

92-25570

DECLARATION OF COVENANTS, CONDITIONS,  
AND RESTRICTIONS FOR AWBREY GLEN

THIS DECLARATION is made this 8th day of July, 1992, by Brooks Resources Corporation, an Oregon corporation ("Declarant").

O B J E C T I V E S

Declarant owns property located on Awbrey Butte in Deschutes County, Oregon. Declarant proposes to develop portions of this property as a planned development to be known as "Awbrey Glen." Declarant intends to create in Awbrey Glen a planned community which will provide an attractive place to live.

Declarant has recorded the plat of Awbrey Glen Homesites, Phase One, in the plat records of Deschutes County, Oregon. Declarant desires to subject the property described in such plat to the covenants, conditions, restrictions, and charges set forth herein for the benefit of such property and its present and subsequent owners, and to establish such property as the first phase of the planned community to be known as "Awbrey Glen." Additional areas may be annexed to Awbrey Glen in accordance with the provisions set forth in this Declaration.

NOW, THEREFORE, Declarant hereby declares that the property covered in the plat of Awbrey Glen Homesites, Phase One, more particularly described on Exhibit A attached hereto shall be held, sold, and conveyed subject to the following easements, covenants, conditions, restrictions, and charges, which shall run with such property and shall be binding upon all parties having or acquiring any right, title or interest in such property or any part thereof and shall inure to the benefit of each owner thereof.

ARTICLE 1

DEFINITIONS

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

1.1 "Appeals Board" means a board formed pursuant to Section 7.13 to consider decisions of the Architectural Review Committee.

1.2 "Architectural Review Committee" means the Architectural Review Committee appointed pursuant to Article 7 hereof.

1.3 "Association" means the nonprofit corporation to be formed to serve as the association of Owners (as hereinafter defined) as provided in Article 8 hereof, and its successors and assigns.

1.4 "Awbrey Glen" means the property designated in Section 2.1 of this Declaration and any other property designated in any declaration annexing such property to Awbrey Glen in accordance with Section 2.2 of this Declaration, but excluding any property withdrawn from Awbrey Glen in accordance with Section 2.3 of this Declaration.

1.5 "Capital Improvement Assessments" means assessments to cover the cost of capital improvements made pursuant to Section 10.3.

1.6 "Common Areas" means the property referred to in paragraph 3.1(b).

1.7 "Declarant Area" means the land use classification described in paragraph 3.1(c).

1.8 "Declarant" means Brooks Resources Corporation, an Oregon corporation, any person who succeeds to any special Declarant right and to whom all of the Declarant's ownership interest in Awbrey Glen is transferred, or any person, other than the Association, to whom the Declarant has transferred, for purposes of resale, all of Declarant's ownership interest in the planned community.

1.9 "Homesite" means a Lot as defined in Section 1.13.

1.10 "Improvement" means every temporary or permanent structure or improvement of any kind, including but not limited to a house, fence, wall, driveway, swimming pool, storage shelter or other product of construction efforts on or in respect to any property within Awbrey Glen, including landscaping, and every alteration, painting or reconstruction thereof.

1.11 "Initial Development" means the property referred to in Section 2.1.

1.12 "Living Unit" means a building located or to be located upon a Homesite within Awbrey Glen and designated for separate residential occupancy (whether or not occupied) or ownership, but not including any building or portion of a building located on a Common Area.

1.13 "Lot" means a platted or legally partitioned lot, within Awbrey Glen or any property so designated in any Supplemental Declaration annexing such property to Awbrey Glen, but not including any Common Area or any Declarant Area.

1.14 "Mortgage" means a mortgage, trust deed, or land sales contract; "mortgagee" means a mortgagee, beneficiary of a trust deed, or vendor under a land sales contract; and



"mortgagor" means a mortgagor, grantor of a trust deed, or vendee under a land sales contract.

1.15 "Operating Assessments" means the assessments to cover operating expenses referred to in Section 10.2.

1.16 "Owner" means the person or persons, including Declarant, owning any Homesite, including any vendee under a recorded land sales contract to whom possession has passed, but does not include a tenant or holder of a leasehold interest or a person holding only a security interest in a Homesite, including any vendor under a recorded land sales contract who has given up possession. The rights, obligations, and other status of being an Owner commence upon acquisition of the ownership of a Homesite and terminate upon disposition of such ownership, but termination of ownership shall not discharge an Owner from obligations incurred prior to termination.

1.17 "Private Recreational Area" means any portion of the Common Area which is designated as such by Declarant pursuant to Section 3.1(d).

1.18 "Private Way" means any area which is designated as such in the plat of the Initial Development or any plat filed in connection with the annexation of additional real property, or in any Supplemental Declaration.

1.19 "Reserve Account Assessments" means assessments to cover the reserve fund for replacements pursuant to Section 10.4.

1.20 "Supplemental Declaration" means an instrument annexing additional real property to Awbrey Glen.

1.21 "This Declaration" means this Declaration of Covenants, Conditions, and Restrictions for Awbrey Glen and any and all declarations annexing property to Awbrey Glen.

## ARTICLE 2

### PROPERTY SUBJECT TO THIS DECLARATION

2.1 Initial Development. Declarant hereby declares that all of the real property described on Exhibit A attached hereto is owned and shall be owned, conveyed, hypothecated, encumbered, used, occupied, and improved subject to this Declaration. The Initial Development contains 48 Homesites and contemplates construction of one Living Unit on each Homesite.

2.2 Annexation of Additional Property. Declarant may from time to time and in its sole discretion annex to Awbrey Glen any adjacent real property now or hereafter acquired by it. The

annexation of such adjacent real property shall be accomplished as follows:

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

(b) Provisions of Supplemental Declaration. Notwithstanding any provision apparently to the contrary, a Supplemental Declaration with respect to any annexed property may:

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

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

(c) Effect of Annexation. The property included in any such annexation shall thereby become a part of Awbrey Glen and this Declaration, and the Declarant and the Association shall have and shall accept and exercise administration of this Declaration with respect to such property.

(d) No Limitation on Annexation. There is no limitation on the number of Homesites or Living Units which Declarant may create or annex to Awbrey Glen. There is no limitation on the right of Declarant to annex Common Areas.

(e) Voting Rights. Upon annexation, additional Homesites so annexed shall be entitled to voting rights as set forth in Section 8.3 below.

(f) Adjustment of Association Expenses. The formula to be used for reallocating the common expenses if additional Homesites are annexed and the manner of reapportioning the common expenses if additional Homesites are annexed during a fiscal year are set forth in Section 10.5 below.



2.3 Withdrawal of Property. Declarant may withdraw property from Awbrey Glen, including Common Area property, only by duly adopted amendment to this Declaration, except that Declarant may withdraw all or a portion of any property annexed pursuant to a declaration described in Section 2.2 above at any time prior to the sale of the first Homesite in the property annexed by such declaration. Such withdrawal shall be by a declaration executed by Declarant and recorded in the official records of Deschutes County. If a portion of the Property is so withdrawn, all voting rights otherwise allocated to Homesites being withdrawn shall be eliminated, and the common expenses shall be reallocated as provided in Section 10.5 below. The right of Declarant to withdraw property hereunder shall not expire until the first Homesite in the last phase of Awbrey Glen has been sold.

2.4 Declarant Improvements. Declarant agrees to build all improvements necessary for the Private Ways in Awbrey Glen. Declarant also agrees to build at least two tennis courts in Awbrey Glen. Declarant does not agree to build any additional improvements but does not choose to limit Declarant's rights to add improvements not described in this Declaration.

### ARTICLE 3

#### LAND CLASSIFICATIONS

3.1 Initial Development. All land within the Initial Development is included in one of the following classifications:

(a) Homesites. Homesites shall consist of each Lot described on a subdivision plat or partition map with respect to Awbrey Glen or any alteration thereof as may be made by a valid Lot line adjustment. Homesites are intended for residential use.

(b) Common Areas. Common Areas shall consist of all areas designated as such or as "open space", "private way", or "bike paths" on the plat of the Initial Development or in any Supplemental Declaration or on the plat of any land annexed by Supplemental Declaration. Common Areas shall be subject to easements as provided in Section 4.3(f).

(c) Declarant Areas. Declarant Areas shall consist of the areas designated as such on the plat of the Initial Development or on the plat of any land annexed by Supplemental Declaration or in any Supplemental Declaration. Declarant Areas shall be owned by Declarant and may be used for a golf course, pro shop, restaurant, parking, sales or branch office, and other purposes compatible with the remainder of Awbrey Glen. Declarant Areas shall not be subject to any regular assessment, Capital Improvement Assessment, or other assessment pursuant to this Declaration.



(d) Private Recreational Areas. Declarant may designate certain portions of the Common Areas as Private Recreational Areas. Private Recreational Areas shall be available for the use of Owners of less than all of the Homesites. The location of each Private Recreational Area and the Homesites entitled to use each Private Recreational Area shall be designated either on the plat covering the Private Recreational Area or in a separate instrument recorded by Declarant in the official records of Deschutes County, Oregon. The cost of maintenance and improvement of each Private Recreational Area shall be borne equally by the Owners of Homesites entitled to use such Private Recreational Areas.

3.2 Additional Land Classifications. Additional land classifications and uses may hereafter be established in any declaration annexing property to Awbrey Glen as provided in Section 2.2 above.

3.3 Conversion of Homesites to Common Areas. Declarant may elect to build common facilities on one or more Homesites and designate such Homesites as Common Areas by a declaration recorded in the official records of Deschutes County. Such declaration shall be executed by Declarant, as owner of the Homesites.

3.4 Consolidation of Homesites. The Owner of two adjoining Homesites or portions of adjoining Homesites, with the approval of the Architectural Review Committee, may elect to consolidate such Homesites into one Homesite. The Architectural Review Committee may impose reasonable conditions or restrictions on the granting of its approval of a Homesite consolidation, including, but not limited to maintenance or landscaping requirements and limitations on use. The consolidation shall be effective upon the recording in the deed records of Deschutes County of a declaration of the Owner stating that the two Homesites are consolidated. The declaration shall include a written consent to the consolidation executed on behalf of the Architectural Review Committee by at least one member thereof and a description of any restrictions and conditions imposed as a condition of such consent. Thereafter, and except if otherwise provided by the Architectural Review Committee as a condition to its consent, the consolidated Homesites shall constitute one Homesite for all purposes of this Declaration, including voting rights and assessments. No Living Unit may be placed upon the remainder of a Homesite, a portion of which was consolidated with another Homesite but which remainder has not been consolidated with another Homesite, unless the area of such remainder constitutes at least 90 percent of the original area of the Homesite. Areas which have once been consolidated may not be partitioned at any time in the future.

#### ARTICLE 4



PROPERTY RIGHTS IN COMMON AREAS

4.1 Owners' Easements of Enjoyment. Subject to provisions of this Declaration, every Owner and such Owner's invitees shall have a right and easement of enjoyment in and to the Common Areas including, without limitation, Private Ways and bike paths but excluding Private Recreational Areas.

4.2 Title to Common Areas. Fee title to the Common Areas shall be conveyed by Declarant to, and must be accepted by, the Association free and clear of liens and encumbrances other than those created pursuant to this Declaration.

4.3 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) Association's and Owners' Easements. Declarant grants to the Association for the benefit of the Association and all Owners of Homesites within Awbrey Glen the following easements over, under, and upon the Common Areas:

(i) An easement for installation and maintenance of power, gas, electric, water, and other utility and communication lines and services installed by Declarant or with the approval of the Board of Directors of the Association and any such easement shown on any plat of property within Awbrey Glen.

(ii) An easement for construction, maintenance, repair, and use of the Common Areas and common facilities thereon, including, but not limited to, walkways, bike paths, fences, landscaping, irrigation systems, entry way structures, decorative ornamentation, and signs, and for any purposes and uses adopted by the Association for the benefit of the Association and the Owners.

(iii) An easement for the purpose of making repairs to any existing structure on the Common Areas.

(b) Declarant's Easements. So long as Declarant owns any Homesite, and in addition to any other easements to which Declarant may be entitled, Declarant reserves an easement over, under, and across the Common Areas in order to carry out development, construction, and sales activities necessary or convenient for the development of Awbrey Glen and the sale of Homesites and Living Units and for such other purposes as may be necessary or convenient for the development of Awbrey Glen and the sale of Homesites and Living Units and for such other purposes as may be necessary or convenient for discharging



Declarant's obligations or for exercising any of Declarant's rights hereunder. As long as Declarant owns any Declarant Areas within or adjacent to Awbrey Glen or has any maintenance obligations with respect to Awbrey Glen, Developer shall have an easement across the Common Areas as required to maintain and improve the Declarant Areas and to carry out its maintenance responsibilities with respect to Awbrey Glen. Declarant shall have an easement varying in width designated as "Developer's Easement" on the plat of the Initial Development and on plats covering any land annexed by Supplemental Declaration for golf course purposes, including the right in ingress and egress for construction, maintenance, and for players during the regular course of play on the golf course.

(c) Utility Easements. Declarant or the Association may (and, to the extent required by law, shall) grant or assign easements to municipalities, communication companies, or other utilities over Common Areas performing utility services, and the Association may grant free access thereon to police, fire, and other public officials and to employees of utility companies and communications companies serving Awbrey Glen.

(d) Use of the Common Areas. Except as otherwise provided in this Declaration, including without limitation the provisions in Section 4.3(f), 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. Nothing herein shall prevent the placing of a sign or signs upon the Common Areas for the purpose of identifying Awbrey Glen or any subdivision therein, indicating golf cart path directions, or identifying trails or other items of interest, provided such signs are approved by the Architectural Review Committee. The Board of Directors of the Association shall have authority to abate any trespass or encroachment upon the Common Area at any time, by any reasonable means and with or without having to bring legal proceedings.

(e) Alienation of the Common Areas. The Association may not by act or omission seek to abandon, partition, subdivide, encumber, cause the Common Area to be subject to any security interest, sell, or transfer the Common Areas owned directly or indirectly by the Association for the benefit of the Homesites unless the holders of at least 80 percent of the Class A voting rights (as described in Section 8.3(b) below) and the Class B member (as defined in Section 8.3(b) below), if any, have given their prior written approval. This provision shall not apply to the easements described in this Section 4.3. A sale, transfer, or encumbrance of the Common Area or any portion of the Common Area in accordance with this Section 4.3(e) may provide that the Common Area so conveyed shall be released from any restriction imposed on such Common Area by this Declaration. No sale, transfer, or encumbrance, may, however, deprive any Homesite of



such Homesite's right of access or support without the written consent of the Owner of the Homesite.

(f) Restrictions on Use of Common Areas. Use of the common Areas by the Owners shall be subject to the provisions of this Declaration and to the following:

(i) The right of the Association to suspend such use rights of an Owner to the extent provided in Article 11 below.

(ii) The right of the Association to adopt, amend, and repeal rules and regulations in accordance with this Declaration and the Bylaws of the Association, including, without limitation, the right to require reservations for use of the Common Area or Common Area facilities and the right to impose reasonable fees in connection with such use.

(iii) The right of Declarant to construct and maintain golf cart paths and related signage on the Common Area for use by invitees of Declarant and users of facilities on Declarant Areas.

Declarant hereby reserves for each Owner an easement for driveway and underground utility purposes across any Common Area lying between such Owner's Homesite and the Private Way providing access to such Homesite. The width of such driveway easement shall not exceed 20 feet. Declarant also reserves a nonexclusive easement over the Common Area for signs, public utilities operation, maintenance, ingress and egress of its golf course, well, pipelines irrigation systems, and related uses on property owned by Declarant.

(g) Private Ways. Each Owner shall have a nonexclusive easement for use of Private Ways for the purposes of walking thereon or traveling thereon by appropriate means. Each Owner may permit his guests and invitees to use the Private Ways for such purposes. The easement provided for herein shall be appurtenant to and assignable with the Homesite with respect to which it is granted, but shall not be otherwise assignable. The use of Private Ways shall be subject to rules and regulations adopted by the Board of Directors of the Association. The Board of Directors shall have the right to erect gates across Private Ways and bike paths and to regulate access through such gates. Declarant, its employees and invitees of its pro shop, learning center, and maintenance facilities, shall at all times have reasonable access over and across Private Ways. The Board of Directors shall be responsible for providing reasonably convenient means by which Declarant, its employees and invitees, shall have access through any gates. Gates across Private Ways shall be placed in such a manner as to minimize passage by



Declarant, its employees and invitees. The Board of Directors, in its discretion, may dedicate Private Ways to the public. The Board of Directors shall grant free access on Private Ways to police, fire, and other public officials, to employees of utility companies serving Awbrey Glen, and to such others to whom the Board believes access should be given for the benefit of Owners. Declarant may use Private Ways for its own purposes and for the purpose of location of utilities. There shall be no implied dedication of Private Ways.

4.4 Delegation of Use. Any Owner may delegate, in accordance with the Bylaws of the Association, such Owner's right of enjoyment of the Common Areas to the members of such Owner's family or tenants who reside on the Homesite.

## ARTICLE 5

### PROPERTY RIGHTS IN HOMESITES

5.1 Use and Occupancy. Except as otherwise expressly provided in this Declaration, in the plat in which a Homesite was platted or partitioned, or in any declaration annexing such Homesite to Awbrey Glen, the Owner of a Homesite in Awbrey Glen shall be entitled to the exclusive use and benefit of such Homesite.

5.2 Easements Reserved. In addition to any easements shown on the recorded plats, Declarant hereby reserves the following easements for the benefit of Declarant and the Association:

(a) Adjacent Common Area or Declarant Area. The Owner of any Homesite which blends together visually with any Common Area or Declarant Area shall permit the Association or Declarant, as the case may be, to enter upon such Homesite to perform the maintenance of such Common Area or Declarant Area.

(b) Right of Entry. Declarant, the Architectural Review Committee, and any representative of the Association authorized by it may at any reasonable time, and from time to time at reasonable intervals, enter upon any Homesite for the purpose of determining whether or not the use of and/or Improvements on such Homesite are then in compliance with this Declaration. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Homesite.

(c) Utility Easements. Easements for installation and maintenance of utilities are reserved over the rear and side five (5) feet of each Homesite. Such easements are also reserved over the front and on other portions of certain Homesites, as shown on the recorded plat. 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. The easement area of each Homesite and all Improvements in it shall be maintained continuously by the Owner of the Homesite, except for those improvements for which a public authority or utility company is responsible.

5.3 Restriction on Transfer. There shall be no inter vivos transfer, either directly or indirectly, of any interest in a Homesite or a Living Unit which would result in any person owning, either directly or indirectly through a corporation or a partnership, less than a twenty percent (20%) interest in such Homesite or Living Unit without the prior written consent of Declarant.

## ARTICLE 6

### RESTRICTIONS ON USE OF HOMESITES

6.1 Occupancy. No Owner shall occupy, use, or permit his Homesite, or any part thereof, to be used for any purpose other than a private residence for the Owner, his family or his guests, except that each Owner shall be permitted to rent the Unit for periods of no shorter duration than 30 days when he is not in occupancy. Nothing in this section shall be deemed to prohibit (a) activities relating to the sale of Living Units, or (b) the right of Declarant or any contractor or homebuilder to construct Living Units on any Homesite, to store construction materials and equipment on Homesites in the normal course of construction. Declarant may use any Living Unit as a sales office or model home for purposes of sales in Awbrey Glen.

6.2 Improvements. Each Homesite shall be maintained in a clean and attractive condition, in good repair, and in such a fashion as not to create a fire hazard.

6.3 Appearance. All garbage, trash, cuttings, refuse, garbage, and refuse containers, clothes drying apparatus, and other service facilities located on each Homesite shall be screened from view in a manner approved by Declarant.

6.4 Construction and Alteration. Nothing shall be altered or constructed in or removed from or placed on a Homesite except with the prior written consent of Declarant.

6.5 Offensive or Commercial Activity. No offensive or commercial activity shall be carried on, nor shall anything be done on any Homesite which may be or become an annoyance or nuisance to the other Owners.

6.6 Signs. No signs shall be erected or maintained on any Residential Homesite except signs which are approved as to



appearance and location by Declarant. The restrictions contained in this paragraph shall not apply to:

(a) Political Signs. The temporary placement of "political" signs on any Homesite by the Owner thereof;

(b) Declarant's Sales Office and Model Home Signs. The placement by the Declarant or Declarant's agent of one or more signs identifying the name of the Declarant and/or the location of a sales office or model home; or

(c) For Sale Signs. The temporary placement of not more than one "For Sale" sign on any Homesite meeting the guidelines of Declarant or the Architectural Review Committee and facing the Private Way providing access to such Homesite.

6.7 Exterior Lighting or Noise Making Device. No exterior lighting or noise making device shall be placed on a Homesite, or any portion thereof, without the Declarant's prior written consent.

6.8 Antennas and Satellite Dishes. Exterior satellite receiver, transmission dishes, exterior antennas, or other sending or receiving devices shall not be permitted to be placed upon any Homesite except as approved by Declarant.

6.9 Limitation on Transfer. No Owner shall transfer, either by conveyance, contract of sale, or lease, any interest in his Homesite which would result in ownership of such Homesite being held by more than ten persons.

6.10 Prohibited Structures. No house trailer, mobile home, manufactured home assembled off site, tent, shack, barn, or other similar outbuilding or structure, whether permanent or temporary, shall be erected or placed on any Homesite.

6.11 Single Family Residences. No more than one single family residence shall be erected or placed on any Homesite.

6.12 Utilities. No above-ground utilities, pipes, or wires shall be used to connect improvements with supplying facilities.

6.13 View. The height of vegetation and trees on a Homesite shall not materially restrict the view of other Owners. Declarant shall be the sole judge of the suitability of such heights. If the Declarant determines there is such restriction to the view of the other Owners, written notice shall be delivered to the offending Owner. If after 30 days the vegetation or trees are not removed or reduced in height as directed by Declarant, Declarant shall enter the offending



Homesite, complete the removal or reduction, charging the Owner of the Homesite the reasonable costs for the work done. This section is not to be read as justification to create views not present when the Homesite was originally purchased.

6.14 Parking. A minimum of two outdoor parking places in addition to covered parking must be provided for each Homesite and must meet the standards set by the Declarant. No house trailer, travel trailer, boat trailer, camper, incapacitated motor vehicle, snowmobile, motor home, or off-road vehicle shall be parked or stored on any Homesite or Common Area except as provided in the Association's rules and regulations or the architectural guidelines.

6.15 Control of Pets. No pets or domestic animals shall be permitted to run loose or unattended. Owners of pets shall be responsible for compliance with all leash laws and other laws related to the control of pets. No animals shall be kept or raised on any Homesite except household pets and domestic animals not used for any commercial purpose.

6.16 Firearms or Other Weapons. No firearms, air pistols, archery, sling shots, fireworks, or any other weapons or projectiles shall be used or discharged within Awbrey Glen except in such areas as may be designated in writing by the Board of Directors.

6.17 Motor Vehicles. Except for golf carts and carts specifically approved by the Board of Directors, no motorized vehicle shall be operated anywhere except upon a surfaced roadway, nor shall any motor vehicle be parked in other than a designated parking area. Except for golf carts or other carts specifically approved by the Board of Directors and except for construction equipment not required to be licensed, no unlicensed vehicles shall be operated within Awbrey Glen.

## ARTICLE 7

### ARCHITECTURAL REVIEW

7.1 Approval Required. No Improvement, as defined in Section 1.10 above, shall be erected, placed, altered, maintained, or permitted to remain on any land subject to this Declaration until final plans and specifications have been submitted to and approved in writing by Declarant. All approvals shall be in conformance with the building area established on each Homesite unless otherwise approved by the Declarant.

7.2 Procedure. Any Owner proposing to construct any Improvements within Awbrey Glen (including any exterior alteration, addition, destruction, or modification to any such Improvements) shall follow the procedures and shall be subject to



the approvals required by this Article 7. Failure to follow such procedures or obtain such approvals as required by this Article 7 shall be deemed a breach of this Declaration.

7.3 Required Documents. Any Owner proposing to utilize, improve, or develop real property within the Awbrey Glen shall submit the following items for review:

(a) A site plan showing the location, size, configuration, and layout of any building, structure, or Improvement (or, where applicable, any alteration, addition, modification, or destruction thereto), including appurtenant facilities for parking, storage, fences, and vehicular and pedestrian traffic and circulation.

(b) Architectural plans and drawings showing the nature, style, and dimensions of any building, structure, fence, wall, barrier, or deck (or, where applicable, any alteration, addition, modification, or destruction thereof), including the exterior material types, colors, and appearance. The scale of plans shall be 1 inch = 20 feet or larger.

(c) A landscape plan showing the nature, type, size, location, and layout of all landscaping, vegetation ground cover, landscape and site lighting, walks, major existing vegetation and irrigation systems proposed to be planted or installed (or, where applicable, removed or destroyed).

7.4 Review. All plans and drawings identified in Section 7.3 above shall be submitted to Declarant for review prior to the performance of any proposed work. Such plans and drawings shall be accompanied by a check payable to Declarant in an amount to be determined by Declarant from time to time. No plans shall be reviewed until the architectural review fee is paid in full and all items specified in this section are submitted. Within 30 days following receipt of such plans and drawings, and the full amount of the architectural review fee, Declarant shall review the plans and shall inform the Owner in writing whether the plans conform to the development concept for Awbrey Glen. In the event the Owner is not notified as to the conformity of the plans within the 30-day review period, the plans are conclusively presumed to be approved as submitted. In the event any of the plans do not conform to the Awbrey Glen development concept, the Owner shall resubmit those nonconforming portions of the plans for review in accordance with the procedures outlined in Section 7.3 above and this paragraph. No work may be performed relating to any Improvement unless and until all aspects of all plans required under Section 7.3 above and this paragraph. No work may be performed relating to any improvement unless and until all aspects of all plans required under Section 7.3 above have been approved by Declarant. Any site plans, construction plans, or similar plans and drawings



submitted to the city of Bend in connection with the construction of any Improvement in the Awbrey Glen must bear the prior written approval of Declarant.

7.5 Architectural Guidelines. The development concept for Awbrey Glen shall be determined by Declarant in accordance with applicable statutes, ordinances, regulations, zoning, and other governmental land use controls. Architectural guidelines setting forth various aspects of the development concept, in addition to this Declaration, may be published from time to time by Declarant, but Declarant shall not be required to do so. Declarant shall have the right to alter, rescind, or amend any published guidelines without prior notice to any party; provided, however, that once approval has been given pursuant to Section 7.4 above, work may proceed in accordance with the approved plans and drawings, notwithstanding any changes in the development concept. All such guidelines shall be in general conformity with this Declaration.

7.6 Inspection. All work related to any building, structure, or Improvement or any landscaping, vegetation, ground cover, or other Improvements within Awbrey Glen shall be performed in strict conformity with the plans and drawings approved under Section 7.4 above. Declarant shall have the right to inspect any such work to determine its conformity with the approved plans and drawings and reserves the right to order a stop to all work if, in good faith, it believes that any such work is nonconforming. In the event that it is determined in good faith by Declarant that certain work is nonconforming, a stop work notice may be issued, without necessity of court order, which shall require the Owner to correct all nonconforming work specified in the notice before the remainder of the proposed work may be completed. Continued work without correction of any such nonconforming items shall be deemed a breach of this Declaration. Neither Declarant nor any officer, director, employee, agent, or servant of Declarant shall be responsible for any damages, loss, delay, cost, or legal expense occasioned through a stop work notice given in good faith, even if it is ultimately determined that such work was in conformity with the approved plans and drawings.

7.7 Waiver. Any condition or provision of Sections 7.2 through 7.6 above may be waived in Declarant in its exclusive discretion. Any waiver shall be in general conformity with the development concept and development standards for Awbrey Glen. Any such waiver shall not be deemed a general waiver of any aspect of the development concept or the required procedures and approvals specified under Sections 7.2 through 7.6. The granting of a waiver as to one Owner shall not automatically entitle any other Owner to the waiver of the same or similar conditions or provisions. No waiver shall be valid unless it is in writing, signed by an authorized representative of Declarant



and delivered by certified mail to the party claiming the benefit of such waiver.

7.8 Architectural Review Committee. At such time as Declarant shall no longer desire to exercise its rights of approval under Article 5, Article 6, and Article 7, such approval rights shall be exercised by an Architectural Review Committee. The termination of Declarant's approval rights shall be evidenced by the recording of an instrument in the official records of Deschutes County, Oregon. The Board of Directors shall have responsibility for appointment and removal of members of the Architectural Review Committee. The Architectural Review Committee shall consist of as many persons, but not less than three, as the Board of Directors may from time to time appoint. If the Board of Directors fails to appoint the members of the Architectural Review Committee, the Board of Directors shall itself serve as the Architectural Review Committee.

7.9 Majority Action. Except as otherwise provided herein, 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 or notifying 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 members consenting thereto.

7.10 Liability. The scope of Declarant's or the Architectural Review Committee's review is not intended to include any review or analysis of structural, geophysical, engineering, building or zoning code compliance, or other similar considerations. Neither Declarant nor the Architectural Review Committee nor any member thereof shall be liable to any Owner, occupant, 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 thereof, provided only that Declarant or the Architectural Review Committee has, or the member has, in accordance with the actual knowledge possessed by Declarant or the Architectural Review Committee or by such member, acted in good faith.

7.11 Effective Period of Consent. The Declarant's and the Architectural Review Committee's consent to any proposed Improvement shall automatically be revoked one year after issuance unless construction of the Improvement has been commenced or the Owner has applied for and received an extension of time from the party granting consent.

7.12 Construction by Declarant. Improvements constructed by Declarant on any property owned by Declarant, are not subject to the requirements of this Article 7.



7.13 Appeals Board. Any person adversely affected by a decision of the Architectural Review Committee, which decision is made after the turnover meeting described in Section 8.6, may appeal such decision to an Appeals Board. The Appeals Board shall be appointed by the President of the Association and shall include at least one member of the Architectural Review Committee. The decision of the Appeals Board shall be final. Any appeal of a decision of the Architectural Review Committee must be in writing and must be delivered to the President of the Association within ten days after the decision to which the appeal relates. The Board of Directors may impose a reasonable fee to cover the cost of any appeal.

## ARTICLE 8

### ASSOCIATION

Declarant shall organize an association of all of the Owners within Awbrey Glen. Such Association, its successors, and assigns, shall be organized under the name "Awbrey Glen Homeowners Association, Inc." or such similar name as Declarant shall designate, and shall have such property, powers, and obligations as are set forth in this Declaration for the benefit of Awbrey Glen and all Owners of property located therein.

8.1 Organization. Declarant shall, before the first Homesite is conveyed to an Owner, organize the Association as a nonprofit mutual benefit corporation under the Oregon Nonprofit Corporation Act.

8.2 Membership. Every Owner of one or more Homesites within Awbrey Glen shall, immediately upon creation of the Association and thereafter during the entire period of such Owner's ownership of one or more Homesites within Awbrey Glen, 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.

8.3 Voting Rights. Voting rights within the Association shall be allocated as follows:

(a) Homesites. except as provided in Section 8.3(b) with respect to Class B members Homesites shall be allocated one vote per Homesite.

(b) Classes of Voting Membership. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant (except that beginning on the date on



which the Class B membership is converted to Class A membership, and thereafter, Class A members shall be all Owners including the Declarant). Class A members shall be entitled to voting rights for each Homesite owned computed in accordance with Section 8.3(a) above. When more than one person holds an interest in any Homesite, all such persons shall be members. The vote for such Homesite shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Homesite.

Class B. The Class B member shall be Declarant and shall be entitled to nine times the voting rights computed under Section 8.3(a) for each Homesite 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) When seventy-five percent (75%) of the Homesites in the final phase of development of Awbrey Glen have been sold and conveyed to Owners other than Declarant; or
- (ii) At such earlier time as Declarant may elect in writing to terminate Class B membership.

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

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

(b) Statutory Powers. The powers, duties, and obligations of a mutual benefit nonprofit corporation pursuant to the Oregon Nonprofit Corporation Act and of a homeowners association of a planned community pursuant to the Oregon Planned Community Act, as either or both may be amended from time to time.

(c) General. 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 Awbrey Glen.

The powers and obligations of the Association may from time to time be amended, repealed, enlarged or restricted by changes in this Declaration made in accordance with the provisions herein, accompanied by changes in the Articles of Incorporation or Bylaws of the Association made in accordance with such instruments and with the Oregon Nonprofit Corporation Act.



8.5 Liability. Neither the Association nor any officer or member of its Board of Directors shall be liable to any Owner for any damage, loss or prejudice suffered or claimed on account of any action or failure to act by the Association, any of its officers or any member of its Board of Directors, provided only that the officer or Board member has acted in good faith in accordance with the actual knowledge possessed by him.

8.6 Interim Board; Turnover Meeting. Declarant shall have the right to appoint an interim board of three directors or more, who shall serve as the Board of Directors of the Association until replaced by Declarant or their successors have been elected by the Owners at the turnover meeting described in this Section. Declarant shall call a meeting by giving notice to each owner as provided in the Bylaws of the Association for the purpose of turning over administrative responsibility for Awbrey Glen to the Association not later than one hundred twenty (120) days after Homesites representing seventy-five percent (75%) of the votes in all phases of Awbrey Glen computed in accordance with Section 8.3(a) above have been sold and conveyed to Owners other than Declarant. If Declarant does not call a meeting required by this Section within the required time, the Transitional Advisory Committee described in Section 8.7 below or any Owner may call a meeting and give notice as required in this Section. At the turnover meeting the interim directors shall resign and their successors shall be elected by the Owners and Declarant as provided in this Declaration and the Bylaws of the Association.

8.7 Transitional Advisory Committee. Declarant or Owners shall form a transitional advisory committee (the "Transitional Advisory Committee") to provide for the transition from administrative responsibility by Declarant of Awbrey Glen to administrative responsibility by the Association. Not later than the sixtieth (60th) day after the Declarant has conveyed to Owners other than Declarant Homesites representing fifty percent (50%) of the votes of all phases in Awbrey Glen computed in accordance with Section 8.3(a) above, Declarant shall call a meeting of Owners for the purpose of selecting the Transitional Advisory Committee. The Transitional Advisory Committee shall consist of three or more members. The Owners, other than Declarant, shall select two or more members. Declarant may select no more than one member. The Transitional Advisory Committee shall have reasonable access to all information and documents which Declarant is required to turn over to the Association under ORS 94.616.

(a) Declarant Failure to Call Meeting. An Owner may call a meeting of Owners to select the Transitional Advisory Committee if the Declarant fails to do so as provided above.



(b) Owners' Failure to Select Members.

Notwithstanding the foregoing, if the Owners do not select members for the Transitional Advisory Committee as described above, Declarant shall have no further obligation to form the Transitional Advisory Committee.

(c) Turnover Meeting. The requirement for formation of a Transitional Advisory Committee shall not apply once the turnover meeting specified in Section 8.6 above has been held.

8.8 Declarant Control After Turnover. After the turnover meeting described in Section 8.6 above, Declarant shall continue to have the voting rights described in Section 8.3(b) above. In addition, a majority of the Board of Directors of the Association shall be elected by Declarant, as Class B member, with the balance of the Board of Directors elected by the Class A members. After termination of Class B membership, all directors shall be elected by the Class A members.

8.9 Subassociations. Nothing in this Declaration shall be construed as prohibiting the formation of subassociations within Awbrey Glen.

8.10 Association Rules and Regulations. 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 Homesites and the Common Areas as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the property within Awbrey Glen. A copy of the rules and regulations, upon adoption, and a copy of each amendment, modification or revocation thereof, shall be delivered by the Association Board of Directors promptly to each Owner and shall be binding upon all Owners and Occupants of all Homesites upon the date of delivery. The method of adoption of such rules shall be as provided in the Bylaws of the Association.

## ARTICLE 9

MAINTENANCE, UTILITIES, AND SERVICES

9.1 Maintenance and Lighting of Common Areas. The Association shall perform all maintenance upon, and where the Association deems appropriate provide exterior lighting for, the Common Areas and all improvements situated thereon, including without limitation, gates and recreational facilities, provided that any such lighting shall require prior written consent of Declarant. The Association shall also perform necessary maintenance on all Private Recreational Areas, the cost of which shall be allocated pursuant to paragraph 3.1(d).



9.2 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, storm water detention facilities, and storm drainage lines, except to the extent such maintenance is performed by the utilities furnishing such services.

9.3 Road Maintenance. It is anticipated that a road running generally in a north-south direction on the west side of Awbrey Glen and a road on the south boundary of Awbrey Glen will be dedicated to the public. Notwithstanding the fact that such roads will serve property not included in Awbrey Glen, the Association shall be responsible for maintenance of such north-south road until such time as it is accepted for maintenance by the city of Bend or other entity.

## ARTICLE 10

### ASSESSMENTS

10.1 Annual Operating Budgets. The Association Board of Directors 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 overassessment and any common profits of the Association. The budget shall provide for such reserve or contingency funds as the Board deems necessary or desirable or as may be required by law. The method of adoption of the budget shall be as provided in the Bylaws.

10.2 Operating Assessments. All Homesites shall be assessed equally for operating costs. The amount of the assessment per Homesite shall be determined by dividing the annual budget by the total number of Homesites.

10.3 Capital Improvement Assessments. The Association may purchase, construct or otherwise acquire additional equipment, facilities or other capital improvements for the general use and benefit of all the members of the Association, and for that purpose may impose a special assessment to be called a "Capital Improvement Assessment." Any such assessment shall be assessed to the Homesites within Awbrey Glen on the same formula as set forth in Section 10.2. No new Capital Improvement Assessment may be imposed under this section which, for any one purchase, construction or other acquisition, or group of related purchases, constructions or other acquisitions, in the aggregate exceeds \$300 per Homesite, unless approved by the vote or written consent of the Class B member, if any, and by not less than sixty percent (60%) of the votes of the Class A members who are voting in person, by absentee ballot or by proxy at a meeting



duly called for the purpose of approving the Capital Improvement Assessment.

10.4 Reserve Account for Replacing Common Property. Declarant shall establish a reserve account which shall be called the "Common Property Reserve Account," and which will be kept separate and apart from all other funds of the Association. Except as provided in Section 10.4(b) below, the Common Property Reserve Account shall be used exclusively for replacement of items of common property which will normally require replacement, in whole or in part, in more than three and less than thirty years and not for regular or periodic maintenance expenses.

(a) Reserve Account Assessments. Not less often than annually, the Association shall inventory all items of common property which will normally require replacement, in whole or in part, in more than three and less than thirty years, and shall estimate the remaining life of each item of common property and the current replacement cost of each of such items. The Association may identify items for which a reserve account assessment is required as those items which are insurable by a common carrier of all-purpose risk insurance. For the purpose of funding the Common Property Reserve Account, the Association shall impose an assessment to be called the "Common Property Reserve Account Assessment" against each Homesite on the same formula as set forth in Section 10.2. The total Common Property Reserve Account Assessment shall take into account the current replacement cost of each item of common property which has an estimated life of greater than three but less than thirty years and the estimated remaining life for such items of common property. Declarant shall not be required to pay any assessment under this Section 10.4 assessed to a Homesite owned by Declarant until such date as the Homesite is conveyed by the Declarant to an unaffiliated party in an arms-length transaction.

(b) Loan From Common Property Reserve Account. After the turnover meeting described in Section 8.6 above, the Board of Directors of the Association may borrow funds from the Common Property Reserve Account to meet high seasonal demands on the Association's regular operating fund or to meet other temporary expenses. Funds borrowed to meet high seasonal demands or temporary expenses under this paragraph must be repaid from special or operating assessment within six months of the date such funds are borrowed.

(c) Increase, Reduction, or Elimination of Common Property Reserve Account Assessments. At any time after the second year after the turnover meeting described in Section 8.6 above, future assessments for the Common Property Reserve Account may be increased, reduced or eliminated by the vote of Owners of Homesites representing seventy-five percent (75%) of the votes computed in accordance with Section 8.3 above.



10.5 Reallocation Upon Annexation or Withdrawal of Property. When additional property or phases are annexed to or withdrawn from Awbrey Glen, the Association shall, within 60 days of the annexation, recompute the budget in accordance with Section 10.1 based upon the additional Homesites and Common Areas and recompute assessments for each Homesite based upon the formula set forth in Section 10.2. Newly annexed Homesites shall be subject to assessment from the time of annexation of such Homesites to Awbrey Glen, in accordance with the provisions of Section 10.2. The Association shall send notice of the assessment to the Owners of newly annexed Homesites not later than 60 days after the annexation or with the next occurring annual assessment whichever is sooner. Assessments shall be due and payable on or before a date set forth in the notice which shall be not less than 30 days from the date that notice is mailed or at such other time or times set in accordance with this Declaration or the Bylaws as the Association may specify in the notice. To the extent that any adjustment results in a credit for an Owner, such credit shall be applied towards the next occurring payment or payments on the annual assessment.

10.6 Payment of Assessments. The Association shall, not less than annually, provide notice to the Owner of each Homesite of the amount of the assessments for such Homesite. Assessments shall be due and payable on or before a date set forth in the notice which shall be not less than 30 days from the date the notice is mailed or at such other time or times set in accordance with this Declaration or the Bylaws as the Association may specify in the notice. The Board shall have the right to give discounts for advance payment of assessments.

10.7 Creation of Lien; and Personal Obligation of Assessments. Declarant, for each Homesite owned by it within Awbrey Glen does hereby covenant, and each Owner of any Homesite by acceptance of a conveyance thereof, whether or not so expressed in any such conveyance, shall be deemed to covenant to pay to the Association all assessments or other charges as may be fixed, established, and collected from time to time in the manner provided in this Declaration or the Association Bylaws. Such assessments and charges, together with any interest, expenses or attorney fees imposed pursuant to Section 11.6, shall be a charge on the land and a continuing lien upon the Homesite 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 Homesite 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 11 below.

10.8 Declarant's Maintenance Payments. After conversion of Declarant's Class B membership, Declarant shall pay 3 percent of the cost of maintenance of Private Ways to



compensate for the use of Private Ways by its employees and invitees of Declarant's pro shop, learning center, and maintenance facilities.

## ARTICLE 11

### ENFORCEMENT

11.1 Use of Common Areas. In the event any Owner or the invitee of any Owner shall violate any provision of this Declaration, the Bylaws of the Association or any rules or regulations adopted by the Association governing the use of Homesites or Common Areas, then the Association, acting through its Board of Directors, may notify the Owner in writing that the violations exist and that such Owner is responsible for them, and may, after reasonable notice and opportunity to be heard, do any or all of the following: (a) suspend the Owner's voting rights and right to use the Common Areas for the period that the violations remain unabated, or for any period not to exceed sixty (60) days for any infraction of its rules and regulations, (b) bring suit or action against such Owner to enforce this Declaration, or (c) impose fines as provided in Section 11.7. Nothing in this section, however, shall give the Association the right to deprive any Owner of access to and from such Owner's Homesite.

11.2 Nonqualifying Improvements and Violation of General Protective Covenants. In the event any Owner constructs or permits to be constructed on such Owner's Homesite an Improvement contrary to the provisions of this Declaration, or causes or permits any Improvement, activity, condition or nuisance contrary to the provisions of this Declaration to remain uncorrected or unabated on such Owner's Homesite, then the Association acting through its Board of Directors may notify the Owner in writing of any such specific violations of this Declaration and may require the Owner to remedy or abate the same in order to bring the Owner's Homesite, the Improvements thereon, and the Owner's use thereof, into conformance with this Declaration. If the Owner is unable, unwilling, or refuses to comply with the Association's specific directives or remedy or abatement, or the Owner and the Association cannot agree to a mutually acceptable solution within the framework and intent of this Declaration, after notice and opportunity to be heard and within sixty (60) days of written notice to the Owner, then the Association acting through its Board of Directors, shall have, in addition to any other rights or remedies provided in this Declaration, at law or in equity, the right to do any or all of the following:

(a) Remove Cause of Violation. Enter onto the offending Homesite, without being subject to any trespass, conversion or any other claim for damages, and remove the cause



of such violation, or alter, repair or change the item which is in violation of the 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.

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

(c) Fines. Impose one or more fines as provided in Section 11.7.

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

(a) Suspension of Rights; Acceleration. The Association may suspend such Owner's voting rights 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 annual assessment or any other amounts owed by such Owner to the Association immediately due and payable. In no event, however, shall the Association deprive any Owner of access to and from such Owner's Homesite.

(b) Lien. The Association shall have a lien against each Homesite for any assessment levied against the Homesite and any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Homesite from the date on which the assessment, fine or charge is due. The provisions regarding the attachment, notice, recordation, and duration of liens established on real property under ORS 87.352 to 87.386 shall apply to the Association's lien. The lien shall be foreclosed in accordance with the provisions regarding the foreclosure of liens under ORS Chapter 88. The Association, through its duly authorized agents, may bid on the Homesite at such foreclosure sale, and may acquire and hold, lease, mortgage, and convey the Homesite. If any assessment is payable in installments, the full amount of the assessment is a lien from the date the first installment of the assessment becomes due.

(c) Suit or Action. The Association may bring an action to recover a money judgment for unpaid assessments and charges under this Declaration without foreclosing or waiving the lien described in paragraph 11.3(b) above. Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.



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

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

11.5 Subordination of Lien to First Mortgages. The lien of the assessments or charges provided for in this Declaration shall be subordinate to the lien of any first mortgage on such Homesite 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 Homesite shall not affect the assessment lien, provided however, that if a first mortgagee acquires a Homesite by foreclosure or deed in lieu of foreclosure, such mortgagee and a subsequent purchaser (other than the Owner liable for payment of the assessment covered by the lien) shall not be liable for any of the common expenses chargeable to the Homesite which became due before the mortgagee or purchaser acquired title to the Homesite by foreclosure or deed in lieu of foreclosure. Such sale or transfer, however, shall not release the Homesite from liability for any assessments or charges thereafter becoming due or from the lien of such assessments or charges.

11.6 Interest, Expenses, and Attorney Fees. Any amount not paid to the Association when due in accordance with this Declaration shall bear interest from the due date until paid at the rate of 12 percent per annum. A late charge may be charged for each delinquent assessment in an amount established from time to time by resolution of the Board of Directors of the Association not to exceed 10 percent of such assessment. In the event the Association shall file a notice of lien, the lien amount shall also include the recording fees associated with filing the notice, and a fee for preparing the notice of lien established from time to time by resolution of the Board of Directors of the Association. In the event the Association shall bring any suit or action to enforce this Declaration, or to collect any money due hereunder or to foreclose a lien, the Owner-defendant shall pay to the Association all costs and expenses incurred by it in connection with such suit or action, including a foreclosure title report, and the prevailing party in such suit or action shall recover such amount as the court may determine to be reasonable as attorney fees at trial and upon any appeal or petition for review thereof or in any bankruptcy proceeding.

11.7 Fines. The Board of Directors may establish a schedule of fines applicable to violations of this Declaration or rules and regulations established pursuant to this Declaration. Fines may be imposed by the Board of Directors after giving the



alleged violator notice of the proposed fine and an opportunity to be heard. Fines shall be payable within ten days after receipt of written notice of the imposition of the fine. All fines shall be deposited in the Association's operating account.

#### 11.8 Nonexclusiveness and Accumulation of Remedies.

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

### ARTICLE 12

#### MISCELLANEOUS PROVISIONS

12.1 Amendment and Repeal. This Declaration, or any provision thereof, as from time to time in effect with respect to all or any part of Awbrey Glen may be amended or repealed by the vote or written consent of Owners holding not less than seventy-five percent (75%) of the Class A votes, together with the vote or written consent of the Class B member, if such membership has not been terminated as provided herein. Any such amendment or repeal shall become effective only upon recordation in the Deed Records of Deschutes County, Oregon, of a certificate of the president or secretary of the Association setting forth in full the amendment, amendments or repeal so approved and certifying that said amendment, amendments or repeal have been approved in the manner required by this Declaration. In no event shall an amendment under this section create, limit or diminish special Declarant rights without Declarant's written consent, increase the number of Homesites or Living Units, or change the boundaries of any Homesite or any uses to which any Homesite is restricted unless the Owners of the affected Homesites unanimously consent to the amendment.

12.2 Regulatory Amendments. Notwithstanding the provisions of Section 12.1 above, until termination of the Class B membership, Declarant shall have the right to amend this Declaration or the Bylaws of the Association in order to comply with the requirements of any applicable statute, ordinance, or regulation or of the Federal Housing Administration, the Veterans Administration, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, any department, bureau, board, commission or agency



of the United States or the State of Oregon, or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon which insures, guarantees or provides financing for a planned community or lots in a planned community.

12.3 Duration. This Declaration shall run with the land and shall be and remain in full force and effect at all times with respect to all property included in Awbrey Glen and the Owners thereof for an initial period of thirty (30) years commencing with the date on which this document is recorded. Thereafter, this Declaration shall continue to run with the land and be and remain in full force and effect at all times with respect to all property in Awbrey Glen and the Owners thereof for successive additional periods of ten (10) years each. The continuation from the initial or any additional period into the next subsequent period shall be automatic and without the necessity of any notice, consent or other action whatsoever; provided, however, that this Declaration may be terminated at the end of the initial or any additional period by resolution approved not less than six (6) months prior to the intended termination date by the vote or written consent of Owners owning not less than seventy-five percent (75%) of the Class A votes and the vote or written consent of the Class B member, if any, and the written approval of the holders of mortgages on Homesites in the project to the extent required by Section 12.4. Any such termination shall become effective only if prior to the intended termination date a certificate of the president or secretary of the Association, certifying that termination as of a specified termination date has been approved in the manner required herein, is duly acknowledged and recorded in the Deed Records of Deschutes County, Oregon. Such termination shall not have the effect of denying any Owner access to such Owner's Homesite unless such Owner and any mortgagee of such Homesite have consented in writing to the termination.

12.4 Right of Mortgagees Relating to Maintenance. At any time that the Common Areas, including the Private Ways, are not maintained or repaired by the Association to the extent reasonably necessary to protect and preserve the value of the Property for security purposes, then the record mortgagee, upon giving written notice as hereinafter provided, shall be entitled to exercise the rights of the Owner of the Homesite as a member of the Association to vote at all regular and special meetings of the members of the Association for a period of one year following the date of such notice. During this one-year period, the Association shall give notice of all regular and special meetings to both the Owner and the mortgagee, and the Owner may attend such meetings as an observer. Notice from the mortgagee under this section shall quote this Section 12.4 and shall be sent postage prepaid by certified United States mail, return receipt requested, to the Owner with a copy by regular mail to the Association at the last known address of each.



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

12.6 Lessees and Other Invitees. Lessees, invitees, contractors, family members, and other persons entering Awbrey Glen 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 such Owner's Homesite and other areas within Awbrey Glen. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner.

12.7 Nonwaiver. Failure by the Association or by an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

12.8 Construction; Severability. This Declaration and all declarations annexing property to Awbrey Glen shall be liberally construed as one document to accomplish the purposes stated in the introductory paragraphs hereof. Nevertheless, each provision of this Declaration and all declarations annexing property to Awbrey Glen 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.

12.9 Number. As used herein, 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.

12.10 Captions. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration.

12.11 Notices and Other Documents. All notices and other communications under this Declaration shall be in writing



and shall be deemed to have been given on the day of delivery when delivered by personal service and to have been given three business days after delivery to the United States mails certified or registered mail, return receipt requested, addressed to the party to which such notice is directed at its address determined as provided in this Section 12.11.

(a) Addresses. All notices and other communications under this Declaration shall be given to the parties hereto at the following addresses:

(i) If to an Owner, then to the last address for such Owner shown in the Association's records.

(ii) If to Declarant or to the Association, then to Declarant or the Association at:

Brooks Resources Corporation  
416 N.E. Greenwood Avenue  
Bend, Oregon 97708  
Att: Mr. Michael P. Hollern

(b) Change of Address. Any party hereto may change the address to which notices shall be directed by giving ten days' written notice of such change delivered as provided herein.

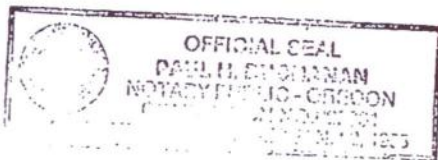
IN WITNESS WHEREOF, Declarant has executed this Declaration the date first above written.

BROOKS RESOURCES CORPORATION

By Michael P. Hollern  
Michael P. Hollern, President

STATE OF OREGON           )  
                                  ) SS  
COUNTY OF                )

The foregoing instrument was acknowledged before me on this 8th day of July, 1992, by Michael P. Hollern who is the President of Brooks Resources Corporation on behalf of the corporation.



Paul H. Buchanan  
Notary Public for Oregon  
My Commission Expires: Jun. 22, 1995



STATE OF OREGON )  
COUNTY OF DESCHUTES ) SS.

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

92 AUG -4 AM 10:56

MARY SUE PENHOLLOW  
COUNTY CLERK

BY: T. Moore DEPUTY

NO. 92-25570 FEE 155<sup>00</sup>

DESCHUTES COUNTY OFFICIAL RECORDS