

4029965ms/7069-1088284  
WEST COAST TITLE & ESCROW  
H2A 250 NW FRANKLIN AVE. # 201  
BEND, OR 97701

**After Recording Return To:**

Arrowood Tetherow, LLC  
250 NW Franklin Ave., Suite 201  
Bend, Oregon 97701

79

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

**ARROWOOD TETHEROW, LLC**

**Declarant**

**DESCHUTES COUNTY OFFICIAL RECORDS  
NANCY BLANKENSHIP, COUNTY CLERK**

**2007-53418**



**\$421.00**

**00576765200700534180790790**

**10/03/2007 03:07:37 PM**

**D-CCR Cnt=1 Stn=26 JS  
\$395.00 \$11.00 \$10.00 \$5.00**

## TABLE OF CONTENTS

		<b>Page</b>
ARTICLE 1	DEFINITIONS .....	2
1.1	“Additional Property” .....	2
1.2	“Architectural Review Committee” .....	2
1.3	“Articles” .....	2
1.4	“Assessments” .....	2
1.5	“Association” .....	2
1.6	“Board” or “Board of Directors” .....	2
1.7	“Builder” .....	2
1.8	“Bylaws” .....	2
1.9	“Club” .....	2
1.10	“Common Areas” .....	2
1.11	“Common Expenses” .....	2
1.12	“Declarant” .....	2
1.13	“Declaration” .....	2
1.14	“Design Guidelines” .....	2
1.15	“Development Period” .....	3
1.16	“Emergency Assessments” .....	3
1.17	“Fire Protection Standards” .....	3
1.18	“General Assessments” .....	3
1.19	“Golf Course Owner” .....	3
1.20	“Golf Course Property” .....	3
1.21	“Governing Documents” .....	3
1.22	“Governmental Authority” .....	3
1.23	“Improvement” .....	3
1.24	“Individual Assessments” .....	3
1.25	“Initial Development” .....	3
1.26	“Limited Common Area Assessments” .....	3
1.27	“Limited Common Areas” .....	3
1.28	“Master Plan” .....	3
1.29	“Mortgage” .....	3
1.30	“Mortgagee” .....	3
1.31	“Neighborhood” .....	4
1.32	“Neighborhood Assessments” .....	4
1.33	“Neighborhood Association” .....	4

1.34	“Neighborhood Committee” .....	4
1.35	“Neighborhood Common Area” .....	4
1.36	“Neighborhood Declarant” .....	4
1.37	“Neighborhood Declaration” .....	4
1.38	“Neighborhood Expenses” .....	4
1.39	“Occupant” .....	4
1.40	“Operations Fund” .....	4
1.41	“Owner” .....	4
1.42	“Person” .....	4
1.43	“Property” .....	4
1.44	“Public Areas” .....	5
1.45	“Recorded” .....	5
1.46	“Reserve Fund” .....	5
1.47	“Restricted Areas” .....	5
1.48	“Shared Use” .....	5
1.49	“Special Assessments” .....	5
1.50	“Supplemental Declaration” .....	5
1.51	“Tetherow” .....	5
1.52	“Turnover Meeting” .....	5
1.53	“Unit” .....	5
1.54	“Voting Group” .....	5
1.55	“Work” .....	5
ARTICLE 2	PROPERTY SUBJECT TO THIS DECLARATION .....	5
2.1	Initial Development.....	5
2.2	Annexation of Additional Property. ....	5
2.3	Withdrawal of Property .....	6
2.4	Annexations into Municipalities and Other Governmental Actions.....	7
2.5	Dedications.....	7
ARTICLE 3	NEIGHBORHOOD DESIGNATION, LAND CLASSIFICATIONS, GOLF CLUB RELATIONSHIP .....	7
3.1	Creation of Neighborhoods .....	7
3.2	Supplemental Declarations.....	7
3.3	Neighborhood Associations .....	7
3.4	Neighborhood Committees .....	8
3.5	Conveyance to the Association .....	8
3.6	Conversion to Different Uses .....	8
3.7	Subdivisions .....	8

3.8	Consolidations.....	8
3.9	Condominium Conversions.....	8
3.10	Land Classifications within Initial Development.....	8
3.11	Relationship to Tetherow Golf Club.....	8
ARTICLE 4	UNITS.....	9
4.1	Use and Occupancy.....	9
4.2	Easements Reserved by Declarant.....	9
	(a) Adjacent Common Areas.....	9
	(b) Utility Easements.....	9
	(c) Utility Inspection and Repairs.....	9
	(d) Easements for Encroachments.....	9
	(e) Easements for Maintenance, Emergency, and Enforcement.....	9
	(f) Rights to Storm Water Runoff and Water Reclamation.....	10
	(g) Future Easements.....	10
4.3	Membership and Sales of Units.....	10
	(a) Membership and Sales of Units.....	10
	(b) Membership Terms.....	10
ARTICLE 5	COMMON AREAS.....	11
5.1	Title to Common Areas.....	11
5.2	Use of Common Areas.....	11
5.3	Easements Retained by Declarant.....	11
5.4	Easement to Serve Other Property.....	11
5.5	Owners' Easements.....	11
5.6	Extent of Owners' Rights.....	12
5.7	Enjoyment of Owners' Rights.....	12
5.8	Alienation of the Common Areas.....	12
5.9	Public, Recreational or Service Areas.....	13
5.10	Open Space Areas.....	13
5.11	Restricted Areas.....	13
5.12	Easements.....	13
5.13	Limited Common Areas.....	13
	(a) Purpose.....	13
	(b) Initial Designation.....	13
	(c) Subsequent Assignments.....	13
	(d) Use by Others.....	14
5.14	Neighborhood Common Areas.....	14
	(a) Purpose.....	14

	(b)	Initial Designation.....	14
	(c)	Subsequent Assignments .....	14
	(d)	Use by Others.....	14
ARTICLE 6		GOLF COURSE PROPERTY .....	14
6.1		View Impairment .....	14
6.2		Rights of Access and Parking.....	14
6.3		Design Control .....	15
6.4		Limitation on Amendments.....	15
6.5		Ownership and Operation of the Golf Course Property .....	15
6.6		Additional Restrictions.....	15
6.7		Jurisdiction and Cooperation.....	15
6.8		Appearance of the Golf Course Property. ....	15
6.9		Golf Course Uses .....	16
	(a)	Private Ways.....	16
	(b)	Golf Cart Path Easement.....	16
	(c)	Golf Course Easements over Adjoining Units .....	16
	(d)	Overspray.....	16
	(e)	Irrigation System.....	16
	(f)	Golf Course Utilities .....	16
	(g)	Natural Water Runoff .....	16
	(h)	Lakes and Water Features.....	17
	(i)	Golf Balls.....	17
	(j)	Golf Tournaments .....	17
	(k)	Intrusion Onto Golf Course Property.....	17
	(l)	Right of Maintenance and Entry. ....	17
	(m)	Interference with Golf Course Operations. ....	18
	(n)	Liquor Sales. ....	18
	(o)	Golf Course Signs. ....	18
	(p)	Right to Photograph.....	18
6.10		Ownership of Property Near Golf Course.....	18
ARTICLE 7		PROPERTY USE RESTRICTIONS.....	19
7.1		Structures Permitted .....	19
7.2		Residential Use.....	19
7.3		Offensive or Unlawful Activities .....	19
7.4		Animals .....	19
7.5		Maintenance of Structures.....	19
7.6		Maintenance of Landscape.....	20

7.7	Prohibited Vehicles .....	20
7.8	Vehicles in Disrepair. ....	20
7.9	Traffic Regulations. ....	20
7.10	Parking and Street Obstructions .....	20
7.11	Grades, Slopes and Drainage .....	20
7.12	Wells and Septic Tanks. ....	21
7.13	Signage.....	21
7.14	Outside Storage .....	21
7.15	Completion of Construction .....	21
7.16	Landscaping. ....	21
7.17	Temporary Structures.....	22
7.18	Fences and Hedges. ....	22
7.19	Antennas and Satellite Dishes .....	22
7.20	Limitations on Open Fires. ....	22
7.21	Recreational Equipment .....	22
7.22	Pest and Weed Control.....	22
7.23	Exterior Lighting.....	22
7.24	Window Coverings. ....	22
7.25	Paths and Trails .....	22
7.26	Drainage .....	22
7.27	Landscape Irrigation.....	22
7.28	Solid Waste .....	23
7.29	Wildlife Protection. ....	23
7.30	Fire Protection.....	23
7.31	Association Rules and Regulations .....	23
7.32	Application to Additional Property .....	23
7.33	Right to Approve Changes in the Standards Within the Community.....	23
ARTICLE 8	ARCHITECTURAL REVIEW COMMITTEE .....	23
8.1	Design Review Requirements .....	23
8.2	Membership: Appointment and Removal .....	23
8.3	Design Guidelines .....	24
	(a) Adoption of Design Guidelines.....	24
	(b) Publication of Design Guidelines .....	24
	(c) Amendment of Design Guidelines .....	24
8.4	Approval Procedures.....	24
	(a) Applications .....	24
	(b) Committee Discretion .....	24

	(c)	Committee Decision.....	25
	(d)	Majority Action.....	25
	(e)	Architectural Review Committee Fees; Assistance .....	25
	(f)	Appeal.....	25
	(g)	Effective Period of Consent .....	25
	(h)	Notice to Declarant .....	26
8.5		Variances.....	26
8.6		Approval Exceptions .....	26
8.7		Approval Exemptions.....	26
8.8		No Waiver of Future Approvals.....	26
8.9		Estoppel Certificate .....	26
8.10		Enforcement.....	26
8.11		Limitation of Liability.....	27
ARTICLE 9		OWNERS ASSOCIATION .....	27
9.1		Organization.....	27
9.2		Membership .....	27
9.3		Voting Rights .....	28
9.4		General Powers and Obligations .....	28
9.5		Specific Powers and Duties.....	28
	(a)	Maintenance.....	28
	(b)	Insurance.....	28
	(c)	Restoring Damaged Improvements.....	28
	(d)	Rulemaking.....	29
	(e)	Assessments .....	29
	(f)	Enforcement.....	29
	(g)	Employment of Agents, Advisers and Contractors .....	29
	(h)	Borrow Money.....	29
	(i)	Hold Title and Make Conveyances.....	29
	(j)	Transfer, Dedication and Encumbrance of Common Areas.....	29
	(k)	Create Classes of Service and Make Appropriate Charges .....	29
	(l)	Joint Use Agreements .....	30
	(m)	Administration of Particular Areas Within Property.....	30
	(n)	Additional Services.....	30
	(o)	Assumption of Other's Maintenance Responsibility .....	30
	(p)	Security .....	30
	(q)	Wildland Fire Protection. ....	30
	(r)	Wildlife Mitigation Maintenance Fund. ....	31

	(s)	Municipal Services .....	31
	(t)	Other Services.....	31
	(u)	Implied Rights and Obligations .....	31
	(v)	Contracts Entered into by Declarant or Before Turnover Meeting .....	31
9.6		Board of Directors.....	31
	(a)	Initial Board.....	31
	(b)	When Fifty Percent (50%) of the Units Have Sold.....	31
	(c)	When Ninety Percent (90%) of the Units Have Been Sold.....	31
	(d)	Turnover Meeting After Termination of Class B Membership.....	31
9.7		Voting Groups.....	32
9.8		Liability.....	32
9.9		Neighborhood Associations .....	32
9.10		Powers of the Association Relating to Neighborhoods .....	32
9.11		Bylaws.....	33
ARTICLE 10		MAINTENANCE .....	33
10.1		Maintenance of Units .....	33
10.2		Maintenance of Common Areas.....	33
10.3		Maintenance of Utilities.....	33
10.4		Corrective Maintenance .....	33
10.5		Damage Liability.....	34
10.6		Maintenance Plan. ....	34
ARTICLE 11		ASSESSMENTS.....	34
11.1		Power to Assess.....	34
11.2		Apportionment of Assessments.....	34
	(a)	Units Owned by Declarant.....	34
	(b)	Other Units.....	34
11.3		Types of Assessments .....	34
	(a)	General Assessments .....	34
	(b)	Neighborhood Assessments .....	35
	(c)	Special Assessments .....	35
	(d)	Emergency Assessments.....	35
	(e)	Limited Common Area Assessments.....	35
	(f)	Individual Assessments.....	35
11.4		Assessment of Additional Property.....	35
11.5		Operations Fund.....	36
11.6		Reserve Fund. ....	36
	(a)	Establishment of Account .....	36

	(b) Funding of Reserve Fund. ....	36
	(c) Reserve Studies. ....	36
	(d) Use of Reserve Fund. ....	37
11.7	Commencement of Assessment Obligation; Time of Payment.....	37
11.8	Payment of Assessments .....	37
11.9	Advance Payments Upon Sale .....	37
11.10	Personal Obligations for Assessments .....	37
11.11	Voluntary Conveyance.....	37
11.12	Neighborhood Association’s Obligation to Pay Assessments.....	38
11.13	No Waiver.....	38
11.14	No Option to Exempt .....	38
11.15	Certificate.....	38
ARTICLE 12	ENFORCEMENT .....	38
12.1	Violation of General Protective Covenants.....	38
12.2	Default in Payment of Assessments; Enforcement of Lien.....	39
12.3	Interest, Late Charges and Expenses.....	39
12.4	Costs and Attorneys’ Fees.....	39
12.5	Assignment of Rents .....	40
12.6	Nonexclusiveness and Cumulation of Remedies .....	40
ARTICLE 13	DISPUTE RESOLUTION .....	40
13.1	Mediation .....	40
13.2	Arbitration. ....	41
13.3	Selection of Arbitrator.....	41
13.4	Consolidated Arbitration. ....	41
13.5	Discovery. ....	41
13.6	Evidence. ....	41
13.7	Excluded Matters. ....	41
13.8	Costs and Attorneys’ Fees.....	42
13.9	Survival .....	42
MORTGAGEES	55	
14.1	Subordination of Lien to Mortgages .....	42
14.2	Reimbursement of First Mortgagees.....	42
14.3	Notification of First Mortgagee.....	42
14.4	Notice to Association .....	42
ARTICLE 15	DECLARANT’S SPECIAL RIGHTS .....	43
15.1	Marketing Rights. ....	43
15.2	Declarant Easements. ....	43

15.3	Size and Appearance of Tetherow. ....	43
15.4	Dedications. ....	43
15.5	Annexations. ....	43
15.6	Subdivisions. ....	43
15.7	Right to Approve Changes in the Standards within Tetherow. ....	43
ARTICLE 16	AMENDMENT AND REPEAL .....	44
16.1	How Proposed. ....	44
16.2	Approval Required. ....	44
16.3	Recordation. ....	44
16.4	Regulatory Amendments. ....	44
ARTICLE 17	MISCELLANEOUS PROVISIONS .....	44
17.1	No Implied Obligations.....	44
17.2	Right to Approve Additional Covenants.....	44
17.3	Right to Transfer or Assign Declarant’s Rights .....	44
17.4	Joint Owners .....	45
17.5	Lessees and Other Invitees.....	45
17.6	Notice of Sale or Transfer of Title .....	45
17.7	Exclusive Rights to Use Name of Development .....	45
17.8	Nonwaiver.....	45
17.9	Consent. ....	45
17.10	Construction; Severability; Number; Captions .....	45
17.11	Terminology and Captions .....	45
17.12	Notices .....	46
Exhibit A	Property Initially Subject to this Declaration	
Exhibit B	Neighborhoods and Land Classifications Within Initial Development	
Exhibit C	Bylaws	

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

**THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS** (“Declaration”) is dated for reference purposes Oct 3, 2007, by **ARROWOOD TETHEROW, LLC**, an Oregon limited liability company (“Declarant”).

**RECITALS**

Declarant is the master planner of the real property located in Deschutes County, Oregon, upon which is being developed a mixed-use planned development to be known as “Tetherow”. Tetherow will contain several residential areas, a golf course and associated membership golf club, and overnight lodging facilities in accordance with the Final Destination Resort Master Plan No. TP-06-973, approved by Deschutes County, Oregon on October 9, 2006, as the same may be amended (the “Master Plan”). Declarant reserves the right to amend such Master Plan, subject to any approval required by applicable governmental authorities.

Declarant is adopting and recording this Declaration in order to impose mutually beneficial restrictions, easements, assessments and liens on the real property within Tetherow designated for residential development under a comprehensive general plan of improvement and development for the benefit of all of the Declarant, the Owners, the Units, the Golf Course Owner, and the Common Areas within Tetherow and any additional real property annexed into Tetherow. The real property initially subject to this Declaration is described on Exhibit "A" attached hereto (the “Property”). From time to time, Declarant may annex additional real property into the Property, and thereby make such real property subject to this Declaration. At the time of such annexation, Declarant reserves the right to supplement this Declaration as it relates specifically to the real property so annexed.

Prior to conveying any lot to an Owner other than Declarant, Declarant shall organize the Tetherow Owners Association (the “Association”), which shall be the owners’ association responsible for administering Tetherow. Supplemental declarations and plats relating to Tetherow may designate certain areas as Common Areas, which will be maintained by the Association, with funds raised through assessments of the owners of Units within Tetherow. Finally, development of Tetherow may result in the creation of Neighborhoods and sub-associations, such as a Condominium or a Planned Community Act owners’ association.

By adoption of these covenants, conditions and restrictions, Declarant is not committing itself to take any action for which definite provision is not made below, nor is Declarant prohibited from adding Improvements or undertaking any activity not described in this Declaration. One who acquires property in Tetherow will have the advantage of any further development of Tetherow, but shall not have any legal right to insist that there be any further or other development except as provided in this Declaration, in any plat of property in Tetherow or in any declaration which hereafter may be recorded.

Declarant and, with Declarant’s consent, any Neighborhood Declarant (as defined below) shall have the right with respect to all or any portion of Tetherow then owned by them, and from time to time, to petition for and obtain rezonings of such property; exchanges of properties; annexations to or incorporations within any boundary or jurisdiction of exchanges of properties; annexations to or incorporations within any boundary or jurisdiction of the County of Deschutes or the City of Bend; inclusions within any urban growth area; amendments to the Master Plan; and such licenses, permits and governmental approvals as Declarant may deem to be appropriate from time to time in connection with the then or anticipated use of such portion of Tetherow.

**NOW, THEREFORE**, Declarant hereby declares that the Property shall be subject to the following easements, covenants, restrictions and charges, which shall run with the Property and shall be binding upon all parties having or acquiring any right, title or interest in the Property or any part thereof and upon all persons who occupy any portion of the Property, and shall inure to the benefit of all such persons.

## Article 1

### DEFINITIONS

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

1.1 “**Additional Property**” means any additional property, whether or not owned by Declarant, which is made subject to this Declaration as provided in Section 2.2.

1.2 “**Architectural Review Committee**” means the committee appointed pursuant to Section Article 8 of this Declaration.

1.3 “**Articles**” means the Articles of Incorporation of the Association.

1.4 “**Assessments**” means all assessments and other charges, fines and fees imposed by the Association on an Owner in accordance with this Declaration, including, without limitation, General Assessments, Neighborhood Assessments, Special Assessments, Emergency Assessments, Limited Common Area Assessments and Individual Assessments as described in Article 11.

1.5 “**Association**” means the Tetherow Owners Association, an Oregon nonprofit corporation to be formed to serve as the owners’ association as provided in Article 9, and its successors and assigns.

1.6 “**Board**” or “**Board of Directors**” means the Board of Directors of the Association.

1.7 “**Builder**” means any licensed contractor who is constructing fifty (50) or more dwellings within the Property.

1.8 “**Bylaws**” means the bylaws of the Association as adopted and amended by the Board from time to time.

1.9 “**Club**” means the private golf club described in Section 3.11.

1.10 “**Common Areas**” means all real and personal property, including easements, that the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners, subject to use restrictions that may be described herein or in any Supplemental Declaration. Common Areas shall be designated as such in this Declaration, any Supplemental Declaration, any plat of the Property, or any conveyance from Declarant to the Association. Common Areas shall include any Improvements thereon, and may be further designated as Public Areas, Restricted Areas, Limited Common Areas, or Neighborhood Common Areas. Common Areas shall also include any Units converted to Common Areas as provided in Section 3.5.

1.11 “**Common Expenses**” shall mean all of the expenses incurred by or on behalf of the Association from time to time including such reserves as the Board may deem appropriate from time to time.

1.12 “**Declarant**” means Arrowood Tetherow, LLC, an Oregon limited liability company, and its successors and assigns, if a recorded instrument executed by Declarant assigns to the transferee all of the rights reserved to Declarant under this Declaration with respect to all or any portion of the Property.

1.13 “**Declaration**” means this Declaration of Covenants, Conditions, Restrictions and Easements for Tetherow as the same may be amended or supplemented from time to time in accordance with the provisions hereof.

1.14 “**Design Guidelines**” means the Architectural and Landscape Design Guidelines adopted by the Architectural Review Committee.

1.15 “**Development Period**” means the period of time between the date this Declaration is Recorded and the earliest of (a) when all of the property within the Master Plan has been developed and all of the Units in the last area to be annexed to this Declaration have been conveyed to Persons other than Declarant, a developer or a home builder; or (b) when, in its discretion, Declarant so determines, as evidenced by a Recorded document to that effect executed by Declarant.

1.16 “**Emergency Assessments**” shall have the meaning given that term in Section 11.3(d) below.

1.17 “**Fire Protection Standards**” means the Wildland Fire Protection Design and Maintenance Standards established for the Property by Deschutes County as part of the Master Plan.

1.18 “**General Assessments**” shall have the meaning given that term in Section 11.3(a).

1.19 “**Golf Course Owner**” means the holder or holders of record fee simple title to the Golf Course Property.

1.20 “**Golf Course Property**” means any parcel of land adjacent to, in the vicinity of, or within Tetherow which is privately owned and operated as a golf course by Persons other than the Association, and related and supporting facilities and improvements operated and/or maintained in connection with or incidental to such golf course.

1.21 “**Governing Documents**” means the Master Plan, this Declaration, the Articles, the Bylaws, any Supplemental Declaration, the Design Guidelines and any Rules and Regulations adopted by the Board.

1.22 “**Governmental Authority**” means the County of Deschutes, the State of Oregon, the United States of America and other governmental entity or agency that has or acquires jurisdiction over the Property or any portion thereof, or over sales of the Property, from time to time.

1.23 “**Improvement**” means any structure or improvement of any kind, including but not limited to any building, fence, wall, driveway, swimming pool, storage shelter, signage, monumentation or other product of construction efforts on the Property and shall also include landscaping.

1.24 “**Individual Assessments**” shall have the meaning given that term in Section 11.3.5.

1.25 “**Initial Development**” means the real property identified in Section 2.1.

1.26 “**Limited Common Area Assessments**” shall have the meaning given that term in Section 11.3(e).

1.27 “**Limited Common Areas**” means those Common Areas that are restricted to the exclusive use of the owners or occupants of certain Units as designated in this Declaration or a Supplemental Declaration.

1.28 “**Master Plan**” means the Final Destination Resort Master Plan No. TP-06-973 approved by Deschutes County, as the same may hereafter be amended.

1.29 “**Mortgage**” means a mortgage, deed of trust or real estate installment sale contract.

1.30 “**Mortgagee**” means a mortgagee under a mortgage, a beneficiary under a deed of trust, or a seller under a real estate installment sale contract.

1.31 “**Neighborhood**” means any area or areas designated by Declarant and comprised of discrete types of development, use or ownership within a portion of the Property, as established and restricted in this Declaration or a Supplemental Declaration.

1.32 “**Neighborhood Assessments**” means Assessments levied against Units in a specific Neighborhood to fund Neighborhood Expenses pursuant to Section 11.3(b).

1.33 “**Neighborhood Association**” means any association established for a specific Neighborhood pursuant to a Neighborhood Declaration.

1.34 “**Neighborhood Committee**” means a committee appointed or elected for a Neighborhood pursuant to Section 3.4.

1.35 “**Neighborhood Common Area**” means a portion of the Common Areas within a Neighborhood restricted in whole or in part to common use primarily by or for the benefit of the Owners owning Units within the Neighborhood and their families, tenants, employees, guests and invitees.

1.36 “**Neighborhood Declarant**” means the declarant of any Neighborhood Declaration or Person designated as such in this Declaration or any Supplemental Declaration establishing a Neighborhood.

1.37 “**Neighborhood Declaration**” means a declaration of easements, covenants, conditions and restrictions and all amendments thereto Recorded by an Owner establishing a plan of condominium ownership, cabin ownership, fractional ownership, shared use ownership, planned unit development, or otherwise imposing use restrictions on Units within a particular Neighborhood.

1.38 “**Neighborhood Expenses**” shall mean the portion of the costs and expenses incurred by the Association in connection with the ownership, administration, management, maintenance, repair, insurance and other activities for Neighborhood Common Areas, together with any other expenses designated as such in any Supplemental or Neighborhood Declaration.

1.39 “**Occupant**” means and refers to the occupant of a Unit who shall be the Owner, lessee or any other person authorized by the Owner to occupy the premises.

1.40 “**Operations Fund**” shall have the meaning given that term in Section 11.5.

1.41 “**Owner**” means the Person, including Declarant, owning any Unit within the Property, but, except as otherwise provided below, does not include a tenant or holder of a leasehold interest or a Mortgagee or other Person holding only a security interest in a Unit. If a Unit is sold under a recorded real estate installment sale contract, the purchaser (rather than the seller) will be considered the Owner unless the contract specifically provides to the contrary. If a Unit is subject to a written lease with a term in excess of one year and the lease specifically so provides, then upon filing a copy of the lease with the Board, the lessee (rather than the fee owner) will be considered the Owner during the term of the lease for the purpose of exercising any rights related to such Unit under this Declaration. The rights, obligations and other status of being an Owner commence upon acquisition of the ownership of a Unit and terminate upon disposition of such ownership, but termination of ownership shall not discharge an Owner from its obligations incurred prior to termination.

1.42 “**Person**” means a human being, a corporation, partnership, limited liability company, trustee or other legal entity.

1.43 “**Property**” means that real property described on the attached Exhibit A and any Additional Property annexed to this Declaration, and all existing and future Improvements located thereon, but excluding any property withdrawn from the provisions of this Declaration.

1.44 “**Public Areas**” means any portion of the Common Areas made available for use on a general or conditional basis by members of the public in any conveyance thereof executed by Declarant, in any plat of the Property, in this Declaration or in any Supplemental Declaration.

1.45 “**Recorded**” means filed in the official records of Deschutes County, Oregon.

1.46 “**Reserve Fund**” shall have the meaning given that term in Section 11.6.

1.47 “**Restricted Areas**” means portions of the Common Areas to which the Owners have limited or no access and which are so designated in any conveyance thereof executed by Declarant, in any plat of Tetherow, in this Declaration or any Supplemental Declaration, or by the Declarant or Board.

1.48 “**Shared Use**” shall mean any timeshare, vacation club, right to use, license, undivided or fractional fee interest or other means of acquiring ownership or access to a Unit for a specified period of time to the exclusion of other Persons holding comparable interests in or rights to the same portion of the Unit.

1.49 “**Special Assessments**” shall have the meaning given that term in Section 11.3(c).

1.50 “**Supplemental Declaration**” means an instrument recorded pursuant to Section 2.2 which subjects Additional Property to this Declaration, designates Neighborhoods, and/or imposes, expressly or by reference, additional or different restrictions and obligations on the Additional Property described in such instrument. The term shall also refer to an instrument recorded by Declarant to establish Voting Groups.

1.51 “**Tetherow**” means all property now or hereafter made subject to this Declaration.

1.52 “**Turnover Meeting**” means the meeting called by Declarant pursuant to Section 9.6(d) below, at which Declarant will turn over administration responsibility for Tetherow to the Association.

1.53 “**Unit**” means a portion of the Property, whether improved or unimproved, which may be independently owned and is intended for development, use and occupancy as an attached or detached residence. Lock-off units that are not separately owned, the Golf Course property, commercial properties and lodging/conference facilities are not Units for purposes of this Declaration. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon.

1.54 “**Voting Group**” means a group of Owners who vote on a common slate for election of directors of the Board, as more particularly described in Section 9.7.

1.55 “**Work**” shall have the meaning given that term in Section 8.4(a).

## Article 2

### PROPERTY SUBJECT TO THIS DECLARATION

2.1 **Initial Development.** The portion of the Property initially made subject to this Declaration is described in the attached Exhibit A and may, but need not, include Neighborhoods, Common Areas, Limited Common Areas, Neighborhood Common Areas, Public Areas, or Restricted Areas.

2.2 **Annexation of Additional Property.** Declarant may from time to time and in its sole discretion annex Additional Property to the Property. The annexation of such Additional Property shall be accomplished as follows:

(a) Declarant and, if applicable, the owner or owners of such real property, shall execute and Record a Supplemental Declaration that shall, among other things, describe the real property to be annexed,

designate the Neighborhood that such addition creates or of which it is a part, if any, establish any additional limitations, uses, restrictions, covenants and conditions that are intended to be applicable to such Additional Property, and declare that such real property is held and shall be held, conveyed, hypothecated, encumbered, used, leased, occupied and improved subject to this Declaration.

(b) The Additional Property described in any such Supplemental Declaration shall thereby become a part of the Property, shall be subject to this Declaration, and the Association shall have and shall accept and exercise administration of this Declaration with respect to such Additional Property.

(c) Notwithstanding any provision apparently to the contrary, a Supplemental Declaration with respect to any Additional Property may:

(i) modify or exclude any then existing restrictions and establish such new limitations, uses, restrictions, covenants and conditions with respect to such property as Declarant may deem to be appropriate for the development of the Additional Property; and

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

(d) There is no limitation on the number of Units which Declarant may create or annex to Tetherow, except as may be established by a Governmental Authority or by any applicable agreement. Similarly, there is no limitation on the right of Declarant to annex Common Areas, except as may be established by a Governmental Authority.

(e) Declarant does not agree to build any specific future Improvement, but does not choose to limit Declarant's right to add additional Improvements.

(f) Nothing in this Declaration shall establish any duty or obligation on Declarant to annex any property to this Declaration, and no owner of property excluded from this Declaration shall have any right to have such property annexed to this Declaration or Tetherow.

(g) Unless otherwise provided within the applicable Supplemental Declaration annexing the Units, upon annexation the Owners of such additional Units shall be entitled to Association voting rights that are consistent with the voting rights of Owners of other portions of the Property.

(h) The formula to be used for reallocating the Common Expenses, shall be as set forth in Section 11.4.

2.3 **Withdrawal of Property.** Declarant and, with the consent of Declarant, any Neighborhood Declarant, may withdraw property from the Property by an amendment to this Declaration executed by Declarant and, if applicable, the Neighborhood Declarant, and Recorded. All voting rights otherwise allocated to Units being withdrawn shall be eliminated, and the Common Expenses shall be reallocated to the remaining Units as provided in Section 11.4. Such withdrawal may be accomplished without prior notice and without the consent of any Owner if such withdrawal (a) is of all or a portion of the Property initially subject to this Declaration or Additional Property annexed pursuant to a Supplemental Declaration at any time prior to the first sale of a Unit in the Property initially subjected to this Declaration, or in the case of Additional Property, prior to the first sale of a Unit in such property so annexed or (b) if the property to be withdrawn was originally included in error or if the withdrawal is for the purpose of making minor adjustments to boundary lines which do not reduce the total number of Units. In addition, Declarant and, with the consent of Declarant, any Neighborhood Declarant, may withdraw any real property then owned by them or any Common Areas if such withdrawal is a result of any changes in their plans for the Property, provided that such withdrawal is approved by a majority of the voting rights in the Association. If a portion of the

Property is withdrawn, all voting rights otherwise allocated to Units being withdrawn shall be eliminated, and the common expenses shall be reallocated as provided in Section 11.4 below.

2.4 **Annexations into Municipalities and Other Governmental Actions.** Declarant and, with the consent of Declarant, any Neighborhood Declarant, shall have the right with respect to all or any portion of the Property then owned by them, and from time to time, to petition for and obtain rezonings of such property; exchanges of properties; annexations to or incorporations within any boundary or jurisdiction of a Governmental Authority; inclusions within any urban growth area; amendments to the Master Plan; and such licenses, permits and approvals from any Governmental Authority as they may deem to be appropriate from time to time in connection with the then or anticipated use of such portion of the Property.

2.5 **Dedications.** Declarant and, with the consent of Declarant, any Neighborhood Declarant, shall have the right to dedicate any portions of the Property then owned by them to any Governmental Authority, quasi-governmental entity or entity qualifying under Section 501(c)(3) of the Internal Revenue Code or similar provisions, from time to time, for such purposes as they may deem to be appropriate, including, without limitation, for utility stations, equipment, fixtures and lines; streets and roads; sidewalks; trails; open space; recreational facilities; schools; fire, police, security, medical and similar services; and such other purposes as they and such Governmental Authority or quasi-governmental entity shall determine to be appropriate from time to time. Any consideration received by them as a result of such dedication, by reason of any condemnation or any conveyance in lieu of condemnation, shall belong solely to the dedicating party.

### Article 3

#### NEIGHBORHOOD DESIGNATION, LAND CLASSIFICATIONS, GOLF CLUB RELATIONSHIP

3.1 **Creation of Neighborhoods.** The Property may contain one or more Neighborhoods, each of which may contain areas that have common uses, have access to certain Neighborhood Common Areas, are treated similarly for assessment or voting purposes, or share other common characteristics as determined by Declarant. Declarant reserves the right to designate which portions of the Property shall constitute a Neighborhood. Neighborhoods need not comprise the entirety of the Property, nor must all Units be part of a Neighborhood. A Neighborhood may be comprised of more than one housing type. Neighborhoods may include noncontiguous parcels of the Property.

3.2 **Supplemental Declarations.** Declarant reserves the right for Declarant and any Neighborhood Declarant to Record against the Neighborhood, as the same may be from time to time delineated in this Declaration or a Supplemental Declaration, or amendments thereto, additional covenants, conditions, restrictions, and reservations governing, expanding or confining the use of any such Neighborhood, reserving additional easements therein, and imposing Neighborhood Assessments upon the Owners of Units in such Neighborhood for the ongoing operation, maintenance, and repair of Neighborhood Common Areas or other portions of the Neighborhood.

3.3 **Neighborhood Associations.** The establishment of a Neighborhood may be accompanied by the formation of a Neighborhood Association. Neighborhood Associations shall be nonprofit corporations with memberships comprised of the Owners of the Units within such Neighborhoods. Declarant or any other Owner of all of the property comprising a Neighborhood may elect to cause any such Neighborhood Association to be formed for such purposes at any time after the Neighborhood Declaration is recorded and before any Units therein are conveyed to Owners. Following the Development Period, the Owners of Units within a Neighborhood, by majority vote and with the written consent of the Board, may elect to establish a Neighborhood Association. At the time a Neighborhood Association is formed, or at any time thereafter, Declarant or the Board may delegate to the Neighborhood Association certain of their respective rights and obligations with respect to the portion of the Property located within the Neighborhood and other Common Areas to which members of such Neighborhood have access. Such rights and duties may include, without limitation, the obligation to maintain Neighborhood Common Areas within the Neighborhood; establish and enforce Rules and Regulations; and hold title to and administer, manage, operate, and insure property and/or easements located within such Neighborhood. Certain obligations and rights with respect to matters affecting more than one Neighborhood may be delegated by Declarant or the Board to two or more of such Neighborhoods.

3.4 **Neighborhood Committees.** With respect to any Neighborhood within Tetherow that does not have a Neighborhood Association, the Board may appoint a Neighborhood Committee composed of three (3) to five (5) Owners of Units within such Neighborhood, which committee shall be responsible for recommending to the Board any Rules and Regulations pertaining to Neighborhood Common Areas, for decisions pertaining to the operation, use, maintenance, repair, replacement or improvement of such Neighborhood Common Areas, and for such other matters pertaining to the Neighborhood as the Board may elect to delegate to the Neighborhood Committee.

3.5 **Conveyance to the Association .** Declarant may elect to build common facilities on one or more Units and designate such Unit or Units as Common Areas by recording an amendment to this Declaration or by conveying such Units to the Association. If the Association accepts title to any real property transferred by an Owner, Declarant or the Golf Course Owner as a result of subsequently recorded amended final plats, certificates of correction, lot line adjustments and/or records of survey, the property received shall be Common Area unless the conveyance deed specifically provides otherwise.

3.6 **Conversion to Different Uses.** Declarant or any Neighborhood Declarant, with the consent of Declarant, may withdraw portions of the Property from any Neighborhood and its related Supplemental Declaration and may also include the portion so withdrawn in a different Neighborhood pursuant to the provisions of a different Supplemental Declaration, subject to the consent of the Neighborhood Declarant of the other Neighborhood. Such withdrawal shall be accomplished by and effective upon recording an amendment to the applicable Supplemental Declaration(s).

3.7 **Subdivisions.** Declarant or any Neighborhood Declarant, with the consent of Declarant, shall have the right to subdivide any Units then owned by it from time to time upon receiving all required approvals from any Governmental Authority. In the event any two or more Units are so subdivided, they shall be deemed separate Units for the purposes of allocating Assessments under this Declaration. No other Owner of any Unit in the Property may subdivide any Unit without the prior written approval of the Declarant during the Development Period and thereafter by the Architectural Review Committee, which consent may be granted or denied at the sole discretion of the Declarant or Architectural Review Committee, as applicable.

3.8 **Consolidations.** Declarant or any Neighborhood Declarant shall have the right to consolidate any two or more Units then owned by it upon receipt of any required approvals from any applicable Governmental Authority and recording any necessary amendment to this Declaration or the applicable Supplemental Declaration. No other Owner may consolidate any Units without the prior written approval of the Declarant and any Neighborhood Declarant during the Development Period and thereafter by the Architectural Review Committee, which may be granted or denied at the sole discretion of the Declarant or Architectural Review Committee, as applicable. An approved consolidation shall be effected by the Recording of a declaration stating that the affected Units are consolidated, which declaration shall be executed by the Owner(s) of the affected Units and by the president of the Association. Once so consolidated, the consolidated Unit may not thereafter be partitioned nor may the consolidation be revoked except as provided in Section 3.7 above. Any Units consolidated pursuant to this section shall be considered one Unit thereafter for the purposes of this Declaration, including voting rights and allocation of assessments.

3.9 **Condominium Conversions.** Declarant or any Neighborhood Declarant shall have the right to convert any Units then owned by it into a condominium or other form of ownership in any manner permitted by Oregon law and to otherwise create and terminate any condominium containing Units owned solely by it and other Owners who consent thereto.

3.10 **Land Classifications within Initial Development.** The Initial Development contains those land classifications and Neighborhoods as set forth in the attached Exhibit B.

3.11 **Relationship to Tetherow Golf Club.** The Golf Course Owner, Declarant or others intend to develop a private golf club on the Golf Course Property (the "**Club**"). The Club is separate and distinct from the Association. The Club will be governed by its own rules and requirements. Each Owner of a Unit shall be a

member of the club, and the rights and obligations of each Owner, in relation to the Club and the Golf Course Property, will be governed by the rules of the Club and that Owner's membership agreement with the Club. The Golf Course Property is privately owned, not part of the Common Areas, and no Owner has the right to use the Golf Club Property independent of its membership in the Club. The Club has the exclusive right to determine from time to time, in its sole discretion and without notice or approval of any change, how and by whom the Golf Course Property and any other facilities owned by the Club shall be used. OWNERSHIP OF A LOT AND MEMBERSHIP IN THE ASSOCIATION DOES NOT GIVE AN OWNER ANY VESTED RIGHT, LICENSE OR EASEMENT TO USE THE GOLF COURSE PROPERTY AND DOES NOT GRANT ANY OWNERSHIP OR MEMBERSHIP RIGHTS IN THE CLUB.

## Article 4

### UNITS

4.1 **Use and Occupancy.** The Owner of a Unit in the Property shall be entitled to the exclusive use and benefit of such Unit, except as otherwise expressly provided in this Declaration, but the Unit shall be bound by and the Owner shall comply with the restrictions made applicable to such Unit by this Declaration, any Supplemental Declaration or any applicable Neighborhood Declaration.

4.2 **Easements Reserved by Declarant.** In addition to any easements shown on recorded plats, Declarant hereby reserves or grants, as applicable, the following perpetual easements:

(a) **Adjacent Common Areas.** The Owner of any Unit which adjoins any Common Areas shall, if the Association elects from time to time to so require, permit the Association to enter upon the Unit to perform the maintenance of such Common Areas. The Owner and occupant of each Unit shall be responsible for controlling such Owner's or occupant's pets so as to not harm or otherwise disturb persons performing such maintenance on behalf of the Association.

(b) **Utility Easements.** Easements for the benefit of Declarant and the Association for installation and maintenance of utilities and drainage facilities are reserved over portions of certain Units and Common Areas as shown on the Recorded plat or as otherwise reserved in any Recorded document. Within the easements, no structure, planting or other material shall be placed or permitted to remain 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 systems, or in drainage infiltration facilities.

(c) **Utility Inspection and Repairs.** Each utility service provider and its agents or employees shall have authority to access all Units, but not Improvements constructed thereon, and the Common Areas, on which communication, power, gas, drainage, sewage or water facilities may be located for the purpose of installing, operating, maintaining, improving or constructing such facilities, reading meters, inspecting the condition of pipes and facilities, and completing repairs. The Owner of any such Unit will be given advance notice if possible. In the case of an emergency, as determined solely by the utility service provider, no prior notice will be required.

(d) **Easements for Encroachments.** Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Areas and between adjacent Units due to the unintentional placement or settling or shifting of the Improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration and the Design Guidelines) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

(e) **Easements for Maintenance, Emergency, and Enforcement.** Declarant grants to the Association easements over the Property as necessary to enable the Association to fulfill its maintenance

responsibilities. The Association shall also have the right, but not the obligation, to enter upon any Unit (including any dwelling thereon) for emergency, security, and safety reasons, to perform maintenance and to enter any portion of the Unit other than the dwelling located thereon to inspect for the purpose of ensuring compliance with and enforce the Governing Documents. Such right may be exercised by any member of the Board, any duly authorized agents and assignees of the Association, or any member or duly authorized representative of the Architectural Review Committee and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

(f) **Rights to Storm Water Runoff and Water Reclamation.** Declarant reserves for itself, and its designees, which may include any Golf Course Owner, all rights to ground water, surface water, and storm water runoff within the Property, and each Owner agrees, by acceptance of a deed to a Unit, that Declarant shall have all such rights. Such rights shall include an easement over the Property for access, and for installation and maintenance of facilities and equipment to capture and transport such water and runoff.

(g) **Future Easements.** Declarant reserves the non-exclusive right and power to grant and record such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the development of any of the Property. The location of any such easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed or conditioned.

#### 4.3 **Membership and Sales of Units.**

(a) **Membership and Sales of Units.** No Unit within the Property may be sold or transferred to any person, person(s) or entity (collectively, the "Transferee") unless and until such Transferee has been approved for Resident Golf or Social/Athletic Membership in the Tetherow Golf Club and complies with all applicable requirements related thereto, including payment of all applicable Membership Deposit, Membership Fee, and/or dues. The foregoing requirement shall not apply to institutional lenders who assume title to a Unit through foreclosure of a mortgage or trust deed on such Unit, but shall apply to any Transferee of such institutional lender. The Tetherow Golf Club is a private club, which shall approve or disapprove potential Transferees in its sole and absolute discretion. There shall be no appeal of a denial of membership to a potential Transferee except as may be established by the Tetherow Golf Club from time to time in its sole, and absolute discretion. Each Transferee shall be bound by the terms and conditions of membership in the Tetherow Golf Club, including all fees, dues, rules and regulations established by the Tetherow Golf Club as the same may be amended from time to time in the sole and absolute discretion of the Tetherow Golf Club.

(b) **Membership Terms.** Each Owner, by acceptance of a deed or recorded contract of sale to a Unit acknowledges that privileges to use any property owned or operated by the Club shall be subject to the terms and conditions of the membership documents for Tetherow Golf Club, as the same may be amended from time to time (the "Membership Plan Documents"). All Owners (excluding the Declarant) approved for membership must acquire and maintain in good standing at least a "Social/Athletic Membership" in Tetherow Golf Club as described in the Membership Plan Documents. Acquisition of a membership in the Club requires the payment of a membership purchase price called a Membership Deposit or Membership Fee, and membership dues, fees and other amounts. The Club owner, as set forth in the Membership Plan Documents, shall determine these amount for Tetherow Golf Club. Notwithstanding the fact that the Club Property is open space or a recreation area for purposes of applicable zoning ordinances and regulations, each Owner by acquisition of title to a Unit releases and discharges forever the Declarant, the Club, their affiliates, successors and assigns and their respective members, partners, shareholders, officers, directors, employees and agents from: (1) any claim that the Club Property is, or must be, owned and/or operated by the Association or the Owners, and/or (2) any claim that the Owners are entitled to use the Club Property by virtue of their ownership of a Unit without acquiring a membership in the Club, paying the applicable Membership Deposit or Membership Fee, and dues, fees and chares established by the Club from time to time, and complying with the terms and condition of the membership Plan Documents for the Club.

## Article 5 COMMON AREAS

5.1 **Title to Common Areas.** Except for the portions thereof dedicated to the public or any Governmental Authority, title to the Common Areas (other than easements) shall be conveyed to and shall be accepted by the Association by Declarant or applicable Neighborhood Declarant AS IS, but free and clear of monetary liens (except for nondelinquent taxes and assessments) on or before the Turnover Meeting.

5.2 **Use of Common Areas.** The Common Areas shall not be partitioned or otherwise divided into parcels for residential use, and no private structure of any type (except utility or similar facilities permitted by Declarant or the Association) shall be constructed on the Common Areas. Except as otherwise provided in this Declaration, the Common Areas shall be reserved for the use and enjoyment of all Owners and no private use may be made of the Common Areas. No Owner shall place or cause to be placed on the Common Areas any trash, structure, equipment, furniture, package or object of any kind. Nothing in this Declaration shall prevent the placing of a sign or signs upon the Common Areas by Declarant, a Neighborhood Declarant or the Association identifying the Property or any Neighborhood or identifying trails or identifying items of interest, including traffic and directional signs, provided such signs are approved by the Architectural Review Committee and comply with any applicable sign ordinances. The Board shall have authority to abate or enjoin any trespass or encroachment upon the Common Areas at any time, by any reasonable means and with or without having to bring legal proceedings. A Supplemental Declaration annexing Additional Property may provide that the Owners of such Additional Property do not have the right to use a particular Common Area or facility located on such Common Area, in which event the same shall automatically become Limited Common Areas assigned to the Units having access thereto as described in such Supplemental Declaration.

5.3 **Easements Retained by Declarant.** So long as it owns any Unit, Declarant and each Neighborhood Declarant shall retain an easement over, under and across the Common Areas to carry out management and sales activities necessary or convenient for the sale of Units, including, without limitation, advertising and "For Sale" signs. Declarant, for itself, Neighborhood Declarants and their successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under and across the Common Areas and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the Improvements on the Property or other real property owned by them; provided, however, that no such rights shall be exercised in such a way as to unreasonably interfere with the occupancy, use, enjoyment or access to a Unit by the Owner thereof or such Owner's family, tenants, employees, guests or invitees.

5.4 **Easement to Serve Other Property.** Declarant reserves for itself and its duly authorized agents, successors, assigns, and mortgagees, and the developers of Improvements in all future phases of Tetherow, a perpetual easement over the Common Areas for the purposes of enjoyment, use, access, and development of the property subject to the Master Plan, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Areas for construction, utilities, water and sanitary sewer lines, communication lines, drainage facilities, irrigation systems, signs and ingress and egress for the benefit of other portions of Tetherow and any Additional Property that becomes subject to this Declaration or any property in the vicinity of the Property or additional property that is then owned by Declarant or an affiliate thereof. Such easements shall include, for example, an easement over the Meek Trail for a secondary entrance for the lodging/conference facilities and signage for the Golf Course Property and any lodging/conference facility, commercial facilities or recreational amenities. Declarant agrees that such users shall be responsible for any damage caused to the Common Areas as a result of their actions in connection with development of such property. If the easement is exercised for permanent use by such property and such property or any portion thereof benefiting from such easement is not made subject to this Declaration, Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of any maintenance of such facilities. The allocation of costs in any such agreement shall be based on the relative extent of use of such facilities.

5.5 **Owners' Easements.** Subject to provisions of this Article and except for Restricted Areas, every Owner and the Owner's tenants and guests shall have a right and easement in and to the Common Areas for the uses for which they are established, which easement shall be appurtenant to and shall pass with the title to every Unit. The use of Limited Common Areas, however, shall be limited to the Owners of the Units to which the Limited

Common Areas are assigned in this Declaration or any applicable Supplemental Declaration and their respective tenants, invitees and licensees.

5.6 **Extent of Owners' Rights.** The rights and easements of enjoyment in the Common Areas created hereby shall be subject to the following and all other provisions of this Declaration:

- (a) The Governing Documents;
- (b) Any restrictions or limitations contained in any deed or other instrument conveying such property to the Association;
- (c) Easements reserved to Declarant and each Neighborhood Declarant for themselves and the Association for underground installation and maintenance of power, gas, electric, water and other utility and communication lines and services installed by or with the consent of Declarant, or the Neighborhood Declarant, or with the approval of the Board and any such easement shown on any plat of the Property and for construction, maintenance, repair and use of Common Areas and any Improvements thereon;
- (d) Easements granted by Declarant, any Neighborhood Declarant or the Association to Governmental Authorities or companies providing utility and communications services and to police, fire and other public officials and to employees of utility companies and communications companies serving the Property;
- (e) The Board's right to:
  - (i) adopt Rules and Regulations regulating use and enjoyment of the Common Areas, including rules limiting the number of guests who may use the Common Areas;
  - (ii) suspend the right of an Owner to use recreational facilities within the Common Areas as provided in this Declaration;
  - (iii) dedicate or transfer all or any part of the Common Areas, subject to such approval requirements as may be set forth in this Declaration;
  - (iv) permit use of any recreational facilities situated on the Common Areas by persons other than Owners, their families, lessees, and guests with or without payment of use fees established by the Board;
  - (v) designate areas and facilities of Common Areas as Public Areas or Restricted Areas; and
  - (vi) provide certain Owners the rights to the exclusive use of those portions of the Common Areas designated Limited Common Areas or Neighborhood Common Areas.

5.7 **Enjoyment of Owners' Rights.** Any Owner may extend the Owner's right of use and enjoyment of the Common Areas to the members of the Owner's family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases the Owner's Unit shall be deemed to have assigned all such rights to the lessee of such Unit for the period of the lease.

5.8 **Alienation of the Common Areas.** The Association may not encumber, sell or transfer title to the Common Areas owned directly or indirectly by the Association for the benefit of the Owners unless such encumbrance, sale or transfer has been approved by at least eighty percent (80%) of the Class A voting rights and the Class B Member. Such approvals shall not be required for the granting of easements as otherwise permitted in this Declaration or dedications under Section 2.5. An Owner, Declarant, Neighborhood Declarant or the Golf Course Owner who receives title to any portion of the Common Area which is transferred by the Association as a

result of subsequently recorded amended final plats, certificates of correction, lot line adjustments and/or records of survey shall take such property free and clear of any requirement that such land be devoted to use as Common Area. Upon conveyance, such land may be used for any purpose for which land adjacent to it may be used.

5.9 **Public, Recreational or Service Areas.** Declarant, at the time Declarant designates Common Areas or conveys Common Areas to the Association, or thereafter the Association, may designate certain portions of such Common Areas as Public Areas which may be used by members of the public on a free or on a fee-paying basis as set forth in such designation or conveyance or as determined by the Board. Owners shall be permitted to use such Public Areas either on a free basis or for fees that are no higher than those charged to members of the public for an equivalent use or service, as determined solely by the Association. Any proceeds from such Public Areas shall be paid to the Association.

5.10 **Open Space Areas.** Any portion of the Property designated as "open space areas" on the Master Plan, as that term is used in DCC § 18.113.030.E, shall be maintained as open space areas and no improvements shall be constructed therein. Such areas shall also be subject to Deschutes County requirements pertaining to wildland fire protection, noxious weed control and trails, including, without limitation, the Fire Protection Standards.

5.11 **Restricted Areas.** Declarant or the Association shall have the right from time to time to designate portions of the Common Areas that may not be entered or used by any of the Owners other than Declarant and the Association or such of their respective agents or representatives as may be reasonably required for their preservation, care, maintenance or renewal, to enforce these restrictions, or for such other limited purposes that are permitted by Declarant or the Board. Restricted Areas may include environmentally or historically sensitive areas, riparian corridors, wetlands, and other areas Declarant or Board desire to preserve in their natural state or otherwise preserve for the protection of wildlife, personal safety, security or other mutually beneficial purposes. The Restricted Areas may be removed, enlarged or reduced or other portions of Tetherow may be added to Tetherow by Declarant or the Board from time to time to the extent reasonably necessary to achieve such purposes.

5.12 **Easements.** Easements may be reserved as part of the Common Areas for signage and visual landscape features, or as otherwise provided in the Supplemental Declaration or other instrument establishing the easement. Such easements are to be maintained by the Association and no changes in landscaping will be permitted without written authorization by the Architectural Review Committee. No building, wall, fence, paving, landscaping or construction of any type shall be erected or maintained by any Owner so as to trespass or encroach upon easements included in the Common Areas.

5.13 **Limited Common Areas.**

(a) **Purpose.** Certain portions of the Common Areas may be designated by Declarant, any Neighborhood Declarant or the Association as Limited Common Areas and reserved for the exclusive use or primary benefit of Owners and occupants of specified Units. By way of illustration and not limitation, Limited Common Areas may include private access roads serving certain Units. All costs associated with maintenance, repair, replacement, and insurance of Limited Common Areas shall be allocated among the Owners of the Units to which the Limited Common Areas are assigned.

(b) **Initial Designation.** Limited Common Areas may be designated as such in the instrument by which they are conveyed to the Association or in any Supplemental Declaration annexing Additional Property to this Declaration, but any such assignment shall not preclude Declarant from later assigning use of the same Limited Common Areas to additional Units.

(c) **Subsequent Assignments.** Limited Common Areas may be converted to Common Areas and Limited Common Areas may be reassigned upon (i) approval by the Board and (ii) the vote of two-thirds of the voting rights of Units to whom any of such Limited Common Areas are then assigned. Any such conversion or reassignment shall also require Declarant's written consent if made during the Development Period.

(d) **Use by Others.** Upon approval of a majority of the voting rights of Owners of Units to which any Limited Common Area is assigned, the Association may permit other Owners to use all or a portion of such Limited Common Area upon payment of reasonable user fees, which fees shall be used to offset the expenses attributable to such Limited Common Area.

#### 5.14 **Neighborhood Common Areas.**

(a) **Purpose.** Certain portions of the Common Areas may be designated by Declarant, a Neighborhood Declarant or the Association as Neighborhood Common Areas and reserved for the exclusive use or primary benefit of Owners and occupants within a particular Neighborhood or Neighborhoods. By way of illustration and not limitation, Neighborhood Common Areas may include entry features, recreational facilities, landscaped medians and cul-de-sacs, lakes, community gardens or open space. All costs associated with maintenance, repair, replacement, and insurance of Neighborhood Common Areas shall be a Neighborhood Expense allocated among the Owners in the Neighborhood(s) to which the Neighborhood Common Areas are assigned.

(b) **Initial Designation.** Any Neighborhood Common Areas shall be designated as such in the instrument by which they are conveyed to the Association, or in any applicable Supplemental Declaration or Neighborhood Declaration, but any such assignment shall not preclude Declarant or a Neighborhood Declarant from later assigning use of the same Neighborhood Common Areas to additional Neighborhoods.

(c) **Subsequent Assignments.** A portion of the Common Areas may be assigned as Neighborhood Common Areas and Neighborhood Common Areas may be reassigned upon (i) approval by the Board, (ii) the vote of a majority of the votes in the Neighborhood or Neighborhoods in which such Common Areas are and will be located, if any, and (iii) for reassignments of Neighborhood Common Areas or conversion of Neighborhood Common Areas to Common Areas, the vote of two-thirds of the voting rights of Units to whom any of such Neighborhood Common Areas are then assigned. Any such assignment or reassignment shall also require Declarant's written consent if made during the Development Period.

(d) **Use by Others.** Upon approval of a majority of the voting rights of Owners of Units within the Neighborhood to which any Neighborhood Common Areas is assigned, the Association may permit Owners of Units in other Neighborhoods to use all or a portion of such Neighborhood Common Areas upon payment of reasonable user fees, which fees shall be used to offset the Neighborhood Expenses attributable to such Neighborhood Common Areas.

## Article 6

### GOLF COURSE PROPERTY

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

6.2 **Rights of Access and Parking.** There is hereby granted for the benefit of the Golf Course Property and the Club members (regardless of whether such members are Owners hereunder), guests, invitees, employees, agents, contractors, and designees, a right and nonexclusive easement of access and use over all roadways located within the Property reasonably necessary to travel between the entrance to the Property and the Golf Course Property and over those portions of the Property (whether Common Areas or otherwise) reasonably necessary to the operation, maintenance, repair, and replacement of the Golf Course Property. Without limiting the generality of the foregoing, Club members and guests and invitees of the Golf Course Property shall have the right

to park their vehicles on the roadways located within the Property at reasonable times before, during, and after golf tournaments and other special functions held by or at the Golf Course Property to the extent that the Golf Course Property has insufficient parking to accommodate such vehicles; provided, however, such roadways must be kept free and clear of all obstructions and in a safe condition for vehicular use at all times. Such easement, however, shall not apply to roadways within gated areas. The Association may not impose any restrictions, limitations or requirements for entry into the Golf Course Property which are not imposed and enforced against all Owners and invitees. If vehicle passes are issued to Association's members, they must be made available to the Golf Course Owner and its invitees on the same terms as they are made available to Association's members.

**6.3 Design Control.** Declarant, any Neighborhood Declarant, the Association, any Neighborhood Association, or any Architectural Review Committee, shall not approve any construction, addition, alteration, change, or installation on or to any portion of the Property which is adjacent to, or otherwise in the direct line of sight of, the Golf Course Property without (i) giving the Golf Course Owner at least fifteen (15) days prior written notice of its intent to approve the same, together with copies of the request and all other documents and information finally submitted in such regard and (ii) receiving approval from the Golf Course Owner. The Golf Course Owner shall then have fifteen (15) days to respond in writing approving or disapproving the proposal, stating in detail the reasons for any disapproval. The failure of the Golf Course Owner to respond to the notice within the fifteen (15) day period shall constitute a waiver of such Owner's right to object to the matter. This section shall also apply to any work on the Common Area or any Neighborhood Common Area, but shall not apply to any construction, addition, alteration, change or installation by Declarant. This section may not be amended in a manner which would adversely affect the rights of the Golf Course Owner without such Owner's written consent.

**6.4 Limitation on Amendments.** In recognition of the fact that the provisions of this Article are for the benefit of the Golf Course Property, no amendment to this Article, and no amendment in derogation of any other provisions of this Declaration benefiting the Golf Course Property, may be made without the written approval of the Golf Course Owner. The foregoing shall not apply, however, to amendments made by Declarant in exercising any rights reserved under this Declaration.

**6.5 Ownership and Operation of the Golf Course Property.** All Persons, including all Owners, are hereby advised that no representations or warranties have been or are made by Declarant or any other Person with regard to the continuing existence, ownership or operation of the Golf Course Property, and no purported representation or warranty in such regard, either written or oral, shall ever be effective without an amendment to this Declaration executed or joined into by Declarant. Further, the ownership and/or operation of the Golf Course Property, if any, may change at any time and from time to time by virtue of, but without limitation, (a) the sale to or assumption of operations of the Golf Course Property by an independent entity or entities; (b) the creation or conversion of the ownership and/or operating structure of the Golf Course Property to an "equity" club or similar arrangement whereby the Golf Course Property or the rights to operate it are transferred to an entity which is owned or controlled by its members; or (c) the transfer of ownership or control of the Golf Course Property to one or more affiliates, shareholders, employees, or independent contractors of Declarant. The Golf Course Owner may convert the private golf course to a public golf course with the approval of the requisite number of the Club members pursuant to the governing documents for the Club. No consent of the Association or any Owner shall be required to effectuate such transfer or conversion.

**6.6 Additional Restrictions.** Declarant hereby reserves for itself and grants for the benefit of the Golf Course Owner the easements set forth in this Article. Declarant reserves the right to impose such additional restrictions relating to such easements as may from time to time reasonably be required to effectuate the purposes of such easements.

**6.7 Jurisdiction and Cooperation.** It is Declarant's intention that the Association and the Golf Course Owner shall cooperate to the maximum extent possible in the operation of the Property. The Association shall have no power to promulgate rules and regulations that would materially and adversely affect the typical golfing activities on or use of the Golf Course Property.

**6.8 Appearance of the Golf Course Property.** Each Owner acknowledges and agrees that neither any Owner nor the Association shall have any right to compel the Golf Course Owner to maintain the Golf Course

Property or any improvements thereon to any particular standard of care and that the appearance of the Golf Course Property and improvements thereon shall be determined in the sole discretion of the Golf Course Owner.

6.9 **Golf Course Uses.** The Golf Course Property is intended to be used for activities typically associated with the game of golf, and except for golf carts and vehicles used by the Golf Course Owner to improve, maintain and repair any Golf Course Property, no motorized vehicles, including snowmobiles, all terrain vehicles, dirt bikes and other vehicles designed primarily for off-road use shall be permitted on the Golf Course Property. Snowshoeing and cross-country skiing during appropriate periods will be allowed only with the Golf Course Owner's consent. Additionally, the following provisions relate to any Golf Course Property and to portions of the Property:

(a) **Private Ways.** All Common Areas immediately adjacent to the Golf Course Property shall be subject to an easement for golf course purposes, including roads, signs, cart paths, irrigation systems and the right of ingress and egress for making improvements and changes to the Golf Course Property, golf course management, golf course maintenance and repair, and for players during the regular course of play on the Golf Course Property.

(b) **Golf Cart Path Easement.** Any easements for golf cart paths or trails designated as such on any plat of the Property or in any Supplemental Declaration annexing Additional Property or any pathway serving any Golf Course Property that is designated as a cart path by signage or by rules adopted by the Association shall be used for golf cart paths, pedestrian walkways, maintenance and vehicle access, and access to the Golf Course Property. Nothing shall be placed in or maintained on any golf cart path easement which shall interfere with utilization thereof for the purposes for which it was intended.

(c) **Golf Course Easements over Adjoining Units.** Any Golf Course Property easements over adjoining Units designated as such on any Plat may be developed as part of any Golf Course Property and may be used as part of the Golf Course Property. No Owner may landscape or place any Improvement, fence, rope or barrier within a Golf Course Property easement without the prior written consent of the Golf Course Owner and the approval of the Architectural Review Committee. Nothing in this provision shall be construed as requiring the Golf Course Owner to water or landscape such easement areas.

(d) **Overspray.** Any portion of the Property immediately adjacent to the Golf Course Property is hereby burdened with a non-exclusive easement in favor of the adjacent Golf Course Property for overspray of water from the irrigation system serving such Golf Course to the extent reasonably required for the maintenance of the Golf Course Property. Under no circumstances shall the Association or the owner of the Golf Course Property be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

(e) **Irrigation System.** The Golf Course Owner, its respective agents, employees, and contractors, successors, and assigns, shall have a perpetual non-exclusive easement, to the extent reasonably necessary, over the Property, but not under or through any buildings, for the installation, operation, maintenance, repair, replacement, monitoring, and controlling of irrigation systems and equipment, including without limitation, well, pumps, and pipelines, serving all or portions of the Golf Course Property.

(f) **Golf Course Utilities.** The Golf Course Owner, its respective agents, successors, and assigns, employees, and contractors shall have a perpetual, non-exclusive easement to the extent reasonably necessary, over the Property (but not under or through any buildings) for the installation, maintenance, repair, replacement, and monitoring of utility lines, wires, drainage swales, pipelines and structures serving all or portions of the Golf Course Property.

(g) **Natural Water Runoff.** All of the Property is hereby burdened with easements in favor of the Golf Course Property for natural drainage of storm water runoff from the Golf Course Property.

(h) **Lakes and Water Features.** The Golf Course Owner may own one or more lakes, water retention ponds or other water features within Tetherow. Notwithstanding the ownership of such lakes or water retention ponds, the Golf Course Owner may use any and all lakes, water retention ponds or other water features within Tetherow for the purpose of irrigating and maintaining the Golf Course Property with the result that the water level in such lakes, water retention ponds or other water features may from time to time vary. Each Owner of a Unit acknowledges such right on the part of the Golf Course Owner and agrees not to commence any cause of action or other proceeding involving the Golf Course Owner based on the exercise of such right or otherwise interfere therewith.

(i) **Golf Balls.** Each Unit, Common Area and Neighborhood Common Area adjoining or adjacent to the Golf Course Property shall be subject to an easement permitting golf balls to come onto such property.

(j) **Golf Tournaments.** Golf tournaments or similar functions may be held at the Golf Course Property from time to time to which members of the public will be invited as spectators or participants. The Golf Course Property and Golf Course Owner shall have and is hereby granted a non-exclusive easement over and across the Common Area appurtenant to such Golf Course Property for all purposes reasonably necessary to hold and conduct tournament play at such Golf Course Property including without limitation, ingress and egress by vehicular and pedestrian traffic, parking, utility services, directional signs, traffic control and other related uses. During such periods, the Golf Course Owner shall have the right to take all reasonable actions which are appropriate for holding such an event. Such Golf Course Owner is solely responsible for all additional costs incurred as a result of the tournament and shall repair any damage caused to the Common Area as a result of the tournament. The Association shall have no right to prohibit or impair the ability of the Golf Course Owner to take any and all reasonable actions which are appropriate for holding a tournament. Each Owner acknowledges that certain inconveniences to Owners may result from holding such tournaments. The types of inconveniences occurring during such tournaments may include, by way of example and not limitation, construction by Declarant, the Golf Course Owner, tournament operators or sponsors, of television towers or other structures on the Golf Course Property which would be visible from a Unit and which may obstruct the view of the Golf Course Property from a Unit; noise associated with the construction and destruction of structures and equipment associated with such tournaments, encroachment on a Unit by spectators, and other inconveniences relating to or caused by spectators, golfers and others involved with the operation of tournaments. Each Owner, including Owners of Units adjacent to the Golf Course Property, further acknowledges that no representations are made by Declarant, the Association, the Golf Course Owner, or any other entity that Owners will be afforded any rights to view or attend such tournaments or functions other than such rights as are afforded members of the general public. The Golf Course Property shall not be used for more than twelve (12) tournaments per year.

(k) **Intrusion Onto Golf Course Property.** Neither the Association nor any Owner shall have any right of entry onto any portion of the Golf Course Property without the prior written consent of the Golf Course Owner. All permitted entry shall be made only through entry points designated by the Golf Course Owner; no Owner may access any portion of the Golf Course Property from any adjacent residential Unit. Neither the Association nor any Owner may permit any irrigation water to overspray or drain from its Common Area or Unit onto any portion of the Golf Course Property without approval of the Golf Course Owner. Neither the Association nor any Owner may permit any fertilizer, pesticides or other chemical substances to overspray, drain, flow or be disposed of in any manner upon any portion of the Golf Course. If the Association or any Owner violates the provisions of this paragraph, it shall be liable to the Golf Course Owner for actual damages suffered by the Golf Course Owner, including out-of-pocket costs to repair such damage.

(l) **Right of Maintenance and Entry.** Subject to notice and opportunity to cure as set forth below, if either the Association or an Owner (“**Defaulting Party**”) fails to maintain any landscaping or Improvements situated adjacent to any portion of the Golf Course Property and within twenty (20) feet of any portion of the Golf Course Property, the Golf Course Owner shall have the right, but not the duty, to maintain the landscaping or Improvement at the sole cost and expense of the Defaulting Party. The Golf Course Owner shall first notify the Association in writing and provide the Association at least thirty (30) days from the date of the notice to perform such maintenance or to cause the Defaulting Party to do so. If the Association or Defaulting Party fails to commence and complete such maintenance within said thirty (30) day period, the Golf Course Owner shall have the

right to enter the Unit, except for any dwelling located on such Unit, or Common Area on which the maintenance is required during reasonable business hours and perform such maintenance. Written notice of the costs incurred by the Golf Course Owner in performing such maintenance and/or repair shall be given to the Defaulting Party who shall have ten (10) days to reimburse the Golf Course Owner in full.

(m) **Interference with Golf Course Operations.** Owners and their invitees shall not engage in any action which would distract from the playing quality of the golf course. Such actions include but are not limited to burning materials where the smoke will cross the golf course, maintaining pets which are creating excess noise, playing loud radios, stereos, televisions or musical instruments, running, walking, jogging, bicycle riding, or skateboarding on the fairways or golf cart paths, picking up golf balls, or otherwise interfering with play.

(n) **Liquor Sales.** The Golf Course Property may be used for the sale of liquor to be consumed on-site and/or off-site. In addition, special event liquor licenses and other permits may be obtained for activities within the Property from time to time. Special event liquor licenses for events held within Common Area or for events which utilize Common Area are subject to the approval of the Board; the Board shall have sole and absolute discretion to determine whether to grant approval of any request. By acceptance of a deed to a Unit, each Owner agrees not to contest any application for a liquor license to be used for the sale of liquor within the Golf Course Property and not to object to any special event liquor licenses applied for or issued from time to time.

(o) **Golf Course Signs.** Appropriate signs may be displayed by the Golf Course Owner to identify, warn and otherwise control crossings of streets and roads within Tetherow by golf carts and pedestrian golfers; permanent and temporary signs may be displayed by the Golf Course Owner to identify the Golf Course Property and provide appropriate directions to the Golf Course Property for motorists and pedestrians; markers may be displayed by the Golf Course Owner to identify the boundaries of the Golf Course Property; and the Golf Course Property and Golf Course Owner shall have and are hereby granted a non-exclusive easement over and across the Common Area appurtenant to such Golf Course Property for the purposes of locating, establishing, maintaining, repairing, replacing and lighting all of its signs permitted pursuant to this Declaration.

(p) **Right to Photograph.** Declarant hereby reserves for itself and hereby grants to the Golf Course Owner, a non-exclusive easement and right to display, use and distribute for any and all purposes photographs, video recording and similar reproductions of all Improvements that are readily visible from the Golf Course Property.

**6.10 Ownership of Property Near Golf Course.** By acceptance of a deed to a Unit, each Owner acknowledges and agrees that owning property adjacent to the golf course has benefits as well as detriments and that the detriments include: (a) the risk of damage to property or injury to persons and animals from golf balls which are hit onto an Owner's Unit or other portion of the Project utilized by the Owner; (b) the entry by golfers onto Owner's Unit or other portions of the Project utilized by the Owner to retrieve golf balls; (c) overspray in connection with the watering of the roughs, fairways and greens on the golf course; (d) noise from golf course maintenance and operation equipment (including, without limitation, irrigation systems, compressors, blowers, mulchers, tractors, utility vehicles and pumps, all of which may be operated at all times of the day and night and/or continuously); (e) odors arising from irrigation and fertilization of the turf situated on the golf course; (f) disturbance and loss of privacy resulting from golf cart traffic and golfers; and (g) noise, vehicular and pedestrian traffic, congestion and loss of privacy as a result of tournaments held on the golf course. Additionally, each Owner acknowledges that pesticides and chemicals may be applied to the golf course throughout the year and that reclaimed water, treated waste water, or other sources of non-potable water may be used for irrigation of the golf course. **Each Owner expressly assumes such detriments and risks and agrees that neither the Association, Declarant, any Neighborhood Declarant, the Golf Course Owner or managers of the golf course, nor any of their successors or assigns shall be liable to the Owner or anyone claiming any loss or damage, including, without limitation, indirect, special or consequential loss or damage arising from personal injury, destruction of property, trespass or any other alleged wrong or entitlement to remedy based upon, due to, arising from or otherwise related to the proximity of the Owner's Unit or Improvements to the golf course, including, without limitation, any claim arising in whole or in part from the negligence of the Association, Declarant, Neighborhood Declarants, the managers or Golf Course Owner of the golf course, or their successors or assigns. Each Owner hereby agrees to indemnify and hold harmless the Association, Declarant,**

Neighborhood Declarants and the Golf Course Owner, managers of the golf course, and their respective successors and assigns, against any and all such claims by Owner's invitees.

## Article 7

### PROPERTY USE RESTRICTIONS

7.1 **Structures Permitted.** No structures shall be erected or permitted to remain on any Unit except structures containing residential dwellings and structures normally accessory thereto as approved by the Architectural Review Committee. No swimming pool may be constructed without the approval of the Architectural Review Committee and, if abutting the Golf Course Property, the Architectural Review Committee shall seek input from the Golf Course Owner and shall provide to the Golf Course Owner a copy of the pool plan submittal by an Owner. The Golf course Owner shall have fifteen (15) business days to submit comments on the plan submittal, and the Architectural Review Committee shall review the Golf Course Owner's comments in rendering its decision.

7.2 **Residential Use.** Units shall only be used for residential purposes. Except with the consent of the Board, no trade, craft, business, profession, commercial or similar activity of any kind shall be conducted on any Unit, nor shall any goods, equipment, vehicles, materials or supplies used in connection with any trade, service or business be kept or stored on any Unit. The mere parking on a Unit of a vehicle bearing the name of a business shall not, in itself, constitute a violation of this provision. Nothing in this paragraph shall be deemed to prohibit (a) activities relating to the rental or sale of Units, including, without limitation, overnight lodging, (b) the right of Declarant or any contractor or home builder to construct Improvements on any Unit, to store construction materials and equipment on such Units in the normal course of construction, and to use Units as sales or rental offices or model homes or apartments for purposes of sales or rental in Tetherow, and (c) the right of the Owner of a Unit to maintain his or her professional personal library, keep his personal business or professional records or accounts, handle his or her personal business or professional telephone calls or confer with business or professional associates, clients or customers, in his or her Unit by appointment only. The Board shall not approve commercial activities otherwise prohibited by this paragraph unless the Board determines that only normal residential activities would be observable outside of the Unit (which activities may be specified in Rules and Regulations adopted by the Board) and that the activities would not be in violation of applicable governmental ordinances.

7.3 **Offensive or Unlawful Activities.** No noxious or offensive activities shall be carried on upon any Unit, nor shall anything be done or placed on any Unit that interferes with or jeopardizes the enjoyment of other Units or the Common Areas, or that is a source of annoyance to Occupants. Occupants shall use extreme care about creating disturbances, making noises or using musical instruments, radios, televisions, amplifiers and audio equipment that may disturb other occupants of Units. No unlawful use shall be made of a Unit nor any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. Owners and other Occupants shall not engage in any abusive or harassing behavior, either verbal or physical, or any form of intimidation or aggression directed at other Owners, Occupants, guests, or invitees, or directed at the managing agent, its agents or employees, or vendors.

7.4 **Animals.** No animals, livestock or poultry of any kind shall be raised, bred, kept or permitted within any Unit other than a reasonable number of household pets which are not kept, bred or raised for commercial purposes and which are reasonably controlled so as not to be a nuisance. All domestic cats owned by Owners shall be kept indoors at all times. Any inconvenience, damage or unpleasantness caused by such pets shall be the responsibility of the respective Owners thereof. No pets shall be permitted to roam the Property unattended, and all pets shall be kept on a leash while outside a Unit. An Owner may be required to remove a pet upon the receipt of the third notice in writing from the Board of violation of any rule, regulation or restriction governing pets within the Property. This section may be further limited by a Supplemental Declaration for additional property within Tetherow.

7.5 **Maintenance of Structures.** Each Owner shall maintain the Owner's Unit and Improvements thereon in a clean and attractive condition, in good repair and in such fashion as not to create a fire or other hazard. Such maintenance shall include, without limitation, exterior painting or staining, repair, replacement and care for roofs, gutters, downspouts, exterior building surfaces, walks, lights and perimeter fences and other exterior

Improvements and glass surfaces. All repainting or restaining, any change in type of roof or roof color and any exterior remodeling or changes shall be subject to prior review and approval by the Architectural Review Committee. Damage caused by fire, flood, storm, earthquake, riot, vandalism, or other causes shall likewise be the responsibility of each Owner and shall be restored within a reasonable period of time. Any change in appearance must first be approved by the Architectural Review Committee.

**7.6 Maintenance of Landscape.** Each Owner shall keep all sidewalks, shrubs, trees, grass and plantings of every kind on the Owner's Unit or within the street right-of-way adjacent thereto neatly trimmed, properly cultivated and free of trash, weeds and other unsightly material and in compliance with the Fire Protection Standards.

**7.7 Prohibited Vehicles.** No mobile home, recreational vehicle (including campers), snowmobiles, all terrain vehicles, dirt bikes and other vehicles designed primarily for off-road use, commercial vehicles, any vehicles exceeding 9,000 pounds in gross vehicle weight, any trailer of any kind, any truck with a rated load capacity greater than one ton, or any boat, shall be kept, placed, maintained or parked for more than twenty-four (24) hours or such other period as may be permitted pursuant to the Association Rules and Regulations on any Unit or Common Area except in enclosed garages approved by the Architectural Review Committee, areas designated by the Board, or screened from view in a manner approved by the Architectural Review Committee. No motor vehicle of any type may be constructed, reconstructed or repaired in such a manner as will be visible from neighboring property, nor may any such vehicle be occupied for residential purposes while located within Tetherow. The Rules and Regulations may restrict the amount of noise vehicles may generate.

**7.8 Vehicles in Disrepair.** No Owner shall permit any vehicle which is in an extreme state of disrepair or which is not currently licensed to be abandoned or to remain parked upon any Unit or on the Common Area or on any street for a period in excess of forty-eight (48) hours. A vehicle shall be deemed in "extreme state of disrepair" when the Board reasonably determines that its presence offends the occupants of a Unit. Should any Owner fail to remove such vehicle within five (5) days following the date on which the notice is mailed to him by the Association, the Association may have the vehicle removed from Tetherow and charge the expense of such removal to the Owner.

**7.9 Traffic Regulations.** The Association may promulgate, administer and enforce reasonable rules and regulations governing vehicular and pedestrian traffic, including reasonable safety measures and speed limits. Except at designated golf cart crossings, no golf carts shall be used on public or private streets within Tetherow. Vehicular and pedestrian traffic includes but is not limited to motor vehicles, trailers, bicycles, skateboards and roller skates. The Association shall be entitled to enforce such provisions by establishing such enforcement procedures as it deems appropriate, including levying fines for the violation thereof, as long as such procedures are consistent with the Declaration and Bylaws. Only drivers licensed to operate motor vehicles shall operate any type of motor vehicle within Tetherow. All vehicles of any kind which are operated within Tetherow shall be operated in a careful, prudent, safe and quiet manner and with due consideration for the rights of all Owners, the Golf Course Property, the Golf Course Owner, and the Owner of the lodging/conference center facilities and each of the foregoing's invitees.

**7.10 Parking and Street Obstructions.** Parking of vehicles of any type whatsoever on any portion of the streets or trails within the Property shall be permitted only as set forth in the Association Rules and Regulations. No Owner shall do anything which will in any manner prevent the streets within the Property from at all times being free and clear of all obstructions and in a safe condition for vehicular use.

**7.11 Grades, Slopes and Drainage.** Each Owner shall accept the burden of, and shall not in any manner alter, modify or interfere with, the established drainage pattern and grades, slopes and courses related thereto over any Unit or Common Area without the express written permission of the Architectural Review Committee, and then only to the extent and in the manner specifically approved. Except with the express written permission of the Architectural Review Committee, no structure, plantings or other materials shall be placed or permitted to remain on or within any grades, slopes, or courses, nor shall any other activities be undertaken that may damage or interfere with established slope ratios, create erosion or sliding problems, or change the direction of or obstruct or retard the flow of water through drainage and infiltration systems.

7.12 **Wells and Septic Tanks.** Except as specifically permitted and approved by Declarant, no well for water shall be constructed or installed on any Unit. No septic tank shall be constructed or installed on any Unit. Declarant has no express or implied obligation to permit the installation of any well and approving the installation of any well or wells does not impose any express or implied obligation on Declarant to approve the installation of any other well.

7.13 **Signage.** No sign or billboard of any kind (including, but not limited to, commercial or political signs to the extent such prohibition is permitted by law) shall be displayed on any Unit to public view, except for:

- (a) identification, traffic and directional signs established by Declarant or the Board;
- (b) signs that are required for legal proceedings;
- (c) during the time of construction of any Improvement, one job identification sign, the size, color and design of which shall be subject to the approval of the Architectural Review Committee;
- (d) signs, billboards or other advertising devices or structures used by Declarant, any Neighborhood Declarant or any Builder authorized by Declarant in connection with the development, marketing, advertising or sale of any interest in a Unit or other portion of the Property;
- (e) signage as permitted by this Declaration with respect to the Golf Course Property and any lodging/conference center facilities;
- (f) one (1) sign which conforms to the signage design and placement standards set forth in the Rules and Regulations or the Design Guidelines may be placed on a Unit advertising the Unit "for sale." No "for rent" signs shall be placed on a Unit; and
- (g) signs, posters and notices approved by the Board, specified in the Rules and Regulations, the Design Guidelines, or in this Declaration may be posted in locations designated by the Board.

7.14 **Outside Storage.** All garbage, trash and accumulated waste material shall be placed in appropriate covered trash containers, which may be placed on Common Area or where visible only on the night before and the day that pick-up is to occur. No woodpiles or similar combustible materials storage is allowed on any Unit.

7.15 **Completion of Construction.** The construction of any building on any Unit, including painting and all exterior finish, shall be completed within eighteen (18) months from the beginning of construction so as to present a finished appearance when viewed from any angle and the Unit shall not be occupied until so completed. If construction has not commenced within twelve (12) months after the project has been approved by the Architectural Review Committee, the approval shall be deemed revoked unless the Owner has applied for and received an extension of time from the Architectural Review Committee. In the event of undue hardship due to weather conditions or other causes beyond the reasonable control of the Owner, this time period may be extended for a reasonable length of time upon written approval from the Architectural Review Committee. The building area shall be kept reasonably clean and in workmanlike order, free of litter, during the construction period. All unimproved Units shall be kept in a neat and orderly condition, free of brush, vines, weeds and other debris, and grass thereon shall be cut or mowed at sufficient intervals to prevent creation of a nuisance or fire hazard and to be in compliance with forest fuels management and fire prevention practices required by the applicable Governmental Authority.

7.16 **Landscaping.** All landscaping plans shall be approved by the Architectural Review Committee. Unless otherwise approved by the Architectural Review Committee, the front yard of each Unit shall be landscaped within thirty (30) days after final building inspection by the local government jurisdiction. All other landscaping within each Unit shall commence within thirty (30) days after final building inspection by the local government

jurisdiction, and shall be completed within six (6) months after the final building inspection, unless otherwise approved by the Architectural Review Committee.

7.17 **Temporary Structures.** No structure of a temporary character, trailer, tent, shack, garage, barn or other outbuildings nor any uncompleted building shall be used on any Unit at any time as a residence either temporarily or permanently.

7.18 **Fences and Hedges.** No fences or boundary hedges shall be installed without prior written approval of the Architectural Review Committee. Owners must locate surveyor's pins marking boundary corners before construction of fences. All fences and hedges installed within Tetherow shall be installed in compliance with the Design Guidelines

7.19 **Antennas and Satellite Dishes.** Over-the-air reception devices are not permitted within the Property except standard TV antennas and satellite dishes are permitted so long as they comply with the Design Guidelines and any other applicable restrictions adopted by Declarant, the Architectural Review Committee, the Board, or the Association, pertaining to the size, means, method and location of their installation.

7.20 **Limitations on Open Fires.** No incinerators or other open fires shall be kept or maintained on the Property; provided, however, that the foregoing restrictions shall not apply to outdoor cooking facilities such as propane or natural gas grills, natural gas backyard fire pits or portable barbeque units or to burning in connection with certain construction and other activities as permitted by the land use approvals.

7.21 **Recreational Equipment.** Unless approved by the Architectural Review Committee, no playground, athletic or recreational equipment or structures, including without limitation, basketball backboards, hoops and related supporting structures, shall be placed, installed or utilized on any Unit in view from any street, sidewalk or Common Area within Tetherow.

7.22 **Pest and Weed Control.** No Owner shall permit any thing or condition to exist upon any Unit which shall induce, breed or harbor infectious plant diseases or noxious insects or vermin. Each owner shall control noxious weeds on the Owner's Unit and shall comply with the noxious weed plan for Tetherow as submitted to the Deschutes County Weed Master and as required by the Deschutes County Weed Control Enforcement Ordinance.

7.23 **Exterior Lighting.** All exterior lighting shall be subject to approval of the Architectural Review Committee. Seasonal holiday lighting and decorations are permissible if consistent with any applicable Rules and Regulations and if removed within thirty (30) days after the celebrated holiday. The Architectural Review Committee may regulate the shielding or hours of use of lighting in order to reduce annoyance to neighboring properties.

7.24 **Window Coverings.** No foil or other reflective materials shall be used on any windows for sunscreens, blinds, shades, or other purposes. No window-mounted heating or air-conditioning unit is permitted.

7.25 **Paths and Trails.** No Owner, other than Declarant or the Association, may create any paths or trails within the Property without the prior written approval of the Architectural Review Committee.

7.26 **Drainage.** Design and construction of drainage facilities for each Unit shall conform to the requirements of the Design Guidelines. The Design Guidelines generally require disposal of stormwater by infiltration and/or dispersion on each Unit.

7.27 **Landscape Irrigation.** Design, construction and operation of landscape irrigation systems shall conform to the requirements of the Design Guidelines and the water utility serving the Property. The area irrigated on each Unit shall not exceed the maximum set forth in the Design Guidelines. The irrigation system and controls installed on each Unit shall be capable of meeting, and be operated to meet, the irrigation efficiency and water conservation rules of the water utility.

7.28 **Solid Waste.** No part of the Property shall be used as a dumping ground for trash or rubbish of any kind, and no rubbish, refuse or garbage shall be allowed to accumulate. Disposal of solid waste, including normal household waste, yard waste and household hazardous waste from each Unit, shall conform to the requirements and procedures set forth by the Association. Should any Owner or occupant responsible for its generation fail to remove any trash, rubbish, garbage, yard rakings or any other such materials from any streets or the Property where deposited by such Person within ten (10) days following the date on which notice is mailed to the Owner or occupant by the Board of Directors, the Association may have such materials removed and charge the expense of such removal to the Owner.

7.29 **Wildlife Protection.** The capturing, trapping, injuring, or killing of wildlife within Tetherow is expressly prohibited, except when reasonably necessary to avoid an imminent threat of personal injury or death to any person or except when reasonably necessary to protect property from damage by rodents or other pests and then only to the extent permissible under applicable laws. The feeding of wildlife or leaving salt blocks out for big game is also expressly forbidden.

7.30 **Fire Protection.** Each Owner shall comply with the Fire Protection Standards.

7.31 **Association Rules and Regulations.** In addition to the restrictions in this Declaration, the Association from time to time may adopt, modify or revoke such Rules and Regulations governing the conduct of Persons and the operation and use of Units and the Common Areas as it may deem necessary or appropriate to insure the peaceful and orderly use and enjoyment of the Property. A copy of the Rules and Regulations, upon adoption, and a copy of each amendment, modification or revocation thereof, shall be furnished by the Board to each Owner and shall be binding upon all Owners and occupants of all Units. The method of adoption of such Rules and Regulations shall be as provided in the Bylaws.

7.32 **Application to Additional Property.** The Supplemental Declaration subjecting Additional Property to this Declaration may establish additional or different restrictions governing the use of such Additional Property.

7.33 **Right to Approve Changes in the Standards Within the Community.** No amendment to or modification of any use restrictions contained in this Declaration or any Supplemental Declaration shall be effective without the prior notice to and the written consent of Declarant so long as Declarant owns property subject to this Declaration or prior to the expiration of the Development Period.

## Article 8

### ARCHITECTURAL REVIEW COMMITTEE

8.1 **Design Review Requirements.** Except for Units owned by Declarant, no Improvement shall be commenced, erected, placed or altered on any Unit 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 Architectural Review Committee. It is the intent and purpose of this Declaration to assure quality of workmanship and materials and to assure harmony of external design with the then existing Improvements and as to location with respect to topography and finished grade elevations. The procedure and specific requirements for review and approval of construction shall be set forth in Design Guidelines adopted from time to time by the Architectural Review Committee. In all cases which the consent of the Architectural Review Committee is required by this Declaration, the provisions of this Article shall apply.

8.2 **Membership: Appointment and Removal.** The Architectural Review Committee shall consist of as many persons, but not less than three (3) nor more than five (5), as Declarant may from time to time appoint. Declarant may remove any member of the Architectural Review Committee at its discretion at any time and may appoint new or additional members at any time. The members of the Architectural Review Committee need not be Owners or representatives of Owners, and may, but need not, include architects, engineers, or similar professionals, whose compensation, if any, shall be established from time to time by the Board. The Architectural Review

Committee may be broken into or may form subcommittees to preside over particular areas of review (e.g., a new construction subcommittee and a modifications subcommittee). Any reference in this Declaration to the Architectural Review Committee should be deemed to include a reference to any such subcommittee. The Association shall keep on file at its principal office a list of the names and addresses of the members of the Architectural Review Committee. Declarant may at any time, and upon expiration of the Development Period shall delegate to the Board the right to appoint or remove members of the Architectural Review Committee. In such event, or in the event Declarant fails to appoint an Architectural Review Committee, the Board shall assume responsibility for appointment and removal of members of the Architectural Review Committee, or if it fails to do so, the Board shall serve as the Architectural Review Committee.

### 8.3 Design Guidelines.

(a) **Adoption of Design Guidelines.** Declarant or the Architectural Review Committee shall prepare Design Guidelines, which may contain general provisions applicable to all of the Property as well as specific provisions which vary from Neighborhood to Neighborhood or any portions of a Neighborhood or Neighborhoods or types of use or Improvements. The Design Guidelines shall interpret and implement the provisions of this Declaration for architectural review and establish guidelines for architectural design, placement of buildings, color schemes, exterior finishes and materials and similar features which may be used in Tetherow; provided, however that the Design Guidelines shall not be in derogation of the minimum standards established by this Declaration. The Design Guidelines are not the exclusive basis for decisions of the Architectural Review Committee and compliance with the Design Guidelines does not guarantee approval of any application.

(b) **Publication of Design Guidelines.** The Architectural Review Committee shall make the Design Guidelines available to Owners who seek to engage in development or construction within the Property. In Declarant's discretion, the Design Guidelines may be recorded, in which event the Recorded version, as it may be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

(c) **Amendment of Design Guidelines.** Declarant shall have sole and full authority to amend the Design Guidelines during the Development Period notwithstanding a delegation of reviewing authority to the Architectural Review Committee unless Declarant also delegates the power to amend to the Architectural Review Committee. Upon termination or delegation of Declarant's right to amend, the Architectural Review Committee shall have the authority to amend the Design Guidelines with the consent of the Board. Any amendments to the Design Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Design Guidelines less restrictive.

### 8.4 Approval Procedures.

(a) **Applications.** Except as otherwise stated in this Article, Owners desiring to construct, alter, repair or replace any Improvements shall apply for an approval therefor from the Architectural Review Committee. Such application shall include plans and specifications showing site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction (the "Work"), as applicable. The Design Guidelines or the Architectural Review Committee may require the submission of such additional information as may be reasonably necessary to consider any application.

(b) **Committee Discretion.** The Architectural Review Committee may, at its sole discretion, withhold consent to any proposed Work if the Architectural Review Committee finds the proposed Work would be inappropriate for the particular Unit or incompatible with the Design Guidelines. In reviewing each submission, the Architectural Review Committee may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions

may vary as to the desirability and/or attractiveness of particular improvements. Considerations such as siting, shape, size, color, design, height, solar access, impairment of the view from other Units within Tetherow or other effect on the enjoyment of other Common Areas, disturbance of existing terrain and vegetation, wildlife protection and any other factors which the Architectural Review Committee reasonably believes to be relevant, may be taken into account by the Architectural Review Committee in determining whether or not to consent to any proposed Work. The Architectural Review Committee shall seek input from the Golf Course Owner on the construction of Improvements on Units abutting the Golf Course Property and shall provide a copy of each plan submittal by an Owner. The Golf Course Owner shall have fifteen (15) business days to submit comments on the plan submittal and the Architectural Review Committee shall review the Golf Course Owner's comments in rendering its decision.

(c) **Committee Decision.** The Architectural Review Committee shall render its decision with respect to the construction proposal within thirty (30) business days after it has received all materials required by it with respect to the application. The response may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application. The Architectural Review Committee may, but shall not be obligated to, specify the reasons for any objections and/or offer suggestions for curing any objections. Notice shall be deemed to have been given at the time the envelope containing the response is deposited with the U.S. Postal Service. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the applicant. In the event the Architectural Review Committee fails to render its approval or disapproval within thirty (30) business days after the Architectural Review Committee has received all materials required by it with respect to the proposal, or if no written notice of noncompliance has been given to the Owner within two (2) years after the completion thereof is readily apparent, approval will not be required and the related provisions of this Declaration shall be deemed to have been fully complied with; provided that the Owner must first issue a written notice to the Architectural Review Committee of the Owner's intent to proceed without such approval and no response from the Architectural Review Committee is forthcoming within ten (10) days after such notice is given.

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

(e) **Architectural Review Committee Fees; Assistance.** The Architectural Review Committee may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Compliance fees and deposits may also be required. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals. Declarant and the Association may employ architects, engineers, or other persons as deemed necessary to perform the review. The Board may include the compensation of such persons in the Association's annual operating budget as a Common Expense.

(f) **Appeal.** At any time after Declarant has delegated appointment of the members of the Architectural Review Committee to the Board pursuant to Section 8.2, any Owner adversely affected by action of the Architectural Review Committee may appeal such action to the Board. Appeals shall be made in writing within ten (10) days of the Architectural Review Committee's action and shall contain specific objections or mitigating circumstances justifying the appeal. If the Board of Directors is already acting as the Architectural Review Committee, the appeal shall be treated as a request for a rehearing, in which case the Board shall meet and receive evidence and argument on the matter. A final, conclusive decision shall be made by the Board within thirty (30) working days after receipt of such notification.

(g) **Effective Period of Consent.** The Architectural Review Committee's consent to any proposed Work shall automatically be revoked twelve (12) 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 Architectural Review Committee.

(h) **Notice to Declarant.** In the event Declarant delegates the right to appoint or remove members of the Architectural Review Committee to the Board prior to expiration of the Development Period, then until expiration of the Development Period, the Architectural Review Committee shall notify Declarant in writing within three (3) business days after the Architectural Review Committee has approved any application relating to proposed Work within the scope of matters delegated to the Architectural Review Committee by Declarant. The notice shall be accompanied by a copy of the application and any additional information which Declarant may require. Declarant shall have five (5) business days after receipt of such notice to veto any such action, in its sole discretion, by written notice to the Architectural Review Committee and the applicant.

8.5 **Variations.** The Architectural Review Committee may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the Architectural Review Committee from denying a variance in other circumstances.

8.6 **Approval Exceptions.** No approval shall be required to rebuild in accordance with originally approved plans and specifications. Any Owner may remodel, paint, or redecorate the interior of the Owner's Unit without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structure and modifications to enclose garages as living space shall be subject to approval. Any request to enclose a garage must include plans for a replacement garage on the Unit. If approval of a garage enclosure is granted by the Architectural Review Committee such approval may be conditional on the construction of a replacement garage.

8.7 **Approval Exemptions.** This Article shall not apply to Declarant's activities during the Development Period. Municipal, state, federal and other governmental or quasi-governmental buildings and facilities, including post offices, are subject to architectural review under this Article. However, such review shall be binding upon any Governmental Authority only to the extent permitted by law.

8.8 **No Waiver of Future Approvals.** Each Owner acknowledges that the persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features of proposed Work until the Work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the Architectural Review Committee may refuse to approve similar proposals in the future. Approval of applications or plans and specifications for any Work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, plans and specifications, or other matters subsequently or additionally submitted for approval.

8.9 **Estoppel Certificate.** Within twenty (20) business days after written request is delivered to the Architectural Review Committee by any Owner, and upon payment to the Architectural Review Committee of a reasonable fee fixed by the Architectural Review Committee to cover costs, the Architectural Review Committee shall provide such Owner with an estoppel certificate executed by a member of the Architectural Review Committee and acknowledged, certifying with respect to any Unit owned by the Owner, that as of the date of the certificate, either: (a) all Improvements made or done upon or within such Unit by the Owner comply with this Declaration, 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. Any purchaser from the Owner, and any mortgagee or other encumbrancer, shall be entitled to rely on such certificate with respect to the matters set forth in the certificate, such matters being conclusive as between Declarant, the Architectural Review Committee, the Association and all Owners, and such purchaser or mortgagee.

8.10 **Enforcement.** If during or after the construction the Architectural Review Committee finds that the Work was not performed in substantial conformance with the approval granted, or that the required approval was not obtained, the Committee shall notify the Owner in writing of the noncompliance, specifying the particulars of

the noncompliance. The Committee may require conforming changes to be made or that construction be stopped. The cost of any required changes shall be borne by the Owner. The Committee shall have the power and authority to order any manner of changes or complete removal of any Improvement, alteration or other activity for which prior written approval from the Committee is required and has not been obtained or waived in writing. If an owner fails to comply with an order of the Committee, then, subject to the Owner's right of appeal under Section 8.4(f), either the Architectural Review Committee or the Board may enforce compliance in accordance with the procedures set forth in Section 12.1 below.

**8.11 Limitation of Liability.** Neither the Architectural Review Committee nor any member of the Architectural Review Committee shall be liable to any Owner, occupant, home builder or developer for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the Architectural Review Committee or a member of the Architectural Review Committee, provided only that the Architectural Review Committee or the member has, in accordance with the actual knowledge possessed by the Committee or Member, acted in good faith. Any such damages or expenses for which the Committee or any Member is liable and to which any Owner becomes entitled shall be a Common Expense. The standards and procedures established by this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Property; they do not create any duty to any Person. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and the Architectural Review Committee shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes, solar ordinances, zoning codes and other governmental requirements, all of which are the sole responsibility of the applicant, nor for ensuring that all dwellings are of comparable quality, value, or size, or of similar design. Declarant, the Association, the Board, any committee, or member of any of the foregoing shall not be held liable for soil conditions, drainage or other general site work, any defects in plans revised or approved hereunder, or any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Unit.

## **Article 9**

### **OWNERS ASSOCIATION**

Declarant has organized or before conveyance of the first Lot shall organize the Association as the association of all of the Owners within the Property. Such Association, and its successors and assigns, shall have such property, powers and obligations as are set forth in this Declaration for the benefit of the Property and all Owners of property located therein.

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

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

9.3 **Voting Rights.** The Association shall have two classes of voting membership:

**Class A.** Class A Members shall be all Owners with the exception of the Class B Member and shall be entitled to one (1) vote for each Unit owned by such Owner. When more than one Person holds an interest in any Unit, all such Persons shall be members. Except as may otherwise be specified in the Supplemental Declaration annexing such Unit to the Property, the vote for such Unit shall be exercised as they among themselves determine. In no event, however, shall more voting rights be cast with respect to any Unit than as set forth in this Section 9.3.

**Class B.** The Class B Member shall be the Declarant and shall be entitled to ten (10) votes for each Unit owned by Declarant. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (i) Expiration of the Development Period; or
- (ii) At such earlier time as Declarant may elect in writing to terminate Class B membership.

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

- (a) The powers, duties and obligations granted to the Association by this Declaration.
- (b) The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Oregon.
- (c) The powers, duties and obligations of a homeowners' association pursuant to the Oregon Planned Community Act.
- (d) Any additional or different powers, duties and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to this Declaration or otherwise promoting the general benefit of the Owners within the Property.

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

9.5 **Specific Powers and Duties.** The powers and duties of the Association shall include, without limitation, the following:

- (a) **Maintenance.** The Association shall provide maintenance for portions of the Property as provided in Article 10 and other provisions of this Declaration.
- (b) **Insurance.** The Association shall obtain and maintain in force certain policies of insurance as determined by the Board.
- (c) **Restoring Damaged Improvements.** In the event of damage to or destruction of Common Areas or other property which the Association insures, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes. If a decision is made not to restore the damaged improvements, and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition

consistent with the Community-Wide Standard. If insurance proceeds are insufficient to cover the costs of reconstruction, the Board may levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage. Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by the Association for the benefit of all or some of the Owners, as appropriate, and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

(d) **Rulemaking.** The Association shall make, establish, promulgate, amend and repeal Rules and Regulations as provided in Section 7.33.

(e) **Assessments.** The Association shall adopt budgets and impose and collect certain Assessments as provided in Article 11.

(f) **Enforcement.** The Association may perform such acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce the provisions of this Declaration and the Rules and Regulations adopted by the Association, including, without limitation, enforcement of the decisions of the Architectural Review Committee. Nothing in this Declaration shall be construed as requiring the Association to take any specific action to enforce violations.

(g) **Employment of Agents, Advisers and Contractors.** The Association may employ the services of any Person as managers, hire employees to manage, conduct and perform the business, obligations and duties of the Association, employ professional counsel and obtain advice from such persons or firms or corporations such as, but not limited to, landscape architects, recreational experts, architects, planners, attorneys and accountants, and contract for or otherwise provide for all services necessary or convenient for the management, maintenance and operation of the Property; provided, however, the Board may not incur or commit the Association to incur legal fees in excess of \$5,000 for any specific litigation or claim matter or enter into any contingent fee contract on any claim in excess of \$100,000 unless the Unit Owners have enacted a resolution authorizing the incurring of such fees or contract by a vote of seventy-five percent (75%) of the total voting rights of the Association. These limitations shall not be applicable to legal fees incurred in defending the Association of the Board of Directors from claims or litigation brought against them. The limitation set forth in this paragraph shall increase by ten percent on each fifth anniversary of the Recording of this Declaration.

(h) **Borrow Money.** The Association may borrow and repay moneys for the purpose of maintaining and improving the Common Areas and, subject to Section 5.8, encumber the Common Areas as security for the repayment of such borrowed money.

(i) **Hold Title and Make Conveyances.** The Association may acquire, hold title to and convey, with or without consideration, real and personal property and interests therein, including but not limited to easements across all or any portion of the Common Area, and shall accept any real or personal property, leasehold or other property interests within the Property conveyed to the Association by Declarant.

(j) **Transfer, Dedication and Encumbrance of Common Areas.** Except as otherwise provided in Section 5.8, the Association may sell, transfer or encumber all or any portion of the Common Areas to which it then holds title of record to a person, firm or entity, whether public or private, and dedicate or transfer all or any portion of the Common Areas to any public agency, authority, or utility for public purposes.

(k) **Create Classes of Service and Make Appropriate Charges.** The Association may, in its sole discretion, create various classes of service and make appropriate Individual Assessments or charges therefor to the users of such services, including but not limited to reasonable admission and other fees for the use of any and all recreational facilities situated on the Common Areas, without being required to render such services to those who do not assent to such charges and to such other Rules and Regulations as the Board deems proper. In addition, the Board shall have the right to discontinue any service upon nonpayment of Assessments or to eliminate any service for which there is no demand or for which there are inadequate funds to maintain the same.

(l) **Joint Use Agreements.** The Association may enter into joint use agreements with other associations, entities or persons relating to the joint use of recreational or other facilities, including the joint use of the Common Areas. The Association may enter into agreements with one or more Neighborhood Associations, sub-associations or other Persons within Tetherow to provide joint use, management, and administrative services, and to perform such other community related activities as may be agreed upon by the Association and such Neighborhood Association(s) or Persons. Without limitation, the Association may enter into agreements with the City of Bend, Deschutes County or other applicable Governmental Authority for the disposal of snow from roads within Tetherow on designated Common Areas. The expense of providing such services by the Association shall be allocated by agreement between the parties.

(m) **Administration of Particular Areas Within Property.** In addition to its other powers and obligations, the Association may be obligated by Declarant or agreement to provide maintenance, architectural review, assessment collection, rules enforcement, or other services to, and levy assessments against, Owners within particular areas of the Property (e.g., one or more Neighborhoods). In such event, the Association shall provide such services in the manner prescribed, and the expenses of such services shall be allocated and assessed as provided in the covenants, easements, or agreement obligating the Association. In the event of a conflict between such other covenants, easements, or agreements and this Declaration, this Declaration shall control.

(n) **Additional Services.** Any Neighborhood, acting either through a Neighborhood Committee or through a Neighborhood Association, if any, may request that the Association provide a higher level of service than that which the Association generally provides to all Neighborhoods, or may request that the Association provide special services for the benefit of Units in such Neighborhood. Upon the affirmative vote, written consent, or a combination thereof, of Owners of a majority of the voting rights within the Neighborhood, the Association may provide the requested services. The cost of such services, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided, any such administrative charge shall apply at a uniform rate per Unit to all Neighborhoods receiving the same service), shall be assessed against the Units within such Neighborhood as a Neighborhood Assessment.

(o) **Assumption of Other's Maintenance Responsibility.** The Association may, but shall not be obligated to, assume maintenance responsibility for property which is the responsibility of another Person (e.g., a Neighborhood Association or any local or state governmental authority) if, in the discretion of the Board, the maintenance of such property provides a benefit to Tetherow and/or such property is not otherwise being maintained in accordance with the Community-Wide Standard. The cost of maintenance assumed in accordance with this section may be a Common Expense to be allocated among all Owners or may be assessed to a Neighborhood Association or as Individual Assessments levied only against the benefited parties.

(p) **Security.** The Association may, but shall not be obligated to, maintain or support certain activities within Tetherow designed to make the Property more enjoyable or safer than it otherwise might be. **Neither the Association, Declarant, any Neighborhood Declarant nor any managing agent shall be considered insurers or guarantors of security or safety within the Property nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security or safety measures undertaken. No representation or warranty is made that any system or measure, including any mechanism or system for limiting access to the Property, cannot be compromised or circumvented, nor that any such system or measure undertaken will in all cases prevent loss or provide the detection or protection for which it is designed or intended. Each Owner acknowledges and agrees that the Association, the Board and any managing agent are not insurers and that each person using the Property assumes all risks for personal injury and loss or damage to property resulting from acts of third parties.**

(q) **Wildland Fire Protection.** The Association shall comply with the Fire Protection Standards. No later than twelve (12) months following the sale of a Unit, other than a sale to Declarant, an affiliate of Declarant, a Neighborhood Declarant or a Builder exempted from Assessments under Section 11.2, the Association shall submit information and applications required for recognition of each Unit under the Firewise Communities USA Recognition Program. In addition, and to the extent mandated by any Governmental Authority, the Association shall participate in Project Wildfire sponsored local and community events and pay an annual contribution equal to \$4 per Unit to Project Wildfire as described in the Fire Protection Standards. The cost of

complying with the Fire Protection Standards, including but not limited to the annual contribution described herein, shall be a Common Expense to be allocated among the Owners.

(r) **Wildlife Mitigation Maintenance Fund.** The Association shall make the annual payments to the wildlife mitigation maintenance fund as required by the Cascade Highlands Final Wildlife Evaluation dated June 29, 2005. Such payments shall be a common expense of the Association payable from the Operations Fund described in Section 11.5.

(s) **Municipal Services.** In addition to any obligations it may have under this Declaration to share costs, the Association may, but is not obligated by this Declaration to, contribute funds to any Governmental Authority for the purpose of increasing its capacity to provide services, such as, but not limited to, maintenance of roads, storm drainage facilities, sidewalks, lighting, trails and roadside landscaping, and police and fire protection services within the Property.

(t) **Other Services.** The Association may provide or contract for such services as the Board may reasonably deem to be of benefit to the Property, including, without limitation, garbage and trash removal.

(u) **Implied Rights and Obligations.** The Association may exercise any other right or privilege reasonably to be inferred from the existence of any right or privilege expressly given to the Association under this Declaration or reasonably necessary to effectuate any such right or privilege.

(v) **Contracts Entered into by Declarant or Before Turnover Meeting.** Notwithstanding any other provision of this Declaration, any management contracts, service contracts or employment contracts entered into by Declarant or the Board of Directors on behalf of the Association before the Turnover Meeting shall have a term of not more than three (3) years. In addition, any such contract shall provide that it may be terminated without cause or penalty by the Association or Board of Directors upon not less than thirty (30) days' notice to the other party given not later than sixty (60) days after the Turnover Meeting.

9.6 **Board of Directors.** The powers and duties of the Association and the affairs of the Association shall be conducted by its Board of Directors duly appointed or elected as provided in this section, except to the extent that a vote of the members is required by this Declaration or the Bylaws.

(a) **Initial Board.** Upon incorporation of the Association and until the first annual meeting after fifty percent (50%) of the Units authorized by the Master Plan have been sold and conveyed to individual residential purchasers (as opposed to home builders), the Board shall be composed of three directors, all of whom shall be appointed by Declarant.

(b) **When Fifty Percent (50%) of the Units Have Sold.** Commencing on the first annual meeting after fifty percent (50%) of the Units authorized by the Master Plan have been sold and conveyed to ultimate purchasers and until the first annual meeting after ninety percent (90%) of the Units have been conveyed, the Board shall be composed of three directors, two of whom shall be appointed by Declarant and one of whom shall be elected by the Class A Members.

(c) **When Ninety Percent (90%) of the Units Have Been Sold.** Commencing on the first annual meeting after ninety percent (90%) of the Units authorized by the Master Plan have been sold and conveyed to ultimate purchasers and until the first annual meeting after expiration of the Development Period, the Board shall be composed of five directors, three of whom shall be appointed by Declarant and two of whom shall be elected by the Class A Members.

(d) **Turnover Meeting After Termination of Class B Membership.** The first annual meeting after termination of the Class B membership shall be the Turnover Meeting, at which time Declarant will turn over administrative control to the Owners. Commencing with the Turnover meeting, the Board shall be composed of seven directors, all of whom shall be elected by the Owners. The method of election, terms of office and method of removal and filling of vacancies shall be governed by the Bylaws.

9.7 **Voting Groups.** In connection with the election of those directors to be elected by the Class A Members, Declarant may, from time to time, in its discretion, designate Voting Groups consisting of one or more Neighborhoods (or the Units outside any Neighborhood) for the purpose of electing directors to the Board, in addition to any at-large directors elected by all Class A Members. Voting Groups may be designated to ensure groups with dissimilar interests are represented on the Board and to avoid allowing Owners representing similar Neighborhoods to elect the entire Board, due to the number of Units in such Neighborhoods, excluding the representation of others. The number of Voting Groups within the Property shall not exceed the total number of directors to be elected by the Class A Members. The Owners in Neighborhoods within each Voting Group shall vote on a separate slate of candidates for election to the Board. Declarant shall establish Voting Groups, if at all, not later than the termination of Class B membership by filing with the Association and Recording a supplemental declaration identifying each Voting Group by legal description or other means such that the Units within each Voting Group can easily be determined. Such designation may be amended from time to time by Declarant, acting alone, at any time prior to termination of the Class B membership. After termination of the Class B membership, the Board shall have the right to Record a supplemental declaration changing the Voting Groups upon the vote of a majority of the total number of directors and approval of a majority of the voting rights in the Association. Neither recordation nor amendment of such supplemental declaration by Declarant shall constitute an amendment to this Declaration and no consent or approval of the Owners shall be required, except as stated in this section. Until such time as Voting Groups are established, all of the members shall constitute a single Voting Group. After a Supplemental Declaration establishing Voting Groups has been Recorded, any and all portions of the Property which are not assigned to a specific Voting Group shall constitute a single Voting Group.

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

9.9 **Neighborhood Associations.** The Board may assist the Neighborhood Associations in the performance of their duties and obligations under their respective Neighborhood Declarations, and the Association shall cooperate with each Neighborhood Association so that each of those entities can most efficiently and economically provide their respective services to Owners. The Association or a Neighborhood Association may use the services of the other in the furtherance of their respective obligations, and they may contract with each other to better provide for such cooperation. The payment for such contract services or a variance in services provided may be reflected in an increased Assessment by the Association for Owners within the particular Neighborhood or by an item in the Neighborhood Association's budget which shall be collected through Neighborhood Assessments and remitted to the Association. If a Neighborhood Association fails or is unable to perform a duty or obligation required by its Neighborhood Declaration, then the Association may, after reasonable notice and an opportunity to cure given to the Neighborhood Association, perform such duties or obligations until such time as the Neighborhood Association is able to resume such functions, and the Association may charge the Neighborhood Association a reasonable fee for the performance of such functions.

9.10 **Powers of the Association Relating to Neighborhoods.** Each Neighborhood Committee shall be a committee of the Association. The Board shall have all of the power and control over any Neighborhood Committee that it has under applicable law over other committees of the Association. The Association shall have the power to veto any action taken or contemplated to be taken by any Neighborhood Committee or Neighborhood Association which the Board reasonably determines to be adverse to the interests of the Association or the Owners

or inconsistent with the Community-Wide Standard. The Association also shall have the power to require specific action to be taken by any Neighborhood Association in connection with its obligations and responsibilities, such as requiring maintenance or repairs or aesthetic changes to be effectuated and requiring that a proposed budget include certain items and that expenditures be made therefor. A Neighborhood Association shall take appropriate action required by the Association in a written notice within the reasonable time frame set by the Association in the notice. If the Neighborhood Association fails to comply, the Association shall have the right to effect such action on behalf of the Neighborhood Association and levy Neighborhood or Individual Assessments to cover the costs, as well as an administrative charge and sanctions.

9.11 **Bylaws.** The Bylaws of the Association and any amendment or modification of the Bylaws shall be Recorded. Declarant hereby adopts, on behalf of the Association, the initial Bylaws attached as Exhibit C to this Declaration.

## Article 10

### MAINTENANCE

10.1 **Maintenance of Units.** Each Owner shall maintain the Owner's Unit and Improvements thereon in a clean and attractive condition, in good repair, in such fashion as not to create a fire or other hazard and in accordance with the standard of quality, maintenance and design generally prevalent throughout Tetherow. Such maintenance shall include, without limitation, painting or staining, repair, replacement and care for roofs, gutters, downpours, exterior building surfaces, walks and other exterior improvements and glass surfaces. All repainting or re-staining and exterior remodeling shall be subject to prior review and approval by the Architectural Review Committee. In addition, each Owner shall keep all shrubs, trees, grass and plantings of every kind on the Owner's Unit and the sidewalk and streetscape between the Unit and the street curb neatly trimmed, properly maintained and cultivated and free of trash, weeds and other unsightly material. Damage caused by fire, flood, storm, earthquake, riot, vandalism, or other causes shall likewise be the responsibility of each Owner and shall be restored within such period of time as may be specified in the Design Guidelines, or if no such period is specified, within a reasonable period of time.

10.2 **Maintenance of Common Areas.** The Association shall be responsible for exterior lighting for and perform all maintenance upon the Common Areas and Limited Common Areas within or immediately adjoining rights of way, including but not limited to grass, trees, walks, private roads, entrance gates, street lighting and signs, parking areas, walkways and trails, unless the maintenance thereof is assumed by a public body. Such areas shall be maintained in a good and workmanlike manner such as to render them fit for the purposes for which they are intended and in compliance with standards required by applicable Governmental Authorities, including, but not limited to, the Fire Protection Standards.

10.3 **Maintenance of Utilities.** The Association shall perform or contract to perform maintenance of all private utilities within Common Areas, such as sanitary sewer service lines, domestic water service lines and storm drainage lines, except to the extent such maintenance is performed by the utilities furnishing such services. Each Owner shall be responsible for the cost of maintaining utility lines within his or her Unit.

10.4 **Corrective Maintenance.** The Association may assume the maintenance responsibilities set out in this Declaration or any Supplemental or Neighborhood Declaration for any Neighborhood or Owner, after giving the responsible Neighborhood Association or Owner reasonable notice and an opportunity to correct its deficient maintenance. In such event, all costs of such maintenance shall be assessed only against those Owners to which the services are provided and shall be Neighborhood Assessments or Individual Assessments as determined by the Board. The assumption of this responsibility may take place either by contract or because, in the opinion of the Board, the level and quality of service then being provided is not consistent with the standard of quality, maintenance and design generally prevalent throughout Tetherow.

10.5 **Damage Liability.** Any damage to any Common Area by Owners, their children, agents, visitors, friends, relatives, tenants, Occupants or service personnel, to the extent not covered by the Association's insurance (including any deductible), shall be assessed to the Owner as an Individual Assessment.

10.6 **Maintenance Plan.** Declarant shall initially prepare and thereafter the Board of Directors shall implement, review and update a maintenance plan (the "**Maintenance Plan**") for the maintenance, repair and replacement of all property for which the Association has maintenance, repair or replacement responsibility under this Declaration or the Bylaws or the Oregon Planned Community Act. The Maintenance Plan shall describe the maintenance, repair or replacement to be conducted, include a schedule for maintenance, repair or replacement, be appropriate for the size and complexity of the maintenance, repair and replacement responsibility of the Association and address issues that include, but are not limited to, warranties and the useful life of the items of which the Association has maintenance, repair or replacement responsibility. The Board of Directors shall review and update the Maintenance Plan as necessary. Changes or updates to the Maintenance Plan shall be based on advice of competent experts or consultants. For a period of 10 years following recording of the Declaration, any changes to the Maintenance Plan without the approval of the Declarant and the original general contractor may void any applicable warranty and will release them from liability for any damage resulting from such change.

## Article 11

### ASSESSMENTS

11.1 **Power to Assess.** The Association may levy Assessments. The Assessments levied by the Association shall be used to promote the recreation, health, safety, and welfare of the Owners and occupants of the Property and for the improvement, operation and maintenance of the Common Areas.

#### 11.2 **Apportionment of Assessments.**

(a) **Units Owned by Declarant.** Units owned by Declarant or any Neighborhood Declarant shall not be subject to General Assessments (including assessments for reserves), Neighborhood Assessments, Special Assessments, Limited Common Area Assessments or Emergency Assessments until such time as the Unit is occupied for residential use. Declarant reserves the right to extend the rights contained in the preceding sentence to other Builders in its sole discretion. Declarant or any Neighborhood Declarant may defer payment of the accrued reserve assessments for a Unit from the time a Unit becomes subject to assessment until the date the Unit is conveyed, but not beyond the date of the Turnover Meeting or, if no Turnover Meeting is held, the date the Owners assume administrative control of the Association. The books and records of the Association shall reflect the amount owing from Declarant or any Neighborhood Declarant for all reserve Assessments.

(b) **Other Units.** Unless otherwise provided in an applicable Supplemental Declaration, all Units other than Units described in Section 11.2(a) shall be subject to assessment and shall pay an equal share of the General Assessments, Neighborhood Assessments, Special Assessments, Limited Common Area Assessments and Emergency Assessments. Declarant may elect to delay collection of Annual Assessments against all Units, but in such case shall pay all common expenses of the Association until such Assessments commence. No Owner by the Owner's own action may claim exemption from liability for contribution towards common expenses by waiver by the Owner of use of enjoyment of any or the Common Area or by abandonment by the Owner of the Owner's Unit. An Owner may not claim an offset against an Assessment for failure of the Association to perform its obligations, and no Owner may offset amounts owing or claimed to be owing by the Association or Declarant to the Owner.

#### 11.3 **Types of Assessments.**

(a) **General Assessments.** The Association is hereby authorized to levy General Assessments against all Units subject to Assessments to fund the Common Expenses. The amount of the General Assessment allocated to each Unit shall be determined in the manner described in Section 11.2. In determining the General Assessments, the Board may consider any Assessment income expected to be generated from any additional Units or changes in the status of the then-existing Units anticipated during the fiscal year. The Board shall from

time to time and at least annually prepare an operating budget for the Association, taking into account the current costs of maintenance and services and future needs of the Association, any previous over Assessment and any common profits of the Association. The budget shall provide for such reserve or contingency funds as the Board deems necessary or as may be required by law, but not less than the reserves required by Section 11.6. The Board may revise the budget and adjust the General Assessment from time to time during the year. Within 30 days after the adoption of a final budget by the Board, the Board shall send to each Owner a copy of the final budget. If the Board fails to adopt a budget, the last adopted budget shall continue in effect.

(b) **Neighborhood Assessments.** The Association or, after Declarant or the Board delegate the same thereto, a Neighborhood Association, is authorized to levy Neighborhood Assessments against all of the Units within such Neighborhood to fund Neighborhood Common Expenses. The determination of the allocation of Neighborhood Common Expenses may be undertaken in the same manner applicable to the Association with respect to allocating General Assessments, Special Assessments or Emergency Assessments, as applicable, unless otherwise provided in the Neighborhood Declaration.

(c) **Special Assessments.** The Board may levy during any fiscal year a Special Assessment, applicable to that year only, for the purpose of deferring all or any part of the cost of any construction or reconstruction, unexpected repair, or acquisition or replacement of a described capital improvement, or for any other one-time expenditure not to be paid for out of General Assessments. Special Assessments for acquisition or construction of new capital improvements or additions which in the aggregate in any fiscal year exceed an amount equal to fifteen percent (15%) of the budgeted gross expenses of the Association for the fiscal year may be levied only if approved by a majority of the voting rights voting on such matter, together with the written consent of the Class B Member, if any. Prior to the Turnover Meeting, any Special Assessment for acquisition or construction of new capital improvements or additions must be approved by not less than fifty percent (50%) of the Class A voting rights, together with the written consent of the Class B Member. Special Assessments shall be apportioned as provided in Section 11.2 and may be payable in lump sum or in installments, with or without interest or discount, as determined by the Board.

(d) **Emergency Assessments.** If the Annual Assessments levied at any time are or will become inadequate to meet all expenses incurred under this Declaration for any reason, including nonpayment of any Owner's Assessments on a current basis, the Board of Directors shall immediately determine the approximate amount of such inadequacy and issue a supplemental budget, noting the reason therefor, and levy an Emergency Assessment for the amount required to meet all such expenses on a current basis. Emergency Assessments shall be apportioned as set forth in Section 11.2 above and payable as determined by the Board of Directors.

(e) **Limited Common Area Assessments.** General Assessments, Special Assessments and Emergency Assessments relating to maintenance, upkeep, repair, replacement or improvements to Limited Common Areas shall be assessed exclusively to the Units having the right to use such Limited Common Areas.

(f) **Individual Assessments.** Any Common Expense or any part of a Common Expense benefiting fewer than all of the Units may be assessed exclusively against the Units benefited as an Individual Assessment. Individual Assessments shall also include default Assessments levied against any Unit to reimburse the Association or Neighborhood Association for costs incurred in bringing such Unit or its Owner into compliance with the provisions of this Declaration or the Rules and Regulations of the Association and for fines or other charges imposed pursuant to this Declaration for violation thereof. Unless otherwise provided by the Board, Individual Assessments shall be due thirty (30) days after the Board has given written notice thereof to the Owners subject to Individual Assessments.

11.4 **Assessment of Additional Property.** When Additional Property is annexed to the Property, the Units included therein shall become subject to Assessments from the date of such annexation, except for those Units exempt from assessment pursuant to Section 11.2(a). All other Units shall pay such Assessments in the amount then being paid by other Units. The Board, however, at its option may elect to recompute the budget based upon the additional Units subject to assessment and additional Common Areas and recompute Assessments for all Units, including the new Units, for the balance of the fiscal year. Notwithstanding any provision of this Declaration apparently to the contrary, a Supplemental Declaration annexing Additional Property may provide that such

Additional Property does not have the right to use a particular Common Area or facility located thereon, in which case such Additional Property shall not be assessed for the costs of operating, maintaining, repairing, replacing or improving such Common Area or facility.

**11.5 Operations Fund.** The Association shall keep all funds received by it as Assessments, other than reserves described in Section 11.6, separate and apart from its other funds, in an Operations Fund held in a bank account in the name of the Association. The Association shall use such fund for the purpose of promoting the recreation, health, safety and welfare of the residents within the Property and in particular for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas and of the Units, including but not limited to:

- (a) Payment of the cost of maintenance, utilities and services, repairs, replacements of that portion of the Property for which the Association is responsible.
- (b) Payment of the cost of insurance maintained by the Association.
- (c) Payment of taxes assessed against the Common Areas and any Improvements thereon.
- (d) Payment of the cost of other services which the Association deems to be of general benefit to the Owners, including but not limited to accounting, legal and secretarial services.

**11.6 Reserve Fund.**

(a) **Establishment of Account.** Declarant, on behalf of the Association, shall conduct an initial reserve study as described in paragraph (c) of this section and establish a Reserve Fund in a bank account in the name of the Association to fund major maintenance, repair or replacement of common properties that will normally require replacement in whole or in part in more than one (1) and less than thirty (30) years, for exterior painting if the Common Areas or other property to be maintained by the Association include exterior painted surfaces, and for other items, whether or not involving Common Areas, if the Association has responsibility to maintain the items, including items required by the Maintenance Plan established pursuant to Section 9.8. The Reserve Fund need not include those items that can reasonably be funded from the general budget or other funds of the Association or for those items for which one or more, but less than all, Owners are responsible for maintenance and replacement under the provisions of this Declaration or the Bylaws.

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

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

- (i) Identify all items for which reserves are to be established;
- (ii) Include the estimated remaining useful life of each item as of the date of the reserve study; and
- (iii) Include for each item, as applicable, an estimated cost of maintenance, repair and replacement at the end of its useful life.

(d) **Use of Reserve Fund.** The Reserve Fund shall be used only for the purposes for which the reserves have been established and shall be kept separate from other funds. After the Turnover Meeting, however, the Board of Directors may borrow funds from the Reserve Fund to meet high seasonal demands on the regular operating funds or to meet unexpected increases in expenses if the Board of Directors has adopted a resolution, which may be an annual continuing resolution, authorizing the borrowing of funds. Not later than the adoption of the budget for the following year, the Board of Directors shall adopt by resolution a written payment plan providing for repayment of the borrowed funds within a reasonable period. Nothing in this section shall prohibit prudent investment of the Reserve Fund. In addition to the authority of the Board of Directors under paragraph (c) of this section, following the second year after the Turnover Meeting, the Association may elect to reduce or increase future Assessments for the Reserve Fund by an affirmative vote of not less than seventy-five percent (75%) of the voting power of the Association and may, on an annual basis by a unanimous vote, elect not to fund the Reserve Fund. Assessments paid into the Reserve Fund are the property of the Association and are not refundable to sellers or Owners of Units. Sellers of the Units, however, may treat their outstanding share of the Reserve Fund as a separate item in any sales agreement.

11.7 **Commencement of Assessment Obligation; Time of Payment.** The obligation to pay Assessments under this Declaration shall commence as to each Unit, on the first day of the month after such Unit becomes subject to this Declaration. The first annual General Assessment levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time Assessments commence for such Unit.

11.8 **Payment of Assessments.** Assessments shall be paid in such manner and on such dates as the Board may establish. Unless the Board otherwise provides, the General Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any Assessments or other charges levied on his Unit, the Board may require the outstanding balance on all Assessments to be paid in full immediately. Until termination of the Development Period, any obligation of Declarant to pay Assessments may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these.

11.9 **Advance Payments Upon Sale.** The Association or any Neighborhood Association may require any Owner to obtain, in conjunction with the closing of any sale of such Owner's Unit, a deposit from the purchaser equal to the then estimated amount of assessments for three (3) months due to such Association. Any Owner entering into such a contract shall be obligated to collect or otherwise deposit such Assessments with the appropriate Association upon the closing of such conveyance and shall be liable therefor after such conveyance if those Assessments are ultimately not received by the Association. No failure to require or collect such estimated Assessments shall impair any contract of sale or provide any grounds for a rescission of such sale.

11.10 **Personal Obligations for Assessments.** Declarant, for each Unit owned by it within the Property, hereby covenants, and each Owner of any Unit by acceptance of a conveyance thereof, whether or not so expressed in any such conveyance, shall be deemed to covenant to pay to the Association all Assessments or other charges as may be fixed, established and collected from time to time in the manner provided in this Declaration or the Bylaws. Such Assessments and charges, together with any interest, late charges, expenses or attorneys' fees imposed pursuant to Sections 12.3 and 12.4, shall be a charge on the land and shall be a continuing lien upon the Unit against which each such Assessment or charge is made. Such Assessments, charges and other costs shall also be the personal obligation of the Person who was the Owner of such Unit at the time when the Assessment or charge fell due. Such liens and personal obligations shall be enforced in the manner set forth in Article 12.

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

11.12 **Neighborhood Association's Obligation to Pay Assessments.** A Neighborhood Association shall be jointly and severally obligated with the Owners of Units subject to its jurisdiction for all General, Special and Emergency Assessments levied against such Units. Each such Neighborhood Association shall include as a line item in its common expense budget, and shall be responsible for collecting and paying to the Association, the total amount of all General, Special, Emergency and Limited Common Area Assessments levied by the Association against the Units within its jurisdiction and such amount shall have first priority for payment out of the income of the Neighborhood Association. The obligation of each Neighborhood Association for collection and payment of Assessments to the Association shall be enforceable by the Association, and the Association may bring suit against any Neighborhood Association to collect delinquent Assessments, in addition to any other rights or remedies it may have hereunder or at law or in equity. The foregoing collection remedies shall not, however, constitute a lien upon all property subject to the jurisdiction of a particular Neighborhood Association. The obligation of each Neighborhood Association to collect and pay such Assessments to the Association pursuant to this section shall not relieve any Owner of liability for its pro rata share of any amounts not paid by the Neighborhood Association.

11.13 **No Waiver.** Failure of the Board to fix Assessment amounts or rates or to deliver or mail each Owner an Assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay Assessments. In such event, each Owner shall continue to pay Assessments on the same basis as during the last year for which an Assessment was made, if any, until a new Assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

11.14 **No Option to Exempt.** No Owner may exempt himself from liability for Assessments by non-use of Common Areas, abandonment of his Unit, or any other means. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

11.15 **Certificate.** Upon written request, the Association shall furnish to any Owner liable for any type of Assessment a certificate in writing signed by an Association officer setting forth whether such Assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

## Article 12

### ENFORCEMENT

12.1 **Violation of General Protective Covenants.** In the event that any Owner constructs or permits to be constructed on his Unit an Improvement contrary to the provisions of this Declaration, or violates any provisions of the Governing Documents, then the Association acting through the Board shall notify the Owner in writing of any such specific violations. If the Owner is unable, is unwilling, or refuses to comply with the Association's specific directives for remedy or abatement, or the Owner and the Association cannot agree to a mutually acceptable solution within the framework and intent of this Declaration, after notice and opportunity to be heard and within fifteen (15) days after issuing written notice to the Owner, then the Association acting through the Board, shall have the right to do any or all of the following:

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

(b) Enter the offending Unit and remove the cause of such violation, or alter, repair or change the item which is in violation of this Declaration in such a manner as to make it conform thereto, in which case the Association may assess such Owner for the entire cost of the work done, which amount shall be payable to

the Operations Fund as an Individual Assessment, provided that no items of construction shall be altered or demolished in the absence of judicial proceedings;

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

(d) Suspend the voting rights, any utility services paid for out of Assessments and the right to use the Common Areas for the period that the violations remain unabated, provided that the Association shall not deprive any Owner of access to and from his Unit in the absence of a foreclosure thereof or court order to such effect; and

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

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

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

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

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

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

**12.3 Interest, Late Charges and Expenses.** Any amount not paid to the Association when due in accordance with this Declaration shall bear interest from the due date until paid at a rate that is the greater of eighteen percent (18%) per annum or three percentage points per annum above the prevailing Portland, Oregon prime rate as of the due date, or such other rate as may be established by the Board of Directors, but not to exceed the lawful rate of interest under the laws of the State of Oregon. A late charge may be charged for each delinquent Assessment in an amount established from time to time by resolution of the Board of Directors, which resolution is delivered to each Unit, mailed to the mailing address of each Unit or mailed to the mailing address designated by the Owner in writing, together with all expenses incurred by the Association in collecting such unpaid assessments, including attorneys' fees (whether or not suit is instituted). In the event the Association shall file a notice of lien, the lien amount shall also include the recording fees associated with filing the notice, and a fee for preparing the notice of lien, established from time to time by resolution of the Board of Directors.

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

12.5 **Assignment of Rents.** As security for the payment of all liens arising pursuant to this Article 12, each Owner hereby gives to and confers upon the Association the right, power and authority, during the continuance of such ownership, to collect the rents, issues and profits of the Owner's Unit, reserving unto the Owner the right, prior to any default by such Owner in performance of that Owner's obligation under this Declaration or the Bylaws to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, the Association may, at any time after ten (10) days written notice to such Owner, either in person, by agent or by a receiver to be appointed by a court of competent jurisdiction, and without regard to the adequacy of any security for such indebtedness, enter upon and take possession of such Owner's Unit or any part thereof, in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, in payment of any indebtedness to the Association or in performance of any agreement hereunder, and in such order as the Association may determine. Such action shall not cure nor waive any default hereunder or invalidate any act done pursuant to this Declaration. The assignment of rents and powers described in the foregoing section shall not affect, and shall in all respects be subordinate to, the rights and powers of the holder of any first or second Mortgage on any Unit, or any part thereof, to do the same or similar acts.

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

## Article 13

### DISPUTE RESOLUTION

#### 13.1 **Mediation.**

(a) Except as otherwise provided in this section, before initiating litigation, arbitration or an administrative proceeding in which the Association and an Owner have an adversarial relationship, the party that intends to initiate litigation, arbitration or an administrative proceeding shall offer to use any dispute resolution program available within Deschutes County, Oregon, that is in substantial compliance with the standards and guidelines adopted under ORS 36.175. The written offer must be hand-delivered or mailed by certified mail, return receipt requested, to the address, contained in the records of the Association, for the other party.

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

(c) If a qualified dispute resolution program exists within Deschutes County, Oregon and an offer to use the program is not made as required under paragraph (a) of this section, then litigation, arbitration or an administrative proceeding may be stayed for thirty (30) days upon a motion of the noninitiating party. If the litigation, arbitration or administrative action is stayed under this paragraph, both parties shall participate in the dispute resolution process.

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

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

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

13.2 **Arbitration.** Any claim, controversy, or dispute by or among Declarant (including members, officers, directors, shareholders and affiliates of Declarant), Association, the Architectural Review Committee, or one or more Owners, or any of them, arising out of or related to this Declaration, the Bylaws of the Association, the Rules and Regulations, or the Property shall be first subject to mediation as described in Section 13.1 above or otherwise, and if not timely settled by mediation, resolved by arbitration in accordance with this Article 13. The decisions and award of the arbitrator shall be final, binding and nonappealable. The arbitration shall be conducted in Bend, Oregon, or at such other location as may be agreed upon by the parties, pursuant to the arbitration statutes of the State of Oregon and any arbitration award may be enforced by any court with jurisdiction. Filing for arbitration shall be treated the same as filing in court for purposes of meeting any applicable statute of limitations or for purposes of filing a notice of pending action (“lis pendens”).

13.3 **Selection of Arbitrator.** The arbitration shall be conducted by a single arbitrator selected by mutual agreement of the parties. The arbitrator selected shall be neutral and unbiased, except to the extent the arbitrator’s prior relationship with any party is fully disclosed and consented to by the other party or parties. If the parties are unable to agree upon the arbitrator within ten (10) days after a party’s demand for arbitration, upon application of any party, the presiding judge of the Circuit Court of Deschutes County, Oregon shall designate the arbitrator.

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

13.5 **Discovery.** The parties to the arbitration shall be entitled to such discovery as would be available to them in an action in Deschutes County Circuit Court. The arbitrator shall have all of the authority of the court incidental to such discovery, including, without limitation, authority to issue orders to produce documents or other materials, to issue orders to appear and submit to deposition, and to impose appropriate sanctions including, without limitation, award against a party for failure to comply with any order.

13.6 **Evidence.** The parties to the arbitration may offer such evidence as they desire and shall produce such additional evidence as the arbitrator may deem necessary for an understanding and determination of the dispute. The arbitrator shall determine the admissibility of the evidence offered. All evidence shall be taken in the presence of the arbitrator and all of the parties, except when any of the parties is absent in default or has waived its right to be present.

13.7 **Excluded Matters.** Notwithstanding the foregoing, the following matters shall not be subject to mediation or arbitration under this Article 13 (but shall be subject to the applicable provisions of Section 13.8 below): (a) actions relating to the collection of fees, Assessments, fines and other charges imposed or levied by the Association (other than disputes as to the validity or amount of such fees, Assessments, fines or charges, which disputes shall be subject to mediation/arbitration as provided above); and (b) actions to enforce any order, decision or award rendered by arbitration pursuant to this Article 13. The filing of a lis pendens or the application to any court for the issuance of any provisional process or similar remedy described in the Oregon or Federal Rules of Civil Procedure shall not constitute a waiver of the right or duty to utilize the procedures specified in this Article 13.

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

13.9 **Survival.** The mediation and arbitration agreement set forth in this Article 13 shall survive the transfer by any party of its interest or involvement in the Property and any Lot therein and shall survive the termination of this Declaration.

## Article 14

### MORTGAGEES

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

14.1 **Subordination of Lien to Mortgages.** The lien of the Assessments or charges provided for in this Declaration shall be subordinate to the lien of any Mortgage on such Unit which was made in good faith and for value and which was recorded prior to the recordation of the notice of lien. Sale or transfer of any Unit shall not affect the Assessment lien, but the sale or transfer of any Unit which is subject to any mortgage or deed of trust pursuant to a decree of foreclosure or nonjudicial sale thereunder shall extinguish any lien of an Assessment notice of which was recorded after the recording of the Mortgage. Such sale or transfer, however, shall not release the Unit from liability for any Assessments or charges thereafter becoming due or from the lien of such Assessments or charges.

14.2 **Reimbursement of First Mortgagees.** First mortgagees of Units may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Areas and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy, for such Common Area. First mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

14.3 **Notification of First Mortgagee.** If a first Mortgagee has requested such notice in writing from the Association, the Board shall notify such Mortgagee of any individual Unit of any default in performance of this Declaration by the Owner which is not cured within sixty (60) days after notice of default to the Owner.

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

## Article 15

### DECLARANT'S SPECIAL RIGHTS

Until the end of the Development Period, with respect to the Common Area and each Unit in Tetherow, the Declarant shall have the following special rights, in addition to all other rights reserved under this Declaration and any Supplemental Declaration:

15.1 **Marketing Rights.** Declarant shall have the right to maintain a sales office and model on one or more of the Units which the Declarant owns. 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 on Tetherow, including, without limitation, the Common Area.

15.2 **Declarant Easements.** The Declarant has reserved easements over Tetherow as more fully described in Sections 4.2, 5.3 and 5.4 hereof.

15.3 **Size and Appearance of Tetherow.** Declarant shall not be prevented from increasing or decreasing the number of Units in Tetherow or from changing the exterior appearance of the Common Area, including the landscaping or any other matter directly or indirectly connected with Tetherow in any manner deemed desirable by Declarant, provided that Declarant obtains governmental consents required by law.

15.4 **Dedications.** Declarant reserves the right to dedicate any portions of Tetherow then owned by Declarant to any governmental authority, quasi-governmental entity or entity qualifying under Section 501(c)(3) of the Internal Revenue Code or similar provisions, from time to time, for such purposes as Declarant may deem to be appropriate, including, without limitation, for utility stations, equipment, fixtures and lines; streets and roads; sidewalks; trails; open space for habitat, wildlife, waterfowl, fish, vegetation, wetlands or other preservation purposes; recreational facilities; schools; cemeteries; fire, police, security, medical and similar services; and such other purposes as Declarant and such governmental authority or quasi-governmental entity shall determine to be appropriate from time to time. Any consideration received by Declarant as a result of such dedication, by reason of any condemnation or any conveyance in lieu of condemnation, shall belong solely to Declarant.

15.5 **Annexations.** Declarant reserves the right with respect to all or any portion of Tetherow then owned by Declarant, and from time to time, to petition for and obtain rezonings of such property; exchanges of properties; annexations to or incorporations within any boundary or jurisdiction of exchanges of properties; annexations to or incorporations within any boundary or jurisdiction of the County of Deschutes or the City of Bend; inclusions within any urban growth area; amendments to the Master Plan; and such licenses, permits and governmental approvals as Declarant may deem to be appropriate from time to time in connection with the then or anticipated use of such portion of Tetherow.

15.6 **Subdivisions.** Declarant reserves the right to subdivide any Units then owned by Declarant from time to time upon receiving all required approvals from the appropriate governmental authority. If any two or more Units are so subdivided, they shall be deemed separate Units for the purposes of allocating Assessments under this Declaration.

15.7 **Right to Approve Changes in the Standards within Tetherow.** No Supplemental Declaration and no amendment to or modification of this Declaration or any Supplemental Declaration shall be effective without the prior notice to and the written consent of Declarant so long as Declarant owns property subject to this Declaration or prior to the expiration of the Development Period.

## Article 16

### AMENDMENT AND REPEAL

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

16.2 **Approval Required.** This Declaration, or any provision thereof, as from time to time in effect with respect to all or any part of the Property, may be amended or repealed by the vote or written consent of Owners representing not less than seventy-five percent (75%) of the Units, based upon one vote for each such Unit, together with the written consent of the Class B Member, if such Class B membership has not been terminated as provided in this Declaration. In no event shall an amendment under this section create, limit or diminish special Declarant rights without Declarant's written consent, or change the boundaries of any Unit or any uses to which any Unit is restricted under this Declaration or change the method of determining liability for common expenses, the method of determining the right to common profits or the method of determining voting rights of any Unit unless the Owners of the affected Units unanimously consent to the amendment. Declarant may not amend this Declaration to increase the scope of special Declarant rights reserved in this Declaration after the sale of the first Unit unless Owners representing seventy-five percent (75%) of the total vote, other than Declarant, agree to the amendment.

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

16.4 **Regulatory Amendments.** Notwithstanding the provisions of Section 16.2 above, until the Turnover Meeting has occurred, Declarant shall have the right to amend this Declaration or the Bylaws of the Association in order to comply with the requirements of any applicable statute, ordinance or regulation or of the Federal Housing Administration; the United States Department of Veterans Affairs; the Farmers Home Administration of the United States; the Federal National Mortgage Association; the Government National Mortgage Association; the Federal Home Mortgage Loan Corporation, any department, bureau, board, commission or agency of the United States or the State of Oregon; or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon that insures, guarantees or provides financing for a planned community or lots in a planned community. After the Turnover Meeting, any such amendment shall require the approval of a majority of the voting rights of the Association voting in person, by proxy or by ballot at a meeting or ballot meeting of the Association at which a quorum is represented.

## Article 17

### MISCELLANEOUS PROVISIONS

17.1 **No Implied Obligations.** Nothing in this Declaration shall be construed to require Declarant or any successor to subject Additional Property to this Declaration or to improve or develop any of the Property or to do so for any particular uses.

17.2 **Right to Approve Additional Covenants.** No Person shall record any declaration of covenants, conditions, and restrictions, declaration of condominium or similar instrument affecting any portion of the Property without Declarant's prior written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force or effect unless subsequently approved in writing by Declarant.

17.3 **Right to Transfer or Assign Declarant's Rights.** The Declarant may assign and delegate one or more of the Declarant's rights and obligations hereunder to one or more successor Declarants. Each such

assignment shall be in writing, be Recorded in the Deschutes County real property records, specify the rights and obligations being assigned and delegated to the successor Declarant and identify the portion of Tetherow to which the assignment pertains. The successor Declarant will not acquire any rights as the successor Declarant as to any portion of Tetherow other than that portion of Tetherow identified in the written assignment.

**17.4 Joint Owners.** Unless otherwise provided in a Neighborhood Declaration, in any case in which two or more Persons share the ownership of any Unit, regardless of the form of ownership, the responsibility of such Persons to comply with this Declaration shall be a joint and several responsibility and the act or consent of any one or more of such Persons shall constitute the act or consent of the entire ownership interest; provided, however, that in the event such Persons disagree among themselves as to the manner in which any consent shall be given with respect to a pending matter, any such Person may deliver written notice of such disagreement to the Association, and the right of consent involved shall then be disregarded completely in determining the proportion of consents given with respect to such matter.

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

**17.6 Notice of Sale or Transfer of Title.** Any Owner selling or otherwise transferring title to his or her Unit shall give the Association written notice within seven (7) days after such transfer of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Association may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including Assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

**17.7 Exclusive Rights to Use Name of Development.** No Person shall use the name "Tetherow" or any derivative of such name in any printed, digital (i.e. internet) or other promotional or commercial material without Declarant's prior written consent. However, an Owner may use the name "Tetherow" where such term is used solely to specify that the Owner's property is located within the Property and Neighborhood Associations shall be entitled to use the words "Tetherow" in their names. In no event shall any Owner enter into an agreement with any third party for the sale, rental or management of the Owner's Unit which agreement purports to grant any right to such third party to use the name "Tetherow" or any derivative of such name in violation of this provision.

**17.8 Nonwaiver.** Failure by the Association or by any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

**17.9 Consent.** Whenever the consent or approval of any person or entity is required by this Declaration, such consent or approval must be in writing and signed by an authorized person in order to be effective.

**17.10 Construction; Severability; Number; Captions.** This Declaration shall be governed and construed under the laws of the State of Oregon. It shall be liberally construed as an entire document to accomplish the purposes hereof as stated in the introductory sections of this Declaration. Nevertheless, each provision of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision shall not affect the validity or enforceability of the remaining part of that or any other provision.

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

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

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

**ARROWOOD TETHEROW, LLC,**  
an Oregon limited liability company

By: *[Signature]*  
Its: *Manager*

STATE OF OREGON                    )  
  )ss.  
COUNTY OF BEND                    )

This instrument was acknowledged before me this 1st day of October 2007 by DONALD N BAUHOFER, MANAGER of Arrowood Tetherow, LLC, an Oregon limited liability company, on its behalf.

*[Signature]*  
Notary Public  
My commission expires: 10-10-09  
Commission No.: 397928



CONSENT

Arrowood Development, LLC, and Proterra Bend - I, LLC, as owners of the Property, hereby consent to the within Declaration and subject the Property to such Declaration.

ARROWOOD DEVELOPMENT, LLC,  
an Oregon limited liability company

By: [Signature]

PROTERRA BEND-I, LLC,  
an Oregon limited liability company

By: [Signature]

STATE OF OREGON )  
County of DESCHUTES )ss.  
)

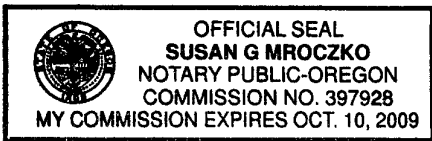
The foregoing instrument was acknowledged before me this 1st day of October, 2007, by DONALD N BAUDFEL, CHAIRMAN of Arrowood Development, LLC, an Oregon limited liability company, on its behalf.



[Signature]  
Notary Public for Oregon  
My commission expires: 10-10-09

STATE OF OREGON )  
County of DESCHUTES )ss.  
)

The foregoing instrument was acknowledged before me this 2nd day of October, 2007, by HAYDEN WATSON, MEMBER of Proterra Bend - I, LLC, an Oregon limited liability company, on its behalf.



[Signature]  
Notary Public for Oregon  
My commission expires: 10-10-09

**EXHIBIT A**

**Property Initially Subject to this Declaration**

“Meeks Trail” as shown on the plat of Tetherow 1 recorded September 24, 2007, in the Records of Deschutes County, Oregon, as Document No. 2007-51564.

Exhibit A

**EXHIBIT B**

**Neighborhoods and Land Classifications Within Initial Development**

**Neighborhoods:** None  
**Units:** None  
**Common Areas:** Meeks Trail  
**Excluded Areas:** None  
**Restricted Areas:** None

**EXHIBIT C**

**BYLAWS OF  
TETHEROW OWNERS ASSOCIATION**

## TABLE OF CONTENTS

	<b>Page</b>
ARTICLE 1	DEFINITIONS..... 1
1.1	Association..... 1
1.2	Articles of Incorporation..... 1
1.3	Declaration..... 1
1.4	Incorporation by Reference..... 1
ARTICLE 2	MEMBERSHIP..... 1
2.1	Membership..... 1
2.2	Membership List..... 1
ARTICLE 3	MEETINGS AND VOTING..... 1
3.1	Place of Meetings..... 1
3.2	First Meeting..... 1
3.3	Annual Meeting..... 1
3.4	Turnover Meeting..... 2
3.5	Special Meetings..... 2
3.6	Notice of Meeting..... 2
3.7	Quorum..... 2
3.8	Voting Rights..... 2
3.9	Fiduciaries and Joint Owners..... 3
3.10	Tenants and Contract Vendors..... 3
3.11	Casting of Votes and Consents..... 3
(a)	Proxies..... 3
(b)	Absentee Ballots..... 3
(c)	Ballot Meetings..... 3
(d)	Electronic Ballots..... 3
(e)	Mortgages..... 3
3.12	Majority Vote..... 3
3.13	Rules of Order..... 4
ARTICLE 4	DIRECTORS: MANAGEMENT..... 4
4.1	Number and Qualification..... 4
4.2	Interim Directors..... 4
4.3	Transitional Advisory Committee..... 4
4.4	Appointment, Nomination and Election..... 4
(a)	When Fifty Percent (50%) of the Units Have Sold..... 4
(b)	When Ninety Percent (90%) of the Units Have Been Sold..... 4

	(c)	Turnover Meeting After Termination of Class B Membership.....	4
	(d)	Nomination Procedures.....	5
4.5		Voting Groups.....	5
4.6		Vacancies.....	5
4.7		Removal of Directors.....	5
4.8		Powers.....	6
4.9		Meetings.....	7
4.10		Open Meetings.....	7
4.11		Notice of Meetings.....	8
4.12		Quorum and Vote.....	8
4.13		Right Of Declarant To Disapprove Actions.....	8
4.14		Liability.....	9
4.15		Compensation.....	9
4.16		Executive, Covenants and Other Committees.....	9
4.17		Enforcement Procedures.....	10
	(a)	Notice.....	10
	(b)	Response.....	10
	(c)	Proof of Notice.....	10
	(d)	Hearing.....	10
	(e)	Appeal.....	10
	(f)	Enforcement Policies.....	10
ARTICLE 5		OFFICERS.....	10
5.1		Designation and Qualification.....	10
5.2		Election and Vacancies.....	10
5.3		Removal and Resignation.....	11
5.4		President.....	11
5.5		Vice Presidents.....	11
5.6		Secretary.....	11
5.7		Treasurer.....	11
5.8		Compensation of Officers.....	12
ARTICLE 6		ASSESSMENTS, RECORDS AND REPORTS.....	12
6.1		Assessments.....	12
6.2		Records.....	13
6.3		Statement of Assessments Due.....	13
6.4		Inspection of Books and Records.....	13
6.5		Payment of Vouchers.....	13
6.6		Execution of Documents.....	13

6.7	Reports and Audits. ....	13
ARTICLE 7	INSURANCE.....	14
7.1	Types of Insurance. ....	14
	(a) Property Damage Insurance. ....	14
	(b) Liability Insurance. ....	14
	(c) Workers' Compensation Insurance. ....	14
	(d) Fidelity Insurance. ....	14
7.2	Insurance by Unit Owners.....	15
7.3	Planned Community Act Requirements. ....	15
ARTICLE 8	GENERAL PROVISIONS.....	15
8.1	Seal.....	15
8.2	Waiver of Notice.....	15
8.3	Action Without Meeting. ....	15
8.4	Conflicts. ....	15
ARTICLE 9	AMENDMENTS TO BYLAWS .....	15
9.1	How Proposed.....	15
9.2	Adoption. ....	15
9.3	Execution and Recording. ....	16

**BYLAWS OF  
TETHEROW OWNERS ASSOCIATION**

**Article 1**

**DEFINITIONS**

1.1 **Association.** "Association" means **TETHEROW OWNERS ASSOCIATION**, a nonprofit corporation organized and existing under the laws of the State of Oregon.

1.2 **Articles of Incorporation.** "Articles of Incorporation" means the Articles of Incorporation of the Association.

1.3 **Declaration.** The "Declaration" means the Declaration of Covenants, Conditions, Restrictions and Easements for Tetherow to which these Bylaws are attached, as the same may be subsequently amended or supplemented pursuant to the terms thereof.

1.4 **Incorporation by Reference.** Except as otherwise provided herein, the terms that are defined in Article 1 of the Declaration are used in these Bylaws as therein defined.

**Article 2**

**MEMBERSHIP**

2.1 **Membership.** Every Owner of one or more Units within the Property shall, immediately upon creation of the Association and thereafter during the entire period of such ownership, be a member of the Association. Such membership shall commence, exist and continue simply by virtue of such ownership, shall expire automatically upon termination of such ownership, and need not be confirmed or evidenced by any certificate or acceptance of membership. The Association shall have two classes of membership, Class A and Class B, as set forth in the Declaration.

2.2 **Membership List.** The Secretary shall maintain at the principal office of the Association a membership list showing the name and address of the Owner of each Unit. The Secretary may accept as satisfactory proof of such ownership a duly executed and acknowledged conveyance, a title insurance policy, or other evidence reasonably acceptable to the Board of Directors.

**Article 3**

**MEETINGS AND VOTING**

3.1 **Place of Meetings.** Meetings of the members of the Association shall be held at such reasonable place convenient to the members as may be designated in the notice of the meeting.

3.2 **First Meeting.** Declarant shall call the first meeting of the Owners to organize the Association within two years following closing of the first sale of a Unit to an ultimate purchaser. Notice of such meeting shall be given to all Owners as provided in Section 3.6.

3.3 **Annual Meeting.** After the first meeting, annual meetings of the members for the election of directors or for the transaction of such other business as may properly come before the meeting shall be held at such reasonable hour and on such reasonable day as may be established by the Board of Directors.

3.4 **Turnover Meeting.** Declarant shall turn over administrative control of the Association to the Owners at the first annual meeting after termination of the class B Membership. If a quorum of the Owners is present, the Owners shall elect not fewer than the number of directors sufficient to constitute a quorum of the Board of Directors.

3.5 **Special Meetings.** A special meeting of the Association may be called at any time by the President or by a majority of the Board of Directors. A special meeting shall be called by the president or secretary upon receipt of a written request stating the purpose of the meeting from members having at least thirty percent (30%) of the voting rights entitled to be cast at such meeting. Business transacted at a special meeting shall be confined to the purposes stated in the notice of meeting.

3.6 **Notice of Meeting.**

(a) Written or printed notice stating the place, day and hour of the meeting, the items on the agenda, including the general nature of any proposed amendment to the Declaration or these Bylaws, any budget changes, any proposal to remove a director or officer and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) or more than fifty (50) days before the date of the meeting. Such notice shall be given either personally, by mail or electronically (to the extent permitted by law) by or at the direction of the President, the Secretary, or the persons calling the meeting, to each member entitled to vote at such meeting and to all mortgagees who have requested such notice. Notices to Declarant shall be mailed. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, with postage fully prepaid thereon, addressed to the member at his or her most recent address as it appears on the records of the Association or to the mailing address of his or her Unit.

(b) When a meeting is adjourned for thirty (30) days or more, or when a redetermination of the persons entitled to receive notice of the adjourned meeting is required by law, notice of the adjourned meeting shall be given as for an original meeting. In all other cases, no notice of the adjournment or of the business to be transacted at the adjourned meeting need be given other than by announcement at the meeting at which such adjournment is taken.

3.7 **Quorum.** At any meeting of the Association, members having at least twenty percent (20%) of the voting rights entitled to be cast at such meeting, present in person by proxy or by absentee ballot, if permitted by the Board of Directors, shall constitute a quorum, except when a larger quorum is required by the Declaration. When a quorum is once present to organize a meeting, it cannot be broken by the subsequent withdrawal of a member or members. If any meeting of members cannot be organized because of a lack of quorum, the members who are present, either in person or by proxy, may adjourn the meeting from time to time not less than forty-eight (48) hours or more than thirty (30) days from the time the original meeting was called until a quorum is present.

3.8 **Voting Rights.** The Association shall have two classes of voting membership:

**Class A.** Class A Members shall be all Owners with the exception of the Class B Member and shall be entitled to one (1) vote for each Unit owned by such Owner. When more than one Person holds an interest in any Unit, all such Persons shall be members. Except as may otherwise be specified in the Supplemental Declaration annexing such Unit to the Property, the vote for such Unit shall be exercised as they among themselves determine. In no event, however, shall more voting rights be cast with respect to any Unit than as set forth in this Section 3.8.

**Class B.** The Class B Member shall be the Declarant and shall be entitled to ten (10) votes for each Unit owned by Declarant. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (1) Expiration of the Development Period; or
- (2) At such earlier time as Declarant may elect in writing to terminate Class B membership.

3.9 **Fiduciaries and Joint Owners.** An executor, administrator, guardian or trustee may vote or grant consent with respect to any Unit owned or held in such capacity, whether or not the specific right shall have been transferred to his or her name; provided that such person shall satisfy the Secretary that he or she is the executor, administrator, guardian or trustee, holding such Unit in such capacity. Whenever any Unit is owned by two or more persons jointly, according to the records of the Association, the vote of such Unit may be exercised by any one of the Owners, in the absence of protest by a co-Owner. In the event of disagreement among the co-Owners, the vote of such Unit shall be disregarded completely in determining the proportion of votes given with respect to such matter, unless a valid court order establishes the authority of a co-Owner to vote.

3.10 **Tenants and Contract Vendors.** Unless otherwise expressly stated in the rental agreement or lease, all voting rights allocated to a Unit shall be exercised by the Owner. Unless otherwise stated in the contract, all voting rights allocated to a Unit shall be exercised by the vendee of any recorded land sale contract on the Unit.

3.11 **Casting of Votes and Consents.** The voting rights or consent of an Owner may be cast in person at a meeting of the Association or, at the discretion of the Board of Directors, by proxy in accordance with paragraph (a) of this Section, by absentee ballot in accordance with paragraph (b) of this Section, by written ballot in accordance with paragraph (c) of this Section, or by any other method specified in the Declaration, these Bylaws or the Oregon Planned Community Act.

(a) **Proxies.** A proxy must be dated and signed by the an Owner, is not valid if it is undated or purports to be revocable without notice, and terminates one year after its date unless the proxy specifies a shorter term. The board of directors may not require that a proxy be on a form prescribed by the Board. An Owner may not revoke a proxy given pursuant to this paragraph except by actual notice of revocation to the person presiding over a meeting of the Association or to the Board of Directors if a vote is being conducted by written ballot in lieu of a meeting. A copy of a proxy in compliance with this paragraph provided to the Association by facsimile, electronic mail or other means of electronic communication utilized by the Board of Directors is valid.

(b) **Absentee Ballots.** An absentee ballot, if authorized by the Board of Directors, shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. All solicitations for votes by absentee ballot shall include instructions for delivery of the completed absentee ballot, including the delivery location and instructions about whether the ballot may be canceled if the ballot has been delivered according to the instructions. An absentee ballot shall be counted as an Owner present for the purpose of establishing a quorum. Even if an absentee ballot has been delivered to an Owner, the Owner may vote in person at a meeting if the Owner has returned the absentee ballot and canceled the absentee ballot, if cancellation is permitted in the instructions given under this paragraph.

(c) **Ballot Meetings.** At the discretion of the Board of Directors, any action that may be taken at any annual, regular or special meeting of the Association may be taken without a meeting by written ballot to the extent and in the manner provided in ORS 94.647

(d) **Electronic Ballots.** To the extent authorized by the Board of Directors and permitted by the Oregon Planned Community Act, any vote, approval or consent of an Owner maybe given by electronic ballot.

(e) **Mortgages.** An Owner may pledge or assign such Owner's voting rights to a Mortgagee. In such a case, the Mortgagee or its designated representative shall be entitled to receive all notices to which the Owner is entitled under these Bylaws and to exercise the Owner's voting rights from and after the time that the Mortgagee shall give written notice of such pledge or assignment to the Board of Directors. Any first Mortgagee may designate a representative to attend all or any meetings of the Association.

3.12 **Majority Vote.** The vote of a majority of the voting rights entitled to be cast by the members present or represented by absentee ballot or proxy, at a meeting at which a quorum is present, shall be necessary for the adoption of any matter voted upon by the members, unless a greater proportion is required by law, by the Declaration, by the Articles of Incorporation, or by these Bylaws.

3.13 **Rules of Order.** Unless other rules of order are adopted by resolution of the Association or the Board of Directors, all meetings of the Association shall be conducted according to the latest edition of *Robert's Rules of Order*, published by Robert's Rules Association.

## Article 4

### DIRECTORS: MANAGEMENT

4.1 **Number and Qualification.** The affairs of the Association shall be governed by a Board of Directors of three (3) to seven (7) persons as provided in the Declaration. All directors, other than directors appointed by Declarant, shall be Owners or co-Owners of Units. For purposes of this section, the officers of any corporate Owner, the members of any limited liability company and the partners of any partnership shall be considered co-Owners of any Units owned by such corporation or partnership.

4.2 **Interim Directors.** Upon incorporation of the Association and until the first annual meeting after fifty percent (50%) of the Units authorized by the Development Plan have been sold and conveyed to individual residential purchasers (as opposed to home builders), the Board shall be composed of three directors all of whom shall be appointed by Declarant.

4.3 **Transitional Advisory Committee.** Unless the Turnover Meeting has already been held, Declarant shall call a meeting of the Owners for the purpose of forming a Transitional Advisory Committee. The meeting shall be called within sixty (60) days after the date Declarant conveys fifty percent (50%) or more of the Units then existing in the Property to Owners other than a successor Declarant or Neighborhood Declarant. The committee shall consist of two (2) or more Owners elected by the Owners other than Declarant and not more than one (1) representative of Declarant. Once the Class A Member commences electing directors pursuant to Section 4.4 below, the directors so elected by the Class A Members shall be Owner elected members of the Transitional Advisory Committee. The Transitional Advisory Committee shall be advisory only, and its purpose shall be to enable ease of transition from administrative control of the Association by Declarant to control by the Owners. The committee shall have access to any information, documents and records that Declarant must turn over to the Owners at the time of the Turnover Meeting. If Declarant fails to call the meeting to elect a Transitional Advisory Committee within the time specified, the meeting may be called and notice given by any Owner. If the Owners fail to elect a Transitional Advisory Committee at the meeting called for such purpose, Declarant shall have no further obligation to form the committee.

#### 4.4 **Appointment, Nomination and Election.**

(a) **When Fifty Percent (50%) of the Units Have Sold.** Commencing on the first annual meeting after fifty percent (50%) of the Units authorized by the Development Plan have been sold and conveyed to ultimate purchasers and until the first annual meeting after ninety percent (90%) of the Units have been conveyed, the Board shall be composed of three directors, two of whom shall be appointed by Declarant and one of whom shall be elected by the Class A Members for a two-year term.

(b) **When Ninety Percent (90%) of the Units Have Been Sold.** Commencing on the first annual meeting after ninety percent (90%) of the Units authorized by the Development Plan have been sold and conveyed to ultimate purchasers and until the first annual meeting after expiration of the Development Period, the Board shall be composed of five directors, three of whom shall be appointed by Declarant and two of whom shall be elected by the Class A Members, one for a one-year term and one for a two-year term, after which the Class A directors shall serve for two-year terms.

(c) **Turnover Meeting After Termination of Class B Membership.** The first annual meeting after termination of the Class B membership shall be the Turnover Meeting, at which time Declarant will turn over administrative control to the Owners. Commencing with the Turnover meeting, the Board shall be composed of seven directors, all of whom shall be elected by the Owners at the Turnover Meeting. Four directors

shall be elected for two-year terms and three for a one-year term, after which all directors shall serve for two-year terms.

(d) **Nomination Procedures.** Nominations for election to the Board shall be made by a Nominating Committee. The Nominating Committee shall consist of a chairman, who shall be a member of the Board, and two or more Class A Members or representatives of Class A Members. The Nominating Committee shall be appointed by the Board not less than 90 days prior to each election to serve a term of one year or until their successors are appointed. The Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but in no event less than the number of positions to be filled. Nominations shall also be permitted from the Class A Members. The Nominating Committee shall nominate separate slates for the directors to be elected at large by all Class A votes, and for the director(s), if any, to be elected by the votes within each Voting Group. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity that exists within the pool of potential candidates.

4.5 **Voting Groups.** In connection with the election of those directors to be elected by the Class A Members, Declarant may, from time to time, in its discretion, designate Voting Groups consisting of one or more Neighborhoods (or the Units outside any Neighborhood) for the purpose of electing directors to the Board, in addition to any at-large directors elected by all Class A Members. Voting Groups may be designated to ensure groups with dissimilar interests are represented on the Board and to avoid allowing Owners representing similar Neighborhoods to elect the entire Board, due to the number of Units in such Neighborhoods, excluding the representation of others. The number of Voting Groups within the Property shall not exceed the total number of directors to be elected by the Class A Members. The Owners in Neighborhoods within each Voting Group shall vote on a separate slate of candidates for election to the Board. Declarant shall establish Voting Groups, if at all, not later than the termination of Class B membership by filing with the Association and Recording a supplemental declaration identifying each Voting Group by legal description or other means such that the Units within each Voting Group can easily be determined. Such designation may be amended from time to time by Declarant, acting alone, at any time prior to termination of the Class B membership. After termination of the Class B membership, the Board shall have the right to Record a supplemental declaration changing the Voting Groups upon the vote of a majority of the total number of directors and approval of a majority of the voting rights in the Association. Neither recordation nor amendment of such supplemental declaration by Declarant shall constitute an amendment to this Declaration and no consent or approval of the Owners shall be required, except as stated in this section. Until such time as Voting Groups are established, all of the members shall constitute a single Voting Group. After a Supplemental Declaration establishing Voting Groups has been Recorded, any and all portions of the Property which are not assigned to a specific Voting Group shall constitute a single Voting Group.

4.6 **Vacancies.**

(a) A vacancy in the Board of Directors shall exist upon the death, resignation or removal of any director, or if the authorized number of directors is increased, or if the members fail at any annual or special meeting of members at which any director or directors are to be elected to elect the full authorized number of directors to be voted for at that meeting.

(b) Vacancies in the Board of Directors, other than interim directors, may be filled by a majority of the remaining directors, even though less than a quorum, or by a sole remaining director, from the Voting Group represented by the director who vacated the position. Each director so elected shall hold office for the balance of the unexpired term and until his or her successor is elected. Vacancies in interim directors shall be filled by Declarant.

4.7 **Removal of Directors.**

(a) All or any number of the directors, other than interim directors, may be removed, with or without cause, at any meeting of members at which a quorum is present, by a vote of 67% of the votes of the Voting Group that elected such director. No removal of a director shall be effective unless the matter of removal was an item on the agenda and stated in the notice of the meeting as provided in these Bylaws.

(b) Any elected director who has three consecutive unexcused absences from Board meetings or who is delinquent in the payment of any assessment or other charge due the Association for more than 30 days may be removed by a majority of the directors present at a regular or special Board meeting at which a quorum is present, and the Board may appoint a successor to fill the vacancy for the remainder of the term.

**4.8 Powers.** The Board of Directors shall have all the powers and duties necessary for the administration of the affairs of the Association, except such powers and duties as by law or by the Declaration or by these Bylaws may not be delegated to the Board of Directors by the Owners. The Board of Directors may delegate responsibilities to committees or a managing agent, but shall retain ultimate control and supervision. The powers and duties to be exercised by the Board of Directors shall include, but not be limited to, those set forth in Section 9.5 of the Declaration and the following:

(a) Carry out the program for maintenance, upkeep, repair and replacement of any property required to be maintained by the Association as described in the Declaration and these Bylaws.

(b) Determine the amounts required for operation, maintenance and other affairs of the Association, and the making of such expenditures.

(c) Prepare a budget for the Association, and assessment and collection of the Assessments.

(d) Employ and dismiss such personnel as may be necessary for such maintenance, upkeep and repair.

(e) Employ legal, accounting or other personnel for reasonable compensation to perform such services as may be required for the proper administration of the Association; provided, however, the Board may not incur or commit the Association to incur legal fees in excess of \$5,000 for any specific litigation or claim matter or enter into any contingent fee contract on any claim in excess of \$100,000 unless the Owners have enacted a resolution authorizing the incurring of such fees by a vote of seventy-five percent (75%) of the voting rights. These limitations shall not be applicable to legal fees incurred in defending the Association or the Board of Directors from claims or litigation brought against them. The limitations set forth in this paragraph shall increase by ten percent on each fifth anniversary of the recording of the Declaration. To the extent required by the Oregon Planned Community Act, the Board shall notify the Owners before instituting litigation or administrative proceedings. With regard to any pending litigation involving the Association, the Board shall periodically report to the Unit Owners as to the status (including settlement offers), progress, and method of funding such litigation. Nothing in this paragraph shall be construed as requiring the Board to disclose any privileged communication between the Association and its counsel.

(f) Open bank accounts on behalf of the Association and designating the signatories required therefor.

(g) Prepare and file, or cause to be prepared and filed, any required income tax returns or forms for the Association.

(h) Purchase Units at foreclosure or other judicial sales in the name of the Association or its designee.

(i) Sell, lease, mortgage, vote the votes appurtenant to (other than for the election of directors), or otherwise deal with Units acquired by the Association or its designee.

(j) Obtain insurance or bonds pursuant to the provisions of these Bylaws and review such insurance coverage at least annually.

(k) Make additions and improvements to, or alterations of, the Common Areas, or modify, close, remove, eliminate or discontinue use of any common facility, including any improvement or landscaping, except that any such modification, closure, removal, elimination or discontinuance (other than on a temporary basis) of any swimming pool, spa or recreational or community building must be approved by a majority vote of the members at a meeting or by written ballot held or conducted in accordance with these Bylaws.

(l) From time to time adopt, modify, or revoke such Policies and Procedures governing the details for the operation of the Association, the conduct of persons and the operation and use of the Property as the Board of Directors may deem necessary or appropriate to ensure the peaceful and orderly use and enjoyment of the Property. Such action may be overruled or modified by vote of not less than seventy-five percent (75%) of the voting rights of each class of members present, in person or by proxy, at any meeting, the notice of which shall have stated that such modification or revocation of Policies and Procedures will be under consideration.

(m) Enforce by legal means the provisions of the Declaration, these Bylaws and any Policies and Procedures adopted hereunder.

(n) In the name of the Association, maintain a current mailing address of the Association, file annual reports with the Oregon Secretary of State, and maintain and keep current the information required to enable the Association to comply with ORS 94.670(7).

(o) Subject to Section 9.5(u) of the Declaration, enter into management agreements with professional management firms.

#### 4.9 **Meetings.**

(a) Meetings of the Board of Directors shall be held at such place as may be designated from time to time by the Board of Directors or other persons calling the meeting.

(b) Annual meetings of the Board of Directors shall be held within thirty (30) days following the adjournment of the annual meetings of the members.

(c) Special meetings of the Board of Directors for any purpose or purposes may be called at any time by the President or by any two directors.

Unless other rules of order are adopted by resolution of the Association or the Board of Directors, all meetings of the Board of Directors shall be conducted according to the latest edition of *Robert's Rules of Order*, published by Robert's Rules Association.

#### 4.10 **Open Meetings.**

(a) All meetings of the Board of Directors shall be open to Owners except that, in the discretion of the Board, the following matters may be considered in executive session: (i) consultation with legal counsel concerning the rights and duties of the Association regarding existing or potential litigation, or criminal matters; (ii) personnel matters, including salary negotiations and employee discipline; (iii) negotiation of contracts with third parties and (iv) collection of unpaid assessments. Except in the case of an emergency, the Board of Directors shall vote in an open meeting on whether to meet in executive session. If the Board of Directors votes to meet in executive session, the presiding officer shall state the general nature of the action to be considered and, as precisely as possible, when and under what circumstances the deliberations can be disclosed to Owners. The statement, motion or decision to meet in the executive session shall be included in the minutes of the meeting, and any contract or action considered in executive session shall not become effective unless the Board, following the executive session, reconvenes in open meeting and votes on the contract or action, which shall be reasonably identified in the open meeting and included in the minutes.

(b) Meetings of the Board of Directors may be conducted by telephonic communication or by other means of communication that allows all members of the Board participating to hear each other simultaneously or otherwise to be able to communicate during the meeting, except that if a majority of the Units are principal residences of the occupants, then: (i) for other than emergency meetings, notice of each Board of Directors' meeting shall be posted at a place or places on the property at least three (3) days before the meeting, or notice shall be provided by a method otherwise reasonably calculated to inform the Owners of such meeting; and (ii) only emergency meetings of the Board of Directors may be conducted by telephonic communication. The meeting and notice requirements of this section may not be circumvented by chance, social meetings, or any other means.

#### 4.11 Notice of Meetings.

(a) Notice of the time and place of meetings shall be given to each director orally, or delivered in writing personally, by mail or to the extent permitted by the Oregon Planned Community Act, by electronic mail, facsimile or other form of electronic communication acceptable to the Board of Directors, at least twenty-four (24) hours before the meeting. Notice shall be sufficient if actually received at the required time or if mailed or sent electronically not less than seventy-two (72) hours before the meeting. If mailed, the notice shall be directed to the address shown on the Association's records or to the director's actual address ascertained by the person giving the notice. Such notice need not be given for an adjourned meeting if such time and place is fixed at the meeting adjourned.

(b) Attendance of a director at a meeting shall constitute a waiver of notice of such meeting except when a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

#### 4.12 Quorum and Vote.

(a) A majority of the directors shall constitute a quorum for the transaction of business. A minority of the directors, in the absence of a quorum, may adjourn from time to time but may not transact any business.

(b) The action of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors unless a greater number is required by law, the Declaration, the Articles of Incorporation or these Bylaws.

(c) A director who is present at a meeting of the Board of Directors at which action is taken on any Association matter is presumed to have assented to the action unless the director votes against the action or abstains from voting on the action because the director claims a conflict of interest. When action is taken on any matter at a meeting of the Board of Directors, the vote or abstention of each director present must be recorded in the minutes of the meeting. Directors may not vote by proxy or by secret ballot at meetings of the Board of Directors, except that officers may be elected by secret ballot.

4.13 Right Of Declarant To Disapprove Actions. So long as Declarant or any affiliate of Declarant owns any property within the Property, directly or indirectly, in whole or in part, Declarant shall have a right to disapprove any action, policy or program of the Association, the Board and any committee which, in the sole judgment of the Declarant, would tend to impair the rights of Declarant, any Neighborhood Declarant, or Builders under the Declaration or these Bylaws, or interfere with development, construction or marketing of any portion of the Property, or diminish the level of services being provided by the Association. This right to disapprove is in addition to, and not in lieu of, any right to approve or disapprove specific actions of the Association, the Board or any committee as may be granted to the Class B Member or Declarant in the Declaration or these Bylaws.

(a) The Declarant shall be given written notice of all meetings of the Association, the Board or any committee thereof and of all proposed actions of the Association, the Board or any committee thereof to be approved at such meetings or by written request in lieu of a meeting. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association,

which notice complies with the requirements for Board meetings set forth in these Bylaws and which notice shall, except in the case of the regular meetings held pursuant to the Bylaws, set forth with reasonable particularity the agenda to be followed at such meeting.

(b) The Declarant shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein. The Declarant, its representatives or agents may make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee.

(c) No action, policy or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met and the time period set forth in subsection (d) below has expired.

(d) The Declarant, acting through any officer or director, agent or authorized representative, may exercise its right to disapprove at any time within 10 days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within 10 days following receipt of written notice of the proposed action. This right to disapprove may be used to block proposed actions, but shall not include a right to require any action or counteraction on behalf of any committee, the Board or the Association unless such action or counteraction countermands an action, policy or program that was not properly noticed and implemented. The Declarant shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

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

**4.15 Compensation.** No director shall receive any compensation from the Association for acting as such.

**4.16 Executive, Covenants and Other Committees.**

(a) Subject to law, the provisions of the Declaration and these Bylaws, the Board of Directors, may appoint an Executive Committee, a Covenants Committee to be responsible for covenant enforcement as provided in Section 4.17 and such other standing or temporary committees as may be necessary from time to time consisting of Owners and at least one member of the Board of Directors and having such powers as the Board of Directors may designate. Such committees shall hold office at the pleasure of the Board.

(b) Each Neighborhood Committee shall be a committee of the Association. The Board shall have all of the power and control over any Neighborhood Committee that it has under applicable law over other committees of the Association. The Board shall have the power to veto any action taken or contemplated to be taken by any Neighborhood Committee or Neighborhood Association which the Board reasonably determines to be adverse to the interests of the Association or the Owners or inconsistent with the Community-Wide Standard.

4.17 **Enforcement Procedures** The Association shall have the power, as provided in the Declaration, to impose sanctions for any violation of the Declaration, these Bylaws or the Policies and Procedures. To the extent specifically required by the Declaration, the Board of Directors shall comply with the following procedures prior to the imposition of sanctions:

(a) **Notice**. The Board of Directors or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a statement that the alleged violator shall have fourteen (14) days to present a written request for a hearing before the Board of Directors or a Covenants Committee appointed by the Board of Directors, if any; and (iv) a statement that the proposed sanction may be imposed as contained in the notice unless a hearing is requested within fourteen (14) days of the notice.

(b) **Response**. The alleged violator shall respond to the notice of the alleged violation in writing within such fourteen (14) day period, regardless of whether the alleged violator is challenging the imposition of the proposed sanction. If the alleged violator cures the alleged violation and notifies the Board of Directors in writing within such fourteen (14) day period the Board of Directors may, but shall not be obligated to, waive the sanction. Such waiver shall not constitute a waiver of the right to sanction future violations of the same or other provisions by any person. If a timely request for a hearing is not made, the sanction stated in the notice shall be imposed; provided, however, that the Board of Directors or Covenants Committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the fourteen (14) day period. Any response or request for a hearing shall be delivered to the Association's manager, President or Secretary, or as otherwise specified in the notice of violation.

(c) **Proof of Notice**. Prior to the effectiveness of sanctions imposed pursuant to this section, proof of proper notice shall be placed in the minutes of the Board of Directors or Covenants Committee, as applicable. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative requests and appears at the hearing.

(d) **Hearing**. If a hearing is requested within the allotted fourteen (14) day period, the hearing shall be held before the Board of Directors or the Covenants Committee, as applicable. The alleged violator shall be afforded a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing (i.e., the decision) and the sanction, if any, to be imposed.

(e) **Appeal**. Following a hearing before the Covenants Committee, if applicable, the violator shall have the right to appeal the decision to the Board of Directors. To exercise this right, the violator must deliver a written notice of appeal to the Association's manager, President or Secretary within ten (10) days after the hearing date.

(f) **Enforcement Policies**. The Board of Directors, by Resolution, may adopt additional Policies and Procedures governing enforcement of the Declaration, these Bylaws or the Policies and Procedures.

## Article 5

### OFFICERS

5.1 **Designation and Qualification**. The officers of the Association shall be the President, the Secretary, the Treasurer, and such Vice Presidents and subordinate officers as the Board of Directors shall from time to time appoint. The President shall be a member of the Board of Directors, but other officers need not be members of the Board. Any two offices, except the offices of President and Secretary, may be held by the same person.

5.2 **Election and Vacancies**. The officers of the Association shall be elected annually by the Board of Directors at the organization meeting of each new Board to serve for one (1) year and until their respective successors are elected. If any office shall become vacant by reason of death, resignation, removal, disqualification

or any other cause, the Board of Directors shall elect a successor to fill the unexpired term at any meeting of the Board of Directors.

**5.3 Removal and Resignation.**

(a) Any officer may be removed upon the affirmative vote of a majority of the directors whenever, in their judgment, the best interests of the Association will be served thereby. The removal of an officer shall be without prejudice to the contract rights, if any, of the officer so removed.

(b) Any officer may resign at any time by giving written notice to the Board of Directors, the President or the Secretary of the Association. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective, provided, however, that the Board of Directors may reject any postdated resignation by notice in writing to the resigning officer. The effectiveness of such resignation shall not prejudice the contract rights, if any, of the Association against the officer so resigning.

**5.4 President.** The President shall be the chief executive officer of the Association and shall, subject to the control of the Board of Directors, have powers of general supervision, direction and control of the business and affairs of the Association. He or she shall preside at all meetings of the members and of the Board of Directors. He or she shall be an ex officio member of all the standing committees, including the executive committee, if any, shall have the general powers and duties of management usually vested in the office of president of a nonprofit corporation, and shall have such other powers and duties as may be prescribed by the Board of Directors or these Bylaws.

**5.5 Vice Presidents.** The Vice Presidents, if any, shall perform such duties as the Board of Directors shall prescribe. In the absence or disability of the President, the President's duties and powers shall be performed and exercised by the Senior Vice President as designated by the Board of Directors.

**5.6 Secretary.**

(a) The Secretary shall keep or cause to be kept a book of minutes of all meetings of directors and members showing the time and place of the meeting, whether it was regular or special, and if special, how authorized, the notice given, the names of those present at directors' meetings, the number of memberships present or represented at members' meetings and the proceedings thereof.

(b) The Secretary shall give or cause to be given such notice of the meetings of the members and of the Board of Directors as is required by these Bylaws or by law. The Secretary shall keep the seal of the Association, if any, and affix it to all documents requiring a seal, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or these Bylaws.

(c) If there are no Vice Presidents, then in the absence or disability of the President, the President's duties and powers shall be performed and exercised by the Secretary.

**5.7 Treasurer.** The Treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Association, including accounts of its assets, liabilities, receipts and disbursements. The books of accounts shall at all reasonable times be open to inspection by any director. The Treasurer shall deposit or cause to be deposited all moneys and other valuables in the name and to the credit of the Association with such depositories as may be designated by the Board. The Treasurer shall disburse or cause to be disbursed the funds of the Association as may be ordered by the Board, shall render to the President and directors, whenever they request it, an account of all of the Treasurer's transactions as Treasurer and of the financial condition of the Association, and shall have such other powers and perform such other duties as may be prescribed by the Board or these Bylaws.

5.8 **Compensation of Officers.** No officer who is a member of the Board of Directors shall receive any compensation from the Association for acting as an officer, unless such compensation is authorized by a resolution duly adopted by the members. The Board of Directors may fix any compensation to be paid to other officers.

## Article 6

### ASSESSMENTS, RECORDS AND REPORTS

6.1 **Assessments.** As provided in the Declaration, the Association, through its Board of Directors, shall do the following:

(a) Assess and collect from every Owner Assessments in the manner described in the Declaration.

(b) Keep all funds received by the Association as Assessments, other than reserves described in the Declaration, in the Operations Fund and keep all reserves collected pursuant to the Declaration in the Reserve Fund and use such funds only for the purposes described in the Declaration. All assessments shall be deposited in the name of the Association in a separate federally insured account at a financial institution as defined in ORS 706.008, other than an extranational institution. All expenses of the Association shall be paid from the Association's bank account.

(c) From time to time, and at least annually, prepare a budget for the Association, estimating the common expenses expected to be incurred with adequate allowance for reserves based upon the reserve study required by the Declaration, and determine whether the General Assessment should be increased or decreased. Within thirty (30) days after adopting a proposed annual budget, the Board of Directors shall provide a summary of the budget to all Owners. If the Board of Directors fails to adopt a budget, the last adopted annual budget shall continue in effect.

(d) Fix the amount of the General Assessment against each Unit at least thirty (30) days in advance of each General Assessment period. Written notice of any Assessment shall be sent to every Owner subject thereto and to any first mortgagee requesting such notice. The due dates shall be established by the Board of Directors, which may fix a regular flat Assessment payable on a monthly, quarterly, semiannual or annual basis. The Board of Directors shall cause to be prepared a roster of the Units showing Assessments applicable to each Unit. The roster shall be kept in the Association office and shall be subject to inspection by any Owner or mortgagee during regular business hours. Within ten (10) business days after receiving a written request, and for a reasonable charge, the Association shall furnish to any Owner or mortgagee a recordable certificate setting forth the unpaid Assessments against such Owner's Unit. Such certificate shall be binding upon the Association, the Board of Directors, and every Owner as to the amounts of unpaid Assessments

(e) When Additional Properties are annexed, the Board of Directors shall assess any Units included therein in accordance with Section 11.4 of the Declaration.

(f) Enforce the Assessments in the manner provided in the Declaration.

(g) Keep records of the receipts and expenditures affecting the Operations Fund and Reserve Fund and make the same available for examination by members and their mortgagees at convenient hours, maintain an Assessment roll showing the amount of each Assessment against each Owner, the amounts paid upon the account and the balance due on the Assessments, give each member written notice of each Assessment at least 30 days before the time when such Assessments shall become due and payable; and for a reasonable charge, promptly provide any Owner or mortgagee who makes a request in writing with a written certificate of such Owner's unpaid Assessments.

6.2 **Records.** The Association shall keep within the State of Oregon correct and complete financial records sufficiently detailed for proper accounting purposes, keep minutes of the proceedings of its members, Board of Directors and committees having any of the authority of the Board of Directors, and retain all documents, information and records turned over to the Association by Declarant. All documents, information and records delivered to the Association by Declarant pursuant to ORS 94.616 shall be kept within the State of Oregon.

6.3 **Statement of Assessments Due.** The Association shall provide, within ten (10) business days after receipt of a written request from an Owner, a written statement that provides: (a) the amount of assessments due from the Owner and unpaid at the time the request was received, including regular and special assessments, fines and other charges, accrued interest, and late-payment charges; (b) the percentage rate at which interest accrues on assessments that are not paid when due; and (c) the percentage rate used to calculate the charges for late payment or the amount of a fixed-rate charge for late payment. The Association is not required to comply with this section if the Association has commenced litigation by filing a complaint against the Owner and the litigation is pending when the statement would otherwise be due.

6.4 **Inspection of Books and Records.** Except as otherwise provided in ORS 94.670(5), during normal business hours or under other reasonable circumstances, the Association shall make reasonably available for examination and, upon written request, available for duplication, by Owners, lenders, and holders of any mortgage of a Unit that make the request in good faith for a proper purpose, current copies of the Declaration, Articles, Bylaws, Policies and Procedures, amendments or supplements to such documents and the books, records, financial statements and current operating budget of the Association. The Association shall maintain a copy, suitable for purposes of duplication, of each of the following: (a) the Declaration, these Bylaws, the Policies and Procedures and any amendments or supplements thereto, (b) the most recent financial statement of the Association, and (c) the current operating budget of the Association. The Association, within ten (10) business days after receipt of a written request by an Owner, shall furnish copies of such documents to the requesting Owner. Upon written request, the Association shall make such documents, information and records available to such persons for duplication during reasonable hours. The Board of Directors, by resolution, may adopt reasonable rules governing the frequency, time, location, notice and manner of examination and duplication of Association records and the imposition of a reasonable fee for furnishing copies of such documents, information or records. The fee may include reasonable personnel costs for furnishing the documents, information or records.

6.5 **Payment of Vouchers.** The Treasurer or managing agent shall pay all vouchers for all budgeted items and for any nonbudgeted items, up to \$1,000 signed by the President, managing agent, manager or other person authorized by the Board of Directors. Any voucher for nonbudgeted items in excess of \$1,000 shall require the authorization of the President or a resolution of the Board of Directors.

6.6 **Execution of Documents.** The Board of Directors may, except as otherwise provided in the Declaration, Articles of Incorporation, or these Bylaws, authorize any officer or agent to enter into any contract or execute any instrument in the name of and on behalf of the Association. Such authority may be general or confined to specific instances. Unless so authorized by the Board of Directors, no officer, agent, or employee shall have any power or authority to bind the Association by any contract or engagement, to pledge its credit, or to render it liable for any purpose or for any amount.

6.7 **Reports and Audits.** An annual financial statement consisting of a balance sheet and an income and expense statement for the preceding year shall be rendered by the Board of Directors to all Owners and to all mortgagees who have requested the same within ninety (90) days after the end of each fiscal year. Commencing with the fiscal year following the Turnover Meeting, if the Annual Assessments exceed \$75,000 for the year, then the Board of Directors shall cause such financial statements to be reviewed within 180 days after the end of the fiscal year by an independent certified public accountant licensed in Oregon in accordance with the Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants, or if the Annual Assessments are \$75,000 or less, shall cause such review within 180 days after receipt of a petition requesting such review signed by at least a majority of owners. The Board of Directors need not cause such a review to be performed if so directed by an affirmative vote of at least sixty percent (60%) of the Owners, not including votes of Declarant with respect to Units owned by Declarant. From time to time, the Board of Directors, at the expense of the Association, may obtain an audit of the books and records pertaining to the Association and

furnish copies thereof to the members. At any time any Owner or holder of a mortgage may, at their own expense, cause an audit or inspection to be made of the books and records of the Association.

## Article 7

### INSURANCE

7.1 **Types of Insurance.** For the benefit of the Association and the Owners, the Board of Directors shall obtain and maintain at all times, and shall pay for out of the Operations Fund, the following insurance:

(a) **Property Damage Insurance.**

(1) The Association shall maintain a policy or policies of insurance covering loss or damage from fire, with standard extended coverage and "all risk" endorsements, and such other coverages as the Association may deem desirable.

(2) The amount of the coverage shall be for not less than one hundred percent (100%) of the current replacement cost of the improvements on the Common Areas (exclusive of land, foundation, excavation and other items normally excluded from coverage), subject to a reasonable deductible not to exceed \$10,000.

(3) The policy or policies shall include all fixtures and building service equipment to the extent that they are part of the Common Areas and all personal property and supplies belonging to the Association.

(b) **Liability Insurance.**

(1) The Association shall maintain comprehensive general liability insurance coverage insuring the Declarant, Neighborhood Declarants, the Association, the Board of Directors, and the managing agent, against liability to the public or to Owners and their invitees or tenants, incident to the operation, maintenance, ownership or use of the Common Areas, including legal liability arising out of lawsuits related to employment contracts of the Association. There may be excluded from such policy or policies coverage of an Owner (other than as a member of the Association or Board of Directors) for liability arising out of acts or omissions of such Owner and liability incident to the ownership and/or use of the part of the Property as to which such Owner has the exclusive use or occupancy.

(2) Limits of liability under such insurance shall not be less than One Million Dollars (\$1,000,000) on a combined single-limit basis.

(3) Such policy or policies shall be issued on a comprehensive liability basis and shall provide a cross-liability endorsement wherein the rights of named insureds under the policy or policies shall not be prejudiced as respects his, her or their action against another named insured.

(c) **Workers' Compensation Insurance.** The Association shall maintain workers' compensation insurance to the extent necessary to comply with any applicable laws.

(d) **Fidelity Insurance.**

(1) The Board of Directors may cause the Association to maintain blanket fidelity insurance for all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of, or administered by, the Association. In the event that the Association has retained a management agent, the Board of Directors may require such agent to maintain fidelity insurance for its officers,

employees and agents handling or responsible for funds of, or administered on behalf of, the Association. The cost of such insurance, if any, may be borne by the Association.

(2) The total amount of fidelity insurance coverage required shall be based upon the best business judgment of the Board of Directors.

(3) Such fidelity insurance shall name the Association as obligee and shall contain waivers by the insurers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. The insurance shall provide that it may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days' prior written notice to the Association.

7.2 **Insurance by Unit Owners.** Each Owner shall be responsible for obtaining, at his or her own expense, homeowner's insurance covering the Improvements on the Owner's Unit and liability resulting from use or ownership of the Unit, unless the Association agrees otherwise. The insurance coverage maintained by the Association shall not be brought into contribution with the insurance obtained under this section by the Owners.

7.3 **Planned Community Act Requirements.** The insurance maintained by the Association shall comply with the requirements of the Oregon Planned Community Act, ORS 94.550 to 94.780.

## Article 8

### GENERAL PROVISIONS

8.1 **Seal.** The Board of Directors may, by resolution, adopt a corporate seal.

8.2 **Waiver of Notice.** Whenever any notice to any member or director is required by law, the Declaration, the Articles of Incorporation, or these Bylaws, a waiver of notice in writing signed at any time by the person entitled to notice shall be equivalent to the giving of the notice.

8.3 **Action Without Meeting.** Any action that the law, the Declaration, the Articles of Incorporation or the Bylaws require or permit the members or directors to take at any meeting may be taken without a meeting or ballot meeting if a consent in writing setting forth the action so taken is signed by all of the members or directors entitled to vote on the matter. The consent, which shall have the same effect as a unanimous vote of the members or directors, shall be filed in the records of minutes of the Association.

8.4 **Conflicts.** These Bylaws are intended to comply with the Oregon Planned Community Act, the Oregon Nonprofit Corporation Law, the Declaration and the Articles of Incorporation. In case of any irreconcilable conflict, such statutes and documents shall control over these Bylaws.

## Article 9

### AMENDMENTS TO BYLAWS

9.1 **How Proposed.** Amendments to these Bylaws shall be proposed by either a majority of the Board of Directors or by members holding at least thirty percent (30%) of the voting rights entitled to be cast for such amendment. The proposed amendment must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon or be attached to any request for consent to the amendment.

9.2 **Adoption.**

(a) A resolution adopting a proposed amendment may be proposed by either the Board of Directors or by the members and may be approved by the membership at a meeting called for such purpose or by

written consent of the members. Members not present at the meeting considering such amendment may express their approval in writing or by proxy. Any resolution must be approved by members holding a majority of the voting rights, together with the written consent of the Class B member, if any. Amendment or repeal of any provision of these Bylaws that is also contained in the Declaration must be approved by the same voting requirement for amendment of such provision of the Declaration.

(b) Notwithstanding the provisions of the preceding paragraph, until the Turnover Meeting has occurred, Declarant shall have the right to amend these Bylaws in order to comply with the requirements of the Federal Housing Administration, the United States Department of Veterans Affairs, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Mortgage Loan Corporation, any department, bureau, board, commission or agency of the United States or the State of Oregon, or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon that insures, guarantees or provides financing for a planned community or lots in a planned community. After the Turnover Meeting, any such amendment shall require the approval of a majority of the voting rights of the Association, voting in person, by proxy, or by ballot, at a meeting or ballot meeting of the Association at which a quorum is represented.

9.3 **Execution and Recording.** An amendment shall not be effective until certified by the President and Secretary of the Association as being adopted in accordance with these Bylaws and ORS 94.625 and recorded in the Deed Records of Deschutes County, Oregon.