

DECLARATION
of
CONDOMINIUM OWNERSHIP
for
THE TREES CONDOMINIUM

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DECLARATION
of
CONDOMINIUM OWNERSHIP
for
THE TREES CONDOMINIUM

MADE PURSUANT TO THE OREGON CONDOMINIUM ACT

THIS DECLARATION, to be effective upon its recording in Benton County, Oregon, pursuant to the provisions of the Oregon Condominium Act, is made and executed this ____ day of _____, 2008, by ADW, L.L.C., an Oregon limited liability company (hereinafter “Declarant”).

RECITALS:

Declarant owns real property and improvements thereon located in the City of Corvallis, Benton County, Oregon, more particularly described on Exhibit A attached hereto (the “Property”). Declarant intends to subject and bind the Property to the condominium form of ownership and to create a fee title Condominium to be known as THE TREES CONDOMINIUM (the “Condominium”). The improvements upon the Property include two (2) two-story buildings consisting of a total of eighteen (18) residential Units. The purpose of this Declaration is to submit the Property and improvements to the condominium form of ownership and use in the manner provided by the Oregon Condominium Act.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions.

The following definitions apply in all Condominium Documents unless the context requires otherwise:

1.1.1 “Act” shall mean the Oregon Condominium Act, currently contained in ORS Chapter 100, as amended from time to time.

1.1.2 “Association” shall mean the nonprofit mutual benefit corporation responsible for the administration, management, and operation of the Condominium created concurrently with the recording of this Declaration and known as The Trees Condominium Homeowners Association.

1.1.3 “Board” shall mean the Board of Directors of the Association.

1.1.4 “Bylaws” shall mean the Bylaws of the Association, as amended from time to time, a copy of which is attached hereto as Exhibit B.

1.1.5 “Common Elements” shall mean all those portions of the Condominium exclusive of the Units.

1.1.6 “Common Expenses” shall mean all costs and expenses incurred by the Association with respect to the use, operation, maintenance, repair and improvement of the Common Elements.

1.1.7 “Condemnation” shall mean any taking of any interest in the Condominium by right of eminent domain or any purchase of any such interest in lieu of such taking.

1.1.8 “Condominium” shall mean the Property that is hereby submitted to condominium ownership and all improvements thereon or to be located thereon and all easements and rights appurtenant thereto.

1.1.9 “Condominium Documents” shall mean this Declaration, the Articles of Incorporation of The Trees Condominium Homeowners Association, its Bylaws, its Rules and Regulations, and any exhibits to any of them.

1.1.10 “Declarant” shall mean the original Declarant specified above and any successors and assigns specified as a successor Declarant in writing by the original Declarant.

1.1.11 “Declaration” shall mean this Declaration of Condominium Ownership for The Trees Condominium and any amendments to it.

1.1.12 “General Common Elements” shall mean all Common Elements other than the Limited Common Elements, as more particularly described in Section 5 below.

1.1.13 “Legal Requirements” shall mean any and all laws, orders, rules, and regulations of any governmental entity.

1.1.14 “Limited Common Elements” shall mean those Common Elements other than the General Common Elements, as designated in Section 6.

1.1.15 “Mortgage” shall include a mortgage, a deed of trust and a contract for the sale of real estate.

1.1.16 “Mortgagee” shall include a mortgagee under a mortgage, a deed of trust beneficiary, or a vendor under a contract for the sale of real estate.

1.1.17 “Owner” shall mean the record owner of fee simple interest in a Unit, unless there is a holder of a vendee’s interest in a Unit under a recorded contract of sale or a holder of a life estate or a leasehold estate in a Unit for a term exceeding twenty (20) years, in which event the vendee or lessee, as the case may be, shall be considered the Owner. If there is more than one such vendee’s or lessee’s interest at any given time, then the holder of the most recent interest shall be considered the current Owner.

1.1.18 “Percentage Interest” shall have the meaning as described in Section 3.2.

1.1.19 “Person” shall mean any individual, corporation, partnership trust or other entity.

1.1.20 “Plat” shall mean the Plat for the Condominium which is being recorded in the deed records of Benton County, Oregon, concurrently with this Declaration and any revisions of such Plat subsequently recorded.

1.1.21 “Property” shall mean the property submitted to the provisions of the Act, as described on Exhibit A.

1.1.22 “Rules and Regulations” shall mean those rules and regulations governing the use and enjoyment of the Condominium, as adopted from time to time by the Board pursuant to the Bylaws.

1.1.23 “Turnover Meeting” shall mean the meeting at which Declarant relinquishes control of the administration of the Association pursuant to Section 100.210 of the Act.

1.1.24 “Unit” shall mean that part of the Condominium designated in Section 4 and as shown on the Plat and comprises the space and improvements enclosed by its boundaries and, as the context requires, the accompanying fractional interest in the Common Elements.

1.2 **Liberal Construction.**

The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Condominium under the provisions of Oregon law. The terms used herein are intended to have the same meaning as may be given in the Act to such terms unless the context clearly requires otherwise or to so define the terms would produce an illegal or improper result.

1.3 **Original Owner of Units.**

Declarant is the original Owner of all Units and will continue to be deemed the Owner thereof except as conveyances or documents verifying the ownership of specifically described Units are filed of record.

1.4 **Captions and Exhibits.**

The captions and headings of sections herein are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof. The various exhibits referred to herein and attached hereto shall be deemed incorporated herein by reference as though fully set forth where such reference is made.

1.5 Severability.

Each provision of this Declaration and the Bylaws shall be deemed independent and severable and shall be valid and enforceable to the fullest extent permitted by law. If any term or provision of this Declaration or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, whether under the Condominium Act or otherwise, the remainder of this Declaration and the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby.

1.6 Duration.

These covenants, conditions and restrictions run with and bind, benefit and burden in perpetuity the Property, all Owners and occupants, and the lessees, invitees and guests of all Owners and occupants unless amended in accordance with this Declaration or terminated in the manner permitted in the Condominium Act.

1.7 Notices.

All notices under this Declaration must be in writing. Any such notice will be deemed effective on the earlier of the date of delivery or, if mailed, three (3) business days following the date of mailing, if addressed to the addressee at the address, if any, designated in the Association's records. It is the responsibility of the Owners to notify the Association of any change in address or change in ownership of the Units. The Association is not responsible for independently verifying the accuracy of its record of Owners and their addresses.

1.8 Costs and Attorneys' Fees.

In any proceeding arising because of an alleged default by an Owner in complying with the terms and provisions of this Declaration or the Rules and Regulations of the Association, including without limitation failure to pay assessments, the prevailing party will be entitled to recover its costs and expenses, including its reasonable attorneys' fees, as may be determined by the Arbitrator (defined in Section 20). In addition, the Association shall be entitled to reasonable attorneys' fees associated with collection costs, regardless of whether a legal action is filed.

1.9 Nonwaiver.

Any failure of the Association to enforce a covenant, condition or restriction contained in this Declaration is not a waiver of the Association's right to enforce that or any other covenant, condition or restriction contained in this Declaration.

1.10 Miscellaneous.

All terms and words used in this Declaration, regardless of the number or gender in which they are used, shall be deemed to include any other number and any other gender as the context may require. "And/or" when applied to two or more matters or things shall be construed to apply to any one or more or all thereof, as the circumstances then warrant. "Herein," "hereof," "hereunder," and words of similar import, must be construed to refer to this

Declaration as a whole, and not to any particular section, unless expressly stated otherwise. The word “days” refers to calendar days unless specific reference is made to “business” days.

2. NAME

The name by which the Property hereby submitted is to be identified is THE TREES CONDOMINIUM.

3. PROPERTY SUBMITTED AND DEVELOPMENT PLAN

The Property submitted to the provisions of the Act is the land owned in fee simple by Declarant and described on the attached Exhibit A, together with all easements, rights, and appurtenances belonging thereto and all improvements now existing or hereafter constructed on such land. Pursuant to ORS 100.125, Declarant proposes to develop the Condominium with the maximum number of Units, the additional Common Elements, minimum allocation of undivided interest in the Common Elements:

3.1 Maximum Number of Units.

Declarant is by this Declaration creating eighteen (18) residential Units in the Condominium.

3.2 Allocation of Undivided Percentage Interest in Common Elements.

Each Owner will be entitled to an equal 1/18th undivided Percentage Interest in the Common Elements, so that the total of the interests of all Units equals 100% of the total interest in the Common Elements. Each Unit’s Percentage Interest in the Common Elements is inseparable from the Unit and any conveyance, encumbrance, judicial sale, or other transfer, voluntary or involuntary, of an undivided interest in the Common Elements is void unless the Unit to which that interest is allocated is also transferred.

4. UNITS

4.1 Generally.

The Condominium consists of two (2) two-story buildings with a total of seventeen (17) apartment style Units and one (1) townhouse style Unit. There is one (1) one-bedroom Unit, sixteen (16) two-bedroom Units and one (1) three-bedroom Unit. The Building in which each Unit is located and each Unit’s square footage is reflected in the chart below and as shown on the Plat. Both buildings have a concrete foundation with concrete masonry unit stem walls. All Units are wood framed with composition shingle roof, lap siding made of a concrete composite, and vinyl windows. There are no basements. In the event of any conflict between the Plat and this Declaration, the latter controls.

UNIT #	SQUARE FEET	Building
1	1,387	A
2	616	A
3	739	A

4	695	A
5	685	B
6	830	B
7	744	B
8	741	B
9	691	A
10	621	A
11	594	A
12	749	A
13	772	A
14	773	B
15	804	B
16	688	B
17	719	B
18	664	A

THE SQUARE FOOTAGE AREAS STATED IN THIS DECLARATION AND THE PLAT ARE BASED ON THE BOUNDARIES OF THE UNITS AS DESCRIBED IN THIS DECLARATION AND MAY VARY FROM THE AREA OF UNITS CALCULATED FOR OTHER PURPOSES.

4.2 Boundaries of Units

Each Unit shall be bounded by the interior surfaces of its perimeter walls, floors, and ceilings, and the interior surfaces of windows' and doors' glazing and screens and shall include both the interior surfaces so described (including the unexposed face of the sheet rock and the underside of the finished floor or top surface of any concrete slab, as applicable) and the air space so encompassed and shall exclude those portions of the walls, floors or ceilings that materially contribute to the structural or sheer capacity of the Condominium. Each Unit shall include the nonbearing interior partitions, fixtures and improvements within the Unit and the outlet of any utility service lines, including water, sewer, electricity, or cable television, and of ventilating or air conditioning ducts, but shall not include any part of such lines or ducts themselves. All other portions of the walls, floors or ceilings shall be a part of the General Common Elements. In the event of a conflict between the Plat and this Declaration, the latter controls.

5. GENERAL COMMON ELEMENTS

The general location of the Common Elements is shown on the Plat. The General Common Elements consist of all parts of the Condominium other than the Units and the Limited Common Elements and include, without limitation, the following:

5.1. The land and the buildings (except the Units and Limited Common Elements) including together with any rights and appurtenances, the foundation, columns, girders, beams, supports, bearing and shear walls, windows, except glazing and screening, Unit access doors, except glazing and screening, and roof.

5.2. All those portions of the Condominium exclusive of the Units and Limited Common Elements, as shown on the Plat, including, without limitation, the driveway and walkways, stairs, certain balconies not assigned to a specific Unit, fencing, irrigation systems, certain open space, landscaping, monument sign, and mailboxes.

6. LIMITED COMMON ELEMENTS

The Limited Common Elements consist of: (a) the balcony and/or patio assigned to the Unit(s) in the chart below which are reserved for the exclusive use of that Unit(s) to which it is assigned and if the balcony and/or patio is assigned to multiple Units, then the use is reserved to each Unit on an equal basis; (b) the one (1) parking space assigned to each Unit in the chart below which is reserved for the exclusive use of that Unit; and (c) the storage area assigned to certain Units in the chart below which storage area is reserved for the exclusive use of the Unit to which it is assigned. The Limited Common Elements described above are shown on the Plat.

UNIT	PARKING SPACE	STORAGE AREA	BALCONY	PATIO
1	P-1	N/A	N/A	LCE-UNIT 1 PATIO
2	P-2	LCE S-1	N/A	LCE-UNIT 2 PATIO
3	P-3	N/A	N/A	LCE-UNIT 3 PATIO
4	P-4	N/A	N/A	LCE-UNIT 4 PATIO
5	P-5	LCE S-2	N/A	LCE-UNIT 5 PATIO
6	P-6	N/A	N/A	LCE-UNIT 6 PATIO
7	P-7	N/A	N/A	LCE-UNIT 7 PATIO
8	P-8	LCE S-3	N/A	LCE-UNIT 8 PATIO
9	P-9	N/A	LCE-UNITS 9 & 10 BALCONY	N/A
10	P-10	N/A	LCE-UNITS 9&10 BALCONY AND LCE-UNIT 10 BALCONY	N/A

UNIT	PARKING SPACE	STORAGE AREA	BALCONY	PATIO
11	P-11	LCE S-4	LCE-UNIT 11 BALCONY	N/A
12	P-12	N/A	LCE-UNITS 12 & 13 BALCONY	N/A
13	P-13	N/A	LCE-UNITS 12 & 13 BALCONY AND LCE-UNIT 13 BALCONY	N/A
14	P-14	LCE S-5	LCE-UNIT 14 BALCONY	N/A
15	P-15	N/A	LCE-UNIT 15 BALCONY	N/A
16	P-16	N/A	LCE-UNIT 16 BALCONY	N/A
17	P-17	LCE S-6	LCE-UNIT 17 BALCONY	N/A
18	P-18	N/A	LCE-UNIT 18 BALCONY	N/A

7. DESCRIPTION OF UTILITIES

All Units are separately metered for electricity service, gas and cable. All water and sewer service to the Units share one common meter, which shall be separately sub-metered by the Association, the costs of which shall be allocated to each Unit in the monthly Association assessments.

8. OCCUPATION, USE AND TRANSFER

The Condominium is intended solely for residential use. The Units may be used only in a manner appropriate to maintain the Condominium's status as a residential condominium on an ownership, rental, or lease basis, and for social, recreational, or other reasonable purposes

normally incidental to residential use. Units may be used for accessory home businesses subject to Board approval of the business as compatible with the residential character of the Condominium, such approval to not be unreasonably withheld, conditioned or delayed. The Unit Owner must also satisfy any local governmental requirements for, or restrictions upon, an accessory home business use of their Unit. Units may be used for operating the Association and for management of the Condominium. Conducting Association business from a Unit or use of a Unit in association with managing the Condominium shall not be considered a violation of the use restrictions set forth in this Section. Units may only be leased in accordance with and to the extent allowed by the Bylaws.

An Owner intending to sell a Unit shall deliver a written notice to the Board, at least two (2) weeks before closing, specifying: (i) the Unit to be sold; (ii) the name and address of the purchaser, the closing agent, and the title insurance company insuring the purchaser's interest; and (iii) the estimated closing date. The Board shall have the right to notify the purchaser, the title insurance company, and the closing agent of the amount of unpaid assessments and charges outstanding against the Unit, whether or not such information is requested. It is understood, however, that a violation of this notice requirement shall not invalidate a sale, transfer or other conveyance of a Unit which is otherwise valid under applicable law but may result in the imposition of a reasonable charge against the Unit for the cost of obtaining such transfer information from other sources. Except to the extent set forth in this Section and certain restrictions on leasing set forth in the Bylaws, this Declaration imposes no restrictions on the alienation of any Unit.

9. MAINTENANCE

9.1 Common Elements

The necessary work to maintain, repair or replace all the Common Elements shall be carried out by the Association, except Limited Common Elements reserved to the use of a single Unit shall be carried out by the Owner or Owners of the Unit to which such elements are reserved. No Owner may alter the Common Elements without first obtaining the consent of the Association in accordance with the procedures set forth in the Bylaws. All work will be specially assessed to the benefited Units if the work pertains to less than all of the Units in the Condominium. For example, if the roof of a single building needs repair, then the cost will be specially assessed only to the Unit Owners of the affected Building. Any such special assessment to the benefited Units shall be reasonably and uniformly determined by the Association Board. The Association may make any repairs or perform maintenance that an Owner is obligated to make which such Owner does not make within a reasonable time.

9.2 Individual Units

The necessary work to maintain, repair or replace the elements of each Unit shall be carried out by the Unit Owner, and each Owner must keep the Owner's improvements in good order, condition and repair.

10. COMMON INCOME AND EXPENSES

10.1 Method of Allocation

10.1.1 Subject to the following exceptions, the Condominium common income, if any, and the Common Expenses shall be allocated among all the Units equally, as provided in Section 3.2 of this Declaration, provided that any Common Expenses solely attributable to less than all of the Units shall be specially assessed only to the Owners of the applicable Units. It is the intent of the Declarant to provide a fair allocation and assessment of the Common Expenses based upon the relative benefit to the Units from any particular Common Expense. Accordingly, anything herein to the contrary notwithstanding, if a Unit Owner demonstrates by clear and convincing evidence (in an arbitration as provided in this Declaration or agreement of all Owners) that a Common Expense allocation hereunder is materially unfair due to a mistake of the Declarant, changed conditions (other than with respect to the use, or lack of use, of the Units or Common Elements) or based upon the relative benefit to each Unit of the category of Common Expenses, then the arbitrator(s) or Owners, as the case may be, shall have the authority to make such adjustment by prospectively reforming the Declaration. The arbitrator(s) and Owners shall have no jurisdiction to retroactively reallocate past assessments of the Association on such a basis.

10.1.2 Assessments for Common Expenses shall commence upon closing of the first sale of a Unit, provided that Declarant may elect to defer the commencement of assessments for Common Expenses (other than assessments for the Reserve Fund pursuant to the Bylaws) for a period not exceeding sixty (60) days from such closing. Assessments for the Reserve Fund, pursuant to the Bylaws, shall commence upon closing of the first sale of a Unit, subject to the right of Declarant to defer the payment of assessments for the Reserve Fund. Declarant shall give not less than ten (10) days written notice to all Owners of the commencement of all Common Expense assessments. Until the commencement of assessments for all Common Expenses, Declarant shall be responsible for payment of all Common Expenses of the Association (other than assessments for the Reserve Fund).

10.2 No Exception and No Offset.

No Owner may claim exemption from liability for contribution toward the Common Expenses by waiver by the Owner of the use or enjoyment of any of the Common Elements or by abandonment by the Owner of the Owner's Unit. No Owner may claim an offset against assessment for Common Expenses for failure or alleged failure of the Board of Directors to perform its obligations.

11. SERVICE OF PROCESS

The name of the person designated to receive service of process in cases provided in ORS 100.550(1) is named in the Condominium Information Report which has been filed with the Real Estate Agency in accordance with ORS 100.250(1)(a).

12. EASEMENTS

12.1 In General.

Each Owner and the Association will have an easement for reasonable access and use of, in and through each other Unit and the Common Elements, for all utility lines, wiring, heat, plumbing, and other service elements, and for reasonable access required to effectuate and continue proper operation of the Condominium. Each Unit and all Common Elements are specifically subject to the foregoing easement for access and use as required for the utility lines, meters, service boxes, and other equipment serving the Condominium or any Unit. The rights described in this Section may be exercised only upon reasonable notice to the Owner of the other Unit, at such time as is reasonably convenient to the other Owner and in a manner that minimizes any interference with the other Owner's use and enjoyment of the Owner's Unit. The specific mention or reservation of any easement for access and use in this Declaration does not limit or negate the general easement for Common Elements created by the Act. Each Unit Owner shall have an easement over the Common Elements for reasonable ingress to and egress from the Owner's Unit. Such easement shall be perpetual and appurtenant to the Unit ownership.

12.2 Rights Created by Association.

The Association has the authority, pursuant to ORS 100.405(5) of the Act, to create on behalf of the Unit Owners leases, easements, rights of way, licenses and other similar interests affecting the Common Elements and consent to vacation of roadways within and adjacent to the Condominium as provided in ORS 100.405(5); provided, however, that no such interest may be granted with regard to a Limited Common Element unless the Owner and any Mortgagees of the Units having the right to use such Limited Common Elements consent to the creation of such an interest. The granting of a lease affecting the General Common Elements in excess of two (2) years duration, or any other interest or consent pursuant to this Section, shall be done only after the prior approval of the Owners of at least seventy-five percent (75%) of the Units. Nothing in this Section may be deemed to empower the Association to revoke, alter, modify or terminate any leases, easements, rights of way, licenses and similar interests of record on the date this Declaration is recorded.

12.3 Right of Entry.

In addition to the rights granted to the Declarant and the Association elsewhere in this Declaration, the Bylaws, or by the Act, the Board, acting on behalf of the Association, or the Declarant or a manager, or any other person authorized by the Board or the Declarant, shall have the right to enter any Unit: (i) in the case of any emergency originating in or threatening the Unit, Common Elements or other Units; (ii) requiring repairs necessary to protect public safety, whether or not the Owner is present at the time; (iii) for the purpose of performing installations, alterations, or repairs to any Common Element; (iv) to prevent damage to the Common Elements or another Unit; or (v) to inspect the Unit to verify that the Owner is complying with the restrictions and requirements described in the Condominium Documents, *provided that* requests for entry are made in advance and in a manner that minimizes interference with such Owner's use or enjoyment of the Owner's Unit and that such entry is at a time reasonably convenient to the Owner except in the case of an emergency. Neither the Declaration nor the Association shall

be deemed guilty in any manner of trespass for entering a Unit or any portion of the Condominium in accordance with this Section.

12.4 Special Easement and Rights for Declarant.

As more particularly provided in this Section, Declarant, for itself and any successor Declarant, has reserved the following special Declarant rights, in addition to rights Declarant may have reserved elsewhere in this Declaration.

12.4.1 Termination of Declarant Rights. Except as otherwise provided in this Declaration, the special Declarant rights set forth in this Section shall continue for so long as: (i) Declarant is completing improvements which are within or may be added to this Condominium or (ii) Declarant owns any Units, *provided that* Declarant may voluntarily terminate any or all of such rights at any time by recording an amendment to this Declaration, which amendment specifies which right is thereby terminated.

12.4.2 Declarant's Easements. During the period of sale and construction of the Units, Declarant and its agents, successors and assigns have an easement for access and use of, over and upon the Common Elements for the purpose of completing or making improvements and repairs to the Condominium and carrying out marketing activities reasonably necessary for the sale of Units, including, without limitation, the right to post signs on the Common Elements, use the Units owned by the Declarant as model Units and the right to use such model Unit(s) for real estate marketing with respect to the Units or other property. If the Declarant causes damage to the Common Elements in the exercise of the easement granted in this Section, then Declarant must restore the Common Elements, ordinary wear and tear excepted. The Declarant and its agents, contractors or employees may maintain daily hours of exterior Unit construction work from 7:30 A.M. until 5 P.M., Monday through Saturday. The Declarant and its agents, contractors or employees may do interior Unit construction work from 7:30 A.M. until 9:00 P.M., on any day. The Association has no approval right or other power by amendment, rules or otherwise to control, limit, regulate or affect Declarant's design, construction or marketing of Units, which is in Declarant's sole discretion. Declarant in its sole discretion may remove trees and other vegetation for the construction of the Units and any improvements to the Common Elements and burn or chip such vegetation within the Property. By appointment made in advance, Declarant shall have the continuing right, but not the obligation, after the conveyance of each Unit by Declarant, to inspect Owner's Unit and the Common Elements at reasonable times to identify and correct any conditions for which Declarant could potentially be legally or contractually responsible.

12.4.3 Amendments. For so long as Declarant owns a Unit, Declarant shall have the right to approve amendments proposed by the Owners to this Declaration, the Bylaws, the Plat, and the Rules and Regulations.

13. ENCROACHMENTS

13.1 Encroachments in the Condominium.

Each Unit shall have an easement over all adjoining Units and Common Elements for the purpose of accommodating any present or future encroachment as a result of engineering errors,

construction, reconstruction, repairs, settlement, shifting, or other movement of any portion of the Property, or any other similar cause, and any encroachment due to building overhang or projection. There shall be a valid easement for the maintenance of the encroaching Units and Common Elements so long as the encroachment shall exist, and the rights and obligations of Owners shall not be altered in any way by the encroachment.

13.2 Limitation.

The easement described in this Section does not relieve an Owner of liability in case of willful misconduct of an Owner or relieve the Declarant or any contractor, subcontractor or vendor of liability for failure to adhere to the Plat.

13.3 Effect of Marketability.

The encroachments described in this Section shall not be construed to be encumbrances affecting the marketability of title to any Unit.

14. MORTGAGEE PROTECTION

14.1 Controlling Over Other Sections.

In the event of a conflict between this Section and other sections of this Declaration, the provisions of this Section control.

14.2 Notice of Action.

Upon written request to the Association identifying the name and address of any Mortgagee with respect to a Unit and the address of such Unit, the Mortgagee will be entitled to receive written notice of: (a) all meetings of the Association and will be permitted to designate a representative to attend all such meetings; (b) any condemnation loss or any casualty loss which affects a material portion of the Condominium or any Unit on which there is a Mortgage; (c) any delinquency in the payment of assessments or charges owed by an Owner of a Unit on which there is a Mortgage which remains uncured for a period of sixty (60) days; (d) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association at least ten (10) days before such occurs; and (e) any proposed action which would require the consent of the specified percentage of Mortgagees under the Declaration or Bylaws.

14.3 Mortgagee Approval.

For purposes of determining the percentage of Mortgagees approving a proposed decision or course of action in cases where a Mortgagee holds first Mortgages on more than one Unit, such Mortgagee will be deemed a separate Mortgagee as to each such Unit.

14.4 Mortgagee's Consent to Abandon Condominium.

Except with respect to termination of the Condominium as a result of destruction, damage, or condemnation, any termination of the Condominium requires the approval of Mortgagees holding Mortgages on Units having at least seventy-five percent (75%) of the votes

of Units in the Condominium which are subject to Mortgages. Any such termination of the Condominium must be carried out by the Owners pursuant to the provisions of the Declaration, Bylaws, and the Act and only after a vote of the Owners as required herein.

14.5 Amendment of Condominium Declaration or Bylaws.

Subject to any contrary provisions of the Act, except upon the approval of Mortgagees holding Mortgages on Units which have at least fifty-one percent (51%) of the votes of Units in the Condominium which are subject to Mortgages, no amendments may be made to the Declaration or Bylaws which add to or amend any material provision of the Declaration or Bylaws which establish, provide for, govern, or regulate any of the following: (a) voting; (b) assessment, assessment liens, or subordination of liens; (c) percentage ownership in Common Elements, including, but not limited to, the reallocation of interests in the Common Elements after a partial condemnation or partial destruction of the Property; (d) reserves for maintenance, repair, and replacement of the Common Elements; (e) insurance or fidelity bonds; (f) easements of access and use of the Common Elements; (g) responsibility for maintenance and repair of the several portions of the Condominium; (h) expansion or contraction of the Condominium, or the addition, annexation, or withdrawal of real property to or from the Condominium; (i) boundaries of any Unit or the exclusive easement rights appurtenant thereto; (j) conversion of Units into Common Elements or of Elements into Units; (k) leasing of Units; (l) imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey such Owners' Unit; (m) any provisions which are for the express benefit of Mortgagees; (n) the purposes to which any Unit or the Common Elements are restricted; and (o) establishment of self-management by the Association.

14.6 Limitation.

The provisions of Section 14.5 are intended only to be a limitation on the right of the Owners to amend the Declaration and Bylaws. Any such amendments to the Declaration or Bylaws may be made only upon full compliance with the provisions of such relating to the procedure and percentage of votes required for such amendment in addition to Section 14.5.

14.7 Deemed Approval by Mortgagees.

Any Mortgagee who receives a written request to approve an amendment to the Declaration or Bylaws or any other action to be taken by the Board, Association or Owners will be deemed to have given such approval unless such Mortgagee's written objection to such action is delivered to the Association within sixty (60) days after the date of the written request.

14.8 Mortgagee's Proxy.

If the Mortgagee of any Unit determines that the Association is not providing an adequate maintenance, repair and replacement program for the Common Elements, then such Mortgagee, at its option, may deliver a notice to the registered agent of the Association, as required pursuant to ORS 100.550, setting forth the particular defect which it believes exists in the maintenance, repair and replacement program. If the specified defects are not corrected within ninety (90) days subsequent to receipt of such notice, then the Mortgagee, upon written notice to the registered agent that it is exercising its proxy rights hereunder, has the right to attend succeeding

annual or special meetings of the Association and to cast the vote(s) for each Unit on which it holds a Mortgage on all business coming before such meeting, which proxy rights will continue until the defects listed on the notice are corrected.

15. OPERATING ENTITY

15.1 Formation and Authority.

The Trees Condominium Homeowners Association has been organized as a nonprofit mutual benefit corporation to administer the operation and management of the Condominium and to undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation, this Declaration and the Bylaws. Each Owner is entitled to vote in the manner prescribed in the Articles of Incorporation and Bylaws of the Association.

15.2 Duties and Powers of the Association.

The Association has all requisite power, duty and authority to perform its obligations under this Declaration, including without limitation, the power, duty and authority to enforce the provisions of this Declaration and to acquire and pay for, from funds provided by assessments of the Units, all goods and services necessary or appropriate for the proper functioning of the Association in accordance with this Declaration. Without limiting the generality of the foregoing or the other provisions of this Declaration, the Association has the power, duty and authority, subject to other provisions of this Declaration and the Bylaws, to undertake the following actions: (a) determine the amounts necessary or appropriate for the performance by the Association of its powers and duties under this Declaration; (b) impose and collect annual and special assessments from the Owners; (c) maintain bank accounts on behalf of the Association and designate the signatories for those accounts; (d) file all required income tax returns; (e) enforce by legal means the provisions of this Declaration; (f) maintain and repair the Common Elements and the improvements thereon and establish a reserve fund for such purposes; (g) promulgate, modify, and rescind rules and regulations governing use of the Common Elements and all improvements on the foregoing, as well as the Condominium generally; (h) obtain such policies of insurance as the Board may from time to time deem appropriate for the protection of the Association, the Common Elements and the improvements thereon; (i) contract for such services (including without limitation legal and accounting services) as may be necessary or appropriate to manage the affairs of the Association properly and in accordance with this Declaration, whether the personnel performing such services are employed directly by the Association or by a manager or management firm or agent retained by the Association; (j) appoint such committees as the Board may determine from time to time to be appropriate to assist in the conduct of the affairs of the Association and delegate to any such committee such authority as the Board may deem appropriate, subject in all cases to the provisions of the Declaration. Except to the extent expressly stated otherwise in this Declaration or the Bylaws, the Association has the powers set forth in the Act at ORS 100.405(4).

15.3 Rules and Regulations.

The Association may, by a majority vote of the Board, from time to time, adopt, amend, enforce and repeal Rules and Regulations as the Board determines to be necessary or proper for

the operation of the Association. The Rules and Regulations will govern the use of the Units and Common Elements by any Owner, occupant, family member or invitee of an Owner or occupant; provided, however, that the Rules and Regulations may not discriminate among Owners and may not be inconsistent with this Declaration, the Association Articles or the Bylaws. A copy of the Rules and Regulations as they may from time to time be adopted, amended or repealed shall be mailed or otherwise delivered to each Owner. Upon such mailing or delivery, the Rules and Regulations shall have the same force and effect as if set forth in and a part of this Declaration. The Association Rules and Regulations shall not materially change the rights, preferences or privileges of any person or the restrictions on any Unit as herein set forth.

15.4 Control of Association.

The Condominium will be governed by The Trees Condominium Homeowners Association, an Oregon nonprofit corporation. As provided in ORS 100.200(1) and (2), the Declarant may retain administrative control of the Association for a period not exceeding the earlier of (a) three (3) years from the date of conveyance of the first unit to a person other than a successor declarant, (b) conveyance of 50 percent (50%) of the units, or (c) the date on which Declarant elects to relinquish permanently its control. Declarant shall have the right to exercise all powers of the Association, the Board or the Association officers under this Declaration, the Bylaws, and the Act, except that Declarant may not bind the Association to any management agreement, service contract, employment contract, lease of recreational areas or facilities, or contract or lease (other than a ground lease) to which Declarant is a party, which is made prior to the Turnover Meeting unless the Association or the Board is granted therein a right of termination thereof which is exercisable without cause or penalty upon not less than thirty (30) days written notice given to the other party not later than sixty (60) days after the Turnover Meeting. Administrative control of the Association by the Declarant is more particularly set forth in the Bylaws.

15.5 Membership.

Each Owner by virtue of being an Owner and as long as such Owner continues in that capacity shall be a member of the Association. The membership of an Owner terminates automatically upon an Owner being divested of its ownership interest in a Unit and Common Elements. Each membership in the Association is appurtenant to the Unit owned by an Owner and may not be transferred in any manner whatsoever except upon a transfer of title to such Unit and then only to the transferee of such title. Any attempt to make a prohibited transfer of a membership is void.

15.6 Voting.

Each Owner is entitled to one (1) vote per Unit owned. The number of votes per Unit owned is unaffected by the number of persons owning a Unit or the size of a single Unit. An Owner's votes must be voted in single block and may not be split. Except as otherwise provided in Section 14.7, no person, firm or corporation holding any lien, mortgage or other encumbrance upon any Unit is entitled, by virtue of such lien, mortgage or other encumbrance, to membership in the Association, or to any of the rights or privileges of such membership.

15.7 Enforcement Powers.

In addition to any other enforcement rights described in this Declaration and the Bylaws or authorized by law, and subject to any restrictions on the Association's enforcement rights, including any due process requirements imposed by this Declaration, the Bylaws or by law, the Association may take any of the following actions against any person or entity whose act or failure to act violates or threatens to violate any provision of this Declaration, the Bylaws, or Association Rules and Regulations: (a) impose monetary fines of no more than \$100 for the first violation, \$500 for the second violation and \$1,000 for the third violation of the same type; (b) suspend or revoke the qualification of any Occupant for use of the Unit and/or Common Elements; and (c) commence a legal action for damages, injunctive relief, or both. Any remedies specifically provided herein are nonexclusive and cumulative and are in addition to all other legal or equitable remedies available to the Association.

15.8 Enforcement Actions.

The determination of whether to impose any of the foregoing sanctions is within the sole discretion of the Association. The Association may take more than one of the foregoing enforcement actions against any violation or threatened violation. The Association, in its sole discretion, may resolve or settle any dispute, including any legal action, under such terms and conditions as it considers appropriate.

15.9 Suspension of Sanctions.

Except in the event of an emergency threatening the health or safety of the other occupants of the Condominium, the sanctions described above in Section 15.7 may not be imposed until the subject of the sanction has first been given ten (10) days prior notice and opportunity to cure the violation complained of and to be heard orally or in writing by the Board. The notice may be given in any manner reasonably intended to provide actual notice to the subject of the sanctions. The imposition of the sanctions described above in Section 15.7 may be suspended during the pendency of any mediation or arbitration.

16. MANAGING AGENT

16.1 Management and Maintenance Mandatory.

If the Association assumes self-management at any time by the agreement of the Owners, thereafter the Association must resume professional management and appoint a managing agent upon the request of any ten (10) Owners. If the Board fails to appoint a managing agent within thirty (30) days of such a request then the managing agent must be a professional property manager experienced in condominium management firm appointed by and under the supervision of the presiding judge of the Benton County Circuit Court until the Board appoints another qualified managing agent. At least thirty (30) days' notice of any contemplated change in the managing agent must be given to any Mortgagee which has requested notice. Even if the Condominium is self managed, the Association shall engage qualified professional maintenance consultants and contractors to regularly inspect and maintain the Common Elements in the Condominium as reasonably necessary to keep the Condominium well maintained and in good repair. At a minimum, the Condominium shall be inspected and maintained on the following

basis: (a) weekly routine landscaping and ground keeping during the summer growing season and monthly during periods of dormant growth; (b) rain gutter and downspouts and storm water drainage system in October of each year to assure storm water will drain away from the buildings; (c) all other elements shall be inspected and maintained at least annually including but not limited to the landscape irrigation system, tree and shrub pruning, play structures and equipment, roofing, siding, window and door frames, caulking and flashing of all penetrations of the building exterior surfaces, street curbs and gutters, sidewalks, street paving, stairs, decks, patios, fences, gates, retaining walls, foundations, eaves and soffits, etc. Declarant or any Owner shall have the right to specifically enforce these inspection and maintenance requirements and recover from the Association and the other Owners any legal fees and costs incurred in any mediation, arbitration or litigation necessary to specifically enforce these requirements, including any trial and any appeal or review of a trial judgment. Any petition for specific performance of such inspection and maintenance requirements shall not be subject to the normal dispute resolution procedures of this Declaration.

16.2 Initial Managing Agent.

Subject to the rights of the Association or the Board to terminate the managing agent without penalty upon not less than thirty (30) days written notice to the other party given not later than sixty (60) days after the Turnover Meeting specified in the Bylaws of the Association, Declarant intends to appoint Sterling Management as the initial agent to manage the Condominium for a term not to exceed three (3) years. All contracts entered into by the Board for the management of the Condominium must be terminable by advance notice of no more than ninety (90) days without the payment of any penalty. If Declarant enters into a professional management contract prior to the expiration of the period of Declarant Control, the management contract must provide the Association with the right to terminate the contract without cause at any time after the transfer of control to the Unit Owners.

16.3 Scope of Managing Agent Duties.

The Board may delegate to the managing agent responsibility for the following items in addition to any others the Board chooses to delegate:

16.3.1 Operation, care, upkeep and maintenance of the portions of the Condominium that are the responsibility of the Association such as the General Common Elements;

16.3.2 Recommendation to the Board of the amounts required for operation, maintenance and other affairs of the Association, and the preparation of annual budgets for approval by the Board;

16.3.3 Collection of Common Expenses from the Owners;

16.3.4 Purchases for the maintenance, repair, replacement, administration, management and operation of the Condominium which are consistent with Board-approved budgets or specially approved by the Board;

16.3.5 Subject to Board approval, maintain bank accounts on behalf of the Association;

16.3.6 The acquisition of any and all goods and services necessary for the operation of the Condominium or for enforcement of the Declaration and these Bylaws consistent with Board-approved budgets or specially approved by the Board;

16.3.7 Subject to Board approval, maintenance and repair of any elements of a Unit such as its appurtenances and/or its improvements when such maintenance or repair is reasonably necessary in the opinion of the managing agent to protect the Common Elements or preserve the appearance and value of the Condominium and the Owner or Owners of the Unit have failed or refused to perform the maintenance or repair thereof has been delivered by the Board to the Owner or Owners;

16.3.8 Subject to Board approval, the Association will act as attorney-in-fact for the Unit Owners for the purpose of purchasing and maintaining bonds and insurance the Board deems necessary for fire or other hazard, liability for personal injury and property damage, fidelity of Association officers and other employees, and Directors' and Officers' liability, for the Association and the Condominium, including the Units, pursuant to the provisions of the Declaration or Bylaws;

16.3.9 Preparation of financial statements, all appropriate income tax returns and the Annual Report to be filed with the Oregon Real Estate Agency; and

16.3.10 Subject to Board review and approval, enforcement by legal means of the provisions of the Act, the Declaration, Bylaws and any Association Rules and Regulations adopted hereunder.

17. TAXATION OF UNITS

Each Unit, together with the undivided fractional interest in the Common Elements, shall be considered a parcel of real property subject to separate assessment and taxation by any taxing authority in a manner comparable to the taxation of other parcels of real property. The Common Elements shall not be considered a separate parcel for purposes of taxation.

18. AMENDMENT

18.1 Approval Required.

Except as may otherwise be provided in this Declaration or by the Act, this Declaration may be amended if such amendment is approved by the Owners holding at least seventy-five percent (75%) of the voting power of the Association and the consent of the Declarant for so long as Declarant owns a Unit. Except as otherwise provided in the Act, no amendment may change the size, location, allocation of undivided interest in the Common Elements, or method for determining liability for Common Expenses, the method of determining the right to common profits, or the method of determining the voting rights of or with respect to any Unit unless such amendment has been approved by the Owners of the affected Units and the holders of any Mortgages on such Units. The Declarant shall have the power to adopt without a vote of the

Owners an amendment to approve a plat amendment, or to correct any provision or exhibit of this Declaration, whether such correction is required due to a surveyor's error, factual error, miscalculation, omission or 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, 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 condominiums or to comply with the Act. For as long as Declarant owns any unsold Units, the Bylaws, Rules and Regulations, and this Declaration shall not be modified, added to, amended or repealed so as to eliminate, change, or impair any rights, privileges, easements, licenses or exemptions granted therein or herein to Declarant or its designee, or otherwise adversely affect Declarant or such designee, without Declarant's or such designee's prior written consent in each instance.

18.2 **Recordation.**

Amendments to this Declaration shall be effective upon recordation of the Declaration as amended, or of the amendment thereto, certified by the President and Secretary of the Association and approved by the Benton County Assessor and the Oregon Real Estate Commissioner, if required by law, in the deed records of Benton County, Oregon.

19. **TERMINATION**

Termination of the Condominium shall be effected in accordance with Section 100.600 and any other applicable provision of the Act, but in no event shall be consummated, other than in connection with the substantial destruction or condemnation of the Property, without the prior written consent of at least seventy-five percent (75%) of those holders of first Mortgages on Units (based upon one vote for each first Mortgage held) who have given written notice to the Association requesting notification of any proposed action that requires the consent of a specified percentage of eligible Mortgagees. The common profits and expenses of the Property following termination of the Condominium shall be allocated in accordance with the Act.

20. **DISPUTE RESOLUTION**

20.1 Generally. To the fullest extent allowed by law, all claims, controversies, or disputes, whether they are statutory, contractual, and/or tort claims or counterclaims between or among Declarant, Declarant's successors and assigns, the Association, and/or Owner(s) (collectively, the "Parties" and individually, a "Party") which arise out of or are related to the Condominium Act, this Declaration, the Bylaws, the Articles of Incorporation of the Association or the Rules and Regulations, or which relate to the interpretation or breach of the Act, this Declaration or the Bylaws, or the Rules and Regulations (collectively referred to as "Disputes") shall be resolved in accordance with the procedures specified herein.

20.2 Mediation. All Disputes shall be subject to mediation as a condition precedent to arbitration. The request for mediation may be made concurrently with the filing of a demand for arbitration as set forth below, but, in such event, mediation shall proceed in advance of

arbitration, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the Parties. All mediation shall be in Benton County, Oregon with the Arbitration Services of Portland, Inc. (the “ASP”) or other service agreeable to the parties. The foregoing requirement does not apply to circumstances in which irreparable harm to a party will occur due to delay or litigation or an administrative proceeding initiated to collect assessments, other than assessments attributable to fines.

20.3 Small Claims.All Claims that have not been resolved by mediation and which are within the jurisdiction of the Small Claims Department of the Benton County Circuit Court shall be brought and determined there, and all Parties shall be deemed to have waived their right to a jury trial with respect to such claims.

20.4 Arbitration.In the event any Dispute is not settled by mediation as described above, the Dispute must be settled by binding arbitration as provided in herein by a single arbitrator for matters having an economic impact of less than \$200,000.00 and three (3) arbitrators for matters of greater impact. Except as provided in Section 20.7, a Party who fails to submit to binding arbitration following a lawful demand by the other Party must bear all costs and expenses, including reasonable attorney fees, incurred by the other Party in obtaining a stay of any pending judicial proceeding or in compelling arbitration of any Dispute. Failure to seek a stay within 60 days after the service of a complaint shall be deemed a waiver of the right to obtain a stay and arbitrate the dispute. The Association may bring or be made a party to any such arbitration, but may not participate in the selection of the Arbitrator.

20.5 Notice.A Party demanding arbitration of a Dispute must give written notice to the other Parties and in such notice appoint a representative. Within ten (10) business days after delivery of such notice, each other Party must appoint one jointly-agreed upon representative by giving written notice to the original Party. Within ten (10) business days after the appointment of the later selected representative, the representatives so appointed must appoint disinterested arbitrator(s) (individually or collectively the “Arbitrator”), who must be a lawyer specializing in real estate matters with at least fifteen (15) years experience in Oregon. Selection of the Arbitrator is subject to the following:

20.5.1 if the second representative is not appointed within the ten (10) business day period, the first representative may select the Arbitrator; and

20.5.2 if the two representatives appointed by the Parties are unable to agree, within ten (10) business days after the appointment of the second representative, upon the appointment of the Arbitrator, they must give written notice to the Parties of such failure to agree, and, if the Parties fail to agree upon the selection of the Arbitrator within ten (10) business days after the representatives appointed by the Parties give such notice, then either of the Parties may apply to the Circuit Court presiding judge of Benton County, Oregon for a court appointment of such Arbitrator.

20.6 Procedure.The arbitration must be conducted, to the extent consistent with this Section, in accordance with the rules of the ASP. The arbitration must be held in Corvallis, Oregon. Any arbitration proceeding may proceed in the absence of any Parties who, after notice, fail to be present at such arbitration and, in such event, an award may be made based solely upon

the evidence submitted by the Parties who are present. Discovery must be in accordance with the rules applicable to litigation in the Circuit Courts of Oregon. The Arbitrator shall make a record of the evidence and issue a written decision including findings of fact and law, within thirty (30) days after appointment, and deliver counterpart copies of the decision and award to each of the Parties. The arbitrator shall resolve all disputes in accordance with the laws of the state of Oregon. The arbitrator shall have no authority nor jurisdiction to award any damages or any other remedies beyond those which could have been awarded in a court of law if the parties had litigated the claims instead of arbitrating them. Unless otherwise agreed in writing by the Parties or unless this Declaration has been terminated, during the pendency of the Arbitration the Parties must continue to comply with all the terms and provisions of this Declaration that are not the subject of the arbitration proceeding. This agreement to arbitrate is specifically enforceable by any Party. The decision or award rendered by the Arbitrator is final except for mistakes of law by the arbitrator, lack of substantial evidence to support factual findings or other extraordinary errors, which may be appealed to a court of competent jurisdiction. Unless appealed within ten (10) days after the decision is issued, the arbitrator's decision and findings will be binding upon the Parties, and judgment may be entered upon it in accordance with applicable Oregon law in a court of competent jurisdiction.

20.7 Court Jurisdiction. Nothing in this Section may limit the right of the Parties to obtain from any court having jurisdiction (i) a judgment for foreclosure upon any lien granted or created under this Declaration, and (ii) provisional or ancillary remedies such as injunctive relief, attachment, garnishment, or the appointment of a receiver. Such rights may be exercised at any time, except to the extent such action is contrary to a final award or decision in any arbitration proceeding. The institution and maintenance of such an action will not constitute a waiver of the right of the Parties to submit any Dispute under this Declaration to arbitration, nor render inapplicable the compulsory arbitration provisions hereof.

20.8 Fees. Except as otherwise provided in this Declaration, the parties to the mediation and arbitration must equally share the fees and costs incurred by the arbitration service and the Arbitrator in making a decision and award.

20.9 Additional Provisions. The Parties must use reasonable efforts to complete any arbitration in as expeditious a manner as is practicable under the circumstances. The Arbitrator will be empowered to impose sanctions for any Party's failure to do so. Each Party shall keep all disputes and arbitration proceedings strictly confidential, except for the disclosure of information required in the ordinary course of business of the Parties or as required by applicable law or regulation. Any time limitation (such as the statute of limitations or laches) that would bar litigation of a claim will also bar arbitration of a Dispute. Except as specifically provided for in this Declaration or the Bylaws, no party in the arbitration, mediation or other proceeding shall be entitled to recover costs or attorneys' fees in connection therewith.

20.10 Claims by the Association. To the fullest extent allowed by law and except for claims in an amount less than or equal to \$7,500, no claim shall be initiated by the Association without approval from the Owners holding seventy-five percent (75%) of the voting power of the Association. The foregoing limitation shall not apply to actions for delinquent assessments or other charges under this Declaration, the Bylaws or Rules and Regulations, actions to appoint a receiver pursuant to Section 6.1 of the Bylaws; actions to summarily abate and remove a

structure or condition that violates this Declaration or the Bylaws; or for the defense of the Association of an action or proceeding brought against the Association (except for non-mandatory counterclaims).

21. GENERAL PROVISIONS

21.1 Rule Against Perpetuities.

The rule against perpetuities may not be applied to defeat any provisions of this Declaration or the Bylaws or Rules and Regulations.

21.2 Transfer of Declarant's Powers.

Declarant, at any time in the exercise of its sole discretion, may sell, assign, transfer, encumber, or otherwise convey to any person, upon such terms and conditions as Declarant may determine, all of Declarant's rights, powers, privileges, and authority arising hereunder by virtue of Declarant's capacity as Declarant (which rights, powers, privileges, and authority are in addition to those arising from Declarant's ownership of one or more Units).

21.3 No Impairment.

The creation of this Condominium shall not be impaired and title to each Unit and Common Elements shall not be rendered unmarketable or otherwise affected by reason of any insignificant failure of this Declaration or the Plat or any amendment thereto to comply with the Act.

21.4 No Partition.

Except where permitted by the Act, the Common Elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of interest in the Common Elements made without the Unit to which that interest is allocated is void.

21.5 Consents and Approvals.

Except as may be specifically otherwise provided in this Declaration, reference in this Declaration to "approval," "consent" and "satisfactory" may not be interpreted as justifying arbitrary rejection, but rather connote a reasonable application of judgment taking into account long-term property ownership and management practices and commercial customs relating to Class A mixed-use commercial and residential buildings.

21.6 No Waiver of Strict Performance.

The failure of the Board in any one or more instances to insist upon the strict performance of this Declaration or of the Bylaws, or to exercise any right or option contained in such documents, or to serve any notice or to institute any action, shall not be construed as a waiver or relinquishment for the future of such term, covenant, condition, or restriction, but such term, covenant, condition, or restriction shall remain in full force and effect. The receipt by the

Board of any assessment from an Owner with knowledge of any such breach shall not be deemed a waiver of such breach, and no waiver by the Board of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board.

21.7 Liability for Utility Failure.

Except to the extent covered by insurance obtained by the Board pursuant to this Declaration and the Bylaws, neither the Association nor the Board nor Declarant shall be liable for: (i) any failure of any utility or other service to be obtained and paid for by the Board; (ii) injury or damage to person or property caused by the elements, or resulting from electricity, noise, smoke, water, rain (or other liquid), dust, or sand which may leak or flow from the outside or from any parts of Unit structures, or from any of its pipes, drains, conduits, appliances, or equipment, or from any other place; or (iii) inconvenience or discomfort resulting from any action taken to comply with any law, ordinance, or orders of a governmental authority. No diminution or abatement of Common Expense assessments shall be claimed or allowed for any such utility or service failure, or for such injury or damage, or for such inconvenience or discomfort.

22. WARRANTY DISCLAIMER; RELEASES AND WAIVER OF CLAIMS

22.1 Warranty Disclaimer In each Unit Sales Agreement, Declarant, as seller, and each Owner purchasing a Unit from Declarant have contracted for a disclaimer of any warranties express or implied and have waived and released any and all claims with respect to the physical condition of the Condominium. These provisions are incorporated herein by this reference as if fully set forth herein in order to bind all Owners for themselves and their successors and assigns to such provisions. All of the employees and agents of the Declarant are intended third party beneficiaries of these provisions. Any and all claims of Owners against the Declarant, its employees and agents based upon allegations of defective physical conditions in the Condominium shall be subject to this Declaration.

22.2 Release and Waiver of All Future Claims.

AS PART OF THE CONSIDERATION FOR THE UNIT AND TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, EACH OWNER, FOR ITSELF AND ALL SUBSEQUENT OWNERS OF A UNIT, HEREBY WAIVES AND RELINQUISHES ANY AND ALL CLAIMS AGAINST DECLARANT AND ITS AGENTS, SUCCESSORS, EMPLOYEES, AFFILIATES, CONTRACTORS, REPRESENTATIVES, OFFICERS, DIRECTORS, MEMBERS AND PARTNERS, AND AGAINST THE ASSOCIATION AND THE BOARD OF DIRECTORS (COLLECTIVELY, THE "DECLARANT PARTIES"), RELATING TO OR ARISING FROM THE CONDITION OF THE PROPERTY AT ANY TIME. THIS WAIVER IS ABSOLUTE AND UNCONDITIONAL, AND THIS RELEASE AND WAIVER APPLIES WHETHER OR NOT OWNER HAS KNOWLEDGE OF ANY POTENTIAL CAUSE OF ACTION FOR SUCH CLAIMS. THIS WAIVER APPLIES TO CLAIMS UNDER ANY LEGAL THEORY, INCLUDING, BUT NOT LIMITED TO, EXPRESS OR IMPLIED WARRANTIES, NEGLIGENCE, NEGLIGENCE PER SE, NEGLIGENT OR INTENTIONAL MISREPRESENTATION, DEFECTIVE CONSTRUCTION, BREACH OF CONTRACT, UNLAWFUL TRADE PRACTICE, BREACH

OF FIDUCIARY DUTY, STRICT LIABILITY, NUISANCE, TRESPASS OR ANY OTHER THEORY, WHETHER ARISING FROM STATUTE, CONTRACT, TORT OR OTHERWISE. THIS WAIVER INCLUDES, WITHOUT LIMITATION, CLAIMS RELATING TO CONSTRUCTION DEFECTS, WATER INTRUSION, MOLD, MILDEW, FUNGUS AND/OR ODORS IN THE UNIT OR COMMON ELEMENTS; PRODUCTS OR CONDITIONS IN THE UNIT OR COMMON ELEMENTS, INCLUDING, FOR EXAMPLE, CARBON MONOXIDE, RADON OR CARPET GLUE; NOISE OR SOUND TRANSMISSION; LOSS OF USE; EMOTIONAL DISTRESS; INCIDENTAL OR CONSEQUENTIAL DAMAGES; ATTORNEY FEES AND COSTS; OR RELOCATION EXPENSES (TEMPORARY OR OTHERWISE). THIS RELEASE AND WAIVER SHALL BE BINDING UPON OWNER, ALL SUCCESSOR OWNERS OR OCCUPANTS OF THE UNIT, THE ASSOCIATION, AND THEIR RESPECTIVE EMPLOYEES, CONTRACTORS, PROPERTY MANAGERS, BROKERS, HEIRS, SUCCESSORS, ASSIGNS, GUESTS AND INVITEES. OWNER AGREES THAT CLAIMS OF THE ASSOCIATION ARE DERIVATIVE OF CLAIMS OF UNIT OWNERS AND THAT THE ASSOCIATION WILL BE BOUND BY THE FOREGOING WAIVER. THIS WAIVER SHALL ACT AS A COMPLETE BAR AND DEFENSE AGAINST ANY RELEASED OR WAIVED CLAIM. OWNER ACKNOWLEDGES THAT IT HAS READ AND UNDERSTANDS THIS WAIVER AND THAT IT HAS HAD AN OPPORTUNITY TO SEEK AND CONSULT COUNSEL REGARDING THIS WAIVER.

22.3 Personal Property.

Declarant was given no warranty with respect to any appliances, equipment, and other consumer products as defined in the Magnusson-Moss Warranty Act or the Uniform Commercial Code installed in the Unit or Common Elements; tangible personal property which is normally used for personal, family, or household purposes (including any such property intended to be attached to or installed in any real property, without regard to whether it is so attached or installed). Each Owner has agreed in the Unit Sales Agreement for such Owner's Unit that the warranties of appliances and other consumer products installed in the Unit are those of the manufacturer or supplier and are not warranted by Declarant. To the extent assignable, all such manufacturer or supplier warranties have been assigned to Owner, effective on the closing of such Owner's purchase of his or her Unit(s). Declarant has made no representations or guarantees regarding the existence or validity of any manufacturer or supplier warranties or the performance by any manufacturer or supplier of its warranty obligations. With respect to any manufactured products, Owner expressly has assumed the risk, as against Declarant, that such products may be defective. Each Owner warranted in the Unit Sales Agreement for his or her Unit that Owner had adequate opportunity to investigate the condition of the manufactured products, and Owner relied solely on such independent investigation in purchasing the Unit.

22.4 No Other Warranties.

DECLARANT MADE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF HABITABILITY, MERCHANTABILITY, AND/OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTIES REGARDING CONSUMER PRODUCTS AS DEFINED IN THE MAGNUSSON-MOSS WARRANTY ACT OR THE UNIFORM COMMERCIAL CODE, WITH RESPECT TO THE BUILDING, THE UNIT, COMMON ELEMENTS, OR ANY

OTHER PART OF THE CONDOMINIUM OTHER THAN THOSE EXPRESSLY DESCRIBED IN EACH UNIT SALES AGREEMENT. WITHOUT LIMITATION TO THE FOREGOING, AND EXCEPT FOR THE EXPRESS WARRANTY OF EACH UNIT SALES AGREEMENT, DECLARANT MADE NO REPRESENTATION OR WARRANTY REGARDING (I) COMPLIANCE WITH APPLICABLE BUILDING CODES, (II) ACOUSTICS, CONSISTENCY OF FLOOR SLOPE, OR SOUND TRANSFERENCE WITHIN THE CONDOMINIUM, (III) LIGHT, AIR OR VIEW, OR (IV) THE ABILITY OF THE BUILDING ENVELOPE OR ANY COMPONENTS OF THE CONDOMINIUM TO WITHSTAND WATER INTRUSION. DECLARANT MADE NO WARRANTY REGARDING SOUND TRANSMISSION BETWEEN UNITS OR THE LEVEL OR ADEQUACY OF SOUND INSULATION IN A UNIT OR THE COMMON ELEMENTS. THE TERMS OF THE WARRANTIES SET FORTH IN EACH UNIT SALES AGREEMENT SHALL NOT BE EXTENDED BY ANY WARRANTY REPAIR OR REPLACEMENT WORK PERFORMED OR CAUSED TO BE PERFORMED BY DECLARANT OR ITS REPRESENTATIVES. DECLARANT SHALL NOT BE RESPONSIBLE FOR (I) DAMAGE TO THE UNIT, COMMON ELEMENTS, OR THE CONDOMINIUM CAUSED BY THE OWNER, THE ASSOCIATION, OR OTHER PARTIES, WHETHER BY MISUSE OR OTHERWISE, (II) FOR DAMAGE EXACERBATED BY THE OWNER, THE ASSOCIATION, OR OTHER PARTIES, OR ALLOWED BY THE OWNER OR THE ASSOCIATION, (III) FOR ANY MODIFICATIONS TO THE UNIT, COMMON ELEMENTS, OR THE CONDOMINIUM MADE BY PARTIES OTHER THAN DECLARANT, (IV) ANY OTHER ITEMS COVERED BY THE MANUFACTURER'S WARRANTY; OR (V) CONDITIONS OR DEFECTS CAUSED BY OR RESULTING FROM THE FAILURE OF AN OWNER OF THE ASSOCIATION TO PERFORM NORMAL AND ROUTINE MAINTENANCE OF THE UNIT AND COMMON ELEMENTS, AS APPLICABLE.

22.5 Right of Inspection.

By appointment managed in advance, Declarant, its agents and assigns shall have the continuing right, but not the obligation, after the conveyance of each Unit by Declarant to inspect Owner's Unit and the Common Elements at reasonable times to identify and correct any conditions for which Declarant could potentially be responsible under the Unit Sale Agreements or the law.

22.6 Unit Square Footage.

THE SQUARE FOOTAGE AREAS STATED IN THIS DECLARATION AND THE PLAT ARE BASED ON THE BOUNDARIES OF THE UNITS AS DESCRIBED IN THIS DECLARATION AND MAY VARY FROM THE AREA OF UNITS CALCULATED FOR OTHER PURPOSES. For example, Unit square footage may be different from the square footage shown on plans and specifications or advertising brochures, which are based on good faith estimates. Variations in size may be seen even between units having the same floor plan. Each Owner waives any claims relating to variations in the square footage of the Unit which do not exceed five percent (5%) of variation from the square footage shown on plans and specifications or advertising brochures.

22.7 **Model Units.**

Model units and their appurtenances and furnishings are displayed only for illustrative purposes and shall not be deemed to be an agreement or commitment by Declarant to deliver the Unit being purchased by Owner in accordance with any such model unit or with the same or similar appurtenances and furnishings shown in such model Unit. The furnishings, decorations, gas fireplaces, appliance drip pans, custom colors or textures, and other appurtenances and finish work in or to any model unit are not included in the sale of the Units; provided, however, that such items may be included in the sale of a specified model unit if, and only to the extent, the Unit Sale Agreement for that model unit specifically describes appurtenances and furnishings as part of the sale. Unless expressly stated otherwise in the Unit Sale Agreement, Owner is not purchasing a model unit, which has been professionally decorated and furnished.

22.8 **Vegetation.**

Grass, trees and other vegetation, if any, even if remaining at close of purchase of a particular Unit, escrow and occupancy, may not survive and may need to be replaced at the sole expense of the Association. No warranty of quality or survival is given by Declarant with respect to grass, trees and other vegetation. Further, Owners are advised that native trees are often subject to governmental regulation and may not necessarily be removed at will.

22.9 **Sound Transmission.**

It is normal to experience some transmission of sound between condominium units, and on occasion these sounds are heard in normal conditions with typical noise levels. Declarant makes no warranty regarding soundproofing, transmission of sound between units and/or levels or adequacy of sound insulation, and that transmission of sound between units shall not be considered a construction defect. Pursuant to the Unit Sale Agreement, Owner has had ample opportunity to discern to his or her satisfaction the level of sound and sound transmission at the Unit at various times of day, that sound levels may differ over time depending on a variety of factors, and that Owner accepts current and potential future sound levels. The consideration paid to Declarant for the Unit reflects Owner's acceptance of sound transmissions, and Owner acknowledges in the Unit Sale Agreement that Declarant would have required a higher purchase price for any additional sound insulation or any warranties regarding sound.

22.10 **Acoustics, Light, Air and View.**

Declarant makes no representation or warranty regarding the existence of or changes in the level of noise, light, air or view benefiting or burdening the Unit specifically or the Condominium generally. Declarant shall have no liability if the current level of noise, light, air or view affecting the Unit changes due to future developments. As is typical in residential condominiums, the Units are not soundproof and Declarant makes no warranty or representation regarding the degree that exterior sounds will infiltrate the Unit. Unit occupants may hear some degree of noise from the nearby streets, from nearby residences and from nearby common areas. The Association, and not Declarant, will have the responsibility of enforcing rules against disturbing other members of the Association; however, noise occurring outside the Unit may be

audible inside the Unit to some degree. Any removal of the finished flooring or other alterations within the Unit or Condominium may adversely affect the noise levels within the Unit.

22.11 Mold.

Mold is a commonly occurring natural substance that can grow in the Unit and the Common Elements where water infiltration and humidity exist. There is controversy regarding whether and to what extent certain types of mold are toxic to humans. Declarant will not be liable for any property damage or bodily injury suffered by the Unit's occupants and resulting from the presence of mold. Owners are hereby advised to regularly cause the Unit and the Common Elements to be inspected for mold or any other dangerous condition. Owners should take prompt action to remedy underlying water infiltration and humidity conditions that are causing any mold and thereby avoid any possibility of damage or injury from long-term exposure to mold.

22.12 Wood.

Wood flooring is a natural product that normally contains variations in grain and color. Wood is also subject to seasonal expansion and contraction due to humidity level variations resulting in small cracks (less than 1/8 of an inch) that are not a defect and are not warranted against. Owners are advised to carefully follow wood flooring care instructions, because the wrong cleaning and shining methods and materials may damage the floor. Spills of liquids must be removed immediately to avoid wood floor damage. High heel shoes and many other objects will damage wood flooring by scratching or denting it, which is expensive to remedy if not irreparable. Wood floor coverings such as area rugs often result in color variations due to chemical reactions or blockage of sunlight on part of the wood floor.

22.13 Covenants Running with the Land.

The provisions of this Section 22 are intended to touch and concern the Condominium and shall be deemed covenants running with the land or equitable servitudes. Each and every term of this Section shall, to the fullest extent allowed by law, bind each Owner, the Association and each subsequent Owner or transferee of a Unit.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed this
_____ day of _____, 2008.

ADW, L.L.C.,
an Oregon limited liability company

By: _____
Alford Don Ward, Member

By: _____
Kristina Ward, Member

STATE OF OREGON)
)ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____,
2008, by Alford Don Ward, Member of ADW, L.L.C., an Oregon limited liability company.

Notary Public for _____
My Commission Expires _____

STATE OF OREGON)
)ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____,
2008, by Kristina Ward, Member of ADW, L.L.C., an Oregon limited liability company.

Notary Public for _____
My Commission Expires _____

The foregoing Declaration is approved pursuant to ORS 100.110 this ____ day of _____, 2008, and in accordance with ORS 100.110(7), this approval shall automatically expire if this Declaration is not recorded with two (2) years from this date.

Oregon Real Estate Commission

By: _____

Title: _____

The foregoing Declaration is approved this ____ day of _____, 2008.

ASSESSOR AND TAX COLLECTOR
FOR BENTON COUNTY

By: _____

Assessor

By: _____

Tax Collector

EXHIBIT A

Legal Description of Property

That tract of land conveyed to ADW, LLC. by Document No. 2007-429968 of the Benton County Deed Records, being more particularly described as follows:

Lot 14, Block 1, HIGHLAND LAWN ACRES (a subdivision of record in Benton County, Oregon).

ALSO: That portion of a vacated street, as described by M-5938 of the Benton County Deed Records, which inured to Lot 14, Block 1, HIGHLAND LAWN ACRES (a subdivision of record in Benton County, Oregon), and being more particularly described as follows:

Beginning at the Northwest corner of Lot 14, Block 1, HIGHLAND LAWN ACRES (a subdivision of record in Benton County, Oregon); thence North $02^{\circ}48'24''$ West, along the Northerly extension of the West line of said Lot 14, a distance of 1.58 feet to a $5/8''$ iron rod on the Southerly right-of-way line of NW Circle Boulevard; thence along said Southerly right-of-way line, along the arc of a 1064.66 foot radius curve to the left (the long chord of which bears South $85^{\circ}12'46''$ East, 12.02 feet), a distance of 12.02 feet to a 1" copper plug on the North line of said Lot 14; thence South $87^{\circ}14'32''$ West, 11.91 feet to the point of beginning.

EXHIBIT B
BYLAWS
OF
THE TREES CONDOMINIUM HOMEOWNERS ASSOCIATION