

**DECLARATION OF ADDITIONAL COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR CLAREMONT GREENS TOWNHOMES**

**December 27, 1996**



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**DECLARATION OF ADDITIONAL COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR CLAREMONT GREENS TOWNHOMES**

THIS DECLARATION OF ADDITIONAL COVENANTS, CONDITIONS AND RESTRICTIONS FOR CLAREMONT GREENS TOWNHOMES (this "Declaration") is made as of the 24th day of December, 1996 by CLAREMONT LIMITED PARTNERSHIP, an Oregon limited partnership ("Declarant").

Declarant owns or has developed approximately 193 acres in the aggregate located in Washington County, Oregon. In its Declaration of Annexation of Claremont No. 7 (Claremont Greens) (the "Annexation Declaration"), recorded December 13, 1996 in the Deed Records of Washington County, Oregon at Fee No. 96110650, Declarant proposed the development of portions of this property as part of a planned unit development within Claremont to be known as "Claremont Greens."

Declarant desires to subject the real property commonly known as Claremont Greens Townhomes, being Lots 399-433 as depicted on the plat of Claremont No. 7 recorded in Plat Book 106, Page 23 (Document No. 96084104), Washington County, Oregon (the "Townhome Property") to the covenants, conditions, restrictions and charges set forth in this Declaration for the benefit of such property and its present and subsequent owners. Declarant also desires to reaffirm that the Townhome Property subject to this Declaration, in addition to being subject to the Annexation Declaration, is also subject to the covenants, conditions and restrictions contained in the First Amended and Restated Declaration of Protective Covenants, Conditions and Restrictions for Claremont (the "Master Declaration"), recorded November 8, 1991 in the Deed Records of Washington County, Oregon at No. 91062331.

By adoption of this Declaration, Declarant is not committing itself to take any action for which definite provision is not made in this Declaration, the Annexation Declaration, or the Master Declaration, nor is the Declarant prohibited from adding improvements or undertaking any activity not described in this Declaration, the Annexation Declaration or the Master Declaration.

**SECTION 1. DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR CLAREMONT GREENS  
TOWNHOMES**

**NOW, THEREFORE,** Declarant hereby declares the Townhome Property shall be held, conveyed, encumbered, used, occupied and improved subject to the additional covenants, conditions, restrictions and charges set forth below in this Declaration, which shall run with such property and shall be binding upon all such parties having or

acquiring any right, title or interest in the Townhome Property or any part thereof and shall inure to the benefit of each owner thereof. Unless otherwise defined herein, capitalized terms shall have the meaning given to them in the Annexation Declaration. In the event of any conflict between this Declaration, the Annexation Declaration, and the Master Declaration, the Master Declaration shall control, except as provided to the contrary in Section 4.4 of the Annexation Declaration.

## **SECTION 2. DEFINITIONS**

When used in this Declaration, the following terms shall have the following meanings.

### **2.1 Articles**

"Articles" shall mean the Articles of Incorporation of the Townhome Association, as amended from time to time.

### **2.2 Assessment**

"Assessment" shall mean any assessment levied against one or more Townhome Owners by the Townhome Association for payment of expenses relating to the Townhome Property, and shall include, without limitation, Regular, Special, and Limited Assessments as those terms are defined herein.

### **2.3 Architectural Review Committee**

"Architectural Review Committee" shall mean the committee appointed pursuant to this Declaration.

### **2.4 Board**

"Board" shall mean the duly elected board of directors of the Townhome Association.

### **2.5 Building Lot**

"Building Lot" shall mean a platted or partitioned lot or tract within the Townhome Property, with the exception of any tract or lot marked as Common Area, Claremont Greens Common Area, Claremont Greens Limited Common Areas or open space on any plat of any portion of the Townhome Property or in any annexation declaration, initially being Lots 399 - 433 as depicted on the Plat.

## **2.6 Building Structure**

"Building Structure" shall mean a building structure that is comprised of one or more contiguous dwelling units constructed and located on Building Lots, including, without limitation, garage structures located on the same Building Lots, whether attached to or detached from the Building Structure.

## **2.7 Bylaws**

"Bylaws" shall mean the Bylaws of the Townhome Association, as amended from time to time.

## **2.8 Claremont Greens**

"Claremont Greens" shall mean that property annexed to Claremont and subject to the covenants, conditions and restrictions stated in the Annexation Declaration.

## **2.9 Declarant**

"Declarant" shall mean and refer to Claremont Limited Partnership, an Oregon limited partnership, and its successors and assigns if such successors or assigns should acquire more than one undeveloped Building Lot from the Declarant for the purpose of development.

## **2.10 Landscaped Areas**

"Landscaped Areas" shall mean all portions of a Building Lot other than those portions occupied by a Building Structure or designated as an Outdoor Living Area or containing paved driveways or walkways.

## **2.11 Limited Assessment**

"Limited Assessment" shall mean an assessment levied against a Townhome Owner by the Townhome Association for costs and expenses incurred by the Townhome Association for corrective action performed pursuant to this Declaration and required as a result of the willful or negligent actions or omissions of such Townhome Owner or such Townhome Owner's tenants, guests, contractors, or invitees.

## **2.12 Outdoor Living Area**

"Outdoor Living Area" shall mean the portion of a Building Lot that is located immediately adjacent to a Building Structure and is screened, enclosed, or set off in any manner to create a private outdoor living/landscaped area. Outdoor Living Areas shall initially be established by Declarant at the time of construction of the Building Structures and may be modified from time to time by the Townhome Owner of the corresponding

Building Lot, with the approval of the Architectural Review Committee, in accordance with Section 5.

**2.13 Plat**

"Plat" shall mean the plat of Claremont No. 7 recorded in Plat Book 106, Page 23 (Document No. 96084104), Washington County, Oregon.

**2.14 Regular Assessment**

"Regular Assessment" shall mean an assessment against all Townhome Owners made pursuant to the provisions of Section 4.2 below.

**2.15 Special Assessment**

"Special Assessment" shall mean an assessment against all Townhome Owners when the Regular Assessment for any particular year is or will be inadequate to meet the expenses of the Townhome Association.

**2.16 Townhome Association**

"Townhome Association" shall mean the non-profit corporation formed or to be formed to serve as the association of Townhome Owners as provided in this Declaration and shall include such corporation's successors and assigns.

**2.17 Townhome Common Area**

"Townhome Common Area" shall mean those areas of the Townhome Property designated as such on any plat or annexation declaration of any property annexed to Claremont Greens. As of the recording of this Declaration, no Townhome Property has been designated as Townhome Common Areas.

**2.18 Townhome Improvement**

"Townhome Improvement" shall mean every structure or improvement of any kind, including but not limited to a fence, wall, driveway, storage shelter, patio, deck, or other product of construction efforts on or in respect to a Building Lot.

**2.19 Townhome Owner**

"Townhome Owner" shall mean any person or entity, including the Declarant, at any time owning a Building Lot, including any vendee to whom possession has passed under a recorded land sale contract, but does not include a tenant or holder of a leasehold interest or a person holding only a security interest in a Building Lot, including any vendor who has surrendered possession under a recorded land sale contract.

## **2.20 Townhome Property**

"Townhome Property" shall mean Lots 399 - 433 as designated on the Plat and shall include any additional property designated as such on any plat or annexation declaration of any property annexed to Claremont and subject to the covenants, conditions and restrictions contained in the Annexation Declaration and this Declaration.

## **SECTION 3. THE ASSOCIATION**

### **3.1 Organization**

Declarant shall, before the first Building Lot is conveyed to a Townhome Owner other than Declarant, organize the Townhome Association as a nonprofit corporation under the Oregon Nonprofit Corporation Act, under the name "Claremont Greens Townhome Association" or such similar name as Declarant shall designate. The Articles shall provide for the Townhome Association's perpetual existence, but if the Townhome Association is at any time dissolved, whether inadvertently or deliberately, it shall automatically be succeeded by an unincorporated association of the same name. All of the property, powers, and obligations of the incorporated Townhome Association, existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated association. Such vesting shall thereafter be confirmed as evidenced by appropriate conveyances and assignments by the incorporated Townhome Association. To the greatest extent possible, any successor unincorporated association shall be governed by the Articles and Bylaws as if they had been drafted to constitute the governing documents of the unincorporated association.

### **3.2 Membership**

Immediately upon creation of the Townhome Association and thereafter during the entire period of any Townhome Owner's ownership of one or more Building Lots, such Townhome Owner shall be a member of the Townhome 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.

### **3.3 Voting Rights**

Voting rights within the Townhome Association shall be allocated as follows.

#### **3.3.1 Building Lots**

Except as provided in Section 3.3.2, Building Lots shall be allocated one vote per Building Lot.

### 3.3.2 Classes of Voting Membership

The Townhome Association shall have two classes of voting membership:

**Class A.** Class A members shall be all Townhome Owners, with the exception of Declarant (except that beginning on the date on which the Class B membership is converted to Class A membership, and thereafter, Class A members shall be all Townhome Owners, including Declarant). Class A members shall be entitled to voting rights for each Building Lot owned, computed in accordance with Section 3.3.1. When more than one person holds an interest in any Building Lot, all such persons shall be members. The vote for such Building Lot shall be exercised as such persons among themselves determine, but in no event shall more votes be cast with respect to any Building Lot than as set forth in Section 3.3.1.

**Class B.** The Class B member shall be Declarant and shall be entitled to five (5) times the voting rights computed under Section 3.3.1 for each Building Lot owned by Declarant. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when Building Lots representing seventy-five percent (75%) of the votes in the final phase of the Townhome Property have been conveyed to owners other than Declarant; or
- (b) Declarant's earlier written election to terminate the Class B membership.

### 3.4 Powers and Obligations

The Townhome Association shall have, exercise, and perform all of the powers, duties, and obligations

- (a) granted to the Townhome Association by this Declaration;
- (b) of a nonprofit corporation pursuant to the Oregon Nonprofit Corporation Act and of a homeowners' association of a planned community pursuant to the Oregon Planned Community Act, as either or both may be amended from time to time; and
- (c) otherwise necessary or desirable for the purpose of carrying out the functions of the Townhome Association, pursuant to this Declaration or otherwise promoting the general benefit of the Townhome Owners within the Townhome Property.

The Townhome Association shall have the power, in the Board's sole discretion, to hire attorneys to advise the Townhome Association and/or the Board concerning any

appropriate matter, including, without limitation, making or defending claims and demands, filing or defending suits or actions, interpreting this Declaration, Bylaws and other applicable documents, and assisting in collecting delinquent assessments. The powers and obligations of the Townhome Association may from time to time be amended, repealed, enlarged, or restricted by changes in this Declaration made in accordance with the provisions herein and accompanied by changes in the Articles or Bylaws made in accordance with such instruments and with the Oregon Nonprofit Corporation Act. The Townhome Association is subordinate to the Claremont Civic Association, which is the master association for Claremont, and the Claremont Greens Association. In the event of a conflict, the Claremont Civic Association shall control, except as provided to the contrary in Section 4.4 of the Annexation Declaration.

### **3.5 Liability**

Neither the Townhome Association nor any officer or member of the Board shall be liable to any Townhome Owner for any damage, loss, or prejudice suffered or claimed on account of any action or failure to act by the Townhome Association or any of its officers or any member of the Board, provided only that the officer or Board member has acted in his or her good faith and actual knowledge.

### **3.6 Interim Board; Turnover Meeting**

Declarant shall have the right to appoint an interim board of three directors, who shall serve as the Board until replaced by Declarant or until their successors have been elected by the Townhome Owners at the turnover meeting described in this Section. Declarant shall call a meeting by giving notice to each Townhome Owner, as provided in the Bylaws, for the purpose of turning over administrative responsibility for the Townhome Property to the Townhome Association, not later than 120 days after Building Lots representing seventy-five percent (75%) of the votes in the Townhome Property, as computed in Section 3.3.1, have been sold or conveyed to Townhome Owners other than Declarant. If Declarant does not, within the required period, call the meeting required by this Section, the Transitional Advisory Committee described in Section 3.7 or any Townhome Owner may call such a meeting and give notice as required by this Section. At the turnover meeting, the interim directors shall resign and their successors shall be elected by the Townhome Owners (including Declarant), as provided in this Declaration and the Bylaws. At the turnover meeting, Declarant shall also deliver to the Townhome Association those items specified in ORS 94.616(3). After the turnover meeting, Declarant or its representative shall be available to meet with the Board, as provided under ORS 94.616(4).

### **3.7 Transitional Advisory Committee**

Declarant or the Townhome Owners shall form a transitional advisory committee (the "Transitional Advisory Committee") to provide for the transition of administrative responsibility for the Townhome Property from Declarant to the Townhome Association. Not later than the 60th day after Declarant has conveyed to Townhome Owners, other than Declarant, Building Lots representing 50% of the votes in all phases of the Townhome Property, as computed in accordance with Section 3.3.1, Declarant shall call a meeting of Townhome Owners for the purpose of selecting the Transitional Advisory Committee. The Transitional Advisory Committee shall consist of three or more members. The Townhome Owners, other than Declarant, shall select two or more members. Declarant may select no more than one member. The Transitional Advisory Committee shall have reasonable access to all information and documents that Declarant is required to turn over to the Townhome Association under ORS 94.616(3).

#### **3.7.1 Declarant's Failure to Call Meeting**

Any Townhome Owner may call a meeting of Townhome Owners to select the Transitional Advisory Committee if Declarant fails to do so as provided above.

#### **3.7.2 Townhome Owners' Failure to Select Members**

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

#### **3.7.3 Turnover Meeting**

The requirement for formation of a Transitional Advisory Committee shall not apply once the turnover meeting specified in Section 3.6 has been held.

### **3.8 Subassociations**

Nothing in this Declaration shall be construed as prohibiting the formation of subassociations within the Townhome Property, including, without limitation, neighborhood associations.

### **3.9 Townhome Association's Rules and Regulations**

The Townhome 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 Building Lots and the Townhome Common Area and Landscaped Areas as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Townhome Property. Upon adoption, a copy of the rules and regulations and a copy



of each amendment, modification, or revocation thereof shall be delivered by the Board promptly to each Townhome Owner and shall be binding upon all Townhome Owners and occupants of all Building Lots upon the date of delivery. The method of adoption of such rules shall be as provided in the Bylaws.

### **3.10 Special Duties of the Townhome Association**

Without limiting the generality of the general powers and duties of the Townhome Association set forth in Section 3, the Townhome Association shall have the power and obligation to conduct and perform the following duties, the costs of which shall be borne as provided in Section 4:

#### **3.10.1 Maintenance of Building Exteriors, Townhome Common Area, and Landscaped Areas**

**3.10.1.1 By the Townhome Association.** The Townhome Association shall be responsible for maintenance of the exteriors of all Building Structures and maintenance and repair of the Townhome Common Area (including any utilities thereon, to the extent not maintained by governmental authorities), to the extent described below, and all Landscaped Areas. Maintenance of the exteriors of Building Structures shall include the painting, repairing, and replacing of all exterior surfaces, including roofs (but excluding the repair and replacing of exterior doors); maintaining, repairing, and replacing exterior lighting fixtures, rain gutters, down spouts, and sprinkler timing devices; and cleaning of the exterior surfaces of skylights. The costs associated with the repair and maintenance of Building Structure roofs shall be paid for by Special Assessment levied against Townhome Owners who reside in the affected Building Structures. If such repairs and maintenance benefit all affected Townhome Owners, all costs shall be distributed evenly among the affected Townhome Owners, in all other cases such costs shall be paid for by the individual Townhome Owner benefited by the repair or maintenance. Maintenance of the Townhome Common Area and Landscaped Areas shall include maintaining, repairing, and replacing of grass, sod, trees, shrubs, and bushes in a neat, clean, and attractive condition and the maintenance and repair of all underground sprinkler systems. The decision as to the nature and extent of maintenance that is required for a particular Building Structure and the timing of such maintenance shall be solely within the discretion of the Board.

**3.10.1.2 By the Townhome Owners.** The maintenance responsibilities described in Section 3.10.1.1 specifically do not include the following duties, which are the sole responsibility of the Townhome Owners of the Building Lots: repairing, replacing, restoring, or cleaning of glass (other than cleaning of the exterior surfaces of skylights), and landscaping and other Townhome Improvements (including, without limitation, decks and patios) located within the Outdoor Living Areas; exterior items of hardware not specifically described in Section 3.10.1.1 (including replacing and

repairing exterior doors); exterior window casements, sashes, and frames; walkways and driveways; electrical and mechanical doorbells and knockers; and air-conditioning and heating equipment and devices. The Townhome Owners of Building Lots shall also be responsible for maintaining, repairing, and replacing the interiors of their respective dwelling units within the Building Structures, including without limitation, maintaining, repairing, and replacing electrical wiring and fixtures, plumbing pipes and conduits, all fixtures and appliances (whether built-in or free-standing), air-conditioning, heating, sewage-disposal, and interior fire-protection systems and all amenities and hardware located within the interiors of the Building Structures. Each Townhome Owner of a Building Lot shall also be responsible for removal of snow and ice from that Townhome Owner's Building Lot.

### **3.10.2 Insurance.**

**3.10.2.1 By the Townhome Association.** The Townhome Association shall obtain and maintain in effect from reputable insurance companies authorized to do business in the State of Oregon, public liability and property damage insurance with respect to all Townhome Common Areas, in such amounts and in such forms as the Board deems advisable to provide adequate protection for bodily injury, including deaths of persons and property damage, whether caused by the negligence of the Townhome Association or otherwise. However, such policy(ies) shall not be for an amount of less than \$1,000,000.00 per person, per occurrence, and such policy(ies) shall provide that the coverage thereunder cannot be canceled or substantially modified without at least 10-days' written notice to the Townhome Association. Additionally, the Townhome Association shall obtain and maintain in effect from such companies fire and extended coverage casualty insurance (including coverage for damage resulting from vandalism and malicious mischief) with respect to each Building Structure and the Townhome Common Area (including any insurable Townhome Improvements thereon), in an amount equal to 100% of the replacement cost thereof. The casualty coverage may be obtained on a "blanket" basis. The Townhome Association may obtain such other and further policies of insurance as it deems advisable. The casualty insurance to be obtained by the Townhome Association pursuant to this section shall include the following terms, if these are reasonably available:

- (a) a waiver of subrogation by the insurer as to any claims against the Board, any Townhome Owner, or any guest of a Townhome Owner;
- (b) a waiver by the insurer, of its right to repair and reconstruct instead of paying cash;
- (c) a provision that no policy may be canceled, invalidated, or suspended because of any action of a Townhome Owner;

(d) a provision that no policy may be canceled, invalidated, or suspended because of the conduct of any director, officer, or employee of the Townhome Association unless the insurer gives the Townhome Association a prior written demand that the Townhome Association correct the defect and allows the Townhome Association a reasonable time to make the correction; and

(e) a provision that any "other insurance" clause in any policy shall exclude from its coverage all owners' policies.

**3.10.2.2 By the Townhome Owners.** Each Townhome Owner of a Building Lot shall obtain and maintain in effect, from reputable insurance companies authorized to do business in the State of Oregon, public liability and property damage insurance with respect to such Building Lot, in an amount of not less than \$1,000,000.00 per person, per occurrence. Additionally, each Townhome Owner shall obtain and maintain in effect from such companies fire and extended coverage casualty insurance (including coverage for damage resulting from vandalism and malicious mischief) with respect to all insurable Townhome Improvements located on such Building Lot, other than the Building Structure thereon, in an amount equal to 100% of the replacement cost thereof. Each Townhome Owner shall also be responsible for obtaining fire and extended coverage casualty insurance with respect to that Townhome Owner's personal property. No Townhome Owner shall obtain any of the insurance coverages described in Section 3.10.2.1. nor shall any insurance coverage obtained by a Townhome Owner (or such Townhome Owner's mortgagee) be brought into contribution with insurance obtained by the Townhome Association.

## **SECTION 4. ASSESSMENTS**

### **4.1 Creation of Lien and Personal Obligation of Assessments**

Declarant, for each Building Lot owned by it within the Townhome Property, does hereby covenant, and each Townhome Owner of any Building 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 Townhome Association all assessments or other charges as may be fixed, established, and collected from time to time in the manner provided in this Declaration or the Bylaws. Such assessments and charges, together with any interest, expenses, or attorneys' fees and costs imposed pursuant to Section 8.6, shall be a charge on the land and shall be a continuing lien upon the Building Lot against which each such assessment or charge is made. The lienable amount shall also include the costs of preparing and recording the lien notice and shall be recoverable by the Townhome Association whether or not suit or action is filed. Such assessments, attorneys' fees and costs, charges, and other costs shall also be the personal obligation of the person who was the Townhome 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 Section 8 below. In a voluntary conveyance of a Building Lot, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments and charges against the grantor of the Building Lot as of the date of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee for assessments accrued or imposed prior to the date of the grant or conveyance. A transfer pursuant to a foreclosure of a first mortgage or trust deed shall not be construed as a voluntary conveyance. No Townhome Owner may avoid such personal obligation by abandonment of his or her Building Lot.

## **4.2 Regular Assessments**

### **4.2.1 Commencement**

Regular Assessments against all Building Lots shall commence on the date on which the deed or contract of sale for such Building Lot from Declarant to the Townhome Owner is recorded.

### **4.2.2 Amount of Annual Regular Assessment**

The total annual Regular Assessment against all Building Lots shall be based upon an annual budget prepared by the Board, with respect to projected expenses of the Townhome Association, including, without limitation, the following:

(a) maintenance, repair, and operation of the Building Structures, to the extent provided in Section 3.10 (except that any replacement of exterior surfaces shall be by Special Assessment), Townhome Common Area, and Landscaped Areas;

(b) premiums for all insurance policies the Townhome Association is required or permitted to maintain pursuant to this Declaration;

(c) professional management fees and expenses, employee salaries, and legal and accounting costs;

(d) any deficits remaining from the previous fiscal year of the Townhome Association;

(e) reasonable contingency reserves of the Townhome Association, established at the discretion of the Board (in addition to those funds contained in the Common Townhome Property Reserve Account); and

(f) such other and further costs, expenses, obligations, and liabilities as the Board, in its discretion, may incur for the management, operation, and

maintenance of the Townhome Property and the Townhome Association, in accordance with this Declaration.

#### **4.2.3 Allocation of Assessments**

All Regular Assessments shall be allocated among all Building Lots, on the basis of one (1) assessment unit per Building Lot.

#### **4.2.4 Notice of Regular Assessments and Time for Payment Thereof**

Regular Assessments shall be made on a monthly basis. Subject to amendment by the Board, the Townhome Association shall give written notice to each Townhome Owner as to the amount of the Regular Assessment with respect to each Building Lot, on or before December 15 for each year for the calendar year commencing January 1 of the next year. The Regular Assessment shall be due and payable as the Board shall determine.

Declarant is required, pursuant to ORS 94.595, to establish a reserve account in the name of the Townhome Association for replacement of all items of common property. No common property is presently envisioned by Declarant, therefore no such account shall initially be established. In the event that the Townhome Association acquires any common property, such an account will be established in accordance with applicable law.

#### **4.3 Special Assessments**

In addition to the Regular Assessments authorized hereby, the Board shall have the authority to levy Special Assessments to satisfy any actual or projected deficiency between the expenses of the Townhome Association and the amounts realized through Regular Assessments. Special Assessments shall be allocated among the Townhome Owners of Building Lots similarly to Regular Assessments. Special Assessments are payable as the Board may from time to time determine, within 30 days after the mailing of notice thereof to affected Townhome Owners.

#### **4.4 Limited Assessments**

The Townhome Association may levy against any Townhome Owner a Limited Assessment equal to the costs and expenses incurred by the Townhome Association, including legal fees, for corrective action performed pursuant to this Declaration when such action is required as a result of the willful or negligent actions or omissions of such Townhome Owner or such Townhome Owner's tenants, guests, contractors, or invitees.

#### **4.5 Statement of Account**

Upon payment of a reasonable fee, which shall be established by the Board but shall not exceed \$50.00, and upon written request of any Townhome Owner or any mortgagee, prospective mortgagee, or prospective purchaser of a Building Lot, the Townhome Association shall issue a written statement setting forth the amount of the unpaid Assessments, if any, with respect to such Building Lot and the amount of the current monthly Assessments and the dates on which such Assessments become or became due. Such statement shall be conclusive upon the Townhome Association, in favor of persons who rely thereon in good faith. Unless such request for a statement of account shall be complied with within 20 days, all unpaid Assessments that become due prior to the date of making such request shall be subordinate to the lien of a mortgagee that acquired its interest subsequent to requesting such statement. If a prospective purchaser makes such request, the lien for such unpaid Assessments shall be released automatically if (i) the statement is not furnished within the 20-day period provided herein, (ii) an additional written request is made by such purchaser and is not complied with within 10 days, and (iii) the purchaser subsequently acquires the Building Lot.

### **SECTION 5. ARCHITECTURAL REVIEW COMMITTEE**

#### **5.1 Architectural Review**

No Townhome Improvement shall be commenced, erected, placed, altered, or maintained on any Building Lot, by a Townhome Owner, until the design plans and specifications showing the nature, shape, heights, materials, colors, and proposed location of the Townhome Improvement have been submitted to and approved in writing by the Architectural Review Committee. All such Townhome Improvements must also be approved by the Claremont Civic Association pursuant to the Master Declaration. It is the intent and purpose of this Declaration to achieve a high standard of quality of workmanship and materials and to assure harmony of external design with existing Townhome Improvements and location with respect to topography and finished grade elevations.

#### **5.2 Procedure**

In all cases that require Architectural Review Committee approval or consent pursuant to this Declaration, the provisions of this Section 5 shall apply. The procedure and specific requirements for Architectural Review Committee approval or consent may be set forth in Design Guidelines adopted from time to time by the Architectural Review Committee. The Architectural Review Committee may charge a reasonable fee to cover the cost of processing an application for its approval.

### **5.3 Committee Decision**

The Architectural Review Committee shall render its decision on an application for approval of the design of any Townhome Improvement or any other proposal submitted to it for approval or consent, within 15 working days after it has received a complete, written application therefor. A complete application shall specify the approval or consent requested and be accompanied by all material reasonably required or desired by the Architectural Review Committee to make an informed decision on such application. If the Architectural Review Committee fails to render approval or disapproval of such application within 30 working days after the Architectural Review Committee has received a complete application, or if no suit to enforce the terms of this Declaration has been commenced within one year after completion of construction of the Townhome Improvement, approval will not be required and the related provisions of this Declaration shall be deemed to have been fully complied with.

### **5.4 Committee Discretion**

The Architectural Review Committee may, at its sole discretion, withhold consent to any proposed Townhome Improvement if the Architectural Review Committee finds the proposed Townhome Improvement would be inappropriate for the particular Building Lot or incompatible with the design standards that the Architectural Review Committee intends for the Townhome Property. Consideration of siting, shape, size, color, design, height, solar access, impairment of the view from other Building Lots within the Townhome Property, effect on the enjoyment of other Building Lots or the Townhome Common Area, disturbance of existing terrain and vegetation, and any other factors the Architectural Review Committee reasonably believes to be relevant, may be taken into account by the Architectural Review Committee in determining whether or not to approve or condition its approval of any proposed Townhome Improvement.

### **5.5 Membership; Appointment and Removal**

The Architectural Review Committee shall consist of as many persons as Declarant may from time to time appoint. Declarant may remove any member of the Architectural Review Committee from office at any time and may appoint new or additional members at any time. The Townhome Association shall keep on file at its principal office a list of the names and addresses of the members of the Architectural Review Committee. Declarant may at any time delegate, but shall, in any event, delegate at or prior to the turnover meeting described in Section 3.6, to the Board the right to appoint or remove members of the Architectural Review Committee. After such delegation (or after such delegation is required under this Section 5.5), the Architectural Review Committee shall consist of at least three persons. At such time as Declarant delegates to the Board the right to appoint or remove members of the Architectural Review Committee, or if Declarant fails to appoint an Architectural Review Committee,

the Board shall assume responsibility for appointment and removal of members of the Architectural Review Committee. If the Board has assumed the responsibility for appointment of the members of the Architectural Review Committee and fails to make such appointments, the Board shall serve as the Architectural Review Committee.

#### **5.6 Majority Action**

Except as otherwise provided herein, a majority of the members of the Architectural Review Committee shall have the power to act on behalf of the Architectural Review Committee, without the necessity of a meeting and without the necessity of consulting or notifying the remaining members of the Architectural Review Committee. The Architectural Review Committee may render its decision only by written instrument setting forth the action taken by the members consenting thereto.

#### **5.7 Liability**

The scope of the Architectural Review Committee's review is not intended to include any review or analysis of structural, geophysical, engineering, or other similar considerations. Neither the Architectural Review Committee nor any member thereof shall be liable to any Townhome Owner, occupant, builder, or developer for any damage, loss, or prejudice suffered or claimed on account of any action or failure to act of the Architectural Review Committee or a member thereof, provided only that the member has, in accordance with the actual knowledge possessed by the Architectural Review Committee or by such member, acted in good faith.

#### **5.8 Nonwaiver**

Consent by the Architectural Review Committee to any matter proposed to it or within its jurisdiction shall not be deemed to constitute a precedent or waiver impairing its right to withhold approval as to any similar matter thereafter proposed or submitted to it for consent.

#### **5.9 Appeal**

After Declarant has delegated appointment of the members of the Architectural Review Committee to the Board, any Townhome Owner adversely affected by an action of the Architectural Review Committee may appeal such action to the Board. Appeals shall be made in writing within ten days after the Architectural Review Committee's action and shall contain specific objections or mitigating circumstances justifying the appeal. A final, conclusive decision shall be made by the Board within 15 working days after receipt of such notification.



#### **5.10 Effective Period of Consent**

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

#### **5.11 Estoppel Certificate**

Within 15 working days after written request therefor is delivered to the Architectural Review Committee by any Townhome Owner, and upon payment to the Architectural Review Committee of a reasonable fee, if any, fixed by the Architectural Review Committee to cover costs, the Architectural Review Committee shall provide such Townhome Owner with an estoppel certificate executed by a member of the Architectural Review Committee and acknowledged, certifying with respect to any Building Lot owned by the Townhome Owner, that as of the date thereof, either: (a) all Townhome Improvements made or done upon or within such Building Lot by the Townhome Owner comply with this Declaration or (b) such Townhome Improvements do not so comply. If the estoppel certificate states that the Townhome Improvements do not comply, such certificate shall also identify the noncomplying Townhome Improvements and set forth with particularity the nature of such noncompliance. Any purchaser from the Townhome Owner, and any mortgagee or other encumbrancer, shall be entitled to rely on such certificate with respect to the matters set forth therein, such matters being conclusive as between Declarant, the Architectural Review Committee, the Townhome Association and all Townhome Owners, and such purchaser or mortgagee.

#### **5.12 Construction by Declarant**

Townhome Improvements constructed by Declarant on any property owned by Declarant are not subject to the requirements of this Section 5.

### **SECTION 6. PROPERTY RIGHTS AND EASEMENTS**

#### **6.1 Townhome Owners' Use and Occupancy**

Except as otherwise expressly provided in this Declaration or in the plat in which a Building Lot was platted or partitioned, the Townhome Owner of a Building Lot shall be entitled to the exclusive use and benefit of such Building Lot, including, without limitation, the Landscaped Area thereon. If a Townhome Owner leases or rents its Building Lot, such lease or rental agreement shall be expressly subject to the terms and conditions of this Declaration. Declarant, the Architectural Review Committee, and any representative of the Townhome Association authorized by it may at any reasonable time, and from time to time at reasonable intervals, enter upon any Building Lot for the purpose of determining whether or not the use of and/or Townhome Improvements on such

Building Lot are then in compliance with this Declaration. No such entry shall be deemed to constitute a trespass or conversion or otherwise to create any right of action in the Townhome Owner of such Building Lot. Declarant or the Townhome Association may grant or assign easements over or with respect to any Building Lot, to municipalities or other utilities performing utility services and to communication companies.

## **6.2 Townhome Owners' Easements of Enjoyment**

Subject to the provisions of this Declaration, every Townhome Owner and his or her invitees shall have a right and easement of enjoyment in and to any Townhome Common Area. This easement shall be appurtenant to and shall pass with the title to every Building Lot. Use of the Townhome Common Area shall not result in unreasonable disturbance of occupants of the Building Structures and shall be subject to such rules and regulations as may be adopted by the Board from time to time.

## **6.3 Title to Townhome Common Area**

Fee title to any Townhome Common Area shall be conveyed to the Townhome Association by Declarant, free and clear of liens and encumbrances at any time, in the discretion of Declarant, prior to the date on which Class B membership in the Townhome Association ceases and is converted to Class A membership as described in Section 3.3.

## **6.4 Extent of Townhome Owners' Rights**

The rights and easements of enjoyment in the Townhome Common Area created hereby shall be subject to the following and all other provisions of this Declaration:

### **6.4.1 Townhome Association's and Townhome Owners' Easements**

Declarant grants to the Townhome Association, for the benefit of the Townhome Association and all Townhome Owners of Lots within the Townhome Property the following easements over, under, and upon the Townhome Common Area:

(a) an easement for installation and maintenance of power, gas, electric, water, and other utility and communication lines and services installed by Declarant or with the approval of the Board and any such easement shown on any plat of the Townhome Property;

(b) an easement for construction, maintenance, repair, and use of the Townhome Common Area and any common facilities thereon; and

(c) an easement for the purpose of making repairs to any existing structures on the Townhome Common Area.

#### **6.4.2 Declarant's Easements**

So long as Declarant owns any Building Lot, and in addition to any other easements to which Declarant may be entitled, Declarant reserves an easement over, under, and across the Townhome Common Area, in order to carry out development, construction, sales, and rental activities necessary or convenient for the development of the Townhome Property or the sale or rental of Building Lots and for such other purposes as may be necessary or convenient for discharging Declarant's obligations or for exercising any of Declarant's rights hereunder.

#### **6.4.3 Utility and Other Municipal Easements**

Declarant or the Townhome Association may (and, to the extent required by law, shall) grant or assign easements to municipalities or other utilities performing utility services and to communication companies. The Townhome Association may grant free access thereon to police, fire, and other public officials and to employees of utility companies and communications companies serving the Townhome Property.

#### **6.4.4 Use of the Townhome Common Area**

Except as otherwise provided in this Declaration, the Townhome Common Area shall be reserved for the use and enjoyment of all Townhome Owners and no private use may be made of the Townhome Common Area. The Board shall have authority to abate any trespass or encroachment upon the Townhome Common Area at any time, by any reasonable means and with or without having to bring legal proceedings.

#### **6.4.5 Alienation of the Townhome Common Area**

The Townhome Association may not, by act or omission, seek to abandon, partition, subdivide, encumber, sell, or transfer any Townhome Common Area owned directly or indirectly by the Townhome Association for the benefit of the Building Lots unless the holders of at least 80 percent of the Class A voting power of the Townhome Association and the Class B member, if any, have given their prior written approval. This provision shall not apply to a grant of the easements described in Section 6.4.2 or 6.4.3. A sale, transfer, or encumbrance of the Townhome Common Area or any portion of the Townhome Common Area, in accordance with this Section 6.4.5 may provide that the Townhome Common Area so conveyed shall be released from any restriction imposed on such Townhome Common Area by this Declaration. No such sale, transfer, or encumbrance may, however, deprive any Building Lot of such Building Lot's right of access or support without the written consent of the Townhome Owner of such Building Lot.

#### **6.4.6 Limitations on Use**

Use of the Townhome Common Area by the Townhome Owners shall be subject to the provisions of this Declaration, and to the following:

- (a) the right of the Townhome Association to suspend the use rights of a Townhome Owner, to the extent provided in Section 8 below and
- (b) the right of the Townhome Association to adopt, amend, and repeal rules and regulations, in accordance with this Declaration and the Bylaws.

#### **6.5 Delegation of Use**

In accordance with the Bylaws, any Townhome Owner may delegate to the members of his or her family and to his or her tenants or contract purchasers, in each case, who reside on the Building Lot, his or her right of enjoyment of the Townhome Common Area.

#### **6.6 Encroachments**

If an encroachment results from construction, reconstruction, repair, shifting, settlement, or movement of any portion of the Townhome Property, an easement for the encroachment shall exist to the extent that any Building Lot or Townhome Common Area encroaches on any other Building Lot or Townhome Common Area. An easement shall continue for the purpose of maintaining the encroachment so long as the encroachment exists. Nothing in this Section 6.6 shall relieve a Townhome Owner of liability in case of a Townhome Owner's willful misconduct nor shall relieve Declarant or any other person of liability for failure to adhere to any plat of any portion of the Townhome Property.

#### **6.7 Maintenance Easement**

An easement is hereby reserved in favor of the Townhome Association and its successors, assigns, contractors, agents, and employees, over and across each Building Lot, for purposes of accomplishing the maintenance, repair, and replacement of the exteriors of Building Structures and landscaping and other Townhome Improvements located upon the Landscaped Areas.

### **SECTION 7. ADDITIONAL RESTRICTIONS AND DUTIES**

In addition to the covenants, conditions and restrictions contained the Master Declaration and the Annexation Declaration, the following covenants, conditions and restrictions shall apply to the Building Lots:

## **7.1 Structures Permitted**

Except to the extent expressly provided or contemplated in this Declaration, no Townhome Improvements shall be erected or permitted to remain on any Building Lot except Townhome Improvements designed for residential living.

## **7.2 Residential Use**

Building Lots shall be used solely for residential purposes. Except with the consent of the Board and as allowed by applicable ordinances, agreements, or land use approvals, no trade, craft, business, profession, commercial, or similar activity of any kind shall be conducted on any Building 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 Building Lot. Nothing in this paragraph shall be deemed to prohibit

(a) activities relating to the rental or sale of Building Structures;

(b) the right of Declarant or any contractor or homebuilder to construct Building Structures on any Building Lot, to store construction materials and equipment on such Building Lots in the normal course of construction, and to use any Building Structure as a sales or rental office or model home for purposes of sales or rental in the Townhome Property; and

(c) the right of a Townhome Owner 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 Building Structure. The Board shall not approve commercial activities otherwise prohibited by this Section unless the Board determines that only normal residential activities would be observable outside of the Building Structure and that the activities would not be in violation of applicable ordinances.

## **7.3 Use of Outdoor Living Areas**

Outdoor Living Areas shall be used exclusively for patios, low-profile decks, and private planting and landscaping areas.

## **7.4 Party Walls**

### **7.4.1 General Rules of Law to Apply**

Each wall that is built as a part of the original construction of a Building Structure and is placed on the dividing line between Building Lots shall constitute a party wall. To

the extent not inconsistent with the provisions of this section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

#### **7.4.2 Sharing of Repair and Maintenance**

The cost of reasonable repair and maintenance of a party wall shall be shared by the Townhome Owners who make use of the wall, in proportion to such use.

#### **7.4.3 Destruction by Fire or Other Casualty**

If a party wall is destroyed or damaged by fire or other casualty, any Townhome Owner who has used the wall may restore it. If the other Townhome Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof, in proportion to such use, without prejudice, however, to the right of any of such Townhome Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

#### **7.4.4 Weatherproofing**

Notwithstanding any other provision of this section, a Townhome Owner who, by negligent or willful act, causes the party wall to be exposed to the elements shall bear the whole cost of repairing the damage caused thereby and of furnishing the necessary protection against such elements.

#### **7.4.5 Right to Contribution Runs with Land**

The right of any Townhome Owner to contribution from any other Townhome Owner under this section shall be appurtenant to the former Townhome Owner's Lot and shall pass to such Townhome Owner's successors in title.

#### **7.4.6 Arbitration**

If any dispute arises concerning a party wall or under the provisions of this section, the dispute shall be conclusively resolved by arbitration. Each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator. The decision of a majority of all the arbitrators shall be final and binding.

#### **7.4.7 No Breach of Party Walls**

Each Townhome Owner shall ensure that party walls separating his or her dwelling unit from other dwelling units within the same Building Structure are not punctured or otherwise breached by such Townhome Owner or his or her lessees, invitees, contractors, or family members.

## **SECTION 8. ENFORCEMENT**

### **8.1 Use of Townhome Common Area**

If any Townhome Owner shall violate any provision of this Declaration, the Bylaws, or any rules or regulations adopted by the Townhome Association, governing the use of Building Lots or the Townhome Common Area, the Townhome Association, acting through the Board, may in writing notify the Townhome Owner that the violations exist and that such Townhome Owner is responsible for them and may, after affording the Townhome Owner reasonable notice and opportunity to be heard, do any or all of the following:

- (a) suspend the Townhome Owner's voting rights and right to use the Townhome Common Area for the period that the violations remain unabated or for any period not to exceed 60 days for any infraction of its rules and regulations;
- (b) impose reasonable fines upon the Townhome Owner, in the manner and amount the Board deems appropriate in relation to the violation, which fines shall be paid into the maintenance and operation account of the Townhome Association; or
- (c) bring suit or action against such Townhome Owner to enforce this Declaration.

Nothing in this Section, however, shall give the Townhome Association the right to deprive any Townhome Owner of access to and from such Townhome Owner's Building Lot.

### **8.2 Nonqualifying Townhome Improvements and Violation of General Protective Covenants**

If any Townhome Owner constructs or permits to be constructed on such Townhome Owner's Building Lot an Townhome Improvement contrary to the provisions of this Declaration or causes or permits any Townhome Improvement, activity, condition, or nuisance contrary to the provisions of this Declaration to remain uncorrected or unabated on such Townhome Owner's Building Lot, the Townhome Association, acting through the Board, may in writing notify the Townhome Owner of any such specific violations of this Declaration and may require the Townhome Owner to remedy or abate the same in order to bring the Townhome Owner's Building Lot, the Townhome Improvements thereon, and the Townhome Owner's use thereof into conformance with this Declaration. If the Townhome Owner is unable or unwilling to comply with the Townhome Association's specific directives for remedy or abatement or the Townhome Owner and the Townhome Association cannot agree on a mutually acceptable solution within the framework and intent of this Declaration, after the Townhome Owner has been afforded notice and opportunity to be heard and within 60 days after such notice, the

Townhome Association, acting through the Board, shall have, in addition to any other rights or remedies provided in this Declaration, at law, or in equity the right to do any or all of the following:

(a) impose reasonable fines against such Townhome Owner in the manner and amount the Board deems appropriate in relation to the violation;

(b) enter the offending Building Lot (which entry shall not subject the Townhome Association, the directors of the Townhome Association, or any agent or representative thereof to liability for trespass, conversion, or any other claim for damages) 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. The Townhome Association may assess such Townhome Owner for the entire cost of the work done, which amount shall be payable to the maintenance and operation account of the Townhome Association, provided that no items of construction shall be altered or demolished in the absence of judicial proceedings; and/or

(c) bring suit or action against the Townhome Owner on behalf of the Townhome Association and other Townhome Owners, to enforce this Declaration.

### **8.3 Default in Payment of Assessments; Enforcement of Lien**

If an Assessment or other charge levied under this Declaration is not paid within 30 days after its due date, such Assessment or charge shall become delinquent and shall bear interest from the due date until paid, at the rate set forth below and, in addition, the Townhome Association may exercise any or all of the following remedies.

#### **8.3.1 Suspension of Rights; Acceleration**

The Townhome Association may suspend such Townhome Owner's voting rights and right to use the Townhome Common Area until such amounts, plus other charges under this Declaration, are paid in full and may declare all remaining periodic installments of any Assessment or any other amounts owed by such Townhome Owner to the Townhome Association immediately due and payable. In no event, however, shall the Townhome Association deprive any Townhome Owner of access to and from such Townhome Owner's Building Lot.

#### **8.3.2 Lien**

The Townhome Association shall have a lien against each Building Lot for any Assessment levied against such Building Lot, together with attorneys' fees and costs, interest, fines or other charges imposed against the Townhome Owner of the Building Lot under this Declaration, the Bylaws or rules and regulations, from the date on which the Assessment, attorneys' fees and costs, interest, fines, or charge is due, whether or not suit



or action is filed. The lien shall be a continuing lien which, as long as any lienable sum continues to be owed to the Townhome Association by any Townhome Owner with respect to the Building Lot of the Townhome Owner, shall accumulate all future Assessments, interest, fines and other charges as set forth in this Declaration and attorneys' fees and costs incurred in the collection thereof (whether or not suit is filed). If any Assessment is payable in installments, the full amount of the Assessment is a lien from the date the first installment of the Assessment becomes due, and in the event any installment is delinquent, the due date of all future installments shall be accelerated and become due when the lien is filed. The Townhome Association, through its duly authorized agents, may bid on the Building Lot at the foreclosure sale of any such lien and may acquire and hold, lease, mortgage, and convey the Building Lot.

### **8.3.3 Suit or Action**

The Townhome Association may bring an action to recover a money judgment for unpaid Assessments, interest, fines, and charges under this Declaration, without foreclosing or waiving the lien described in Section 8.3.2. Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made. Any money judgment awarded to the Townhome Association in such action shall not be deemed to merge into the lien.

### **8.3.4 Other Remedies**

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

## **8.4 Notification of First Mortgagee**

If permitted by applicable law, the Board may notify any first mortgagee of any Building Lot of whom the Board has notice, of any default in performance of the terms of this Declaration by the Townhome Owner if the default is not cured within sixty (60) days.

## **8.5 Subordination of Lien to Mortgages**

The lien for the assessments or charges provided for in this Declaration shall be subordinate to the lien of any first mortgage or deed of trust on such Building Lot if the mortgage or deed of trust was made in good faith and for value and was recorded prior to the recordation of the notice of the lien for assessments or charges. Sale or transfer of any Building Lot shall not affect the assessment lien, provided that the sale or transfer of any Building Lot subject to a mortgage or deed of trust pursuant to a decree of foreclosure thereunder or pursuant to a proceeding, deed, or assignment in lieu of foreclosure shall extinguish the lien of an assessment, notice of which was recorded after the recording of the first mortgage or trust deed. Such sale or transfer, however, shall not

release the Building Lot from liability for any assessments or charges thereafter becoming due or from the lien of such subsequent assessments or charges.

#### **8.6 Interest, Expenses, and Attorneys' Fees**

Any amount not paid to the Townhome Association when due in accordance with this Declaration shall bear interest from the due date until paid at a rate of eighteen percent (18%) per annum, or at such other rate as may be established by the Board, but not to exceed the lawful rate of interest under the laws of the State of Oregon. A late charge for each delinquent assessment may be charged in an amount to be established from time to time by resolution of the Board and not to exceed 30% of such assessment. If the Townhome Association shall file a notice of lien, the lien amount shall also include the recording fees and attorneys' fees and costs associated with preparing and filing the lien notice, and attorneys' fees and costs incurred in attempting to collect the delinquent amount prior to the filing of the lien, whether or not suit or action is filed. If the Townhome Association shall bring any suit or action to enforce this Declaration, Bylaws or any rule, or regulation promulgated thereunder, or to collect any money due hereunder or to foreclose a lien, the Townhome Owner-defendant shall pay to the Townhome Association all costs and expenses, including a foreclosure title report, incurred by the Townhome Association in connection with such suit or action, 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.

#### **8.7 Nonexclusiveness and Accumulation of Remedies**

An election by the Townhome Association, to pursue any remedy provided for violation of this Declaration, shall not prevent concurrent or subsequent exercise of any other 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 Townhome Association. In addition, any aggrieved Townhome Owner may bring an action against another Townhome Owner or the Townhome Association, to recover damages or to enjoin, abate, or remedy any violation of this Declaration, by appropriate legal proceedings.

### **SECTION 9. CASUALTY**

The Townhome Association shall be responsible for repairing, reconstructing, and rebuilding all damage to or destruction of (a) the structural components of the Building Structures and (b) the Townhome Common Area, subject to the provisions of this Section 9 and of Section 4.5. The Townhome Association shall rebuild and/or restore the damaged or destroyed portions of the structural components of the Building Structures and the Townhome Common Area to substantially the same condition in which these

existed prior to such damage or destruction unless Townhome Owners of at least seventy-five percent (75%) of the Building Lots and at least seventy-five percent (75) of first mortgagees of Building Lots agree that the damaged or destroyed portions shall not be rebuilt and/or restored. Rebuilding and/or restoration shall begin within 60 days following the damage or destruction. If the proceeds of the insurance policies held by the Townhome Association are insufficient to fund the full cost of rebuilding and/or restoration, the difference between the amount of such proceeds and such cost shall be charged to all Townhome Owners, by means of a Special Assessment. If the required number of Townhome Owners and first mortgagees of Building Lots agree that the damaged or destroyed portions of the Building Structures and/or Townhome Common Area shall not be rebuilt and/or restored, the proceeds of the insurance policies held by the Townhome Association shall be distributed on an equitable basis among the Townhome Owners of the affected Building Lots, in such manner as the Board shall determine. The Townhome Association shall represent the Townhome Owners in any proceeding, negotiation, settlement, or agreement relating to the payment of proceeds under any insurance policies held by the Townhome Association.

## **SECTION 10. MISCELLANEOUS**

### **10.1 Term**

The covenants, conditions, and restrictions of this Declaration shall run until December 31, 2023, unless amended as herein provided. After December 31, 2023, such covenants, conditions, and restrictions shall be automatically extended for successive periods of ten (10) years each, unless amended or extinguished by a written instrument executed by members holding at least 75% of the voting power of the Townhome Association and recorded in the deed records of Washington County.

### **10.2 Amendment and Repeal**

10.2.1 Except as expressly provided in Section 4.2.3, this Declaration or any provision thereof, as from time to time in effect with respect to all or any part of the Townhome Property, may be amended or repealed by the vote of Townhome Owners holding not less than 75% of the total voting power of the Townhome Association.

10.2.2 Any such amendment or repeal shall become effective only upon recordation in the deed records of Washington County, of a certificate of the president or secretary of the Townhome Association setting forth in full the amendment, amendments, or repeal so approved and certifying that said amendment, amendments, or repeal have been approved in the manner required by this Declaration.

10.2.3 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 Building Lot or any uses to which any Building Lot is restricted unless the Townhome Owners of the affected Building Lots unanimously consent to the amendment.

### **10.3 Regulatory Amendments**

Notwithstanding the provisions of Section 10.2, until the turnover meeting described in Section 3.6, Declarant shall have the right to amend this Declaration or the Bylaws in order to comply with the requirements of any applicable statute, ordinance, regulation, or guideline of the Federal Housing Administration, the Veterans Administration, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, any department or bureau or board or commission or agency of the United States or the State of Oregon, or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon, which body insures, guarantees, or provides financing for a planned community or lots in a planned community.

### **10.4 Notices**

Any notices permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered 72 hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Townhome Association for the purpose of service of such notice or to the residence of such person if no address has been given to the Townhome Association. Such address may be changed from time to time, by notice in writing to the Townhome Association.

### **10.5 Right of Enforcement**

Except as otherwise provided herein, any Townhome Owner of any Building Lot covered by this Declaration shall have the right to enforce any or all of the provisions hereof against any property covered by this Declaration and against the Townhome Owners thereof.

### **10.6 Remedies Cumulative**

Each remedy provided herein is cumulative and not exclusive.

### **10.7 Joint Townhome Owners**

In any case in which two or more persons share the ownership of any Building Lot, regardless of the form of ownership, the responsibility of such persons to comply

with this Declaration shall be a joint and several responsibility, and the act or consent of any one or more of such persons shall constitute the act or consent of the entire ownership interest. However, if such persons disagree among themselves as to the manner in which any vote or right of consent held by them shall be exercised with respect to a pending matter, any such person may deliver written notice of such disagreement to the Townhome Association, and the vote or right of consent involved shall then be disregarded completely in determining the proportion of votes or consents given with respect to such matter.

#### **10.8 Lessees and Other Invitees**

Lessees, invitees, contractors, family members, and other persons entering the Townhome Property under rights derived from a Townhome Owner shall comply with all of the provisions of this Declaration restricting or regulating the Townhome Owner's use, improvement, or enjoyment of such Townhome Owner's Building Lot and other areas within the Townhome Property. The Townhome 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 Townhome Owner.

#### **10.9 Non-Waiver**

The failure to enforce any of the provisions herein at any time shall not constitute a waiver of the rights to enforce any such provision or any other provision of said restrictions.

#### **10.10 Restrictions Construed Together**

All of the provisions hereof shall be liberally construed together to promote and effectuate the general plan and scheme of the Townhome Property.

#### **10.11 Restrictions Severable**

Each of the provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

#### **10.12 Singular Includes Plural**

Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine, or neuter shall each include the masculine, feminine, and neuter.

10.13 Captions

All captions and titles used in this Declaration are intended solely for convenience of reference and shall not affect that which is set forth in any of the provisions hereof.

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

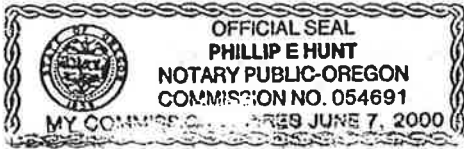
CLAREMONT LIMITED PARTNERSHIP,  
an Oregon limited partnership

By: Claremont Development Co., Inc.,  
an Oregon corporation,  
as General Partner

By: [Signature]  
Its: President

By: H. Williams Properties, Inc.,  
an Oregon corporation,  
as General Partner

By: [Signature]  
Its: V.P.



State of Oregon )  
) ss.  
County of MULTNOMAH )

The foregoing instrument was acknowledged before me on this 24 day of December, 1996, by Isabel Lozano Vice President of Claremont Development Co., as General Partner of Claremont Limited Partnership. H. WILLIAMS PROPERTIES, INC

Notary Present  
GENERAL PARTNER     OK H

[Signature]  
Notary Public for Oregon  
My Commission expires: 6/7/00

State of Oregon )  
 ) ss.  
County of WASHINGTON)

The foregoing instrument was acknowledged before me on this \_\_\_ day of December, 1996, by GEORGE J. MANSFIELD PRESIDENT of H. Williams Properties, Inc., as General Partner of Claremont Limited Partnership. CLAREMONT DEVELOPMENT CORP.

Virginia Willett  
Notary Public for Oregon  
My Commission expires: 01-20-98

