of the construction so as to present a finished appearance when viewed from any angle. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon written approval from the ARC. The Lot and building area shall be kept reasonably clean and in workmanlike order, free of litter, during the construction period with a garbage disposal facility located on site during such construction period. If construction has not commenced within three (3) months after the project has been approved by the ARC, the approval shall be deemed revoked unless the Owner has

applied for and received an extension of time from the ARC. All provisions of this Article 4 shall exclude any construction by the Declarant.

4.5. Improvements and Landscaping. Except as otherwise provided in this Declaration, the Association shall pay for and maintain any improvements and landscaping associated with any maintenance easement held by the Association. Maintenance of all landscaping on Lots, including street trees and/or street frontage landscaping is the Owner's sole responsibility. All landscaping and improvements on any Lot or Common Area shall be maintained and cared for in a manner consistent with the standard of design and quality as originally established by the Declarant or the ARC. Maintenance of landscape areas shall include, but not be limited to watering, weeding, pruning, fertilization, mowing and other forms of maintenance. All Lots and Common Areas shall be kept free of weeds and diseased or dead lawn, trees, ground cover or shrubs shall be promptly removed and replaced. All lawn areas shall be watered, fertilized and neatly mowed, and trees and shrubs shall be fertilized and neatly trimmed on a regular basis

(a). Landscape installation on Lots by Owners is subject to approval by the ARC. Owners may use any enclosed side and rear yard for any purpose not prohibited hereunder, provided such use is not deemed, by the ARC or the Association to be a nuisance. Completed landscaping on Lots shall be installed by Owners no later than six (6) months after occupancy. Street frontage trees, landscaping, and/or perimeter landscaping installed by Declarant on or abutting individual Lots are to be maintained by the Owner in the same manner and with same high pride of ownership as the Lot Owner is required to use when maintaining the rest of his property, including watering, weeding, pruning, fertilization, mowing and other forms of maintenance. If Owner fails to maintain or repair Owner maintained areas, Declarant or the Board of Directors reserves the right to cause such maintenance and/or repair to be performed on behalf of Owner subject to Article 4.21. No owner may connect to any Association maintained irrigation system.

(b). Declarant reserves the right to install and maintain landscape improvements and hereby reserves a landscape maintenance easement on any Lot(s) or Common Area as Declarant deems necessary for sales and marketing purposes. Declarant is not obligated to provide any landscaping in said areas noted in this Article.

4.6. Rental of Homes. An Owner shall be entitled to rent or lease his residence if:

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

(b) Minimum Rental Period. The period of the rental or lease is not less than thirty (30) days; and

(c) Tenant Must Be Given Documents. The Owner gives each tenant a copy of the Declaration, Bylaws and Rules and Regulations.

(d) Owner Responsibility. Owner shall be responsible for any violations by tenants and shall be solely responsible for either correcting or eliminating such violations, or getting tenant to do same.

(e) Limitation/Cap Regarding Investment Property. At any given time, Investment Property shall not make up greater than twenty-five percent (25%) of the total Lots located within Summit Crest. Occupancy of Investment Property shall be limited to the tenant, such tenant's visitors and guests. At least fifteen (15) days prior to entering into any rental or lease agreement, an Owner must notify the Board of Directors in writing of such Owner's intent, the name and address of the proposed tenant and the circumstances of the proposed rental arrangement. If the Board of Directors finds that such proposed tenancy will not exceed the limitation on Investment Property described in the first sentence of this subsection and otherwise is not detrimental to the Association and Summit Crest, the Board of Directors will approve such tenancy. Provided, however, such tenants shall always be under the control of and subject to all provisions of the Declaration, Bylaws and Rules and Regulations. At any time during the tenancy, the Board of Directors may cause the termination of such tenancy and evict such tenants for cause with or without joining the Owner of such Lot/Home in any such action."

4.7. Animals. No animals, livestock or poultry of any kind shall be raised, bred, kept or permitted within any Lot other than a reasonable number of domestic household pets which are not kept, bred or raised for commercial purposes and which are reasonably controlled so as not to be a nuisance. Any inconvenience, damage or unpleasantness caused by such pets, including noise and odor, shall be the responsibility of the respective Owners thereof. No dogs shall be permitted to roam the Property unattended, and all dogs shall be kept on a leash while outside a Lot accompanied by a person responsible for cleaning up any animal waste. It is the sole responsibility and requirement of any pet owner to immediately clean up any pet

waste deposited upon any Lot, Common Area, or Association maintained easement area. An Owner may be required to remove a pet from the property upon the receipt of the third notice in writing from the Association Board of Directors for violation of any rule, regulation or restriction governing pets within the Property. A "reasonable number of domestic household pets" and the definition of "domestic household pets" shall be subject to rules adopted and approved by the Board in its sole discretion.

4.8 Nuisance. No odors or loud noises shall be permitted to arise or emit from any Lot or Common Areas so as to render any such property or portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such property. No noxious, harmful or offensive activities, including, but not limited to, firearm discharge and open fires except in a contained outdoor fireplace or barbeque while attended, shall be carried on upon any Lot or Common Area, nor shall anything be done or placed on any Lot or Common Area which interferes with or jeopardizes the enjoyment, or which is a source of annoyance to the other Owners or Occupants.

4.9 Parking. No motor vehicles classed by manufacturer rating as exceeding one ton, recreational vehicle, mobile home, travel trailer, tent trailer, utility trailer, camper, boat, boat trailer, detached camper, camper shell or other similar vehicles or equipment may be parked, maintained, constructed, reconstructed or repaired on any Lot, Common Areas or street within the Property. Notwithstanding the foregoing, any of the above described vehicles may be stored in a garage or behind the building line provided said vehicles are screened from other Lots, the street, or Common Areas, and said screening device is in compliance with the CC&R's and approved by the ARC. This paragraph shall not apply to cleaning, loading and short term parking which shall be permitted for a cumulative period not to exceed forty-eight (48) hours in any calendar month. Parking shall only be in garages or driveways if no portion of the vehicle overhangs the street, sidewalks or pathways. Garages shall be primarily used for vehicular parking and not solely for storage. In addition, parking of vehicles is prohibited on any public street, private street or Common Area within the Property if so designated as a "no parking" area.

4.10 Vehicles in Disrepair. No Owner shall permit any vehicle, which is not currently licensed or is in an extreme state of disrepair to be abandoned or to remain parked upon any Lot for a period in excess of forty-eight (48) hours, nor on a Common Area for any length of time. A vehicle shall be deemed in an "extreme state of disrepair" when the Board of Directors reasonably determines that its presence offends the Owners and Occupants. Should any Owner fail to remove such vehicle within five (5) days following the date on which the notice is mailed to him/her by the Association, the Association may have the vehicle removed from the Property and

charge the expense of such removal to the Owner. All oil or grease on roadways and/or driveways shall be cleaned up immediately by Owner.

4.11 Signs. No signs shall be erected or maintained on any Lot except that not more than one "For Sale" sign placed by the Owner, Declarant or by a licensed real estate agent, not exceeding twenty-four (24) inches high and thirty-six (36) inches long, may be temporarily displayed on any Lot, subject to the provisions of Article 9.2 below. No "For Rent", "For Lease" or other similar type signs shall be displayed upon any Lot or Property within the community. The restrictions contained in this paragraph shall not prohibit the temporary placement of "political" signs on any Lot by the Owner or Occupant, or construction and marketing related signage by the Declarant or its contractors. No sign of any kind, other than Declarant's marketing signs or any Association signs for the common good of the Community, which have been previously approved by the Board of Directors, will be allowed on Common Areas.

4.12. Rubbish and Trash. No Lot or part of the Common Area shall be used as a dumping ground for trash or rubbish of any kind. All garbage and other waste shall be kept in appropriate containers for timely and proper disposal, out of public view. Yard rakings, dirt and other material resulting from landscaping work shall not be dumped onto streets, the Common Areas or any other Lots. Should any Owner fail to remove any trash, rubbish, garbage, yard rakings or any such materials from any Lot, any roadways or Common Area where deposited by him/her within five (5) days following the date on which notice is mailed to him/her by the Board of Directors, the Association may have such materials removed and charge the expense of such removal to the Owner. Each Owner is responsible for trash disposal, and shall remove individual trash containers within 12 hours of collection. No trash and/or storage containers shall be evidently visible from any adjacent street or neighboring Lot, and shall not be allowed to emit any odors or attract insects or rodents.

4.13. Fences, Hedges, Retaining Walls. No fences, boundary hedges, or retaining walls shall be installed without prior written approval of the ARC. Any fencing or retaining wall installed on Owner's Lots either by Owner, or by Declarant, will be Owner's maintenance responsibility. All fences that are Owner's responsibility are to be maintained in a condition acceptable to the Board and ARC. All side yard fencing shall maintain a five (5) foot setback from the front of the house. Further, no fencing will be allowed in the front yard. All fence materials, designs, and colors are subject to prior approval of the ARC. No chain link fencing will be visible from the street.

4.14. Service Facilities; Utilities. Service facilities (e.g. garbage containers, clotheslines, air conditioning compressors, etc.) shall be screened such that the elements screened are not visible at any time from the street or a neighboring Home. Vegetative screens are encouraged. All utility lines shall be maintained, repaired and replaced by the Owner of each Lot or all Owners individually or collectively at their sole expense. The Association is not responsible for the maintenance of any utility, cable TV, or phone services of facilities. The exterior location of any heating and air conditioning compressors or heat pumps shall be approved in advance by the ARC. Said locations must take into consideration the noise and view from adjacent Homes.

4.15. Antennas, Satellite Dishes and Solar Collectors. No Owner may erect or maintain a television or radio receiving or transmitting antenna, satellite dish or similar implement or apparatus, or solar collector panels or equipment upon any Lot unless such apparatus is erected and maintained in such a way that it is screened from public view along the public street right-of-way directly in front (and side, in the case of a corner Lot) of the house erected on such Lot; and no such apparatus shall be erected without the prior written consent of the ARC. Exterior satellite dishes with a surface diameter of eighteen (18) inches or less may be placed on any Lot, subject to ARC approval, so long as they are installed above the first story (at least eight feet off the ground) and fully below the highest peak of the roof, in the least noticeable location as possible, such as the eaves or other break in the natural lines of the residence. The dishes shall not be visible from the street and are to be screened from all neighboring Homes. The ARC, as designated in this Declaration, shall have the absolute authority to determine whether an accessory is adequately screened from public view. The authority of the ARC in this matter shall be subject to any regulations issued by the Federal Communications Commission ("FCC") or any other applicable governmental authority.

4.16. Exterior Lighting or Noisemaking Devices. Except with the consent of the ARC, no exterior lighting or noisemaking devices shall be installed or maintained on any Lot, other than security and fire alarms. However, false alarms of security and fire systems will not be allowed to repeatedly occur. Seasonal holiday lighting and decorations cannot be installed for more than two (2) weeks at a time, except between the period of Thanksgiving through January 20. Outside this period, at least one (1) month must elapse between the removal of one set of holiday lights, and the installation of a new set. No outdoor lighting shall be allowed to shine, glare or be a nuisance to adjacent properties.

4.17. Grades, Slopes, and Drainage. There shall be no modifications to and/or interference with the established grading and/or drainage patterns or systems over or through any Lot or Common Area within the Property, unless properly

engineered and permitted by the City, if required, and as approved by the ARC. Notwithstanding the foregoing, however, any permitted modifications to the established grading and/or drainage patterns may not affect other Lots, Common Areas and/or real property on or outside of the Property. The term "established grading and/or drainage patterns" shall mean any Declarant installed walls, grading, drainage systems/swales, conduits, inlets and outlets designed and constructed on the Property. Further, Declarant installed retaining walls are not in all cases located on the boundaries of Lot lines. Retaining wall location shall not constitute evidence of the intended location of a Lot line, nor provide grounds for any claim of adverse possession. Except as otherwise provided in this Declaration, each Lot Owner shall be responsible for all costs to repair and maintain any portion of a retaining wall located within the boundaries of each respective Lot line. The Association shall pay for and maintain any walls located within the boundaries of any Common Area Tracts. No Owner shall take any action to add, construct or place any improvement on the Lot so that it may, in the judgment of the ARC result in a disturbance of, weakening of, or damage to the retaining walls; increase any engineered load or alter design criteria; or cause damage to the wall and surrounding properties.

4.18 Damage or Destruction to Home and/or Lot. If all or any portion of a Lot or Home is damaged by fire or other casualty, the Owner shall either (i) restore the damaged improvements or (ii) remove all damaged improvements, including foundations, and leave the Lot in a clean and safe condition. Any restoration proceeding under (i) above must be performed so that the improvements are in substantially the same condition in which they existed prior to the damage, subject to current governmental regulations and building codes, and the provisions of Article 6 are to be complied with by the Owner. The Owner must commence such work within sixty (60) days after the damage occurs and must complete the work within six (6) months thereafter. In the event the Owner fails to commence such work within the six (6)-month period, the Association shall have the right, but not the obligation, to commence such work on behalf of, and for the sole account of, Owner.

4.19. Detached Buildings. No permanent or removable detached accessory buildings, including, but not limited to, storage buildings, greenhouses, children's playhouses, gazebos, arbors and similar structures, shall be built without the prior written consent of the ARC. No detached buildings shall be used as additional living space and none shall contain any plumbing. Permanent outbuildings shall be of a one (1) story design, constructed of wood whose roofing, siding color, style and finish matches that of the exterior material of the house. Metal sheds are prohibited. Heavy duty rubber or unbreakable plastic or composite storage sheds that are portable and temporary in nature, MAY be approved providing that they are: 1) screened or hidden from the view of neighboring lots and Common Areas, and 2)

aesthetically harmonious with the home in terms of color and texture/finish (e.g. pebbled/muted/dull).

4.20. Owner's Maintenance Obligations. Each Owner shall maintain their Lot and improvements in a clean attractive condition, in good repair, and in such a fashion so as to not create a hazard of any kind. Such maintenance shall include, without limitation, painting or staining, repair, replacement and care of roofs, gutters, downspouts, surface water drainage, walks and other exterior improvements and glass surfaces. In addition, each Owner shall keep shrubs, trees, grass and plantings of every kind neatly trimmed, fertilized, property cultivated and free of trash, weeds and other unsightly materials. The provisions of this Article include all areas on Lots, except as provided in Articles 3.4 (e) and 4.5, above.

4.21. Right of Maintenance and Entry by Association. If an Owner fails to perform maintenance and/or repair which he/she is obligated to perform pursuant to this Declaration for buildings or landscaping, and if the Board determines, after notice and a hearing (given pursuant to the provisions of the Bylaws), that such maintenance and/or repair is necessary to preserve the attractiveness, quality, nature and/or value of Summit Crest, the Board may cause such maintenance and/or repair in connection therewith to be performed and may enter any such Lot whenever entry is necessary in connection with the performance of any maintenance or construction which the Board is authorized to undertake. Entry shall be made with as little inconvenience to an Owner as practicable and only after advance written notice of not less than forty-eight (48) hours, except in emergency situations. Such right of maintenance shall include, but not be limited to, buildings, street trees and front and side yard landscape. All maintenance and/or repairs performed on behalf of Lot Owners shall be at the Owner's sole expense.

4.22. Association Rules and Regulations. The Board of Directors, from time to time, may adopt, modify or revoke Rules and Regulations governing the conduct of persons and the operation or use of Lots 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 any Rules and Regulations, upon adoption, amendment, modification or revocation thereof, shall be delivered by the Board of Directors promptly to each Owner and shall be binding upon all Owners and Occupants of all Lots upon the date of delivery or actual notice thereof. The method of adoption of such Rules and Regulations shall be provided in the Bylaws of the Association.

4.23. City and County Ordinances and Regulations. The standards and restrictions of the Article 4 shall be the minimum required. To the extent the

ordinances and regulations of The City of Redmond, Oregon and/or Deschutes County are more restrictive or provide for a higher or different standard, the ordinances and regulations of The City of Redmond, Oregon and/or Deschutes County, or any jurisdiction the Property may be annexed into, shall prevail.

4.24. Violation. The Association may impose a fine, charge or penalty for any violation of this Declaration, the Bylaws and Rules and Regulations after reasonable notice of the violation and a reasonable opportunity for a hearing. Additionally, the Association may seek injunctions or other equitable relief or may file an action for money damages owing from such violations.

4.25. Security. The Association is not responsible for security of the neighborhood or any Homes. The Owners are exclusively responsible for security of their Home and Property.

## ARTICLE 5

### COMMON AREA

5.1 Use of Common Areas. Use of Common Areas is subject to the provisions of the Declaration, Bylaws, Articles and Rules and Regulations promulgated by the Board of Directors. There shall be no use of the Common Area except by Owners and their invitees. There shall be no obstruction of any part of the Common Area. Nothing shall be stored or kept in the Common Area without the prior written consent of the Board of Directors. No alterations or additions to the Common Area shall be permitted without the prior written approval by the Board of Directors. Nothing shall be stored or kept in the Homes or Common Area which will increase the rate of insurance on the Common Area without the prior written consent of the Board.

5.2 Maintenance of Common Area. Except as otherwise provided in this Declaration, the Association shall pay for and maintain any improvements including but not limited to, drainage systems, landscape, utilities, irrigation and fencing within the boundaries of the easement area within the boundaries of any Tracts, and any maintenance easement held by the Association as described in Article 3.4 above. The Association shall keep the Common Area and improvements thereon in good condition and repair, provide for all necessary services and cause all acts to be done which may be necessary or proper to assure the maintenance of the Common Area in first class condition. All landscaping and improvements on any Lot or Common Area shall be maintained and cared for in a manner consistent with the standard of design and quality as originally established by the Declarant or the ARC. All Lots and

Common Areas shall be kept free of weeds and diseased or dead lawn, trees, ground cover or shrubs shall be promptly removed and replaced. All lawn areas shall be fertilized and neatly mowed, and trees and shrubs shall be fertilized and neatly trimmed on a regular basis.

5.3 Alterations to Common Area. The Declarant does not choose to limit its rights to add improvements to the Common Area and nothing in this Declaration shall be deemed to require Declarant to build any improvement on the Common Area. After all Lots to have been conveyed to Owners other than the Declarant or a Declarant assignee, the Association may construct, reconstruct, or alter any improvement situated upon the Common Area. A proposal for any construction of or alteration, maintenance or repair to an improvement may be made at any meeting. A proposal may be adopted by the Board, subject to the limitations contained in the Bylaws and the Declaration.

5.4 Funding. Expenditures for alterations, maintenance or repairs to an existing capital improvement for which a reserve has been collected shall be made from the reserve account. As provided in Article 10.6, the Board may levy a special assessment to fund any construction, alteration, repair or maintenance of an improvement (or any other portions of the Common Area) for which no reserve has been collected or for which the reserve account is insufficient to cover the cost of the proposed improvement.

5.5 Condemnation of Common Area. If all or any portion of the Common Area is taken for any public or quasi-public use under any statute, by right of eminent domain or by purchase in lieu of eminent domain, the entire award shall be received by and expended by the Board of Directors in a manner which in their discretion is in the best interest of the Association. The Association shall represent the interest of all Owners in any negotiations, suit or action or settlement in connection with such matters.

5.6 Damage or Destruction of Common Area. In the event any Common Area is damaged or destroyed by an Owner or any of his Occupants, guests, tenants, licensees, agents or members of his family in a manner that would subject such Owner to liability for such damage under Oregon law, such Owner does hereby authorize the Association to repair such damage. The Association shall repair the damage and restore the area in workmanlike manner as originally constituted or as may be modified or altered subsequently by the Association in the discretion of the Board of Directors. The reasonable cost necessary for such repairs shall become a special assessment upon the Lot of the Owner who caused or is responsible for such damage.

## ARTICLE 6

### ARCHITECTURAL REVIEW COMMITTEE

6.1. Architectural Review. No improvement shall be commenced, erected, placed or altered on any Lot until the construction plans and specifications showing the nature, shape, heights, materials, colors, and proposed location of the improvement have been submitted to and approved in writing by the ARC. It is the intent and purpose of this Declaration to assure quality of workmanship and materials and to assure harmony of exterior design with the existing improvements and landscaping. The ARC is not responsible for determining compliance with structural and building codes, solar ordinances, zoning codes or other governmental regulations, all of which are the responsibility of the Lot Owners. The procedure and specific requirements for review and approval of construction may be set forth in design guidelines adopted from time to time by the ARC. Construction by the Declarant is presumed to have been approved and is thereby exempt from this review. In all cases which the ARC consent is required by this Declaration, the provision of this Article shall apply.

6.2. Architectural Review Committee, Appointment and Removal. The ARC shall consist of no fewer than three (3) members and no more than five (5) members, as the Board may appoint from time to time. The Declarant reserves the right to appoint all members of the ARC and all replacements thereto until turnover. The Declarant may appoint a single person to serve as the ARC. After turnover, Declarant shall delegate the right to appoint and remove members of the ARC to the Board of Directors. The terms of office for each member of the ARC shall be for one (1) year unless lengthened by the Board at the time of appointment or unless the Board serves as the ARC in which event the terms of the ARC members shall be the same as their terms as Board members. The Board may appoint any or all of its members for the ARC and there should be no requirement for non-Board members on the ARC. The Board may appoint one or more members to the ARC who are not Owners, but who have special expertise regarding the matters which come before the ARC. In the sole discretion of the Board, such non-Owner members of the ARC may be paid and that cost paid by applicants or the Association.

6.3. Majority Action. Except as otherwise provided in this Declaration, a majority of the members of the ARC shall have the power to act on behalf of the ARC, without the necessity of a meeting and without the necessity of consulting the remaining members of the ARC. The ARC may render its decision only by written instrument setting forth the action taken by the members consenting thereto.

6.4. Duties. The ARC shall consider and act upon the proposals and/or plans submitted pursuant to this Article. The ARC, from time to time and at its sole discretion, may adopt architectural rules, regulations and guidelines ("Architectural Standards"). The Architectural Standards shall interpret and implement the provisions of this Declaration for architectural review and guidelines for architectural design, placement of buildings, color schemes, exterior finishes and materials and similar features which may be used in the Property; provided, however that the Architectural Standards shall not be in derogation of the minimum standards established by this Declaration.

6.5. ARC Decision. The ARC shall render its approval or denial decision with respect to the construction proposal within twenty (20) working days after it has received all material required by it with respect to the application. All decisions shall be in writing. In the event the ARC fails to render its decision of approval or denial in writing within sixty (60) days of receiving all material required by it with respect to the proposal, the application shall be deemed approved. Approval by the ARC does not imply government approval which is solely the responsibility of the Owner.

6.6. ARC Discretion. The ARC may, at its sole discretion, withhold consent to any proposed work if the ARC finds the proposed work would be inappropriate for the particular Lot or incompatible with the design standards that the ARC intends for Summit Crest. Consideration such as siting or location on the Lot, shape, size, color, design, height, solar access, or other effect on the enjoyment of other Lots or the Common Area, and any other factors which the ARC reasonably believe to be relevant, may be taken into consideration by the ARC in determining whether or not to consent to any proposed work.

6.7. Nonwaiver. Consent by the ARC to any matter proposed to it or within its jurisdiction shall not be deemed to constitute a precedent or waiver impairing the ARC's right to withhold approval as to any similar matter thereafter proposed or submitted to it for consent.

6.8. Appeal. At any time after Declarant has delegated appointment of the members of the ARC to the Board of Directors pursuant to Article 6.2, any Owner adversely impacted by action of the ARC may appeal such action to the Board of Directors. Appeals shall be made in writing within ten (10) days of the ARC's action and shall contain specific objections or mitigating circumstances justifying the appeal. If the Board is already acting as the ARC, the appeal shall be treated as a request for a rehearing, but in such case the Board must actually meet and receive evidence and argument. A final, conclusive decision shall be made by the Board of Directors within fifteen (15) days after receipt of such notification. The determination of the Board shall be final.

6.9. Effective Period of Consent. The ARC's consent to any proposed work shall automatically be revoked three (3) months after issuance unless construction of the work has been commenced or the Owner has applied for and received an extension of time from the ARC.

6.10. Determination of Compliance. The ARC shall inspect, from time to time, all work performed and determine whether it is in substantial compliance with the approval granted. If the ARC finds that the work was not performed in substantial conformance with the approval granted, or if the ARC finds that the approval required was not obtained, the ARC shall notify the Owner in writing of the noncompliance. The notice shall specify the particulars of any noncompliance and shall require the Owner to take the necessary action to bring the work into compliance with the approved project.

6.11. Noncompliance. If the ARC determines that an Owner has not constructed an improvement consistent with the specifications on which approval is based, and if the Owner fails to diligently commence to remedy such noncompliance in accordance with the provisions of the notice of noncompliance, then at the expiration of the third (3<sup>rd</sup>) day from the date of such notification, the ARC shall provide a notice of a hearing to consider the Owner's continuing noncompliance. The hearing shall be set not more than thirty (30) days from the date of the notice of noncompliance. At the hearing, if the ARC finds that there is no valid reason for the continuing noncompliance, the ARC shall determine the estimated costs of correcting it. The ARC shall then require the Owner to remedy or remove the same within a period of not more than ten (10) days from the date of the ARC's determination. If the Owner does not comply with the ARC's ruling within such period or within any extension of such period as the ARC, at its discretion, may grant, the Association may (a) remove the noncomplying improvement, (b) remedy the noncompliance, or (c) file suit to compel compliance. The costs of such action shall be assessed against the Owner and his Lot, including all attorneys' fees and other costs expended and incurred to enforce compliance before suit or action is filed and at trial or on any appeal or review of therefrom.

6.12. Liability. Neither the ARC, the Board, their agents, nor any member thereof shall be liable to any Owner, Occupant, or builder for any damage, loss or prejudice suffered or claimed or claimed to be suffered arising from any action by the ARC or a member thereof or failure of the ARC or a member thereof, provided only that the member has acted in good faith in accordance with the actual knowledge possessed by him.

6.13. Estoppel Certificate. Within fifteen (15) working days after written request is delivered to the ARC by an Owner, and upon payment to the ARC of a

reasonable fee fixed by the ARC to cover costs, the ARC shall provide such Owner with a certificate executed by the Chairman of the ARC, and acknowledged, certifying with respect to any Lot owned by the Owner, that as of the date thereof either (a) all improvements made or done upon or within such Lot by the Owner comply with this Declaration or any Rules and Regulations either promulgated by the Board or the ARC, or (b) such improvements do not so comply, in which event, the certificate shall also identify the noncomplying improvements and set forth with particularity the nature of such noncompliance. The Owner, his/her/their heirs, devisees, successors and assigns shall be entitled to rely on the certificate with respect to the matters set forth. The certificate shall be conclusive as between the Declarant, the ARC, the Association and all Owners, and all such persons deriving an interest through any of them.

## ARTICLE 7

### SUMMIT CREST HOMEOWNERS ASSOCIATION

7.1. Members. Each Owner shall be a mandatory member of the Association. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of any Lot within the Property. Transfer of ownership of a Lot automatically transfers membership in the Association. Without any other act or acknowledgement, Occupants and Owners shall be governed and controlled by this Declaration the Articles, Bylaws, and Rules and Regulations and any amendments thereof.

7.2. Proxy. Each Owner may cast his vote in person, pursuant to a proxy executed by the Owner, or by written ballot, as provided by ORS 65.222. An Owner may not revoke a proxy given pursuant to this Article except by actual notice or revocation to the person presiding over a meeting of the Association. A proxy shall not be valid if it is undated or purports to be revocable without notice. A proxy shall terminate one (1) year after its date, unless the proxy specifies a shorter term.

7.3. Voting Rights. The Association shall have two (2) classes of voting members.

(a) Class A. Class A members shall be all Owners of Lots other than the Declarant, and each Class A member shall be entitled to one (1) vote for each Lot owned with respect to all matters upon which Owners are entitled to vote.

(b) Class B. The Class B member shall be Declarant, its successors and assigns. The Class B member shall have three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership upon the earlier of:

(i). The date that Lots representing one hundred percent (100%) of Lots anticipated to be created and subject to this Declaration, including any anticipated annexation of additional Lots, have been conveyed to Owners other than Declarant ("Termination Date"); or

(ii). At such earlier time as Declarant may elect in writing to terminate Class B membership.

Thereafter, each Owner, including the Declarant, shall be entitled to one (1) vote for each Lot owned with respect to all matters upon which Owners are entitled to vote, and the total number of votes shall be equal to the total number of Lots.

When more than one (1) person or entity owns a Lot, the vote for such Lot may be cast as they shall determine, but in no event will fractional voting be allowed. Fractional or split votes shall be disregarded, except for purposes of determining a quorum. The total number of votes as of the Termination Date and thereafter shall be equal to the total number of Lots.

7.4. Procedure. All meetings of the Association, the Board of Directors, the ARC, and Association committees shall be conducted with such rules of order as may from time to time be adopted by the Board of Directors. Notwithstanding which rule of order is adopted, the chairman shall be entitled to vote on all matters, not merely to break a tie vote. A tie vote does not constitute a majority or approval of any motion or resolution.

## ARTICLE 8

### DECLARANT CONTROL

8.1. Interim Board and Officers. The Declarant hereby reserves administrative control of the Association. The Declarant, in its sole discretion, shall have the right to appoint and remove members of the Interim Board of Directors, which shall manage the affairs of the Association and which shall be vested with all

powers and rights of the Board of Directors. The Interim Board shall consist of from one to three members. Notwithstanding the provision of this Article, at the Turnover Meeting (as hereinafter defined) at least one (1) Director shall be elected by Owners other than the Declarant, even if the Declarant otherwise has voting power to elect all of the members of the Board.

8.2. Transitional Advisory Committee. The Declarant shall allow, not later than the 60<sup>th</sup> day after the Declarant conveys fifty percent (50%) or more of the Lots to Owners other than a Successor Declarant, a Transitional Advisory Committee of three (3) or more members to be formed. The Declarant shall select no more than one (1) member of such Committee. The purpose of the Transitional Advisory Committee shall be to provide for the transition from administrative responsibility by the Declarant to the administrative responsibility by the Association and the Committee shall have reasonable access to all information and documentation required to be turned over to the Association at the Turnover Meeting. If the Declarant fails to call for a meeting to select the Transitional Advisory Committee, an Owner may do so. Should the Owners fail to select members to serve on the Transitional Advisory Committee, the Declarant shall have no further obligation to form the Committee. In no event shall a Transitional Advisory Committee be formed once the Turnover Meeting has been held.

8.3. Turnover Meeting. The Declarant shall call a meeting for the purpose of turning over administrative control of the Association from the Declarant to the Class A members within ninety (90) days of the earlier of:

(a) Upon Sale of Lots. The date that Lots representing one hundred per cent (100%) of Lots subject to this Declaration, plus any recorded annexation of additional Lots, have been conveyed to persons other than the Declarant; or

(b) Declarant's Earlier Election. At such earlier time as Declarant may elect in writing to terminate Class B membership.

The Declarant shall give notice of the meeting to each Owner as provided in the Bylaws. If the Declarant does not call the meeting required under this Article, any Owner may do so. At the Turnover Meeting, Declarant shall turn over to the Association, and the Association shall accept, all responsibility for administration of the Association. Declarant shall, at such meeting, provide all documentation and records related to the administration of the business as provided by law.

8.4 Board of Directors. At and following Turnover, the Board of Directors of the Association shall be comprised of five (5) directors. The directors

will be elected by a plurality of the total membership of the Association. In the event of a vacancy occurring on the Board, the position of such director(s) shall be filled in accordance with the terms and provisions of the Bylaws through appointment by the Board of Directors. Terms of office shall be staggered such that in the first election at the Turnover Meeting, as described in the Bylaws, two (2) Directors shall serve a term of three (3) years, two (2) for two (2) years and one (1) for one (1) year. At all subsequent Annual Meetings, the term of office for elected Directors will be three (3) years.

## ARTICLE 9

### DECLARANT'S SPECIAL RIGHTS

9.1. General. Declarant is undertaking the work of developing Lots and other improvements within the Property. The completion of the development work and the marketing and sale of the Lots is essential to the establishment and welfare of the Property as a residential community. Until the Homes on all Lots on the Property have been constructed, fully completed and sold, with respect to the Common Areas and each Lot on the Property, the Declarant shall have the special rights set forth in this Article 9.

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

9.3. Declarant's Easements. The Declarant has reserved easements over the Property as more fully described in Article 3.4, Section (c) and (d) hereof.

9.4. Appearance and Design of the Property. Declarant shall not be prevented from changing the exterior appearance of the Common Area, including the landscaping or any other matter directly or indirectly connected with project in any manner deemed desirable by Declarant, provided that the Declarant obtain governmental consents required by law. The construction and material standards of Article 4 notwithstanding, Declarant may change exterior and/or interior designs of Homes and Lots from initial plans and provisions in this document, without notice. This may include designs, colors, and type of materials, provided Declarant obtains any necessary governmental consent.

9.5. Construction by Declarant. All construction by Declarant is presumed to have been approved by the ARC and to meet any Design Guidelines of the Association.

9.6. Meeting Attendance. The Board of Directors shall notify the Declarant, in writing, and in a timely manner, of all committee, board, or member meetings, and provide an agenda and any other list of items to be discussed as part of the meeting. Minutes of the meeting shall be mailed to the Declarant within 15 days of any meeting. The Declarant shall be a voting, Class B member, as provided in 7.3(b) until such time as the Declarant no longer owns any lots in the property, after which the Declarant shall have the right and/or option to attend all meetings for a period not to exceed 5 years from the date of turnover. The intent of this provision is to continue to build a relationship and maintain an open line of communication between the Board of Directors and Homeowners of Summit Crest and the Declarant.

## ARTICLE 10

### FUNDS AND ASSESSMENTS

10.1. Purpose of Assessment. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners and Occupants and for the improvement, operation and maintenance of the Common Area, including administrative costs and insurance for the Association. No individual structure insurance will be provided by the Association.

(a) Common Expense Designations. Common Expenses of the nature described in Article 10.1 which are to be, or are, incurred by the Association for the benefit of all of the Owners of Lots within the Property shall be separately budgeted for allocation among all such Owners and shall be designated "General Common Expenses".

(b) Insurance By the Association. The Board shall obtain, and maintain in effect, from reputable insurance companies authorized to do business in the State of Oregon, public liability insurance with respect to all the Common Area in such amounts and in such forms as the Board deems advisable to provide adequate protection for bodily injury, including deaths of persons, and property damage, whether caused by the negligence of the Association or otherwise; provided, however, that such policy(ies) shall not be for an amount of less than one million dollars (\$1,000,000.00) per person, per occurrence, and that such policy(ies) shall provide that the coverage there under cannot be canceled or substantially modified without at least ten (10)

days written notice to the Association. No fire and casualty coverage will be purchased for Homes. The Association may obtain such other and further policies of insurance as it deems advisable. The named insured on the policy may read "Summit Crest Homeowners Association." The casualty insurance to be obtained by the Association pursuant to this paragraph 10.1(b) shall include the following terms, if the Board determines they are reasonably available:

- i) A waiver of subrogation by the insurer as to any claims against the Board, any Owner, or any guest of an Owner;
- ii) A waiver by the insurer of its right to repair and reconstruct instead of paying cash;
- iii) A provision that no policy may be canceled, invalidated, or suspended because of the action of an Owner;
- iv) A provision that no policy may be canceled, invalidated, or suspended because of the conduct of any director, officer, or employee of the Association unless the insurer gives the Association a prior written demand that the Association correct the defect and allows the Association a reasonable time to make the correction; and
- v) A provision that any "other insurance" clause in any policy shall exclude from its coverage all owners' policies.

At the discretion of the Board, the Corporation may purchase and maintain insurance on behalf of any person who is or was a Director, Officer, employee, or agent of the Corporation, against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his/her/their status as such, whether or not the Corporation would have the power to indemnify him or her against such liability under the provisions of the Articles of Incorporation of the Corporation.

10.2. Covenants to Pay. Declarant, on behalf of each and every subsequent Owner of any Lot, covenants and agrees that each Lot will pay the Association the assessments and any additional charges levied pursuant to this Article 10.

(a) Funds Held. The assessments collected by the Association shall be held by the Association for and on behalf of each Owner and shall be used solely for the operation, care and maintenance of Summit Crest Homeowners Association as provided by this Declaration. Upon the sale or transfer of any Lot, the Owner's interest in the funds shall be deemed automatically transferred to the successor in interest of such Owner, and is not refundable.

10.3. Basis of Assessments and Commencement of Assessments. Assessments are to be levied against all Lots, except those owned by the Declarant, whether or not such Lots have been improved with a substantially completed Home. Provided, however, that no Assessment shall be levied against any Lot until such time as it is first sold to an Owner other than Declarant or Declarant assignee. Assessments for all Lots conveyed by the Declarant to Owner, either by deed or land sales contract, shall begin on the day of the recording of the deed or land sale contract conveying or contracting to convey the Lot of the new Owner.

10.4. Annual Assessments. Annual assessments for each fiscal year shall be established when the Board approves the budget for that fiscal year. The fiscal year shall be the calendar year unless another year is adopted by vote of the Board members. Annual Assessments will be levied on a quarterly basis unless otherwise approved by the Board.

(a) Budget. Regardless of the number of Members or the amount of assets of the Association, each year the Board shall prepare, approve and make available to each Member a pro forma operating statement (budget) containing; (i) estimated revenue and expenses on an accrual basis; (ii) the amount of the total cash reserves of the Association currently available for replacement or major repair of the Common Area and for contingencies; (iii) an itemized estimate for the remaining life of, and the methods of funding to defray repair, replacement or additions to major components of the Common Area; and (iv) a general statement setting forth the procedures used by the Board in the calculation and establishment of reserves to defray the costs and repair, replacement or additions to major components of the Common Area. For the first fiscal year, the budget shall be approved by the Board no later than the date on which annual assessments are scheduled to commence. Thereafter, the Board shall annually prepare and approve the budget and distribute a copy thereof to each Member, together with written notice of the amount of the annual assessments to be levied against the Owner's Lot, not less than thirty (30) days and not more than ninety (90) days prior to the beginning of the fiscal year.

(b) Allocation of Assessments. The total amount in the General Association budget shall be charged equally against all Lots which have closed escrow to an Owner other than the Declarant or a Declarant assignee as annual assessments. Any profits of the Association shall be similarly allocated.

(c) Non-Waiver of Assessments. If before the expiration of any fiscal year the Association fails to fix annual assessments for the next fiscal year, the annual assessments established for the preceding year shall continue until a new annual assessment is fixed.

#### 10.5. Reserve Funds

(a) Reserve Fund for Replacing Common Elements. Declarant shall establish a reserve fund in the name of the Association for replacement, in whole or in part, of any completed improvements located in, on, or under the Common Area or Lots for which the Association is responsible pursuant to this Declaration, that will normally require replacement in more than three (3) and fewer than thirty (30) years, for any exterior painting to the extent the Common Area improvements include exterior painted surfaces, for other items, whether or not involving the Common Area, if the Association has responsibility to maintain the items, and for other items for which reserves are required by the Declaration or Bylaws ("Reserve Fund"). The Reserve Fund need not include those items that could reasonably be funded from the maintenance fund or operating assessments, or for which one or more Owners are responsible for maintenance and replacement under the provisions of this Declaration or the Bylaws. For purposes of funding the Reserve Fund, the Declarant initially, and thereafter the Association, shall impose an assessment to be called the "Reserve Fund Assessment" equally against each Lot. The Reserve Fund Assessment shall be based on the reserve study, and updates thereof, described below, or other sources of reliable information. Nothing herein shall limit the authority of Declarant or the Association to establish other separate and unrelated reserve funds that are funded by assessments for reserves that are in addition to the Reserve Fund or that relate only to a particular type or category of Lot. The Reserve Fund shall be kept separate from other funds and may be used only for the purposes for which reserves have been established as specified in this Section, although the Board may borrow funds with a specified repayment program, in accordance with the Oregon Planned Community Act.

Required Reserve Fund Assessments for completed improvements shall begin accruing from the date the first Lot assessed is conveyed. Declarant may elect

to defer payment of the Reserve Fund Assessments due on Lots it owns until the date of the conveyance of the Lot to an Owner. However, the Declarant may not defer such payment beyond the date of the Turnover Meeting. The book and records of the Association shall reflect the amount owing from the Declarant for all Reserve Fund Assessments.

After the Turnover Meeting, the Board may borrow funds from the Reserve Fund to meet high seasonal demands on the regular operating funds or to meet other unexpected increases in expenses. Such funds borrowed from the Reserve Fund shall be repaid from regular annual or special assessments against the Lots, if the Board has adopted a resolution, which may be an annual, continuing resolution, authorizing the borrowing of funds. Not later than the adoption of the budget for the following year, the Board shall adopt by resolution a written payment plan providing for repayment of the borrowed funds within a reasonable period.

The Board may adjust the amount of the Reserve Fund Assessments as indicated by any reserve study or update, and provide for other reserve items that the Board, in its discretion, may deem appropriate. In addition, after the second anniversary of the turnover meeting, the Association may elect to reduce or increase future Reserve Fund Assessments by a 75% vote of the Owners.

Any funds established for any of the purposes mentioned in this Section shall be deemed to be within the Reserve Fund notwithstanding that it may not be so designated by the Board of Directors. The amount of the Reserve Fund shall constitute an asset of the Association and shall not be refunded or distributed to any Owner.

(b) Reserve Study and Maintenance Plan. The Board of Directors shall annually conduct a reserve study, or the review and update of an existing study, of the Common Area to determine the requirements of the reserve fund described above. The reserve study shall include (a) identification of all items for which reserves are required to be established; (b) the estimated remaining useful life of each item as of the date of the reserve study; (c) the estimated cost of maintenance, repair, or replacement of each item at the end of its useful life; and (d) a thirty (30) year plan with regular and adequate contributions, adjusted by estimated inflation and interest earned on the reserve fund, to meet the maintenance, repair, and replacement schedule.

(c) Maintenance Plan. Annually, in concurrence with the reserve study review, the Board shall also review and update, as necessary, an

Association Maintenance Plan to reflect, at a minimum, recent maintenance that has taken place, changes in the physical status of a reserve component, or the addition of a physical component that has come to the Board's attention.

(d) Maintenance Plan Summary. The Board of Directors shall annually provide a Maintenance Plan Summary to all Lot owners, which details any maintenance to be conducted in the coming fiscal year, on reserve components referenced by the Maintenance Plan and Reserve Study.

10.6 Special Assessments. The Board of Directors shall have the power to levy special assessments against an Owner or all Owners in the following manner for the following purposes:

(a) Deficits in Operating Budget. To correct a deficit in the operating budget, by vote of a majority of the Board;

(b) Breach of Documents. To collect amounts due to the Association from an Owner for breach of the Owner's obligations under the Declaration, the Bylaws, or the Rules and Regulations, by vote of a majority of the Board;

(c) Repairs. To make repairs or renovations to the Common Area if sufficient funds are not available from the operating budget or replacement reserve accounts by vote of a majority of the Board; or

(d) Capital Additions. To make capital acquisitions, additions or improvements, by vote of at least seventy-five percent (75%) of all votes allocated to the Lots.

10.7 Accounts.

(a) Types of Accounts. Assessments collected by the Association may be deposited into at least two (2) separate accounts with a bank, which accounts shall be designated as (i) the Current Operating Account and (ii) the Reserve Account. Those portions of the assessments collected for current maintenance and operation levied under Article 10.4 (b) will be in the Current Operating Account and those portions of the assessments collected as reserves for replacement and deferred maintenance of capital improvements into the Reserve Account. Special Assessments shall be deposited into one of the two accounts, whichever is deemed by the Board to be appropriate. Withdrawal of

funds for the Association's Reserve Account shall require the signatures of two (2) Directors.

(b) Reserve Account. The Association shall pay out of the Reserve Account only those costs that are attributable to the maintenance, repair or replacement of capital improvements for which reserves have been collected and held.

(c) Current Operating Account. All ordinary maintenance and operating expenses shall be paid from the Current Operating Account.

10.8 Default in Payment of Assessments, Enforcement of Liens.

(a) Personal Obligation. All assessments properly imposed under this Declaration or the Bylaws shall be the joint and several personal obligations of all Owners of the Lot to which such assessment pertains. In a voluntary conveyance (that is, one other than through foreclosure or a deed in lieu of foreclosure) the grantees shall be jointly and severally liable with the grantor(s) for all Association assessments imposed through the recording date of the instrument affecting the conveyance. A suit for a money judgment may be initiated by the Association to recover such assessments without either waiving or foreclosing the Association's lien.

(b) Association Lien. At any time any assessment (of any type provided for by this Declaration or the Bylaws) or installment thereof is delinquent, the Association, by and through its Board or any management agent, may file a notice of lien in the deed records of Deschutes County, Oregon against the Lot in respect to which the delinquency pertains. Once filed, such lien shall accumulate all future assessments or installments, interest, late fees, penalties, fines, attorneys' fees (whether or not suitor action is instituted) and other appropriate costs properly chargeable to an Owner by the Association, until such amounts are fully paid. 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 87, except that the Association's lien may be continued in force for a period not to exceed six (6) years from the date the assessment is due. The lien of the Association shall be superior to all other liens and encumbrances except property taxes and assessments, and any first mortgage or deed of trust.

(c) Interest; Fines; Late Fees; Penalties. The Board in its reasonable discretion may from time to time adopt resolutions to set the rate of interest, and to impose late fees, fines and penalties on delinquent assessments or for violations of the provisions of this Declaration, the Bylaws, any Rules and Regulations, and any rules and regulations adopted by the ARC. The adoption of such impositions shall be communicated to all Owners in writing not less than thirty (30) days before the effective date by a notice mailed to the assessment billing addresses of such Owners. Such impositions shall be considered assessments which are lienable and collectible in the same manner as any other assessments. Provided, however, no fine or penalty for violation of this Declaration, the Bylaws or any Rules and Regulations (other than late fees, fines or interest arising from an Owner's failure to pay regular or special assessments) may be imposed against an Owner or his Lot until such Owner is given an opportunity for a hearing as provided in Article 4.24.

(d) Acceleration of Assessments. In the event an Owner is delinquent in payment of any assessment or installment on any assessment, the Association, upon not less than ten (10) days written notice to the Owner, may accelerate the due date of the full annual assessment for that fiscal year and all future installments of any special assessments.

(e) Association's Right to Rents/Receiver. In any foreclosure suit by the Association with respect to such lien, the Association shall be entitled to collect reasonable rent from the defaulting Owner for the use of his Lot or shall be entitled to the appointment of a Receiver. Any default by the Owner in any provisions of the Declaration or Bylaws shall be deemed to be a default by the Owner of any mortgage to which the Owner is party or to which the Lot is subject.

10.9 Initial Contribution At the time of the initial closing of the sale of each lot, the escrow agent shall collect from each Lot owner (except Declarant) a start up contribution in the amount of three hundred and fifty dollars (\$350.00.) Said start up contribution shall be paid to Declarant for the establishment and development of Common Areas and to cover maintenance and operating expenditures for the Common Areas until the date when all original lots have been conveyed from the Declarant to a second owner of record. Said contribution shall be used at the Declarant sole discretion, and shall not be subject to review by the Association. Should a contribution not be paid at escrow, such contribution amount and reasonable attorney fees and costs shall become a lien against the property and subject to collection in the same manner as assessments.

## ARTICLE 11

### GENERAL PROVISIONS

11.1. Records. The Board of Directors shall preserve and maintain minutes of the meetings of the Association, the Board and any committees. The Board of Directors shall also keep detailed and accurate financial records including individual assessment accounts of Owners, the balance sheet, and income and expense statements. Individual assessment accounts shall designate the name and address of the Owner or Owners of the Lot, the amount of each assessment as it becomes due, the amounts paid upon the account, and the balance due on the assessments. The Board shall annually cause to be prepared and distributed to each Owner within ninety (90) days after the end of the fiscal year, an annual financial statement consisting of a balance sheet and income and expenses statement for the preceding fiscal year. Such financial statement shall be reviewed by a certified public accountant within one hundred eighty (180) days following the end of the fiscal year if the Association has annual assessments exceeding seventy-five thousand 00/100 dollars (\$75,000.00), or, if less than seventy-five thousand 00/100 dollars (\$75,000.00), if a petition requesting such review is executed by a majority of the Owners and delivered to the Board. The minutes of the Association, the Board and committees, and the Association's financial records shall be reasonably available for review and copying by the Owners. A reasonable charge may be imposed by the Association for providing copies other than the annual copies to all Owners of the financial statements.

11.2. Indemnification of Directors, Officers, Employees and Agents. The Association shall indemnify any Director, officer, employee or agent who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by the Association) by reason of the fact that he/she is or was a Director, officer, employee or agent of the Association or is or was serving at the request of the Association as a Director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by said person in connection with such suit, action or proceeding if he/she acted in good faith and in a manner he/she reasonably believed to be in, or not opposed to, the best interest of the Association, and, with respect to any criminal action or proceedings, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or with a plea of nolo contendere or its equivalent, shall not of itself create a presumption that a person did not act in good faith and in a manner

which he/she reasonably believed to be in, or not opposed to, the best interest of the Association, and with respect to any criminal action or proceedings, had reasonable cause to believe his conduct was unlawful. Payment under this clause may be made during the pendency of such claim, action, suit or proceeding as and when incurred, subject only to the right of the Association to reimbursement of such payment from such person, should it be proven at a later time that such person had no right to such payments. All persons who are ultimately held liable for their actions on behalf of the Association as a Director, officer, employee or agent shall have a right of contribution over and against all other Directors, officers, employees or agents and members of the Association who participated with or benefited from the acts which created said liability.

11.3. Enforcement; Attorneys' Fees. The Association and the Owners within the Property or any mortgagee on any Lot shall have the right to enforce all of the covenants, conditions, restrictions, reservations, easements, liens and charges now or hereinafter imposed by any of the provisions of this Declaration as may pertain specifically to such parties or owners by any proceeding at law or in equity. Failure by either the Association or by any Owner or mortgagee to enforce any covenant, condition or restriction herein contained shall in no event be deemed a waiver of their right to do so thereafter. The prevailing party in any such action or appeal therefrom shall be entitled to recovery of reasonable attorney fees and costs.

11.4. Severability. Invalidation of any one of these covenants, conditions or restrictions by judgment or court order shall not affect the other provisions hereof and the same shall remain in full force and effect.

11.5 Duration. The covenants, conditions and restrictions of this Declaration shall run with and bind the land for a term of thirty-five (35) years from the date of this Declaration being recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless rescinded by a vote of at least ninety percent (90%) of the Owners and ninety percent (90%) of the first mortgagees. Provided however, amendments which do not constitute rescission of the planned development may be adopted as provided in Article 11.6 below. Additionally, any such rescission which affects the Common Area shall require the prior written consent of Deschutes County.

11.6 Amendment. Except as otherwise provided in Articles 11.5, 11.9, and the restrictions set forth elsewhere herein, this Declaration may be amended at any time by an instrument approved by not less than seventy-five percent (75%) of the total votes for all Lots subject to this Declaration, of each class of members that are eligible to vote. However, during the period of time prior to the Turnover Meeting, Declarant has right to amend Declaration, Bylaws and Articles of

Incorporation without notice to or approval by any Class A members. Any amendment must be executed, recorded and certified as provided by law. Provided, however, that no amendment of this Declaration shall effect an amendment of the Bylaws or Articles without compliance with the provisions of such documents, and the Oregon Non-Profit Corporation Act. Provided further, until the Turnover Meeting, no amendment affecting the general plan and development or any other right of the Declarant herein contained may be effected without the express written consent of the Declarant or its successors and assigns.

11.7 Release of Right of Control. The Declarant may give up its right of control in writing at any time by notice to the Association.

11.8 Personal Pronouns. All personal pronouns used in this Declaration, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall apply to the plural and vice versa.

11.9 Unilateral Amendment by Declarant. The Declarant may amend this Declaration in order to comply with the requirements of the Federal Housing Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Mortgage Loan Corporation, the United States Department of Veterans Affairs, any department, bureau, board, commission or agency of the United States or the State of Oregon, or any other state in which the Lots are marketed and sold, or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon, or such other state, the approval of which entity is required in order for it to insure, guarantee or provide financing in connection with development of the Property and sale of Lots. Prior to the Turnover Meeting, no Declarant amendment shall require notice to or approval by any Class A member.

11.10 Resolution of Document Conflicts. In the event of a conflict among any of the provisions in the documents governing Summit Crest Homeowners Association, such conflict shall be resolved by looking to the following documents in the order shown below:

1. Declaration of Covenants, Conditions and Restrictions;
2. Articles of Incorporation;
3. Bylaws;
4. Rules and Regulations.

By:   
Mike Loomis, Vice President Land Development  
D.R. Horton, Inc.- Portland

This instrument was acknowledged before me on February 13, 2007,  
by Mike Loomis, as Vice President Land Development for D.R. Horton, Inc.-Portland

NOTARY PUBLIC FOR OREGON  
My Commission Expires: 4/5/10





When recorded mail to:  
D.R. Horton, Inc. - Portland  
Attn: Michael Loomis  
4386 SW Macadam Ave. Ste. 102  
Portland, OR 97239

## FIRST AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SUMMIT CREST

### Recitals

2

THIS FIRST AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR SUMMIT CREST (this "First Amendment") is made and entered into effect this 20 day of September, 2007, by D. R. Horton, Inc.-Portland a Delaware corporation (the "Declarant") and by "Summit Crest Homeowners Association" (the "Association").

WHEREAS, the Declarant caused that certain Declaration of Covenants, Conditions and Restrictions for Summit Crest to be recorded on the 23<sup>rd</sup> day of February, 2007 as Document No. 2007-11054 in the records of Deschutes County, Oregon.

WHEREAS, pursuant to Section 11.6 of the Declaration, Declarant desires to amend the Declaration as provided herein. Declarant may unilaterally amend the Declaration pursuant to Section 11.6 as this amendment is prior to the Turnover Meeting. Capitalized terms not defined herein shall have the meaning given in the Declaration, except as otherwise indicated.

The Declaration is hereby amended as follows:

1. Section 4.13 is hereby amended and restated as follows:

4.13. Fences, Hedges, Retaining Walls. No fences, boundary hedges, or retaining walls shall be installed without prior written approval of the ARC. Any fencing or retaining wall installed on Owner's Lots either by Owner, or by Declarant, will be Owner's maintenance responsibility. All fences that are Owner's responsibility are to be maintained in a condition acceptable to the Board and ARC. All side yard fencing shall maintain a five (5) foot setback from the front of the house. Further, no fencing will be allowed in the front yard. All fence materials, designs, and colors are subject to prior approval of the ARC. No chain link fencing will be visible from the street. All fences shall be cedar and stained with Pittsburgh Artifact # 6138 unless otherwise approved by the ARC.

2. Except as expressly amended hereby the Declaration remains in full force and effect.

RECORDED BY FIRST AMERICAN TITLE  
INSURANCE COMPANY OF OREGON AS AN  
ACCOMMODATION ONLY NO LIABILITY IS  
ACCEPTED FOR THE CONDITION OF TITLE  
OR FOR THE VALIDITY SUFFICIENCY, OR  
EFFECT OF THIS DOCUMENT.

3. The undersigned Declarant certifies that this First Amendment has been approved in the manner required by Article 11.6 of the Declaration.

IN WITNESS HEREOF, the undersigned hereby execute this document as of,  
Sept. 20, 2007.

**D.R. HORTON, INC.-PORTLAND**  
a Delaware corporation

By: [Signature]  
Mike Loomis  
Its: Vice President, Land Development

STATE OF OREGON           )  
                                          ) ss  
County of Multnomah       )

The foregoing instrument was acknowledged before me on 9/20/07, 2007, by Mike Loomis, Vice President Land Development for D.R. Horton, Inc.-Portland, a Delaware corporation, on behalf of the corporation.

[Signature]  
Notary Public for Oregon  
My commission expires: 4/5/10



**Summit Crest Homeowner's Association**

By: [Signature]  
Michael Loomis  
Its: President on behalf of the Association

STATE OF OREGON           )  
                                          ) ss  
County Of Multnomah       )

The foregoing instrument was acknowledged before me on 9/20/07, 2007, by Michael Loomis who is the President of "Summit Crest Homeowner's Association" on behalf of the Association.

[Signature]  
Notary Public for Oregon  
My commission expires: 4/5/10

