

AFTER RECORDING RETURN:

**DECLARATION OF
PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS OF
HERON'S REST**

Declarant: City Center Development Partners Corp

Table of Contents

RECITALS.....	1
ARTICLE 1	
DEFENITIONS.....	2
ARTICLE 2	
PROPERTY SUBJECT TO THIS DECLARATION.....	4
2.1 Development	4
2.2 No Right to Annex Additional Property or to Withdraw Property	4
ARTICLE 3	
OWNERSHIP AND EASEMENTS	4
3.1 Non-Severability	4
3.2 Ownership of Lots	5
3.3 Ownership of Common Area	5
3.4 Easements	5
3.4.1 Easements on Plat	5
3.4.2 Public Easement – Private Roadway.....	5
3.4.3 Easements on Lots	5
3.4.4 Easements for Common Area	5
3.4.5 Easements Reserved by Declarant	5
3.4.6 Additional Utility and Drainage Easements	6
3.4.7 Association's Easements	6
3.4.8 Easement to Governmental Entities	6
3.5 Declarant's Right to Dedicate Common Area and Grant Easements; Board's Authority After Title Transferred to Association	6
ARTICLE 4	
LOTS AND HOMES	6
4.1 Residential Use	6
4.2 Construction of Homes	7

4.2.1	Garages	7
4.2.2	Setbacks	7
4.2.3	Electrical Meters	7
4.2.4	Exterior Finishes	7
4.2.7	Windows	8
4.2.8	Roofs	8
4.2.9	Concrete Approaches	8
4.3	Completion of Construction	8
4.4	Construction Sites	8
4.4.1	General	8
4.4.2	Erosion Control	8
4.5	Noise Control	9
4.6	Landscaping	9
4.7	Maintenance of Buildings.....	9
4.8	Maintenance of Landscaping	9
4.9	Rental of Homes	9
4.10	Animals	10
4.11	Nuisance	10
4.12	Parking	10
4.13	Signs	10
4.14	Rubbish and Trash	10
4.15	Fences and Hedges	11
4.16	Utilities.....	11
4.17	Antennas and Satellite Dishes	11
4.18	Exterior Lighting	11
4.19	Basketball Hoops	11
4.20	Grades, Slopes and Drainage	11
4.21	Damage or Destruction to Home and/or Lot	11
4.22	Association Rules and Regulations	12
4.23	Ordinances and Regulations	12
4.24	Temporary Structures	12
4.25	Declarant Exemptions	12
4.26	Accessory Buildings	12
4.27	Right of Entry	12
4.27	Enforcement	13

ARTICLE 5

	COMMON AREA AND COMMONLY MAINTAINED PROPERTY	13
5.1	Use of Common Areas	13
5.2	Maintenance of Common Area and Commonly Maintained Property	13
5.3	Alterations to Common Area	13

5.4	Funding	13
5.5	Landscaping	14
5.6	Condemnation of Common Area	14
5.7	Damage or Destruction of Common Area	14
5.8	Power of Association to Sell, Dedicate or Transfer Common Area	14
5.9	Security	14
5.10	Limited Access to Common Areas	15
5.11	Transfer.....	15

ARTICLE 6

ARCHITECTURAL REVIEW COMMITTEE

6.1	Architectural Review	15
6.2	Architectural Review Committee, Appointment and Removal	15
6.3	Majority Action	16
6.4	Duties	16
6.5	ARC Decision	16
6.6	ARC Discretion	16
6.7	Nonwaiver	16
6.8	Appeal	16
6.9	Effective Period of Consent	17
6.10	Determination of Compliance	17
6.11	Noncompliance	17
6.12	Liability	17
6.13	Estopped Certificate	17
6.14	Fees	18
6.15	Declarant and Successor Exempt From ARC	18

ARTICLE 7

MEMBERSHIP IN THE ASSOCIATION

7.1	Members	18
7.2	Proxy	18
7.3	Voting Rights	18
	7.3.1 Class A	18
	7.3.2 Class B	18
7.4	Procedure	19

ARTICLE 8

DECLARATION CONTROL

8.1	Interim Board and Officers	19
8.2	Transitional Committee.....	19
	8.2.1 Members.....	19
	8.2.2 Notice of Meeting.....	19
8.3	Turnover Meeting	20

8.3.1	Latest Date	20
8.3.2	Optional Turnover	20

ARTICLE 9

	DECLARANT'S SPECIAL RIGHTS	20
9.1	General	20
9.2	Marketing Rights	20
9.3	Declarant Easements	20
9.4	Additional Improvements	20
9.5	Control of ARC	20

ARTICLE 10

	FUNDS AND ASSESSMENTS	21
10.1	Purpose of Assessments; Expenses	21
10.2	Covenants to Pay	21
	10.2.1 Funds Held in Trust	21
	10.2.2 Offsets	21
	10.2.3 Rights of Profits	21
10.3	Basis of Assessment; Commencement of Assessments	21
	10.3.1 Commencement of Assessments	21
10.4	Annual Assessments	22
	10.4.1 Budgeting	22
	10.4.2 Allocation of Assessments	22
	10.4.3 Non-waiver of Assessments	22
10.5	Special Assessments	22
	10.5.1 Correct Deficit	22
	10.5.2 Special Obligations of an Owner	22
	10.5.3 Repairs	23
	10.5.4 Capital Improvements	23
	10.5.5 Reimbursement Assessments	23
10.6	Accounts	23
	10.6.1 Types of Accounts	23
	10.6.2 Reserve Accounts	23
	10.6.2.1 Calculation of Reserve Assessment	24
	10.6.2.2 Loan From Reserve Account	24
	10.6.2.3 Increase or Reduction of Reserve Account Assessment	24
	10.6.2.4 Investment of Reserve Account	24
	10.6.2.5 Refunds of Assessments	24
	10.6.3 Current Operating Account	24
10.7	Default in Payment of Assessments; Enforcement of Liens	25
	10.7.1 Personal Obligations	25
	10.7.2 Association Lien	25
	10.7.3 Interest; Fines; Late Fees; Penalties	25

10.7.4	Acceleration of Assessments	25
10.7.5	Association's Right to Rents; Receiver	26

ARTICLE 11

GENERAL PROVISIONS		26
11.1	Records.....	26
11.2	Indemnification of Directors, Officers, Employees and Agents	26
11.3	Enforcement; Attorney's Fees	26
11.4	Construction Defect Claim Procedure	27
11.5	Severability	27
11.6	Duration	27
11.7	Amendment	27
11.8	Release of Right of Control	27
11.9	Unilateral Amendment by Declarant	28
11.10	Resolution of Document Conflicts	28

**DECLARATION OF
PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS
FOR HERON'S REST**

THIS DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR HERON'S REST ("Declaration") is made by City Center Development Partners Corp, an Oregon Corporation ("Declarant").

Recitals

Declarant is the owner of all the real property and improvements thereon located in the County of Tillamook, State of Oregon, described as follows:

Lots ___ - ___, inclusive, and Tracts __ through ___ ("**Tracts**"), as shown on the plat map of Heron's Rest filed for the record on _____, in the plat records of the County of Tillamook, State of Oregon (the "**Property**").

Declarant intends to develop Heron's Rest as a Class I planned community. To establish Heron's Rest as a planned community, Declarant desires to impose these mutually beneficial covenants, conditions, restrictions, easements, assessments and liens on the Property, under a comprehensive general plan of improvement and development for the benefit of all Lots and Common Areas in Heron's Rest.

Declarant has deemed it desirable for the efficient preservation of the values and amenities in Heron's Rest to create a nonprofit corporation, to which will be delegated and assigned the powers and authority to own, maintain and administer the Common Areas, maintain, repair and replace certain portions of the Property, to administer and enforce the covenants, conditions, and restrictions of this Declaration, and to collect and disburse the assessments and charges hereinafter created.

The Declarant shall convey the Tracts to the Heron's Rest Homeowners' Association ("**Association**"). The Association shall assume the maintenance obligations of such Tracts for the benefit of all the Owners and assess the Owners of Lots ___ - ___ equally for the expenses. Such maintenance shall generally include all private roadway(s), shared sidewalks, parking areas, picnic structures, landscaping, fences, guardrails, recycling and garbage facilities, bike or alternative transportation facilities, playground(s), stormwater drainage facilities and other shared utilities.

Tillamook County shall not be responsible for maintaining any of the private streets, sidewalks and/or Common Areas within the Property unless the County expressly assumes such obligation, and the Association expressly consents, in writing.

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

ARTICLE 1

DEFINITIONS

1.1 **"Architectural Review Committee"** or **"ARC"** shall refer to that committee constituted and acting pursuant to Article 6 of this Declaration.

1.2 **"Articles"** shall mean the Articles of Incorporation for the nonprofit corporation, Heron's Rest Homeowners' Association, as filed with the Oregon Secretary of State.

1.3 **"Association"** shall mean and refer to Heron's Rest Homeowners' Association, and its successors and assigns.

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

1.5 **"Business days"** shall mean Monday through Friday, excluding federal holidays.

1.6 **"Bylaws"** shall mean and refer to the Bylaws of the Association, which shall be recorded in the Deed Records of Tillamook County, Oregon.

1.7 **"Common Area"** shall mean and refer to Tracts ___ through __ shown on the recorded Plat of the Property, including any improvements located thereon, which areas and improvements are intended to be devoted to the common use and enjoyment of the members and which land has been conveyed to the Association. Tracts __-__ are open space. Tract ___ is a private street, subject to a public easement for pedestrian and bicycle use, as further provided herein and noted on the Plat.

1.8 **"Commonly Maintained Property"** shall mean any property owned by a person or entity other than the Association for which the Association has the obligation to maintain, repair and replace. Commonly Maintained Property shall include, but not be limited to, the exterior of all Homes as further provided herein, shared walkways, landscaping, and street lighting.

1.9 **"Declaration"** shall mean the covenants, conditions, restrictions, and all other provisions set forth in this Declaration.

1.10 **"Declarant"** shall mean and refer to City Center Development Partners Corp, an Oregon corporation, and its successors or assigns, or any successor or assign to all or the

remainder of its interest in the Property ("**Successor Declarant**"). Any or all of the special rights and obligations of Declarant set forth in this Declaration may be transferred to other persons or entities, the Successor Declarant, without the consent of any mortgagee or Owner, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration. No such transfer shall be effective unless it is in a written instrument signed by Declarant and duly recorded in the official records of Tillamook County.

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

1.12 "**Home**" shall mean and refer to any portion of a structure situated on a Lot and designed and intended for use and occupancy as a residence by a single family or household, including any attached outbuilding or garage.

1.13 "**Lot**" shall mean and refer to each and any of Lots __ - __; provided, however, that "Lot" shall not include any Tracts.

1.14 "**Members**" shall mean and refer to the Owners of Lots in Heron's Rest.

1.15 "**Mortgage**" means a recorded first mortgage, first trust deed, a first contract of sale that creates a first lien against a Lot, and "mortgagee" means the holder, beneficiary or vendor of such mortgage, trust deed or contract of sale, but only when such holder, beneficiary or vendor notifies the Association in writing of the existence of such mortgage and gives the Association a current name and mailing address.

1.16 "**Occupant**" shall mean and refer to the occupant of a Home, whether such person is an Owner, a lessee or any other person authorized by the Owner to occupy the Home.

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

1.18 "**Plat**" shall mean and refer to the Plat of Heron's Rest recorded in the Plat Records of Tillamook County, Oregon.

1.19 "**Private Roadway**" shall mean the private roadway as shown on the Plat extending from Third Street to Hallie Lane, on which only one-way (western direction of flow) vehicular travel shall be allowed, unless two-way traffic is otherwise permitted by resolution of the Association and the roadway is marked and improved accordingly, in compliance with all applicable laws, regulations and approvals relating to the Property.

1.20 **"Property"** shall have the meaning attributed to such term in the Recitals of this Declaration.

1.21 **"Reserve Account(s)"** shall mean and refer to an account set up by the Board to hold funds for construction, improvements or maintenance of the Common Area and the Commonly Maintained Property.

1.21 **"Rules and Regulations"** shall mean and refer to the documents containing rules and regulations and policies adopted by the Board or the Architectural Review Committee, as may be from time to time amended.

1.22 **"Tracts"** shall have the meaning attributed to such term in the Recitals of this Declaration.

1.23 **"Heron's Rest"** shall mean the Lots and Tracts on the Property as shown on the Plat.

ARTICLE 2

PROPERTY SUBJECT TO THIS DECLARATION

2.1 **Development.** The development of Heron's Rest shall consist of the Property, which shall be held, transferred, sold, conveyed and occupied subject to this Declaration. Declarant does not intend to build any Common Area improvements in Heron's Rest other than the private street(s), shared walkways, picnic structure, playground, recycling and/or garbage facilities, lighting, and stormwater and other utility improvements.

2.2 **No Right to Annex Additional Property or to Withdraw Property.** The Declarant reserves no right to annex additional property to or to withdraw property from Heron's Rest.

ARTICLE 3

OWNERSHIP AND EASEMENTS

3.1 **Non-Severability.** The interest of each Owner in the use and benefit of the Common Area shall be appurtenant to the Lot owned by the Owner. No Lot shall be conveyed by the Owner separately from the interest in the Common Area. Any conveyance of any Lot reference in the instrument of conveyance. There shall be no judicial partition of the Common Area. Each Owner, whether by deed, gift, devise or operation of law, for such Owner's benefit and for the benefit of all other Owners, specifically waives and abandons all rights, interests and causes of action for judicial partition of any interest in the Common Area and agrees that no action for judicial partition shall be instituted, prosecuted or reduced to judgment. Ownership interests in the Common Area and Lots are subject to the easements granted and reserved in this Declaration. Each of the easements granted or reserved herein shall be deemed to be

covenants running with the land for the use and benefit of the Owners and their Lots and shall be superior to all other encumbrances applied against or in favor of any portion of Heron's Rest.

3.2 **Ownership of Lots.** Title to each Lot in Heron's Rest shall be conveyed in fee to an Owner. If more than one person and/or entity owns an undivided interest in the same Lot, such persons and/or entities shall constitute one Owner.

3.3 **Ownership of Common Area.** Subject to subsection 3.5, title to any Common Area shall be conveyed to the Association not later than the date of the Turnover Meeting.

3.4 **Easements.** The Property, including all Common Area and Lots therein, shall be subject to the easements provided in this subsection. Individual deeds to Lots may, but shall not be required to, set fourth the easements specified in this Article.

3.4.1 **Easements on Plat.** The Common Area and Lots are subject to the easements and rights-of-way shown on the Plat.

3.4.2 **Public Easement – Private Roadway.** The public shall have an easement for pedestrian and bicycle ingress, egress and travel on the Private Roadway. Such easement shall not extend to any parking areas associated with or adjacent to the Private Roadway.

3.4.3 **Easements on Lots.** The Association shall have an easement on, under and across the entirety of each Lot for the installation, repair, maintenance, modification, relocation, improvement, expansion, and/or replacement of: (i) any utilities, and (ii) sidewalks, walkways, fencing, guardrails and similar improvements. However, the Association: (a) may not cause or permit material damage to any Home existing on the Lot as a result of any work related to the easements provided in the preceding sentence, (b) shall repair the area affected by any work by returning such area to the condition it was in prior to the work, to the extent possible, (c) shall give reasonable prior notice to the Owner of any Lot affected by any work pursuant to the easements in this subsection; and (d) shall be responsible for all costs associated with the easements provided in this subsection.

3.4.4 **Easements for Common Area.** Subject to the restrictions contained herein, every Owner shall have a non-exclusive right and easement of use and enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Lot.

3.4.5 **Easements Reserved by Declarant.** So long as Declarant owns any Lot, Declarant reserves an easement over, under and across the Common Area to carry out sales activities necessary or convenient for the sale of Lots. Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress to, from, over, in, upon, under and across the Common Area and the right to store materials and equipment thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the improvements on the Property in such a way as not to interfere unreasonably with the

occupancy, use, enjoyment or access to an Owner's Lot by such Owner or such Owner's family, tenants, employees, guests or invitees.

3.4.6 **Additional Utility and Drainage Easements.** Notwithstanding anything expressed or implied to the contrary, this Declaration shall be subject to all easements granted or acquired by Declarant for the installation and maintenance of utilities and drainage facilities necessary for the development of Heron's Rest. No structure, planting or other material that may damage or interfere with the installation or maintenance of utilities, that may change the direction of flow of drainage channels in the easement areas, or that may obstruct or retard the flow of water through drainage channels in the easement areas shall be placed or permitted to remain within any easement area.

3.4.7 **Association's Easements.** Declarant grants to the Association and its duly authorized agents and representatives such easements over the Lots and Common Area as are necessary to perform the duties and obligations of the Association, as set forth in this Declaration, the Bylaws, and the Articles, as the same may be amended.

3.4.8 **Easements to Governmental Entities.** Declarant grants a non-exclusive easement over the Common Area to all governmental and quasi-governmental entities, agencies, utilities, and their agents for the purposes of performing their duties as utility and service providers.

3.5 **Declarant's Right to Dedicate Common Area and Grant Easements; Board's Authority After Title Transferred to Association.** Declarant reserves the right and power to dedicate and/or convey any portion or all of the Tracts to any governmental body or agency or convert or improve all or a portion of the Tracts as an environmental enhancement area without the approval of any other Owner or the Association. Declarant further reserves the right and power to grant an easement over the Tracts to any governmental body or agency or any public or private utility company or provider without the approval of any other Owner or the Association. Declarant's rights and power under this Section 3.5 shall expire when the Declarant no longer owns any Lots. Thereafter, the Board shall have the same powers reserved to Declarant and may exercise such power upon a two-thirds (2/3rds) or greater vote of the Board members at any duly called and held Board meeting. The provisions of this Section 3.5 shall control over any provisions to the contrary contained in any other Section of the Declaration.

ARTICLE 4

HOMES AND HOMES

4.1 **Residential Use.** Lots shall only be used for residential purposes, except as authorized in this subsection. Except with the Board's prior written consent, no trade, craft, business, profession, commercial or similar activity of any kind shall be conducted on any Lot or in any Home, and no goods, equipment, vehicles, materials or supplies used in connection with any trade, service or business shall be kept or stored on any Lot or in any Home. The lease

or rental of any Home, irrespective of term length, shall be deemed a "residential purposes," and shall be permitted outright without prior Board consent. Nothing in this Section 4.1 shall be deemed to prohibit or limit: (a) activities relating to the sale of residences, (b) the leasing or rental of any Home, and (c) the right of Declarant or any contractor or homebuilder to construct residences on any Lot, to store construction materials and equipment on such Lots in the normal course of construction, and to use any residence as a sales office or model home for purposes of sales in Heron's Rest. The Board shall not approve non-residential activities otherwise prohibited by this Section 4.1 unless the Board determines that only normal residential activities would be observable outside of the residence, there would be no onsite customers or employees, there would be no abnormally frequent ingress or egress, and that the activities would not be in violation of applicable local government ordinances.

4.2 **Construction of Homes.** The Declarant intends to initially construct all Homes in Heron's Rest. Except for Homes constructed by or for Declarant, no construction of a Home or any other structure shall occur on a Lot unless approval of the ARC is first obtained pursuant to Article 6. Consideration such as siting, shape, size, color, design, height, solar access, or material may be taken into account by the ARC in determining whether or not to consent to any proposed work. No manufactured homes are permitted. The following restrictions are minimum standards applicable to all Lots:

4.2.1 **Garages.** Only Lots _____ may have a garage. Each garage shall be fully enclosed. No Lot may have a carport or unenclosed area for parking or storage.

4.2.2 **Setbacks.** All Homes shall meet the minimum setbacks as established in the applicable zone, free of variance.

4.2.3 **Electrical Meters.** All electrical meter bases shall be installed directly on the primary building. Meters on posts will not be allowed.

4.2.4 **Exterior Finishes.** The exterior of all structures on any Lot shall be designed, built and maintained in such a manner as to blend in with the natural surroundings, existing structures and landscaping in Heron's Rest. Walls shall be double wall constructed with siding of cedar, redwood, fiber cement, or other material approved by the ARC. Exterior colors, including garage door finishes, must be approved in writing by the ARC and shall be natural stains and earth tone colors. All decks, railings, and patio designs must be approved in writing by the ARC. Exterior trim, fences, doors, patios, railings, decks, eaves, gutters, and all

exterior finish of homes, garages and other accessory buildings shall be designed, built and maintained to be compatible with the exterior of the structure they adjoin.

4.2.7 **Windows.** All window frames shall be vinyl or wood only. Aluminum frames are not allowed.

4.2.8 **Roofs.** The minimum pitch of any gable roof is to be 4:12. Roofing materials shall be a minimum of 25 years architectural composition. Roof colors are subject to ARC approval. The minimum overhang at the tails shall be 16 inches. The minimum overhang at the rakes shall be 12 inches. All buildings shall have gutters with downspouts, piped to an appropriate drainage outlet.

4.2.9 **Concrete Approaches.** All Lots with garages will be required to contain a concrete entry to connect to the street. This "Driveway Approach" shall be ___ feet deep, measured from the back of the curb, and six (6) inches thick, with a fine broom finish. A curb cut is required. "Wings" at the outside of the driveway shall be ___ feet in length. Maximum driveway width measured at the "bottom" shall be ___ feet. Any damage to the street or curb during construction shall be repaired by the Lot Owner. Owners shall obtain detailed diagrams for the curb cuts and Driveway Approaches construction from the ARC.

4.3 **Completion of Construction.** The construction of any building on any Lot, including painting and all exterior finish, shall be completed within twelve (12) months from the beginning of the construction so as to present a finished appearance when viewed from any angle. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon written approval from the ARC. If construction has not commenced within twelve (12) months after the project has been approved by the ARC, the approval shall be deemed revoked unless the Owner has applied for and received an extension of time from the ARC.

4.4 **Construction Sites.**

4.4.1 **General.** Owners, contractors and others shall keep a clean construction site. All construction debris, lumber remnants and scrap materials shall be removed from the site after each phase of work such as foundations, floors, walls, roofs, etc. and in no case allow the accumulation of more than one week's debris. Small lightweight material and articles capable of being windblown must be contained within refuse containers. Chemical toilets shall be placed on the construction Lot behind the curb.

4.4.2 **Erosion Control.** All construction actively will require certain erosion control practices. During inclement weather silt fences and bio-bags shall be used to prevent sedimentation run-off. At a minimum, each Home construction shall place a rock entrance from the street to the front of the Home. Any mud or dirt tracking on the street shall be cleaned up immediately. Any fines issued by a Government agency concerning erosion control run-off or

pollution of streams shall be the responsibility of the Lot Owner causing such action. Lot Owners shall obtain erosion control diagrams from the ARC.

4.5 **Noise Control.** Contractors, Owners and others shall restrict all noise-producing construction activities to the following hours: Monday through Saturday, 7:00 am to 7:00 pm. Loud radios or similar devices are not permitted on the job site. Violators will be required to leave.

4.6 **Landscaping.** The Declarant intends to install all, or essentially all, landscaping in Heron's Rest prior to the sale of any Lot. Each Owner other than Declarant shall obtain the ARC's prior approval of all landscaping plans before commencing installation or modification of any landscaping, which landscaping shall be consistent with the character of the landscaping in Heron's Rest, as further provided in Section 5.5.

4.7 **Maintenance of Buildings.** The Association shall have the exclusive right and obligation to maintain, repair and/or replace the visible exterior of all buildings (including dwelling and any outbuildings), limited to visible siding and trim, roof, patio and deck areas, doors (including garage doors), and chimneys (collectively, "**Exterior Elements**"), provided such exterior elements have been installed or constructed by the Declarant or approved by the ARC. Each Owner shall be solely responsible for the maintenance, repair and replacement of all other building elements on such Owner's Lot, at such Owner's sole cost. The HOA may assess any maintenance, repair or replacement costs specific to a particular Lot against that Lot, which may be collected and enforced as any other assessments imposed pursuant to the Declaration and Bylaws. The Association shall have an easement over each Lot for purposes of discharging its rights and obligations in this section, as per Section 3.4.7. No Owner may alter the Exterior Elements without ARC approval. The Association shall have a right to any insurance proceeds received by the Owner on account of damage, destruction or casualty to the Exterior Elements, which the Association shall apply to the repair or replacement of the Exterior Elements.

4.8 **Maintenance of Landscaping.** The Association shall have the exclusive right and obligation to maintain, repair and/or replace all landscaping in Heron's Rest, including but not limited to all hard surfaces (including walkways, brickwork, driveways, fences, railings, stairs, roadways and sidewalks) and generally all vegetation on the Lots and Common Property. The Association may remove, at the Association's discretion, any landscaping installed without prior ARC approval, and shall be held harmless from any claims asserted by any Owner for such removal. The Association shall have an easement over each Lot for purposes of discharging its rights and obligations in this section, as per Section 3.4.7.

4.9 **Rental of Homes.** An Owner may rent or lease such Owner's Home or a portion thereof, provided that the Owner and the tenant enter into a written rental or lease agreement specifying that (i) the tenant shall be subject to all provisions of the Declaration, Bylaws and Rules and Regulations, and (ii) a failure to comply with any provision of the Declaration, Bylaws and Rules and Regulations shall constitute a default under the rental or lease

agreement. The Owner shall provide each tenant a copy of the Declaration, Bylaws and Rules and Regulations.

4.10 **Animals.** No animals, livestock or poultry of any kind, other than a reasonable number of household pets that are not kept, bred or raised for commercial purposes and that are reasonably controlled so as not to be a nuisance, shall be raised, bred, kept or permitted within any Lot. Any Lot Owner who maintains any pet upon any portion of Heron's Rest shall be deemed to have agreed to indemnify and hold the Association, each of its members and the Declarant free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet. The Association shall have the right to order any person whose pet is a nuisance to remove such pet from the premises upon the delivery of the third notice in writing of a violation of any rule, regulation or restriction governing pets within Heron's Rest. All pets shall be registered and inoculated as required by law.

4.11 **Nuisance.** No noxious, harmful or offensive activities shall be carried on upon any Lot or Common Area. Nor shall anything be done or placed on any Lot or Common Area that interferes with or jeopardizes the enjoyment of, or, that is a source of annoyance to, the Owner or other Occupants. No lighting of fireworks or discharging of firearms is allowed within Heron's Rest.

4.12 **Parking.** Boats, trailers, commercial vehicles, mobile homes, campers, vans longer than ____ feet, and other recreational vehicles or equipment, regardless of weight, shall not be parked on any part of the open space, including for loading or unloading, and may not be parked on any street or Lot, including the driveway (but excluding any enclosed garage), for more than 24 hours.

4.13 **Signs.** No signs shall be erected or maintained on any Lot except that not more than one (1) "For Sale" or "For Rent" sign placed by the Owner or by a licensed real estate agent, not exceeding twenty-four (24) inches high and thirty-six (36) inches long, may be temporarily displayed on any Lot. No signs are permitted within twenty (20) feet of any entrance monument. Attaching signs to fences is prohibited. The restrictions contained in this Section 4.13 shall not prohibit the temporary placement of "political" signs on any Lot by the Owner or Occupant. Provided, however, political signs shall be removed within three (3) days after the election day pertaining to the subject of the sign. Real estate signs shall be removed within three (3) days after the sale closing date.

4.14 **Rubbish and Trash.** No Lot or part of the Common Area shall be used as a dumping ground for trash or rubbish of any kind. All garbage and other waste shall be kept in appropriate containers for proper disposal and out of public view. Yard rakings, dirt and other material resulting from landscaping work shall not be dumped onto streets, the Common Area or any other Lots. If an Owner fails to remove any trash, rubbish, garbage, yard rakings or similar materials from any Lot, any streets or the Common Area where deposited by such Owner or the Occupants of such Owner's Lot after notice has been given by the Board to the

Owner, the Association may have such materials removed and charge the expense off such removal to the Owner. Such charge shall constitute a special assessment, which may be collected and enforced as any other assessments imposed pursuant to the Declaration and Bylaws.

4.15 **Fences and Hedges.** No fences or boundary hedges shall be installed or replaced without prior written approval of the ARC. No building, wall, fence, paving, landscaping or other construction of any type shall be erected or maintained by an Owner so as to trespass or encroach upon any Common Area unless specifically approved by the ARC in writing.

4.16 **Utilities.** All telephone, electrical, cable television and other utility installations shall be placed underground in conformance with applicable law and subject to approval by the ARC.

4.17 **Antennas and Satellite Dishes.** Except as otherwise provided by law, no exterior antennas, satellite dishes, microwave, aerial, tower or other devices for the transmission or reception of television, radio or other forms of sound or electromagnetic radiation shall be erected, constructed or placed on any Common Area or Lot.

4.18 **Exterior Lighting.** No exterior light shall exceed 100-watt capacity. Exterior lighting shall be installed directly on a building.

4.19 **Basketball Hoops.** No Owner may install a permanent basketball hoop on any Lot without the ARC's prior approval. The ARC may in its discretion, prohibit such basketball hoops. Basketball hoops shall be prohibited in the Common Area and on any Lot if the area of play is intended to be the street or any Common Area.

4.20 **Grades, Slopes and Drainage.** There shall be no interference with the established drainage patterns or systems over or through any Lot within Heron's Rest so as to affect any other Lot or Common Area or any real property outside Heron's Rest unless adequate alternative provision is made for proper drainage and is approved by the ARC. The term "established drainage" shall mean the drainage swales, conduits, inlets and outlets designed and constructed for Heron's Rest. Individual Lot drainage shall be drained to a curb opening, if available, or a sub-surface drainage system. Any other drainage system shall be approved by the ARC.

4.21 **Damage or Destruction to Home and/or Lot.** If all or any portion of a Lot or Home is damaged by fire or other casualty, the Owner shall either (i) restore the damaged improvements or (ii) remove all damaged improvements, including foundations, and leave the Lot in a clean and safe condition. Any restoration proceeding under (i) above must be performed so that the improvements are in substantially the same condition in which they existed prior to the damage, unless the provisions of Article 6 are complied with by the Owner. The Owner must commence such work within (60) days after the damage occurs and must complete the work within 12 months thereafter.

4.22 **Association Rules and Regulations.** The Board from time to time may adopt, modify or revoke such rules and regulations governing the conduct of persons and the operation and use of Lots and the Common Area as it may deem necessary or appropriate to assure the peaceful and orderly use and enjoyment of the Property and the administration and operation of the Association, provided such rules and regulations are consistent with this Declaration and the Bylaws ("**Rules and Regulations**"). A copy of the Rules and Regulations, upon adoption, and a copy of each amendment, modification or revocation thereof, shall be delivered by the Board promptly to each Owner and shall be binding upon all Owners and occupants of all Lots upon the date of delivery or actual notice thereof. The method of adoption of such Rules and Regulations shall be provided in the Bylaws of the Association. Subject to approval or consent by the Board, the ARC may adopt rules and regulations pertinent to its functions.

4.23 **Ordinances and Regulations.** The standards and restrictions set forth in this Article 4 shall be the minimum required. To the extent that local governmental ordinances and regulations are more restrictive or provide for a higher or different standard, such local governmental ordinances and regulations shall prevail.

4.24 **Temporary Structures.** No structure of a temporary character or any trailer, basement, tent, shack, garage, barn, recreational vehicle or other outbuilding shall be used on any Lot as a residence, either temporarily or permanently.

4.25 **Declarant Exemptions.** The Declarant shall be exempt from the application of Sections 4.3, 4.4, and 4.13.

4.26 **Accessory Buildings.** All accessory buildings and structures shall require prior approval of the ARC. All accessory buildings and structures shall be designed, constructed and maintained compatible with the exterior materials, character and style of the Home. The ARC may require the accessory buildings to be painted the same color as the Home.

4.27 **Right of Entry.** In addition to the rights granted to the Declarant and the Association elsewhere in this Declaration, the Bylaws, or by law, the Board, acting on behalf of the Association, or a managing agent, manager, or any other person authorized by the Board, shall have the right to enter any Lot (but not the interior of any building on the Lot): (i) in the case of any emergency originating in or threatening the Common Elements or other Lots; (ii) requiring repairs necessary to protect public safety, whether or not the Owner is present at the time; (iii) for the purpose of performing installations, alterations, or repairs to any Common Element, landscaping, or any Exterior Elements; (iv) to prevent damage to the Common Elements or another Unit; or (v) to inspect the Lot to verify that the Owner is complying with the restrictions and requirements described in the Declaration and Bylaws, *provided that* requests for entry, when feasible, are made in advance and in a manner that minimizes interference with such Owner's use or enjoyment of their Unit and that such entry is at a time reasonably

convenient to the Owner except in the case of an emergency. The Association shall not be deemed guilty in any manner of trespass for entering a Lot in accordance with this Section.

4.28 **Enforcement.** The Board of Directors and/or the ARC may adopt enforcement procedures and a schedule of fines for violations of the Declaration, Bylaws and rules and regulations of the Association and the ARC. Prior to levying fines the Board or ARC shall give notice and an opportunity to be heard as set forth in the enforcement procedures.

ARTICLE 5

COMMON AREA AND COMMONLY MAINTAINED PROPERTY

5.1 **Use of Common Areas.** Use of the Common Area is subject to the provisions of the Declaration, Bylaws, Articles and the Rules and Regulations adopted by the Board. Except for such improvements installed by the Declarant or the Association, nothing shall be stored or kept in the Common Area without the prior written consent of the Board. No alterations or additions to the Common Area shall be permitted without the prior written consent of the Board.

5.2 **Maintenance of Common Area and Commonly Maintained Property.** The Association shall be responsible for maintenance, repair, replacement, and upkeep of the Common Area and Commonly Maintained Property. The Association shall keep the Common Area in good condition and repair, provide for all necessary services and cause all acts to be done which may be necessary or proper to assure the maintenance of the Common Area. The cost for all Association maintenance, repair, replacement, and upkeep of the Common Area and Commonly Maintained Property shall be at the equal expense of all Owners. However: (i) should any Owner cause extraordinary damage to the Common Area or Commonly Maintained Property, such Owner shall be responsible for the costs associated with the repair of the damage by way of special assessment, and (ii) all costs associated with the Association's maintenance, repair, replacement, and upkeep of any Exterior Elements on any Lot shall be charged against the Owner of such Lot as a special assessment.

5.3 **Alterations to Common Area.** Only the Declarant or the Association shall construct, reconstruct, or alter any improvements located on the Common Area. A proposal for any constructions of or alteration, maintenance or repair to any such improvement may be made at any Board meeting. A proposal may be adopted by the Board, subject to the limitations contained in the Bylaws and this Declaration.

5.4 **Funding.** Expenditures for alterations, maintenance or repairs to an existing improvement for which a reserve has been collected shall be made from the Reserve Account. As provided in Section 10.5, the Board may levy a special assessment to fund any construction, alteration, repair or maintenance of an improvement (or any other portions of the Common Area and Commonly Maintained Property) for which no reserve has been collected or for which the Reserve Account is insufficient to cover the cost of the promised improvements.

5.5 **Landscaping.** All landscaping on any Lot, the Common Area or Commonly Maintained Property shall be maintained and cared for in a manner that is consistent with Declarant's or the ARC's original approval of such landscaping. Weeds and diseased or dead lawn, trees, ground cover or shrubs shall be removed and replaced. Lawns shall be neatly mowed and trees and shrubs shall be neatly trimmed.

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

5.7 **Damage or Destruction of Common Area.** If all or any portion of the Common Area or Commonly Maintained Property is damaged or destroyed by an Owner or any Owner's guests, Occupants, tenants, licensees, agents or members of Owner's family in a manner that would subject such Owner to liability for such damage under Oregon law, such Owner hereby authorizes the Association to repair such damage. The Association shall repair the damage and restore the area in workmanlike manner as originally constituted or as may be modified or altered subsequently by the Association in the discretion of the Board, except that any modifications to Exterior Elements, patios, decks or similar exterior areas associated with any Home shall be done only with the consent of the Owner. Reasonable costs incurred in connection with effecting such repairs shall become a special assessment upon the Lot and against the Owner who caused or is responsible for such damage.

5.8 **Power of Association to Sell, Dedicate or Transfer Common Area.** As provided in ORS 94.665, the Association may sell, dedicate, transfer grant a security interest in, or grant an easement for installation and maintenance of utilities or for similar purposes with respect to, any portion of the Common Area. Except for grants of easements for utility-related purposes, no such sale, dedication, transfer or grant of a security interest shall be effective unless approved by seventy five percent (75%) of the Owners.

5.9 **Security.** The Association may, but shall not be obligated to, maintain or support certain activities within the Property designated to make the Property safer than it otherwise might be. Neither the Association, any managing agent retained by the Association, Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Property, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or of ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection or other security system measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants that the Association, its Board of Directors and committees, any managing agent retained by the Association, Declarant, and any successor Declarant are not insurers and that each person using the Property assumes all risks for loss or damage to persons, to property

and to the contents of Lost resulting from acts of third parties and releases such parties from any liability therefor.

5.10 **Limited Access to Common Areas.** The Association shall endeavor to keep all Common Property open to access by all Owners and Owner's guests, Occupants, tenants, licensees, agents or members of Owner's family at all reasonable times. However, the Association may, in the Association's reasonable discretion, limit the access of the Owners and any Owner's guests, Occupants, tenants, licensees, agents or members of Owner's family to any portion of the Common Property for substantial health, safety, environmental, or other general welfare purposes, and place signage or other notices restricting entry into such areas.

5.11 **Transfer.** An Owner intending to sell a Lot shall deliver a written notice to the Board, at least two (2) weeks before closing, specifying: (i) the Lot to be sold; (ii) the names and addresses of the purchaser, the closing agent, and the title insurance company insuring the purchaser's interest; and (iii) the estimated closing date. The Board shall have the right to notify the purchaser, the title insurance company, and the closing agent of the amount of unpaid assessments and charges outstanding against the Lot, whether or not such information is requested. However, a violation of this section shall not invalidate a sale, transfer, or other conveyance of a Lot which is otherwise valid under applicable law. Except to the extent set forth in this section and certain restrictions on leasing set forth herein or in the Bylaws, this Declaration and the Bylaws impose no restrictions on the alienation of any Lot.

ARTICLE

ARCHITECTURAL REVIEW COMMITTEE

6.1 **Architectural Review.** Except for improvements constructed by the Declarant, no improvement shall be commenced, erected, placed or altered on any Lot until the construction plans and specifications showing the nature, shape, heights, materials, colors and proposed location of the improvement have been submitted to and approved in writing by the ARC. This Article's purpose is to assure quality of workmanship and materials and harmony between exterior design and the existing improvements and landscaping and as to location. The ARC shall not be responsible for determining compliance with structural and building codes, ordinances, zoning codes or other governmental regulations, all of which are the applicant's responsibility. The procedure and specific requirements for review and approval of construction shall be set forth in design guidelines and standards adopted from time to time by the ARC. The provisions of this Article shall apply in all instances in which this Declaration requires the ARC's consent.

6.2 **Architectural Review Committee, Appointment and Removal.** Declarant shall have the right to appoint all members of the ARC and all replacements thereto until Heron's Rest the Turnover Meeting. Each ARC member shall serve for one (1) year. After the Declarant assigns the right to appoint the members of the ARC to the Board, the ARC shall consist of no fewer than three (3) members and no more than five (5) members. The Board may appoint itself

as the ARC or any of its members to the ARC. If an ARC has not been appointed, the Board shall serve as the ARC.

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

6.4 **Duties.** The ARC shall consider and act upon the proposals and/or plans submitted pursuant to this Article. The ARC, from time to time and at its sole discretion, may adopt architectural rules, regulations and guidelines consistent with this Declaration ("**Architectural Standards**").

6.5 **ARC Decision.** The ARC shall render its written decisions approving or denying each application submitted to it within twenty (20) business days after its receipt of all materials required with respect to such application. If the ARC fails to render such written decision within thirty (30) business days of its receipt of all required materials or request an extension, the application shall be deemed approved. The ARC shall be entitled to one or more extensions of time if it provides notice of an extension in writing to the applicant, but such extensions shall collectively not to exceed twenty (20) business days. In the event of such extension requests, if the ARC does not render a written decision within the extension period, the application shall be deemed approved. Provided, however, the applicant may agree to further extensions to allow the applicant to complete or supplement the application.

6.6 **ARC Discretion.** The ARC, at its sole discretion, may withhold consent to any proposed work if the ARC finds the proposed work would be inappropriate for the particular Lot or incompatible with the design standards that the ARC intends for Heron's Rest. The ARC may consider siting, shape, size, color, design, height, view preservation, solar access or other effect on the enjoyment of other Lots or the Common Area, and any other factors that it reasonably believes to be relevant in determining whether or not to consent to any proposed work.

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

6.8 **Appeal.** After Declarant has assigned the right to appoint ARC members to the Board, any Owner adversely impacted by action of the ARC may appeal such action to the Board. Such appealing Owner shall submit to the Board a written notice of appeal, setting forth specific objections or mitigating circumstances justifying the appeal, to the Board within ten (10) business days after the ARC's action. The Board shall issue a final, conclusive decision within thirty (30) business days after receipt of such notice, and such decision shall be final and

binding upon the appealing Owner and the ARC. Provided, however, the Board is serving as the ARC, then such appeal shall be deemed a request for reconsideration.

6.9 **Effective Period of Consent.** The ARC's consent to any proposed work shall automatically expire twelve (12) months after issuance unless construction of the project has been substantially commenced or the Owner has applied for and received an extension of time from the ARC.

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

6.11 **Noncompliance.** If the ARC determines that an Owner has not constructed an improvement consistent with the specifications of an ARC approval or has constructed an improvement without obtaining ARC approval, sends a notice of noncompliance to such Owner, and such Owner fails to commence diligently remedying such noncompliance in accordance with such notice, then, effective at 5 p.m. on the tenth (10th) business day after issuance of such notice, the ARC shall provide notice of hearing to consider the Owner's continuing noncompliance. The hearing shall be set not more than thirty (30) business days from the date on which the notice of noncompliance was issued. At the hearing, if the ARC finds that there is no valid reason for the continuing noncompliance, the ARC may levy a fine against the noncomplying Owner for such amount according to a previously adopted schedule of fines. Such fine may be a continuing fine until the noncompliance is remedied. The ARC shall require the Owner to remedy such noncompliance within sixty (60) days after the date of the ARC's determination. The costs of any such action to obtain compliance shall be assessed against the Owner as an assessment.

6.12 **Liability.** Neither the ARC nor any member thereof shall be liable to any person or entity for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the ARC or a member thereof, provided only that the ARC or the member has, in accordance with its or his actual knowledge, acted in good faith.

6.13 **Estoppel Certificate.** Within fifteen (15) business days after the ARC's receipt of a written request from an Owner and the ARC's receipt of payment of a reasonable fee fixed by the ARC to cover costs, the ARC shall provide such Owner with a certificate executed by the chairperson or other authorized member of the ARC certifying with respect to any Lot owned by the Owner, that, as of the date thereof with (a) all improvements made or done upon such Lot 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. The Owner and such Owner's heirs, devisees, successors and assigns shall be entitled to rely on the certificate with respect to the matters set

forth therein. The certificate shall be conclusive as among Declarant, the ARC, the Association, all Owners, and all persons deriving any interest through any of them.

6.14 **Fees.** The ARC may charge applicants a reasonable application fee and additional costs incurred or expected to be incurred by the ARC to retain architects, attorneys, engineers and other consultants to advise the ARC concerning any aspect of the applications and/or compliance with any appropriate architectural criteria or standards. Such fees shall be collectible upon application.

6.15 **Declarant and Successor Exempt From ARC.** The Declarant or a successor to all of the unsold Lots shall be exempt from the requirement to submit and have plans approved by the ARC. However, the Declarant and its successor shall not be exempt from the provisions of Article 4 of the Declaration, except as set forth in Section 4.25.

ARTICLE 7

MEMBERSHIP IN THE ASSOCIATION

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

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

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

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

7.3.2 **Class B.** The Class B members shall be Declarant, its successors and assigns. The Class B member shall have three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership upon the earlier of the following dates (the "**Termination Date**"):

- (a) Twenty (20) years after the date this Declaration is recorded; and

- (b) At such earlier time as Declarant elects in writing to terminate Class B membership.

After the Termination Date, each Owner, including Declarant, shall be entitled to one (1) vote for each Lot owned with respect to all matters upon which Owners are entitled to vote, and the total number of votes shall be equal to the total number of Lots subject to this Declaration, initially or through annexation.

When more than one (1) person or entity owns a Lot, the vote for such Lot may be cast as they shall determine, but in no event shall fractional voting be allowed. Fractional or split votes shall be disregarded, except for purposes of determining a quorum.

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

ARTICLE 8

DECLARANT CONTROL

8.1 **Interim Board and Officers.** Declarant hereby reserves administrative control of the Association. Declarant, in its sole discretion, shall have the right to appoint and remove members of an interim board (the "**Interim Board**"), which shall manage the affairs of the Association and be invested with all powers and rights of the Board until the Turnover Meeting (as hereinafter defined). The Interim Board shall consist of from one (1) to three (3) members. Notwithstanding the provision of this Section 8.1, at the Turnover Meeting, at least one (1) Director shall be elected by Owners other than Declarant, even if Declarant otherwise has voting power to elect all three (3) Directors.

8.2 **Transitional Committee.** The Declarant shall call a meeting of Owners for the purpose of selecting a transitional advisory committee (the "**Transitional Committee**") to provide for the transition of administrative control from the Declarant to the Members not later than sixty (60) days after the Declarant has conveyed fifty percent (50%) of the Lots to Owners other than the Declarant. The Transitional Committee shall have access to the information, documents and records which the Declarant must turn over to the Owners under the Oregon Planned Community Act.

8.2.1 **Members.** The Transitional Committee shall consist of three (3) members. The Class A Members shall, by majority vote, elect no more than two Members, and the Declarant shall elect one Member.

8.2.1 **Notice of Meeting.** The Declarant shall give notice of the meeting required under this section. The notice shall state the purpose of the meeting and the

time and place where it is to be held. If such meeting is not called by the Declarant within the time specified, the meeting may be called and notice given by an Owner. If the Owners, other than the Declarant, do not select members for the committee, the Declarant shall have no further responsibility to form the committee.

8.3 **Turnover Meeting.** Declarant shall call a meeting for the purposes of turning over administrative control of the Association from Declarant to the Owners within sixty (60) days of the earlier of the following dates:

8.3.1 **Latest Date.** Seventy-five percent (75%) of the Lots have been sold by Declarant to Owners other than Declarant;

8.3.2 **Optional Turnover.** At such time as Declarant has elected in writing to terminate Class B membership.

Declarant shall give notice of the Turnover Meeting to each Owner as provided in the Bylaws. If Declarant does not call the Turnover Meeting required under this Section, any Owner may do so.

ARTICLE 9

DECLARANT'S SPECIAL RIGHTS

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

9.2 **Marketing Rights.** Declarant shall have the right to maintain a sales office and model on one or more of the Lots which Declarant owns. Declarant and prospective purchasers and their agents shall have the right to use and occupy the sales office models during reasonable hours any day of the week. Declarant may maintain a reasonable number of "For Sale" signs at reasonable locations on the Property, including, without limitation, on the Common Area.

9.3 **Declarant Easements.** Declarant reserves easements over the Property as more fully described in Section 3.4 herein.

9.4 **Additional Improvements.** Declarant does not agree to build any improvements not described in this Declaration.

9.5 **Control of the ARC.** Declarant shall have the right, but not the obligation, to control all aspects of the ARC, including the appointment of all ARC members and the

approval, modification or adoption of the Architectural Standards as described in Article 6 herein.

ARTICLE 10

FUNDS AND ASSESSMENTS

10.1 **Purpose of Assessments; Expenses.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, aesthetics and welfare of the Owners and Occupants of Heron's Rest, for the improvement, operation and maintenance of the Common Area and the Commonly Maintained Property, for the payment of obligations of the Association, for the administration and operation of the Association and for property and liability insurance.

10.2 **Covenants to Pay.** Declarant and each Owner covenant and agree to pay the Association the assessments and any additional charges levied pursuant to this Declaration or the Bylaws. All assessments for operating expenses, repairs and replacement and reserves shall be allocated among the Lots and their Owners as set forth in Section 10.4.2.

10.2.1 **Funds Held in Trust.** The assessments collected by the Association shall be held by the Association for and on behalf of each Owner and shall be used solely as set forth in Section 10.1. The assessments are the property of the Association and are not refundable to Owners or Lots. Upon the sale or transfer of any Lot, the Owner's interest in such funds shall be deemed automatically transferred to the successor in interest to such Owner.

10.2.2 **Offsets.** No offsets against any assessment shall be permitted for any reason, including, without limitation, any claim that the Association is not properly discharging its duties.

10.2.3 **Right to Profits.** Association profits, if any, shall be the property of the Association and shall be contributed to the Current Operating Account.

10.3 **Basis of Assessment; Commencement of Assessments.** The Declarant shall pay all common expenses of the Association until the Lots are assessed for common expenses. The amount of the initial annual assessment to Owners other than the Declarant shall be determined by the Declarant. Assessments are to be levied against all Lots whether or not such Lots have been improved with a completed Home; provided, however, the Declarant shall be exempt from paying the assessments on all Lots owned by it, as more specifically set forth in Section 10.3.1 below.

10.3.1 **Commencement of Assessments.** The date of commencement of the assessments shall be determined by the Declarant; however, in no event shall they commence later than the Turnover Meeting; provided, however, the Declarant shall be exempt from paying the operation portion of the assessment on all Lots owned by it.

10.4 **Annual Assessments.** Annual assessments for each fiscal year shall be established when the Board approves the budget for that fiscal year. The initial assessment and the implementation thereof shall be determined by the Declarant and shall be prorated on a monthly basis. For prospective purposes, any portion of a month shall count as a full month. Annual assessments shall be levied on a fiscal year basis. The fiscal year shall be the calendar year unless another year is adopted by vote of the Association members. Unless otherwise specified by the Board, annual assessments shall be due and payable on the first day of each calendar year.

10.4.1 **Budgeting.** Regardless of the number of Members or the amount of assets of the Association, each year the Board shall prepare, approve and make available to each Member a pro forma operating statement (budget) containing: (i) estimated revenue and expenses; (ii) the amount of the total cash reserves of the Association currently available for replacement or major repair of the Common Area, Commonly Maintained Property and for contingencies; (iii) an itemized estimate for the remaining life of, and the methods of funding to defray repair, replacement or additions to major components of the Common Area and Commonly Maintained Property as provided in Section 10.6.2; and (iv) a general statement setting forth the procedures used by the Board in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the Common Area and Commonly Maintained Property. For the first fiscal year, the budget shall be approved by the Board no later than the date on which annual assessments are scheduled to commence. Thereafter, the Board shall annually prepare and approve the budget and distribute a copy thereof to each Member, together with written notice of the amount of the annual assessments to be levied against the Owner's Lot, not less than thirty (30) days and not more than ninety (90) days prior to the beginning of the fiscal year.

10.4.2 **Allocation of Assessments.** The total amount in the budget shall be charged equally against all Lots subject to assessment.

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

10.5 **Special Assessments.** The Board and/or the Owners shall have the power to levy special assessments against an Owner or all Owners in the following manner for the following purposes:

10.5.1 **Correct Deficit.** To correct a deficit in the operating budget, by vote of a majority of the Board;

10.5.2 **Special Obligations of an Owner.** To collect amounts due to the Association from an Owner as provided under this Declaration, the Bylaws, or the Rules and Regulations, by vote of a majority of the Board;

10.5.3 **Repairs.** To collect additional amounts necessary to make repairs or renovations to the Common Area or Commonly Maintained Property if sufficient funds are not available from the operating budget or replacement reserve accounts, by vote of a majority of the Board;

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

10.5.5 **Reimbursement Assessments.** The Association shall levy a reimbursement assessment against any Owner and such Owner's Lot if a failure to comply with this Declaration, Bylaws, Architectural Standards or any Rules and Regulations has (i) necessitated an expenditure of monies by the Association to effect compliance or (ii) resulted in the imposition of a fine or penalty against such Owner or such Owner's Lot (a "**Reimbursement Assessment**"). A Reimbursement Assessment shall not be levied by the Association except upon at least ten (10) business days' written notice to the Owner being assessed. If, within said ten (10) business day period, the Owner makes a written request to the Board for a hearing, a hearing shall be held. Upon request for a hearing, the Board shall conduct a hearing as soon as practicable, and shall make its decision within not more than thirty (30) business days after the hearing is held. If a notice has been previously given, and the hearing has already been held or waived (in writing or by the Owner's failure to appear) for the violation resulting in the Reimbursement Assessment, no additional notice and hearing is required prior to levying the Reimbursement Assessment.

10.6 **Accounts.**

10.6.1 **Types of Accounts.** Assessments collected by the Association shall be deposited into at least two (2) separate accounts with a bank, which accounts shall be clearly designated as (i) the Current Operating Account and (ii) the Reserve Account. The Board shall deposit those portions of the assessments collected for current maintenance and operation into the Current Operating Account and shall deposit those portions of the assessments collected as reserves for replacement and deferred maintenance of capital improvements into the Reserve Account. Withdrawal of funds for the Association's Reserve Account shall require the signature of either two (2) Directors or one (1) Director and an officer of the Association who is not a Director. In its books and records, the Association shall account separately for operating expenses relating to the Common Area/Commonly Maintained Property and operating expenses relating to all other matters, as well as for necessary reserves relating to the Common Area/Commonly Maintained Property and necessary reserves relating to all other matters.

10.6.2 **Reserve Account.** Declarant shall establish a Reserve Account, in the name of the Association, which shall be kept separate from all other funds held by the Association. The Association shall pay out of the Reserve Account only those costs that are attributable to the maintenance, repair or replacement of Common Area property and Commonly Maintained Property that normally requires replacement, in whole or in part, within three (3) to thirty (30) years and not for regular or periodic maintenance and expenses. No

funds collected for the Reserve Account may be used for ordinary current maintenance and operation purposes.

10.6.2.1 **Calculation of Reserve Assessment; Reserve Study.** The reserve assessment is based on the estimated remaining life and current replacement cost of Common Area property and Commonly Maintained Property which normally requires replacement, in whole or in part, within three (3) to thirty (30) years. Not less often than ever two years, the Board of Directors shall inventory all items of Common Area property and shall estimate the remaining life of each item and the current replacement cost of each of such items. The total Reserve Account assessment shall be equal to the sum of the estimated replacement cost of each item which has an estimated life of greater than three (3) but less than thirty (30) years, divided by the estimated number of years of life for such item. The Board of Directors shall establish a thirty-year plan with regular and adequate contributions, adjusted by estimated inflation and interest earned on reserves, to meet the maintenance, repair, and replacement schedule. The reserve account assessment shall be allocated pursuant to Section 10.4.2. The Board of Directors shall conduct a reserve study, or review and update an existing study of Common Area or Commonly Maintained Property to determine the reserve account requirements, at least every two years.

10.6.2.2 **Loan From Reserve Account.** After the Turnover Meeting described in Section 8.2, the Board may borrow funds from the Reserve Account to meet high seasonal demands on the Association's regular operating fund or to meet unexpected increases in expenses. Funds borrowed must be repaid later from assessments if the Board has adopted a resolution, which may be an annual continuing resolution, authorizing the borrowing of funds. Not later than the adoption of the budget for the following year, the Board shall adopt by resolution a written payment plan providing for repayment within a reasonable period.

10.6.2.3 **Increase or Reduction of Reserve Account Assessment.** At any time after the second year after the Turnover Meeting, future assessment for the Reserve Account may be increased or reduced by the vote of Owners of Lots representing seventy-five percent (75%) of the votes computed in accordance with Section 7.3.

10.6.2.4 **Investment of Reserve Account.** Nothing in this section prohibits the prudent investment of Reserve Account funds, subject to any constraints imposed by the Board, the Bylaws or the Rules and Regulations.

10.6.2.5 **Refunds of Assessments.** Assessments paid into the Reserve Account are the property of the Association and are not refundable to sellers or Owners of Lots. Sellers or Owners of Lots may treat their outstanding share of the Reserve Account's balance as a separate item in the sales contract providing for the conveyance of their land.

10.6.3 **Current Operating Agreement.** All costs other than those to be paid from the Reserve Account pursuant to Section 10.6.2 may be paid from the Current Operating Agreement.

10.7 Default in Payment of Assessments; Enforcement of Liens.

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

10.7.2 **Association Lien.** The Association shall have a lien against each Lot for any assessment (of any type provided for by this Declaration or the Bylaws) or installment thereof that is delinquent. The Association's lien shall accumulate all future assessments or installments, reimbursement assessments, interest, late fees, penalties, fines, attorney's fees (whether or not suit or action is instituted), actual administrative costs, and other appropriate costs properly chargeable to an Owner by the Association, until such amounts are fully paid. Recording of the Declaration constitutes record notice and perfection of the lien. Said lien may be foreclosed at any time pursuant to the Planned Community Act. The Association shall record a notice of a claim for assessments and other charges in the deed records of Tillamook County, Oregon, before any suit to foreclose may be filed. The lien of the Association shall be superior to all other liens and encumbrances except property taxes and assessments and/or any first mortgage, deed of trust or land sale contract recorded before the Association's notice of lien.

10.7.3 **Interest; Fines; Late Fees; Penalties.** The Board, in its reasonable discretion, may from time to time adopt resolutions to set the rate of interest and to impose late fees, fines and penalties on delinquent assessments or for violations of the provisions of this Declaration, the Bylaws, Architectural Standards and the Rules and Regulations adopted by the Board or the ARC. The adoption of such impositions shall be communicated to all Owners in writing not less than thirty (30) days before the effective date by a notice mailed to the assessment billing address of such Owners. Such impositions shall be considered assessments that are lienable and collectible in the same manner as any other assessments; provided, however, that fines or penalties for violation of this Declaration, the Bylaws or any rule and regulation, other than late fees, fines or interest arising from an Owner's failure to pay regular, special or Reimbursement Assessments may not be imposed against an Owner or such Owner's Lot until such Owner is given an opportunity for a hearing as elsewhere provided herein.

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

10.7.5 **Association's Right to Rents; Receiver.** In any foreclosure suit by the Association with respect to such lien, the Association shall be entitled to collect reasonable rent from the defaulting Owner for the use of such Owner's Lot or shall be entitled to the appointment of a receiver.

ARTICLE 11

GENERAL PROVISIONS

11.1 **Records.** The Board shall preserve and maintain minutes of the meetings of the Association, the Board and any committees. The Board also shall keep detailed and accurate financial records, including individual assessment accounts of Owners, the balance sheet, and income and expense statements. Individual assessment accounts shall designate the name and address of the Owner or Owners of the Lot, the amount of each assessment as it becomes due, the amounts paid upon the account, and the balance due on the assessments. The minutes of the Association, the Board and Board committees, and the Association's financial records shall be maintained in the state of Oregon and reasonably available for review and copying by the Owners. A reasonable charge may be imposed by the Association for providing copies.

11.2 **Indemnification of Directors, Officers, Employees and Agents.** The Association shall indemnify any Director, officer, employee or agent who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by the Association) by reason of the fact that such person is or was a Director, officer, employee or agent of the Association or is or was serving at the request of the Association as a Director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by said person in connection with such suit, action or proceeding if such person acted in good faith and in a manner that such person reasonably believed to be in, or not opposed to, the best interest of the Association, and, with respect to any criminal action or proceedings, had no reasonable cause to believe that such person's conduct was unlawful. Payment under this clause may be made during the pendency of such claim, action, suit or proceeding as and when incurred, subject only to the right of the Association to reimbursement of such payment from such person, should it be proven at a later time that such person had no right to such payments. All persons who are ultimately held liable for their actions on behalf of the Association as a Director, officer, employee or agent shall have a right of contribution over and against all other Directors, officers, employees or agents and members of the Association who participated with or benefited from the acts which created said liability.

11.3 **Enforcement; Attorney's Fees.** The Association and the Owners and any mortgagee holding an interest on a Lot shall have the right to enforce all of the covenants, conditions, restrictions, reservations, easements, liens and charges now or hereinafter imposed by any of the provisions of this Declaration as may appertain specifically to such parties or Owners by any proceeding at law or in equity. Failure by either the Association or by any Owner or mortgagee to enforce any covenant, condition or restriction herein contained shall in

no event be deemed a waiver of their right to do so thereafter. In the event suit or action is commenced to enforce the terms and provisions of this Declaration (including without limitations, for the collection of assessments), the prevailing party shall be entitled to its actual administrative costs incurred because of a matter or event which is the subject of the suit or action, attorney's fees and costs in such suit or action to be fixed by the trial court, and in the event of an appeal, the cost of the appeal, together with reasonable attorneys' fees, to be set by the appellate court. In addition thereto, the Association shall be entitled to its reasonable attorneys' fees and costs in any enforcement activity or to collect delinquent assessments, together with the Association's actual administrative costs, whether or not suit or action is filed.

11.4 **Construction Defect Claim Procedure.** No litigation shall be commenced against the Declarant or any Owner of a Lot in respect to any alleged defect in a Home or on any Common Area except in compliance with the process set forth in ORS 701.560-701.595.

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

11.6 **Duration.** The covenants, conditions and restrictions of this Declaration shall run with and bind the land for a term of thirty-five (35) years from the date of this Declaration being recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless rescinded by a vote of at least ninety percent (90%) of the Owners and ninety percent (90%) of the first mortgagees; provided, however, that amendments that do not constitute rescission of the planned community may be adopted as provided in Section 11.7 and that if any of the provisions of this Declaration would violate the rule against perpetuities or any other limitation on the duration of the provisions herein contained imposed by law, then such provision shall be deemed to remain in effect only for the maximum period permitted by law or, in the event the rule against perpetuities applies, until twenty-one (21) years after the death of the last survivor of the now living descendants of Ex-President Barack Obama.

11.7 **Amendment.** Except as otherwise provided in Section 11.6 or ORS 94.590 (or any successor statute), and the restrictions set forth elsewhere herein, this Declaration may be amended at any time by an instrument approved by not less than seventy-five percent (75%) of the total votes of each class of members that are eligible to vote. Any amendment must be executed, recorded and certified as provided by law; provided, however, that no amendment of this Declaration shall effect an amendment of the Bylaws or Articles without compliance with the provisions of such documents, and the Oregon Nonprofit Corporation Act and that no amendment affecting the General Plan of Development or any other right of Declarant herein contained may be affected without the express written consent of Declarant or its successors and assigns, including, without limitation, amendment of this Section 11.7.

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

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

11.10 **Resolution of Document Conflicts.** In the event of a conflict among any of the provisions in the documents governing Heron's Rest, such conflict shall be resolved by looking to the following documents in the order shown below:

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

IN WITNESS WHEREOF, Declarant has executed this instrument this _____ day of _____, 20____.

City Center Development Partners Corp
an Oregon corporation

By: Nathaniel A. Palmer
Its: President

STATE OF _____)
) ss.
County of _____)

This instrument was acknowledged before me on this __ day of _____, 202__
by Nathaniel A. Palmer, President of City Center Development Partners Corp, an Oregon Corporation.

NOTARY PUBLIC FOR _____
My Commission Expires: _____