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I, Jerry Hanson, Director of Assessment and Taxation and Ex-Officio County Clerk for Washington County, Oregon, do hereby certify that the within instrument of writing was received and recorded in the book of records of said county.



Jerry Hanson  
Jerry R. Hanson, Director of Assessment and Taxation,  
Ex-Officio County Clerk

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AMENDED AND RESTATED  
DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
MONTAROSA

JLS CUSTOM HOMES, INC.  
Declarant



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AMENDED AND RESTATED  
DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR MONTAROSA

THIS AMENDED AND RESTATED DECLARATION is made this 21 day of December, 2004, by JLS CUSTOM HOMES, INC., an Oregon corporation ("Declarant").

RECITALS:

A. Dolphin Development LLC #14 ("Original Declarant") recorded the Plat of "Montarosa" on December 12, 2003 in the Plat Records of Washington County, Oregon, as Document No. 2003-204742. In addition, Original Declarant was the Declarant of that certain Declaration of Protective Covenants, Conditions and Restrictions for Montarosa dated October 8, 2003 and recorded December 12, 2003 in the Records of Washington County, Oregon as Document No. 2003-204744 ("Original Declaration"). Declarant is the successor to the Original Declarant and is the owner of all of the lots within Montarosa.

B. Pursuant to Article IX, Sections 1 and 8 of the Original Declaration, Declarant hereby amends and restates the Original Declaration as set forth in this instrument, effective upon the recording of this instrument in the Records of Washington County, Oregon.

C. Declarant desires to subject such property to the conditions, restrictions and charges set forth herein for the benefit of such property and its present and subsequent owners, and to establish such property under the Oregon Planned Community Act, ORS 94.550 to 94.783, as a Class I planned community townhouse project to be known as "Montarosa."

NOW, THEREFORE, Declarant hereby declares that the property described in the plat of Montarosa shall be held, sold and conveyed subject to the following easements, covenants, 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 "Assessments" mean all assessments and other charges, fines and fees imposed by the Association on an Owner in accordance with this Declaration, the Bylaws of the Association or the provisions of the Oregon Planned Community Act, including, without limitation, Annual Assessments, Special Assessments, Emergency Assessments, Working Fund Assessments and Individual Assessments as described in Article 8 below.



1.2 "Association" means the nonprofit corporation to be formed to serve as an Owners' association as provided in Article 6 of this Declaration, and its successors and assigns.

1.3 "Board of Directors" or "the Board" means the duly appointed or elected board of directors of the Association, which is invested with the authority to operate the Association, and to appoint the officers of the Association. Prior to the Turnover Meeting, Declarant will appoint the Board of Directors. After the Turnover Meeting, the Board of Directors will be elected by the Owners.

1.4 "Bylaws" means the amended and restated bylaws of the Association set forth in the attached Exhibit A as the same may hereafter be amended or replaced, which shall supercede and replace any prior recorded Bylaws of the Association.

1.5 "Common Areas" means those lots or tracts designated as common areas in Section 3.1 below, including any improvements thereon.

1.6 "Declarant" means JLS Custom Homes, Inc., an Oregon corporation, and its successors and assigns, if such successor or assignee should acquire Declarant's interest in the remainder of the Property, or less than all of such property if a recorded instrument executed by Declarant assigns to the transferee all of Declarant's rights under this Declaration.

1.7 "Lot" means a numerically designated and platted lot within the Property (including the Unit located on such Lot), with the exception of the Common Areas and any tract marked on the plat as being dedicated to a public body.

1.8 "Montarosa" means the real property described in Section 2.1 below.

1.9 "Mortgage" means a mortgage or a deed of trust; "mortgagee" means a mortgagee or a beneficiary of a deed of trust; "mortgagor" means a mortgagor or a grantor of a deed of trust.

1.10 "Occupant" means the occupant of a Unit who is the Owner, lessee or any other person authorized by the Owner to occupy the premises.

1.11 "Owner" means the person or persons, including Declarant, owning any Lot in the Property, but does not include a tenant or holder of a leasehold interest or a contract vendor or other person holding only a security interest in a Lot. The rights, obligations and other status of being an Owner commence upon acquisition of the ownership of a Lot and terminate upon disposition of such ownership, but termination of ownership shall not discharge an Owner from obligations incurred prior to termination.

1.12 "Rules and Regulations" means those policies, procedures, rules and regulations adopted by the Association pursuant to the authority granted in this Declaration, as the same may be amended from time to time.

1.13 "Sold" means that legal title has been conveyed or that a contract of sale has been executed under which the purchaser has obtained the right to possession.



1.14 **"The Property"** means the real property described in Section 2.1 below.

1.15 **"This Declaration"** means all of the easements, covenants, restrictions and charges set forth herein, together with any rules or regulations promulgated hereunder, as the same may be amended or supplemented from time to time in accordance with the provisions hereof.

1.16 **"Turnover Meeting"** means the meeting called by Declarant pursuant to Section 6.7 below, at which Declarant will turnover administrative responsibility for the Property to the Association.

1.17 **"Unit"** means a building or a portion of a building located upon a Lot within the Property and designated for separate occupancy as a dwelling, together with any attached deck or patio.

**Article 2**

**PROPERTY SUBJECT TO THESE COVENANTS**

2.1 **Description.** Declarant hereby declares that all the real property described below is owned and shall be owned, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration:

All that certain real property located in the City of Beaverton, Washington County, Oregon, contained in that certain plat entitled "Montarosa" filed in the Plat Records of Washington County, Oregon, on the 12th day of December, 2003 as Document No. 2003204742.

2.2 **Improvements.** Declarant does not agree to build any improvements on the Property other than as required by the City of Beaverton, but may elect, at Declarant's option, to build additional improvements.

2.3 **Withdrawal of Property.** Property may be withdrawn from Montarosa only by duly adopted amendment to this Declaration, except that Declarant may withdraw all or a portion of the Property at any time prior to the sale of the first Lot in the plat of the Property, subject to the prior approval of the City of Beaverton. Such withdrawal shall be by a declaration executed by Declarant and recorded in the deed records of Washington County, Oregon. If a portion of the Property is withdrawn, all voting rights otherwise allocated to Lots being withdrawn shall be eliminated, and the common expenses shall be reallocated among the remaining Lots.

**Article 3**

**PROPERTY RIGHTS IN COMMON AREAS**

3.1 **Designation of Common Areas.** Tracts A through H, as shown on the plat, shall be Common Areas for purposes of this Declaration.





3.2 **Owner's Easements of Enjoyment.** Subject to the provisions of this Article, every Owner and his or her invitees shall have a right and easement of enjoyment in and to the Common Areas, which easement shall be appurtenant to and shall pass with the title to every Lot.

3.3 **Title to the Common Areas.** Title to the Common Areas shall be conveyed to the Association by Declarant no later than the Turnover Meeting.

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

(a) **Easements.** Declarant grants to the Association for the benefit of the Association and all Owners of Lots within the Property the following easements over, under and upon the Common Areas:

(1) An easement on all Common Areas for underground 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 and any such easement shown on any plat of the Property.

(2) An easement over all roadways for vehicular access within the Property and to adjacent areas.

(3) An easement for construction, maintenance, repair and use of Common Areas, including common facilities thereon.

(4) An easement for the purpose of making exterior repairs to the Units.

The Common Areas shall be subject to public and private utility easements for the installation and maintenance of sanitary sewers, waterlines, surface water management, storm drainage and access over their entirety. In addition, Declarant or the Association may (and to the extent required by law, shall) grant or assign easements on all Common Areas to governmental bodies or other utilities performing utility services and to communications companies, and may grant free access over the Common Areas to police, fire and other public officials and to employees of utility companies and communication companies serving the Property.

(b) **Use of the Common Areas.** The Common Areas shall be used for the purposes set forth in the plat of the Property. The Common Areas shall not be partitioned or otherwise divided into parcels for residential use. Except as otherwise provided in this Declaration, the Common Areas shall be reserved for the use and enjoyment of all Owners and no private use may be made of the Common Areas. The Common Areas and facilities thereon shall be used for the purposes for which the same are reasonably intended, and their use, operation and maintenance shall not be obstructed, damaged or unreasonably interfered with by any Owner. Nothing herein shall prevent the placing of a sign or signs upon the Common Areas identifying Montarosa or identifying items of interest, including directional signs, provided that such signs comply with any applicable sign ordinances. The Board of Directors shall have



authority to abate any trespass or encroachment upon the Common Areas at any time, by any reasonable means and with or without having to bring legal proceedings. The Association, upon approval in writing of at least 50 percent of the Class A Association voting rights and the Class B member, if any, and if approved by order or resolution of the City of Beaverton, may dedicate or convey any portion of the Common Areas to a park district or other public body.

(c) **Alienation of the Common Areas.** The Association shall not by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas owned directly or indirectly by the Association for the benefit of the Lots unless the holders of at least eighty percent (80%) of the Class A Association voting rights and the Class B member, if any, have given their prior written approval and the City of Beaverton has given its approval. Such approvals shall not be required for the easements described in Section 3.4(a).

(d) **Limitation on Use.** Use of the Common Areas by the Owners shall be subject to the provisions of this Declaration and to the following:

(1) The right of the Association to suspend such use rights of an Owner and his or her family members, guests, tenants and contract purchasers to the extent provided in Article 9 below.

(2) The right of the Association to adopt, amend and to repeal rules and regulations in accordance with this Declaration.

**3.5 Delegation of Use.** Any Owner may delegate, in accordance with the Bylaws of the Association, his or her right of enjoyment to the Common Areas to members of his or her family, tenants, or contract purchasers who reside on the Property, whose use of the Common Areas shall be subject to this Declaration and the Rules and Regulations.

**3.6 Easements Reserved by Declarant.** So long as Declarant owns any Lot, Declarant reserves an easement over, under and across the Common Areas to carry out sales and rental activities necessary or convenient for the sale or rental of Lots, including, without limitation, advertising and "For Sale" signs. In addition, Declarant hereby reserves to itself and for the Owners of Lots in the Property a perpetual easement and right-of-way for access over, upon and across the Common Areas for construction, utilities, communication lines, drainage, and ingress and egress for the benefit of other property owned by Declarant. Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under and across the Common Areas and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the improvements on the Property or other real property owned by Declarant; provided, however, that no such rights shall be exercised by Declarant in such a way as to unreasonably interfere with the occupancy of, use of, enjoyment of or access to an Owner's Lot by that Owner or his or her family, tenants, employees, guests or invitees.



Article 4

PROPERTY RIGHTS IN LOTS

4.1 **Use and Occupancy.** The Owner of a Lot in the Property shall be entitled to the exclusive use and benefit of such Lot, except as otherwise expressly provided in this Declaration, but the Lot shall be bound by and each Owner and Declarant shall comply with the restrictions contained in Article 5 below and all other provisions of this Declaration for the mutual benefit of all Owners.

4.2 **Easements Reserved.** In addition to any utility and drainage easements shown on the recorded plat, Declarant hereby reserves the following easements for the benefit of Declarant, the Association and Owners, as applicable:

(a) **Right of Entry.** The Association and any person authorized by the Association may at any reasonable time, and from time to time at reasonable intervals, enter upon any Lot for the purpose of performing the maintenance referred to in Sections 7.1 and 7.9 below and determining whether or not the Lot is 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 Lot.

(b) **Encroachments.** Each Lot and all Common Areas shall have an easement over all adjoining Lots and Common Areas for the purpose of accommodating any present or future encroachment as a result of engineering errors, construction, reconstruction, repairs, settlement, shifting or movement of any portion of the Property, or any other similar cause, and any encroachment due to building overhang or projection. There shall be valid easements for the maintenance of the encroaching Units and Common Areas so long as the encroachments shall exist, and the rights and obligations of Owners shall not be altered in any way by the encroachment. The encroachments described in this paragraph shall not be construed to be encumbrances affecting the marketability of title to any Lot. Nothing in this section shall relieve an Owner of liability in the case of the Owner's willful misconduct.

(c) **Utilities.** Each Lot shall be subject to an easement under and across that portion of the Lot not occupied by the Unit for installation, maintenance and use of power, gas, electric, water and other utility and communication lines, facilities and services and for meters measuring such services installed by or at the direction of Declarant or with approval of the Board of Directors.

(d) **Rain Drains and Storm Sewers.** Each Lot shall be subject to an easement for installation and maintenance of such rain drains and connected storm sewers installed or to be installed (as required by governmental regulatory authorities or as otherwise authorized by the Board of Directors) in or around any Unit or under the surface of any Lot.

4.3 **Adjoining Walls.** When two Units adjoin each other at the common boundary and either of the adjoining walls is damaged or destroyed, the provisions of Section 7.9 shall apply. If the destroyed wall is not rebuilt, the Association shall install an exterior wall to protect



the remaining Unit. Until the Unit is replaced or a wall is installed, the Association shall provide the necessary protection of the remaining wall from the elements.

## Article 5

### RESTRICTIONS ON USE

**5.1 Residential Use.** Not more than one Unit may be located on any Lot. Except with the consent of the Board of Directors, no trade, craft, business, profession, commercial or similar activity of any kind shall be conducted on any Lot, nor shall any goods, equipment, vehicles, materials or supplies used in connection with any trade, service or business be kept or stored on any Lot. The mere parking on a Lot of a vehicle bearing the name of a business shall not, in itself, constitute a violation of this provision. Nothing in this paragraph shall be deemed to prohibit (a) activities relating to the rental or sale of Lots; (b) the right of Declarant to construct Units on any Lot, to store construction materials and equipment on any Lot in the normal course of construction, and to use one or more Units as sales or rental offices or model homes or apartments staffed by employees of Declarant or any licensed real estate sales persons for purposes of sales or rental within the Property; and (c) the right of the Owner of a Lot to maintain his or her professional personal library, keep his or her personal business or professional records or accounts, handle his or her personal business or professional telephone calls or confer with business or professional associates, clients or customers, in his or her Unit by appointment only. The Board of Directors shall not approve commercial activities otherwise prohibited by this paragraph unless the Board of Directors determines that only normal residential activities would be observable outside of the Unit and that the activities would not be in violation of applicable law.

**5.2 Offensive or Unlawful Activities.** No noxious or offensive activities shall be carried out in any Unit, Lot or Common Area nor shall anything be done or placed upon any Unit, Lot or Common Area that interferes with or jeopardizes the enjoyment of other Units or the Common Areas, or that is a source of annoyance to residents. Unit Occupants shall exercise extreme care not to make noises that may disturb other Unit Occupants. No unlawful use shall be made of the Lot or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. Owners and other Occupants shall not engage in any abusive or harassing behavior, either verbal or physical, or any form of intimidation or aggression directed at other Owners, Occupants, guests, or invitees, or directed at the managing agent, its agents or employees, or vendors.

**5.3 Trailers, Campers, Boats, Etc.** Except with the consent of the Board of Directors, no motorcycle, trailer, truck camper, boat or boat trailer, or other recreational vehicles or equipment, or vehicles with a gross vehicle weight in excess of 9,000 pounds, commercial vehicles or motor vehicles not operated in daily family use shall be parked in driveways or on any other portion of the Property or on adjoining streets, except in a garage or for the purpose of temporary loading or unloading. No such vehicle shall be used as a residence temporarily or permanently on any portion of the Property.

**5.4 Vehicles in Disrepair.** No Owner shall permit any vehicle that is in an extreme state of disrepair to be abandoned or to remain parked upon any Lot, or on the Common Area or



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any adjoining street for a period in excess of forty-eight (48) hours, unless kept within a garage. A vehicle shall be deemed to be in an "extreme state of disrepair" when, in the opinion of the Board of Directors, due to its appearance or continued inoperability its presence reasonably offends the Occupants of the neighborhood. Should any Owner fail to remove such vehicle within five (5) days following the date on which notice is mailed to him or her by the Association, the Association may have the vehicle removed from the Property and charge the expense of such removal to the Owner in addition to the assessments made upon him or her in accordance with this Declaration. Any vehicle parked in violation of this section can be towed or impounded as provided in Section 9.1(c) below.

**5.5 Signs.** No signs shall be erected or maintained on any Lot except that not more than one "For Sale" sign placed by the Owner, Declarant or by a licensed real estate agent, not exceeding twenty-four (24) inches high and thirty-six (36) inches long, may be temporarily displayed on any Lot, and two such signs may be placed on a Lot during the course of initial construction of a Unit on such Lot. The restrictions contained in this paragraph shall not prohibit the temporary placement of "political" signs on any Lot by the Owner, subject to reasonable regulations adopted by the Association relating to size and length of display.

**5.6 Animals.** No animals, livestock or poultry of any kind shall be raised, kept or permitted within the Property or any part thereof, except a reasonable number of domestic dogs, cats or other household pets kept within a Unit and that are reasonably controlled so as not to be a nuisance. No such dogs, cats or pets shall be permitted to run at large nor shall be kept, bred or raised for commercial purposes. Any inconvenience, damage or unpleasantness caused by such pets shall be the responsibility of the respective Owners thereof. All dogs shall be kept on a leash while outside a Unit. An Owner or Occupant may be required to remove a pet upon receipt of the third written notice from the Board of Directors of violations of any rule, regulation or restriction governing pets within the Property.

**5.7 Appearance.** Except to the extent of the Association's responsibility under Section 7.1 below, each Owner shall maintain such Owner's Unit and Lot in a clean and attractive condition, in good repair and in such a fashion as not to create a fire hazard. Damage caused by fire, flood, storm, earthquake, riot, vandalism, or other causes shall be the responsibility of each Owner and shall be restored within a reasonable period of time. No part of any Lot or any part of the Common Areas shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste. Trash, garbage or other wastes shall be kept only in sanitary containers in the garages, except when outside awaiting pickup during garbage pickup days. No playground, athletic or recreational equipment or structures, including without limitation, basketball backboards, hoops and related supporting structures, shall be placed, installed or utilized on any Lot in view from any street, sidewalk or Common Area within the Property.

**5.8 Antennas and Service Facilities.** Exterior antennas and satellite receivers and transmission dishes are prohibited, except to the extent expressly mandated by rules adopted by the Federal Communication Commission. Specifically, ham radio antennas, satellite dishes one meter or larger, television antennas on masts 12 feet or higher and multi-point distribution antennas more than one meter or on masts 12 feet or higher are prohibited. To the extent permitted by Federal Communication Commission rules, the Board of Directors may require all



other antennas and dishes to be hidden from view from streets and adjoining dwellings. No outside clotheslines or similar service facilities may be installed without the approval of the Board of Directors.

**5.9 Exterior Lighting or Noisemaking Devices.** Except with the consent of the Board of Directors, and except for exterior lighting originally installed by the Declarant, no exterior lighting or noise-making devices shall be installed or maintained on any Lot. Owners shall not tamper with exterior lighting installed by the Declarant except to replace expended bulbs with similar new bulbs. Seasonal holiday lighting and decorations are permissible if consistent with any applicable Rules and Regulations and if removed within thirty (30) days after the celebrated holiday.

**5.10 Windows, Decks, Porches and Outside Walls.** To preserve the attractive appearance of the Property, the Association may regulate the nature of items that may be placed in or on windows, decks, porches, and the outside walls so as to be visible from the street or Common Areas. Window coverings, curtains, shutters, drapes or blinds, other than those of commercially produced quality, shall not be permitted to be visible from any public or private street, pathway, Common Area or adjacent property. Garments, rugs, laundry and other similar items may not be hung from windows, facades, porches, or decks. No window air conditioners will be permitted.

**5.11 Alterations.** Exterior painting, maintenance and roof repair or replacement will be performed by the Association to the extent provided in Section 7.1 below. Owners are expressly prohibited from painting or changing the exterior of a building or other structure after original construction without the written permission of the Board of Directors. Any demolition or alteration of the structural components of a Unit shall also require the prior written approval of the City of Beaverton. To guard against moisture intrusion, no penetration of or attachments to the exterior surfaces is allowed without the prior written approval of the Board of Directors. No structure may be installed outside of Units except structures, including without limitation fences, installed by Declarant or the Association or installed by an Owner with written approval of the Board of Directors.

**5.12 Insurance.** Nothing shall be done or kept in any Lot or Common Area that will increase the cost of insurance on the Units or Common Areas. No Owner shall permit anything to be done or kept in his Unit or in the Common Areas that will result in cancellation of insurance on any Lot or any part of the Common Areas.

**5.13 Leasing and Rental of Units.** No Owner may lease or rent his Unit for a period of less than thirty (30) days. All leases or rentals shall be by written lease agreement, that shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration and the Rules and Regulations, Articles of Incorporation and Bylaws of the Association, and that any failure by the lessee or tenant to comply with the terms of such documents shall be a default under the lease. If the Board of Directors finds that a lessee or tenant has violated any provision of such documents or the Rules and Regulations, the Board may require the Owner to terminate such lease or rental agreement. Other than the foregoing, there is no restriction on the right of any Owner to lease or rent his Unit.



**5.14 Parking.** The Association shall be responsible for enforcing areas marked "No Parking" on private streets. Vehicles parked in violation of this Declaration or the Rules and Regulations may be towed and stored at the direction of the Board of Directors, with the expense charged to the Owner.

**5.15 Garages.** All garage doors shall remain closed except to permit entrance and exit and in connection with outside activities. Garages shall be used primarily for parking of vehicles, and only secondarily for storage, and shall not be used as office or living space, except that Declarant may use garages as sales offices prior to permanent occupancy of the Unit.

**5.16 Landscape.** All exterior landscape installation and maintenance, including lawn care, plant pruning and bark mulch application, will be performed by the Association, except landscaping within rear yards. Each Owner shall be responsible for installing and maintaining the landscaping within the Owner's private rear yard in a neat and well kept condition. An Owner may not change the landscaping or install additional landscaping, other than within the Owner's rear yard, without the prior written approval of the Board of Directors. Landscape irrigation settings shall be set by the Association and no Owner shall tamper with or change such settings. The Association shall have right of access to each control box. Any changes to screen landscaping must be approved by the Board of Directors and comply with City of Beaverton requirements.

**5.17 Rain Drains and Sewers.** All rain drains and storm sewers shall be kept free of debris, and Owners shall not cause any such drains or sewers to become blocked, clogged or otherwise to back up into any Lot.

**5.18 Retaining Walls on Lots.** Owners may not modify retaining walls installed by Declarant. The Association shall maintain such walls; however, the cost of repairing any damage to such walls caused by an Owner or any landscaping installed by an Owner, will be assessed to the owner as an Individual Assessment. Owners shall provide periodic access, upon reasonable notice, for inspection and maintenance by the Association.

**5.19 Rules and Regulations.** In addition, 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 the Lots, Units and the Common Areas as it may deem necessary or appropriate to ensure the peaceful and orderly use and enjoyment of the Property. A copy of the Rules and Regulations, upon adoption, and a copy of each amendment, modification or revocation thereof, shall be furnished by the Board of Directors to each Owner. The Rules and Regulations may be adopted by the Board of Directors, except as may be otherwise provided in the Bylaws of the Association.

## Article 6

### ASSOCIATION

Before conveyance of the first Lot, Declarant shall organize an association of all of the Owners within the Property. Such Association, and its successors and assigns, shall be organized as an Oregon nonprofit corporation under the name "Montarosa Homeowner's



Association," and shall have such property, powers and obligations as are set forth in this Declaration for the benefit of the Property and all Owners of property located therein.

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

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

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

**Class A.** Class A members shall be all Owners with the exception of the Class B member and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

**Class B.** The Class B member shall be Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

- (a) When seventy-five percent (75%) of the Lots in Montarosa have been sold and conveyed to Owners other than a successor Declarant; or
- (b) At such earlier time as Declarant may elect to terminate such special voting rights.

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

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





(b) The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Oregon.

(c) The powers, duties and obligations of a homeowners association pursuant to the Oregon Planned Community Act.

(d) Any additional or different powers, duties and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to this Declaration or otherwise promoting the general benefit of the Owners within the Property.

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

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

(a) **Maintenance and Services.** The Association shall provide maintenance and services for the Property as provided in Article 7 and other provisions of this Declaration.

(b) **Insurance.** The Association shall obtain and maintain in force policies of insurance as provided in this Declaration or the Bylaws of the Association.

(c) **Rulemaking.** The Association shall make, establish, promulgate, amend and repeal Rules and Regulations as provided in Section 5.19 of this Declaration.

(d) **Assessments.** The Association shall adopt budgets and impose and collect assessments as provided in Article 8 of this Declaration.

(e) **Enforcement.** The Association shall perform such acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce the provisions of this Declaration and the Rules and Regulations adopted by the Association. Nothing in this Declaration shall be construed as requiring the Association to take any specific action to enforce violations.

(f) **Employment of Agents, Advisers and Contractors.** The Association, through its Board of Directors, may employ the services of any person or corporation as manager; hire employees to manage, conduct and perform the business, obligations and duties of the Association; employ professional counsel and obtain advice from such persons or firms or corporations such as, but not limited to, landscape architects, recreational experts, architects, planners, lawyers and accountants; and contract for or otherwise provide for all services necessary or convenient for the management, maintenance and operation of the Property; provided, however, the Association may not incur or commit to incur legal fees in excess of \$5,000 for any specific litigation or claim matter or enter into any contingent fee contract on any claim in excess of \$100,000 unless the Owners have enacted a resolution authorizing the incurring of such fees by a vote of seventy-five percent (75%) of the voting rights of the



Association. These limitations shall not be applicable to legal fees incurred in defending the Association or the Board of Directors from claims or litigation brought against them. The limitations set forth in this paragraph shall increase by ten percent on each fifth anniversary of the recording of this Declaration.

(g) **Borrow Money, Hold Title and Make Conveyances.** The Association may borrow and repay moneys for the purpose of performing its duties under this Declaration and, subject to Section 3.4(c) above, encumber the Common Areas as security for the repayment of such borrowed money. The Association may acquire, hold title to and convey, with or without consideration, real and personal property and interests therein, including, but not limited to easements across all or any portion of the Common Area, and shall accept any real or personal property, leasehold or other property interests within the Property conveyed to the Association by Declarant.

(h) **Transfer, Dedication and Encumbrance of Common Area.** Except as otherwise provided in Section 3.4(c) above, the Association may sell, transfer or encumber all or any portion of the Common Area to a person, firm or entity, whether public or private, and dedicate or transfer all or any portion of the Common Area to any public agency, authority, or utility for public purposes.

(i) **Create Classes of Service and Make Appropriate Charges.** The Association may, in its sole discretion, create various classes of service and make appropriate Individual Assessments or charges therefor to the users of such services without being required to render such services to those of its members who do not assent to such charges, subject to such Rules and Regulations as the Board of Directors deems proper. In addition, the Board of Directors shall have the right to discontinue any service upon nonpayment of Assessments or to eliminate any service for which there is no demand or for which there are inadequate funds to maintain the same.

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

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



Association shall indemnify the managing agent and its officers and employees from any such claims, other than for gross negligence or intentional misconduct.

**6.7 Interim Board; Turnover Meeting.** Declarant shall have the right to appoint an interim board of one to three directors, who shall serve as the Board of Directors until replaced by Declarant or their successors have been elected by the Owners at the Turnover Meeting. Declarant shall call a meeting of the Association for the purpose of turning over administrative responsibility for the Property to the Association not later than ninety (90) days after termination of the Class B membership as provided in Section 6.3 above. At the Turnover Meeting, the interim directors shall resign and their successors shall be elected by the Owners as provided in the Bylaws. If the Declarant fails to call the Turnover Meeting as required by this section, any Owner or mortgagee of a Lot may call the meeting by giving notice as provided in the Bylaws.

**6.8 Contracts Entered into by Declarant or Prior to Turnover Meeting.** Notwithstanding any other provision of this Declaration, any management contracts, service contracts and employment contracts entered into by the Declarant or the Board of Directors on behalf of the Association prior to the Turnover Meeting shall have a term of not more than of three (3) years. In addition, any such contract shall provide that it may be terminated without cause or penalty by the Association or Board of Directors upon not less than thirty (30) nor more than ninety (90) days' notice to the other party given at any time after the Turnover Meeting.

**6.9 Managing Agent or Manager.** On behalf of the Association, the Board of Directors may employ or contract for a professional managing agent or a manager at a compensation to be established by the Board of Directors. The Board of Directors may delegate to the managing agent or manager such duties and powers as the Board of Directors may authorize.

**6.10 Bylaws.** The Bylaws of the Association and any amendment or modification of the Bylaws shall be recorded in the Deed Records of Washington County, Oregon. Declarant hereby adopts, on behalf of the Association, the Amended and Restated Bylaws attached as Exhibit A to this Declaration.

## Article 7

### MAINTENANCE, SERVICES, CONDEMNATION, DAMAGE

**7.1 Exterior Maintenance.** The Association shall provide exterior maintenance upon each Unit as follows: paint, caulk, repair, replace and care for roofs, roof overhangs, eaves, gutters, downspouts, flashings, exterior building surfaces, exterior lights (except light bulbs) and other exterior improvements. Such exterior maintenance does not include repair or replacement of exterior light bulbs, doors, windows and other glass surfaces, except to the extent of the proceeds of the Association's insurance or to prevent water intrusion at the expense of the Owner (subject to insurance reimbursement). The Association shall maintain all landscaping within the Property (including fences and retaining walls, screen landscaping, lawn care, plant pruning and bark mulch application), except that each Owner shall be responsible for installation and maintenance of any landscaping within the Owner's rear yard. The cost of such maintenance by the Association shall be a common expense paid out of assessments described in Article 8. In



the event, however, the need for such maintenance or repair is caused by the willful or negligent act or omission of an Owner, his or her family, tenants, guests or invitees, and to the extent such maintenance or repair is not covered by the Association's insurance policy, the costs of such maintenance and repair may, in the discretion of the Board of Directors, be charged to the Owner as an Individual Assessment.

**7.2 Maintenance and Lighting of Common Areas and Streetscape.** In addition to the exterior maintenance as set forth in Section 7.1, the Association shall maintain any exterior lighting for and perform all maintenance upon the Common Areas and the improvements located thereon, including, without limitation, perimeter fences, walls, landscaping, roadways, walkways and accessways and the sidewalks and landscaping within the right of way of streets adjoining the Property.

**7.3 Maintenance of Utilities.** The Association shall perform or contract to perform maintenance of any utilities, such as sanitary sewer service lines, domestic water service lines and storm drainage lines, located in the Common Areas and Lots. Each Owner shall maintain at such Owner's expense utility lines to the extent located within the Unit.

**7.4 Maintenance Plan and Annual Inspections.** The Association shall maintain those portions of the Property to be maintained by the Association in as good or better condition as at the time of the Turnover Meeting. ~~To that end, the Board of Directors shall establish, periodically update, and implement a Maintenance Plan that identifies those components of the Property to be maintained by the Association pursuant to this Declaration requiring periodic maintenance, including a maintenance manual defining how and when such maintenance should be performed and setting forth the estimated cost of such maintenance.~~ The operating and reserve budgets of the Association shall take into account such costs. Changes or updates to the Maintenance Plan shall be based upon the advice of competent experts or consultants. In addition, the Board of Directors shall cause an annual professional inspection of those portions of the Property to be maintained by the Association pursuant to this Declaration for the purposes of identifying any items needing repair or preventive maintenance, and shall cause such repair or preventive maintenance to be implemented.

**7.5 Utilities and Services.** The Association may provide or contract for such utilities and services as the Board of Directors may reasonably deem to be of benefit to the Property, including, without limitation, cable, telecommunications, garbage and trash removal and security services.

**7.6 Security.** The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed 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 system, burglar alarm system or other security system cannot be compromised or circumvented, nor that any such systems or security 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 Lots resulting from acts of third parties and releases such parties from any liability therefor.

**7.7 Access at Reasonable Hours.** For the purpose solely of performing the maintenance and services provided for in this Article 7, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot or exterior of the dwelling thereof at reasonable hours. The Association shall also have a right of entry for purposes of effecting emergency repairs or action to prevent imminent damage or injury to other Units, to other Owners and their guests or invitees, or to the Common Areas. In such instances, the Association shall give notice by telephone if reasonably possible prior to entry.

**7.8 Condemnation.** If any portion of the Common Areas is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, notice of the proceeding or proposed acquisition shall promptly be given to each Owner and to each mortgagee. The Association shall represent the Owners in any condemnation proceeding or in negotiations, settlements and agreements with the condemning authority for acquisition of any portion of the Common Areas and each Owner appoints the Association to act as his other attorney-in-fact for such purposes. All compensation, damages or other proceeds of the taking of Common Areas shall be payable to the Association. Proceeds shall first be applied to restore or repair any remaining Common Area, including a structure on Common Area, which may be required to permit the continued enjoyment of such Common Area. Thereafter, the Association shall deposit such sums in the Operations Fund or apply these sums to such capital improvements as shall be authorized pursuant to Section 8.5 of this Declaration.

**7.9 Damage or Destruction by Casualty.** In the event of damage or destruction that affects a material portion of the Property, timely written notice shall be given to the Owners and their mortgagees, and the following provisions shall apply:

(a) In the event of damage or destruction by casualty of any structures erected on the Common Areas or to the structure, roof or exterior of any Unit, the damage or destruction shall be repaired, reconstructed, or rebuilt unless, within fourteen (14) days of such damage or destruction, the Board of Directors or more than ten percent (10%) of the Owners shall have requested a special meeting of the Association. Such special meeting must be held within thirty (30) days of the date of damage or destruction. At the time of such meeting, unless seventy-five percent (75%) of the Owners, whether in person, by writing or by proxy, with the approval of seventy-five percent (75%) or more of the mortgagees if and as required by this Declaration, vote not to repair, reconstruct or rebuild the damaged property, the damage or destruction shall be repaired, reconstructed or rebuilt, with the work commencing as soon as reasonably possible. In the event any portion of the insurance proceeds paid to the Association are not used to repair, reconstruct or rebuild the damaged or destroyed Common Areas or Units, the Association shall distribute the proceeds attributable to Units to the Owners and mortgagees thereof, as their



interests may appear. The proceeds attributable to Common Areas shall be deposited in the Operations Fund or applied to such capital improvements as shall be authorized pursuant to Section 8.5 of this Declaration. If the insurance proceeds are not sufficient to pay the entire cost, the Board of Directors, if necessary, may assess the Owner of each Unit such additional amounts as required to pay the cost of restoration.

(b) If, due to act or neglect of an Owner or a member of his or her family or his or her household pet or of a guest or other unauthorized Occupant or visitor of such Owner, damage shall be caused to the Common Areas or maintenance, repairs or replacements shall be required that would otherwise be a common expense, then such Owner shall pay for such damage and such maintenance, repairs or replacements as may be determined by the Association, to the extent not covered by the Association's insurance, as an Individual Assessment.

**7.10 Owner's Maintenance Responsibilities.** Each Owner shall be responsible for maintaining such Owner's Unit and Lot, to the extent such maintenance is not the responsibility of the Association under Sections 7.1 and 7.9 above, in a clean and attractive condition, in good repair and in such fashion as not to create a hazard. Such maintenance responsibility shall include, but not be limited to, the following:

(a) Repair, replace, restore and clean the interior of the Unit, including, but not limited to interior and exterior glass;

(b) Keep all mechanical and electrical systems and hardware in the Unit and on the exterior of the Unit in good repair and working order, including, without limitation, maintaining, repairing and replacing as necessary electrical wiring, fixtures, plumbing, appliances, heating, air conditioning, sewage disposal and fire protection systems;

(c) Maintain in good condition, repair and replace as necessary bulbs for exterior lighting, patios and decks;

(d) Maintain decks and patios and landscaping within rear yards, including any planters, in neat and healthy condition.

The Association shall have the authority to require each Owner to keep his or her respective Lot and Unit at a high standard of maintenance. In the event an Owner fails to maintain his or her Unit or Lot to the standards established by the Board of Directors pursuant to the authority of this section, the Association will have the right and the authority at its option, after giving reasonable notice and opportunity to be heard to the respective Owner, to cause such repairs and maintenance to be performed as are necessary to meet the foregoing standard and charge the respective Owner for such repairs and maintenance.

**7.11 Option to Provide Maintenance Services through Association.** Upon request of an Owner, the Association may provide maintenance and repair services which would otherwise be the responsibility of such Owner under this Article, provided that the respective Owner shall reimburse the Association, as an Individual Assessment, for such services immediately upon completion. Alternatively, upon proposal by the Board of Directors and approval by fifty-one percent (51%) of the total voting power of the Association, the charge for



such maintenance and repair services may be designated a common expense of the Association to be paid with funds collected from the Owners pursuant to the assessment procedures set forth in Article 8 below. In the event the Owners elect to designate any such maintenance and repair services as a common expense of the Association, (i) such designation shall identify specifically which services are to become included as common expenses (with any maintenance and repair responsibilities not so included to remain the obligation of the Owners under Section 7.10 above); and (ii) the Association may add a charge to such common expenses sufficient to cover the costs of administering, coordinating and invoicing for such additional maintenance and repair services.

## Article 8

### ASSESSMENTS

**8.1 Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners and Occupants of the Property and for the improvement, operation and maintenance of the Common Areas and other areas to be maintained by the Association.

**8.2 Types of Assessments.** The Association may levy Annual Assessments, Special Assessments, Emergency Assessments Working Fund Assessments and Individual Assessments, all as more particularly described below.

**8.3 Commencement and Apportionment of Assessments.**

(a) **When Subject to Assessment.** Lots shall become subject to Annual Assessments (including assessments for reserves), Special Assessments or Emergency Assessments at such time as Declarant has conveyed the Lot to a purchaser other than a successor declarant. Declarant may elect to delay collection of Annual Assessments against all Lots, but in such case shall pay all common expenses of the Association until such Assessments commence. Declarant may defer payment of that portion of the Annual Assessments attributable to accrued reserve assessments for a Lot owned by Declarant from the date the Lot becomes subject to assessment until the date the Lot is conveyed, but not beyond the date of the Turnover Meeting or, if no Turnover Meeting is held, the date the Owners assume administrative control of the Association. The books and records of the Association shall reflect the amount owing from Declarant for all deferred reserve Assessments.

(b) **Apportionment.** All Lots subject to assessment shall pay an equal share of the Annual Assessments, Special Assessments and Emergency Assessments. No Owner by the Owner's own action may claim exemption from liability for contribution towards common expenses by waiver by the Owner of use of enjoyment of any of the Common Area or by abandonment by the Owner of the Owner's Lot. An Owner may not claim an offset against an Assessment for failure of the Association to perform its obligations, and no Owner may offset amounts owing or claimed to be owing by the Association or Declarant to the Owner.

**8.4 Annual Assessments.** The 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 take into account the number of Lots subject to assessment as of the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to assessment during the fiscal year. The budget may be based upon a greater number of Lots than those reasonably anticipated to be subject to assessment during the fiscal year if the Declarant agrees to subsidize the Association for any shortfall in the Operations Fund until the assumed number of Lots is subject to assessment. The budget shall provide for such reserve or contingency funds as the Board deems necessary or as may be required by law, but not less than the reserves required by Section 8.10 below and shall take into account the Maintenance Plan adopted pursuant to Section 7.4 above. Annual Assessments for such operating expenses and reserves ("**Annual Assessments**") shall then be apportioned among the Lots as provided in Section 8.3 above. Within thirty (30) days after adopting the annual budget, the Board of Directors shall provide a summary of the budget to all Owners. If the Board of Directors fails to adopt an annual budget, the last adopted budget shall continue in effect. The manner of billing and collection of Assessments shall be as provided in the Bylaws.

**8.5 Special Assessments.** In addition to the Annual Assessment authorized above, the Board of Directors may levy during any fiscal year a Special Assessment ("**Special Assessment**"), applicable to that year only, for the purpose of deferring all or any part of the cost of any construction or reconstruction, unexpected repair, or acquisition or replacement of a described capital improvement, or for any other one-time expenditure not to be paid for out of Annual Assessments. Special Assessments for acquisition or construction of new capital improvements or additions that in the aggregate in any fiscal year exceed an amount equal to fifteen percent of the budgeted gross expenses of the Association for the fiscal year may be levied only if approved by a majority of the voting rights voting on such matter, together for acquisition or construction of new capital improvements or additions with the written consent of the Class B member, if any. Prior to the Turnover Meeting, any Special Assessment for acquisition or construction of new capital improvements or additions must be approved by not less than fifty percent (50%) of the Class A voting rights, together with the written consent of the Class B member. Special Assessments shall be apportioned as provided in Section 8.3 above and may be payable in lump sum or in installments, with or without interest or discount, as determined by the Board of Directors.

**8.6 Emergency Assessments.** If the Annual Assessments levied at any time are, or will become, inadequate to meet all expenses incurred under this Declaration for any reason, including nonpayment of any Owner's Assessments on a current basis, the Board of Directors shall immediately determine the approximate amount of such inadequacy and issue a supplemental budget, noted as to the reason therefor, and levy an Emergency Assessment for the amount required to meet all such expenses on a current basis ("**Emergency Assessment**"). Emergency Assessments shall be apportioned as set forth in Section 8.3 above and payable as determined by the Board of Directors.

**8.7 Individual Assessments.** Any common expense or any part of a common expense benefiting fewer than all of the Lots may be assessed exclusively against the Lots benefited ("**Individual Assessment**"). Individual Assessments include, without limitation, charges for services provided under Section 6.5(i) and any common expense that the Board of





Directors determines is the fault of the Owner and not paid by insurance. Individual Assessments shall also include default Assessments levied against any Lot to reimburse the Association for costs incurred in bringing such Lot or its Owner into compliance with the provisions of this Declaration or the Rules and Regulations and for fines or other charges imposed pursuant to this Declaration for violation thereof. Unless otherwise provided by the Board of Directors, Individual Assessments shall be due 30 days after the Board of Directors has given written notice thereof to the Owners subject to the Individual Assessments.

**8.8 Working Fund Assessments.** Upon the first sale of a Lot to a purchaser other than a successor Declarant and upon any subsequent sale of such Lot, the purchaser shall pay to the Association a Working Fund Assessment equal to two times the monthly Annual Assessment then applicable to the Lot (the "Working Fund Assessment"). The Board of Directors may deposit Working Fund Assessments either in the Operations Fund or in the Reserve Fund, at the discretion of the Board.

**8.9 Operations Fund.** The Association shall keep all funds received by it as Assessments, other than reserves described in Section 8.10 or Working Fund Assessments deposited in the Reserve Fund as described in Section 8.8, separate and apart from its other funds, in a bank account in the State of Oregon in the name of the Association to be known as the "Operations Fund." All expenses of the Association shall be paid from the Operations Fund or from the Reserve Fund referred to in Section 8.10. The Association shall use such fund exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents within the Property and in particular for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas and of the Lots situated upon the Property, including but not limited to:

- (a) Payment of the cost of maintenance, utilities and services as described in Article 7.
- (b) Payment of the cost of insurance as described in the Bylaws of the Association.
- (c) Payment of taxes assessed against the Common Areas and any improvements thereon.
- (d) Payment of the cost of water service, sewer service and garbage and trash disposal for the Common Areas or that are commonly billed.
- (e) Payment of the cost of other services that the Association deems to be of general benefit to the Owners, including but not limited to accounting, legal and secretarial services.
- (f) In the event any condemnation of a portion of the Common Areas should result in a surplus in the Operations Fund not needed for payment of the other items described in this section, such surplus shall be divided by the number of units within the Property and such amounts paid equally to the holder of any first mortgage or deed of trust on each Lot, or if none, to the Owner of the Lot.



**8.10 Reserve Fund.**

(a) **Establishment of Account.** Declarant shall conduct a reserve study as described in paragraph (c) of this section and establish a bank account in the State of Oregon in the name of the Association (the "Reserve Fund") for replacement of common properties that will normally require replacement in whole or in part in more than three (3) and less than thirty (30) years, for exterior painting if the Common Areas or other property to be maintained by the Association include exterior painted surfaces, for significant future maintenance items as required by the Maintenance Plan established pursuant to Section 7.4, and for other items, whether or not involving Common Areas, if the Association has responsibility to maintain the items. The Reserve Fund need not include those items that could reasonably be funded from operating Assessments or for those items for which one or more Owners are responsible for maintenance and replacement under the provisions of this Declaration or the Bylaws.

(b) **Funding of Reserve Fund.** The Reserve Fund shall be funded by Assessments against the individual Lot assessed for maintenance of the items for which the Reserve Fund is being established, which sums shall be included in the regular Annual Assessment for the Lot. The Reserve Fund shall also include Working Fund Assessments to the extent so allocated by the Board of Directors pursuant to Section 8.8. The Reserve Fund shall be established in the name of the Association. The Association is responsible for administering the Reserve Fund and making periodic payments into it.

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

- (1) Identification of all items for which reserves are to be established;
- (2) The estimated remaining useful life of each item as of the date of the reserve study;
- (3) The estimated cost of maintenance, repair or replacement of each item at the end of its useful life;
- (4) An update of the Maintenance Plan based upon the advice of competent experts or consultants;
- (5) A thirty (30) year plan with regular and adequate contributions, adjusted by estimated inflation and interest earned on reserves, to meet the maintenance, repair and replacement schedule.

(d) **Use of Reserve Fund.** The Reserve Fund shall be used only for the purposes for which the reserves have been established and shall be kept separate from other funds. After the Turnover Meeting, however, the Board of Directors may borrow funds from the Reserve Fund to meet high seasonal demands on the regular operating funds or to meet



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

**8.11 Creation of Lien and Personal Obligation of Assessments.** Declarant, for each Lot owned by it within the Property, does hereby covenant, and each Owner of any Lot 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, late charges, expenses or attorneys' fees imposed pursuant to Section 9.6, shall be a charge on the land and shall be a continuing lien upon the Lot 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 Lot 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 9 below.

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

## Article 9

### ENFORCEMENT

**9.1 Violation of Protective Covenants.** In the event that any Owner violates any provision of this Declaration, the Bylaws of the Association or the Rules and Regulations, then the Association acting through its Board of Directors shall notify the Owner in writing of any such specific violations. If the Owner is unable, is unwilling, or refuses to comply with the Association's specific directives for remedy or abatement, or the Owner and the Association cannot agree to a mutually acceptable solution within the framework and intent of this Declaration, then the Association acting through its Board of Directors shall, after notice and opportunity to be heard as provided in the Bylaws, have the right to do any or all of the following:



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

(b) Enter the offending Lot and remove the cause of such violation, or alter, repair or change the item that is in violation of this Declaration in such a manner as to make it conform thereto, in which case the Association may assess such Owner for the entire cost of the work done, which amount shall be payable to the Operations Fund as an Individual Assessment, provided that no items of construction shall be altered or demolished in the absence of judicial proceedings;

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

(d) Suspend the voting rights and the right to use the Common Areas for the period that the violations remain unabated, provided that the Association shall not deprive any Owner of access to and from his Unit;

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

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

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

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

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

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



**9.3 Notification of First Mortgagee.** The Board of Directors will send notice of any default in performance of this Declaration by a Lot Owner that is not cured within sixty (60) days to any first mortgagee of such Lot who has given written notice to the Association requesting notices of defaults.

**9.4 Subordination of Lien to Mortgages.** The lien of the assessments or charges provided for in this Declaration shall be subordinate to the lien of any mortgage or deed of trust on such Lot that was made in good faith and for value and that was recorded prior to the recordation of the notice of lien. Sale or transfer of any Lot shall not affect the assessment lien, but the sale or transfer of any Lot that is subject to any mortgage or deed of trust pursuant to a decree of foreclosure thereunder or any deed or proceeding, deed or assignment in lieu of foreclosure shall extinguish any lien of an assessment notice of which was recorded after the recording of the mortgage or trust deed. The unpaid Assessments as a result of such foreclosure or sale shall become a common expense of all Owners, including the mortgagee or purchaser, and such sale or transfer shall not release the Lot from liability for any assessments or charges thereafter becoming due or from the lien of such assessments or charges.

**9.5 Interest, Late Charges and Expenses.** Any amount not paid to the Association when due in accordance with this Declaration shall bear interest from the due date until paid at a rate three (3) percentage points per annum above the prevailing Portland, Oregon prime rate as of the due date, or such other rate as may be established by the Board of Directors, but not to exceed the lawful rate of interest under the laws of the State of Oregon. A late charge may be charged for each delinquent assessment in an amount established from time to time by resolution of the Board of Directors, which resolution is delivered to each Lot, mailed to the mailing address of each Lot or mailed to the mailing address designated by the Owner in writing, together with all expenses incurred by the Association in collecting such unpaid assessments, including attorneys' fees (whether or not suit is instituted). In the event the Association shall file a notice of lien, the lien amount shall also include the recording fees associated with filing the notice and a fee for preparing the notice of lien established from time to time by resolution of the Board of Directors.

**9.6 Costs and Attorneys' Fees.** In the event the Association shall bring any suit or action to enforce this Declaration, the Bylaws of the Association or the Rules and Regulations, or to collect any money due under this Declaration 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 attorneys' fees at trial and upon any appeal or petition for review thereof.

**9.7 Assignment of Rents.** As security for the payment of all liens arising pursuant to this Article 9, each Owner hereby gives to and confers upon the Association the right, power and authority, during the continuance of such ownership, to collect the rents, issues and profits of the Owner's Lot, reserving unto the Owner the right, prior to any default by such Owner in performance of that Owner's obligation under this Declaration or the Bylaws to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, the Association may, at any time after ten (10) days written notice to such Owner, either in person, by agent or by a receiver to be appointed by a court of competent jurisdiction, and without regard



to the adequacy of any security for such indebtedness, enter upon and take possession of such Owner's Lot or any part thereof, in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, in payment of any indebtedness to the Association or in performance of any agreement under this Declaration, and in such order as the Association may determine. Such action shall not cure nor waive any default under this Declaration or invalidate any act done pursuant to this Declaration. The assignment of rents and powers described in this section shall not affect, and shall in all respects be subordinate to, the rights and powers of the holder of any first or second mortgage on any Lot to do the same or similar acts.

**9.8 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 10

### DISPUTE RESOLUTION

#### 10.1 Mediation.

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

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

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



action is stayed under this paragraph, both parties shall participate in the dispute resolution process.

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

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

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

**10.2 Arbitration.** Any claim, controversy, or dispute by or among Declarant (including members, officers, directors, shareholders and affiliates of Declarant), Association, the Architectural Control Committee, or one or more Owners, or any of them, arising out of or related to this Declaration, the Bylaws of the Association, the Rules and Regulations, or the Property shall be first subject to mediation as described in Section 10.1 above or otherwise, and if not timely settled by mediation, resolved by arbitration in accordance with this Article 10. The decisions and award of the arbitrator shall be final, binding and nonappealable. The arbitration shall be conducted in the Portland, Oregon, metropolitan area, or at such other location as may be agreed upon by the parties, pursuant to the arbitration statutes of the State of Oregon and any arbitration award may be enforced by any court with jurisdiction. Filing for arbitration shall be treated the same as filing in court for purposes of meeting any applicable statute of limitations or for purposes of filing a notice of pending action ("lis pendens").

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

**10.4 Consolidated Arbitration.** Upon demand by any party, claims between or among the parties and third parties shall be submitted in a single, consolidated arbitration. Notwithstanding the provision of this Article 10, in the event any claim, controversy or dispute involves a claim by either party against a third party who is not required to and does not voluntarily agree to submit such claim to arbitration, then either party may elect to have the matter determined by a court of law in a consolidated proceeding, rather than by arbitration. In such case, the parties hereby waive trial by jury and agree that the matter shall be determined by a judge sitting without a jury.



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

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

**10.7 Excluded Matters.** Notwithstanding the foregoing, the following matters shall not be subject to mediation or arbitration under this Article 10 (but shall be subject to the applicable provisions of Section 10.8 below): (a) actions relating to the collection of fees, Assessments, fines and other charges imposed or levied by the Association (other than disputes as to the validity or amount of such fees, Assessments, fines or charges, which disputes shall be subject to mediation/arbitration as provided above); and (b) actions to enforce any order, decision or award rendered by arbitration pursuant to this Article 10. The filing of a lis pendens or the application to any court for the issuance of any provisional process or similar remedy described in the Oregon or Federal Rules of Civil Procedure shall not constitute a waiver of the right or duty to utilize the procedures specified in this Article 10.

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





10.9 **Survival.** The mediation and arbitration agreement set forth in this Article 10 shall survive the transfer by any party of its interest or involvement in the Property and any Lot therein and shall survive the termination of this Declaration.

#### Article 11

#### MORTGAGEES

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

11.2 **Right of First Mortgagees Relating to Maintenance.** At any time that the Common Areas or the exterior of a Unit is not maintained or repaired by the Association pursuant to Article 7 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 Unit 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 (1) year following the date of such notice. During this one (1) 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 11.2 and shall be sent postage prepaid by certified United States mail, return receipt requested, to the Owner with a copy sent by regular mail to the Association at the last known address of each.

#### Article 12

#### AMENDMENT AND REPEAL

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

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



determining voting rights of any Lot, unless the Owners of the affected Lots unanimously consent to the amendment. Declarant may not amend this Declaration to increase the scope of special Declarant rights reserved in this Declaration after the sale of the first Lot unless Owners representing seventy-five percent (75%) of the total vote, other than Declarant, agree to the amendment.

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

**12.4 Regulatory Amendments.** Notwithstanding the provisions of Section 12.1 above, until the Turnover Meeting, Declarant shall have the right to amend this Declaration or the Bylaws of the Association in order to comply with the requirements of the Federal Housing Administration, the United States Department of Veterans Affairs, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Mortgage Loan Corporation, any department, bureau, board, commission or agency of the United States or the State of Oregon, or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon that insures, guarantees or provides financing for a planned community or lots in a planned community. After the Turnover Meeting, any such amendment shall require the approval of a majority of the voting rights of the Association voting in person, by proxy or by ballot at a meeting or ballot meeting of the Association at which a quorum is represented.

### Article 13

#### MISCELLANEOUS PROVISIONS

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

**13.2 Enforcement.** The Association, or any Owner or the owner of any recorded mortgage on any part of the Property shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

**13.3 Construction; Severability; Number; Caption.** This Declaration shall be liberally construed as an entire document to accomplish the purposes hereof as stated in the



introductory paragraphs hereof. Nevertheless, each provision of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision shall not affect the validity or enforceability of the remaining part of that or any other provision.

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

**13.4 Notices and Other Documents.** Any notice or other document permitted or required by this Declaration may be delivered either personally or by mail. Delivery by mail shall be deemed made twenty-four (24) hours after having been deposited in the United States mail, with postage prepaid, addressed as follows: If to Declarant, 16280 NW Bethany Court, Suite 200, Beaverton, Oregon 97008; if to an Owner, at the address given by the Owner at the time of his or her purchase of a Lot, or at the Unit; if to the Association, to the mailing address of the Association as filed with the Oregon Secretary of State. The address of a party may be changed by him at any time by notice in writing delivered to the Association as provided herein.

**13.5 Private Agreement.** This Declaration and the covenants and agreements contained herein constitute a private agreement among the Owners of Lots in Montarosa. This Declaration does not restrict the City of Beaverton's authority to adopt or amend its development regulations. There may be conflicting requirements between this Declaration and regulations of the City of Beaverton, which will limit its review of a development application to the requirements of its regulations. It is the duty of every person engaged in development or remodeling of a Lot and/or improvement in Montarosa to know the requirements of this Declaration and the covenants and agreements contained herein. In the event there is a conflict between a regulation of the City of Beaverton and this Declaration, any question regarding which provision controls shall be directed to the Association. In no event will the City of Beaverton be liable for any approvals or permits that are granted in compliance with the regulations of the City of Beaverton, the State of Oregon or any other jurisdiction, but that are not in compliance with this Declaration. Declarant and/or the Association will not be liable for any approvals that are granted in compliance with this Declaration, but that are not in compliance with the regulations of the City of Beaverton, the State of Oregon or any other jurisdiction.



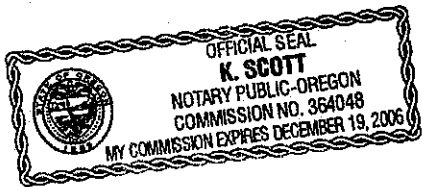
IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date set forth above.

JLS CUSTOM HOMES, INC.,  
an Oregon corporation

By: [Signature]  
Its: President

STATE OF OREGON     )  
                                  ) ss.  
County of Washington )

The foregoing instrument was acknowledged before me this 21 day of Dec., 2004 by Jason B. Sage, President of JLS Custom Homes, Inc., an Oregon corporation, on its behalf.



[Signature]  
Notary Public for Oregon  
My commission expires: 12-19-06  
Commission No.: 364048

(es)