APPLICANT SUBMISSION #3
REBUTTAL OF APPELLANT'S NEW ARGUMENTS AND NEW EVIDENCE
(CROOK COUNTY COURT)
PHASE 15 TENTATIVE PLAT
Brasada Ranch
File No. 217-22-000451-PLNG

Applicant:	FNF NV Brasada, LLC Attn: Brent McLean 16986 SW Brasada Ranch Road Powell Butte, Oregon 97753
Agent:	DOWL Attn: Adam Conway 963 SW Simpson Ave., Suite 200 Bend, Oregon 97702
Lawyer:	Brix Law LLP Attn: Laura Craska Cooper 15 SW Colorado Ave., Suite 3 Bend, OR 97702

This submission is in rebuttal to the Appellant's July 25, 2022, letter to the Court, in which it reiterated numerous false claims. Applicant objects to Appellant's submittal because it is not a rebuttal of Applicant's Submission No. 2, which is what the Appellant requested and the County Court agreed to at the hearing in front of the County Court on July 20, 2022. Instead, it was full of new arguments, new claims, new allegations and new evidence. The new claims/objections to the Application should have been raised in the Appellant's appeal paperwork and addressed in front of the Court. For these reasons, it should be disregarded. Nonetheless, the Applicant, in an abundance of caution, addresses these below.

1. Trails

a. Appellant's False Claim #1: "The plain meaning of Condition 15 in context requires the Applicant to show the final location, surfacing, and size of all trails on the preliminary plat and then on the final plat." [Page 1 of Appellant's 43-page rebuttal]

The plain language of Condition 15 of Brasada Ranch's original Development Plan contradicts this claim. The Condition states:

> "The applicant shall provide a detailed depiction of the final location, surfacing, and size of all trails within a phase **prior to preliminary plat approval for each phase** of resort development." *[emphasis added]*

The Applicant agrees with the Planning Commission Decision (May 24, 2022) that the condition does not require trails to be shown on the Applicant's tentative or final plats.

The Applicant respectfully requests that the County Court confirm the

trails are not required on the Applicant's temporary or final plats.

b. **Appellant's False Claim #2: "The Development Plan approval clearly states it applies to "all trails" within a phase – not just those shown on a conceptual plan. Thus, additional trails not shown on the Development Plan may not be constructed without land use approval."** [Page 2 of Appellant's 43-page rebuttal]

The Applicant notes that the only trail currently planned for Phase 15 was shown on the plans submitted as part of the tentative plan process. The Applicant is not proposing to build any other trails in Phase 15. Thus, the Appellant's "objection" or "argument" here makes no sense.

In addition, the Appellant is mistaken in this assertion. Per CCC 18.116.080(3)(a), "the original development plan shall contain the following elements: (vi) Major trail systems." To comply, the Applicant's original Development Plan Application provided a conceptual trail system as Exhibit A (attached as **Exhibit 1**) and the following statement:

> "The Applicant proposes to construct a network of walking, biking, and equestrian trails throughout the resort property. The contemplated location of such trails is set forth on the Development Plan Map. However, the Applicant notes that the trails on the Development Plan Map are conceptual in nature and are subject to modification as each Phase of the resort develops."

Condition No. 15 then only governs the conceptual Major Trial System proposed by the Applicant in the 2003 Development Plan Application. Nothing in the original Development Plan (including nothing in Condition No. 15) limits trails within Brasada Ranch to those shown (1) in the Approved Development Plan or (2) "prior to the preliminary plat." And, except for trails within the 100-year floodplain or on slopes exceeding 25%, no land use permit, building permit, or other approval is required by County Code in order to install trails in Brasada Ranch. Staff confirmed this in the proceedings on remand in front of the Planning Commission.

The Applicant respectfully requests that the County Court confirm that neither the Development Plan Approval nor Crook County Code limits trails within Brasada Ranch to (1) those shown in the Approved Development Plan or (2) those identified "prior to the preliminary plat."

c. **Appellant's False Claim #3: "The common property of the Brasada Ranch HOA cannot be used by non-members without the grant of an easement on the common property because the trails were not platted."** [Page 2 of Appellant's 43-page rebuttal]

To the extent the Appellant is arguing over who may use the trails, this appeal is not the venue. This is an appeal over land use approval for the Phase 15 tentative plat of a destination resort. This process does not determine whether non-members can use common areas; it determines whether the application meets the applicable criteria. The use of common areas (or even trails) by non-

members is not an applicable criterion.

Nonetheless, the Applicant points out that the Resort's overnight guests have been accessing common area trails since they were constructed in the mid-to-late 2000s, and they have been doing so with privilege. Per the Brasada Ranch Declaration, Section 5.7:

> "Any Owner may extend the Owner's right of use and enjoyment of the Common Areas to the members of the Owner's family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases the Owner's Unit shall be deemed to have assigned all such rights to the lessee of such Unit for the period of the lease."

Additionally, if there were any challenges to this privilege, the Brasada Ranch Association Board could put an end to it quickly. Per the Brasada Ranch Declaration, Section 5.6:

> "The rights and easements of enjoyment in the Common Areas created hereby shall be subject to (e) The Board's right to (i) adopt Policies and Procedures regulating use and enjoyment of the Common Areas," and "(v) permit use of any recreational facilities situated on the Common Areas by persons other than Owners, their families, lessees, and guests…"

d. Appellant's False Claim #4: "While any prospective Brasada Ranch owner would understand, from a review of a Brasada Ranch plat, that their prospective property abuts common area, they would also understand that no trail existed or could be built in the open space because the developer failed to obtain approval of any trails in the open space areas prior to preliminary plat approval."
[Page 3 of Appellant's 43-page submittal.]

It is refreshing to hear the Appellant admit that a buyer has the responsibility to complete due diligence before purchasing real estate. Given that this would include the plat, one would assume they would also review the publicly-available Declaration of Covenants, Conditions and Restrictions (CCRs) [Declaration attached as **Exhibit 2**] that govern that plat. Given "any prospective Brasada Ranch owner would understand, from a review of the Brasada Ranch plat, that their property abuts common area," each buyer should have reviewed the meaning of Common Areas and how they may be used and improved. Per the Declaration:

> Section 1.28: "Improvement" means any structure or improvement of any kind, including but not limited to any building, fence, wall, driveway, swimming pool, storage shelter, signage, monumentation or other product of construction efforts on the Residential Areas."
>
> Section 1.50: "Residential Area" means that real property described on the attached Exhibit A" (including Common Areas) "and any Additional Property annexed to this Declaration, **and all existing and future Improvements located thereon** (emphasis added), but excluding any property withdrawn

from the provisions of this Declaration.

Section 2.2.e: "Declarant does not agree to build any specific future Improvement, but does not choose to limit Declarant's right to add additional Improvements."

Section 5.2: "Except as otherwise provided in this Declaration, the Common Areas shall be reserved for the use and enjoyment of all Owners and no private use may be made of the Common Areas."

The Declaration has been of record since June 2, 2005, before any lots within Brasada were sold. Any owner should have known that Common Areas were open to all owners and their tenants and invitees, that the Declarant and the Association could build additional improvements, and that there might be trails installed.

e. While the allegations remain baseless, and we admit absolutely no fault, we must try to end these frivolous delays and move on by appeasing the Coalition. Therefore, we are willing to use whatever land use process is recommended by the County Court or Planning Department to add any trails on common areas that may be developed in time on existing platted common areas.

We've known that this challenge has nothing to do with platting the existing trails in Phase 15, but one that seeks to address prior land use approvals and limit or prevent the Declarant or Association's ability to improve existing Common Areas adjacent to the Coalition member's property.

Page 2 of the Appellant's rebuttal states its primary argument from the beginning: "affected owners are entitled to notice and an opportunity to challenge the creation of trails not shown in the Development Plan Map." In truth, the trails are shown in the original Development Plan Map (attached as **Exhibit 3**). But more importantly, this statement suggests a path forward, which the Appellant seems to reiterate on pages 3 and 4 of its rebuttal: "The Owners' easement rights to use the common area including improvements built in those areas, do not mean that the Declaration authorized the development of common property **without county land use approval** (emphasis added)."

We respectfully ask the Court or Planning Department to agree on which land use process could be used if we propose to add trails to platted common areas in the future. We engaged the entire Community in our last proposed trails and are happy to do so with even more structure.

2. Overnight Lodging Units

We have consolidated the repetitive claims made by the Appellant's legal counsel and the "BR Community Coalition" below.

a. Appellant's Only Accurate Claim: "Not all independently owned cabins in Brasada Ranch participate in the official rental program."

First, the Applicant points out that this claim should be ignored because it was not a basis for the Appellant's appeal. The Appellant may not now, bring up additional ground for appeal outside what was included in its actual appeal.

Nonetheless, the Applicant addresses this point to show that it is irrelevant. Oregon law does not require an owner to use the Resort's rental management program.

ORS 197.435(5)(b) states: "… With respect to lands in eastern Oregon, as defined in ORS 321.805, …. Individually owned units may be considered overnight lodgings if they are available for overnight rental use by the general public for at least 38 weeks per calendar year through a central reservation system operated by the destination resort or by a real estate property manager, as defined in ORS 696.010…."

In other words, an owner need not use the Applicant's rental program, though as the Applicant testified, about three-quarters do. Thus, in addition to being a new claim, this Appellant claim here is wholly irrelevant.

b. Appellant's False Claim #5: "The argument regarding overnight lodging units is not an impermissible collateral attack. Central Oregon LandWatch v. Deschutes County, 285 Or App 267, 396 P3d 968 (2017) (an argument that constructed OLUs did not qualify was not a collateral attack on prior land use decisions that counted units as OLUs in a review for additional Resort development)."

There are two points here: First, the *Landwatch* case does not give Appellant the ability to make a collateral attack. Second, though it should not be necessary to point it out, the facts of the units in *Landwatch* are materially different than in this application.

1. Collateral Attack.

The Appellant is mistaken in using the *Landwatch* case to support its argument. In *Landwatch*, the applicant was seeking to expand an existing resort. The applicant in that case, Pine Forest Development LLC ("Pine Forest"), the developer of the Caldera Springs destination resort, sought to expand the existing, approved resort by adding approximately 490 acres of land and constructing up to 395 additional homes. Before the Court would permit Pine Forest to expand the resort to include NEW land and ADDITIONAL homes, it required that Pine Forest demonstrate that it was in compliance with all applicable standards for a resort:

> "Where, as here, ***a developer proposed an expanded destination resort that is based, in part, on existing ldogings***, for an existing individually owned unit to count as 'overnight lodgings' under the second sentence of ORS 197.435(5)(b), there must be evidence that the unit is in fact separate and rentably separately from other units…." *285 Or App 267,* at p. 294. *[Emphasis added.]*

Note that the Court of Appeals only concluded that the argument was not a collateral attack because there was a proposed "EXPANDED DESTINATION RESORT". In other words, the existing resort is left alone; the Court did not try to change the requirements for the then-existing resort. It did not allow the opponents to try to stop any further buildout of the existing resort. Instead, it inquired as to the validity of the units in the existing resort ONLY BECAUSE OF, AND AS IT RELATED TO, THE PROPOSED EXPANSION.

In this case, the Applicant is NOT proposing an expansion. The Applicant is proposing to build out units that are already part of an approved master plan. No additional units outside the originally approved 900 units are proposed. The Applicant is simply seeking to complete the already-approved Resort consistent with multiple, existing decisions.

The multiple units located within each "Cabin" have already been counted repeatedly by Crook County in multiple decisions, decisions that have been publicly noticed and available. The Applicant has relied upon them.

The County's approval of the existing units as separate OLUs is conclusive, and the Appellant's attempt to void them now is indeed an impermissible, collateral attack on the County's prior decisions. The Appellant could have appealed the prior decisions approving these units as OLUs, including the first phases that relied upon these units to comply with the required ratio. Having failed to appeal in the prior matters, all of which are now long past the applicable appeal period, the Appellant may not now try to attack those previous, final decisions.

For example, in 2006, the County approved an amendment to the Brasada Ranch Final Development Plan [attached as **Exhibit 4**]. That amendment addressed a relocation of a road and the clarification of the number of units. That decision clearly counted each individual unit within a "Cabin" as a separate overnight lodging unit. That decision counted and approved the use of "81 overnight lodging cabins, with 2 to 3 separately rentable, lock-offs per cabin, for an additional minimum of 76 overnight lodging units."

That decision became final, without appeal, on December 13, 2006.

Similarly, in February 2021, the County approved the Phase 14 tentative plat [attached as **Exhibit 5**]. That decision approved Phase 14, counting 243 overnight lodging units, including "91 two, three, and four-bedroom lock-off cabins." The Phase 14 Decision determined that with the existing OLUs, including the 236 contained in the 91 buildings, Brasada Ranch could develop 51 additional lots and remain within the required ratio. Phase 14 was comprised of 51 lots. Thus, in this Phase 15 application, Brasada Ranch will bond for the additional necessary OLUs to maintain the 2.5:1 ratio. Brasada Ranch is currently building 16 OLUs – scheduled to be completed before Summer 2023 – to the R-1 standard. Such OLUs will be built to the standard the County requires when the building permits are submitted.

As with the 2006 amendment, this 2021 decision became final with no appeal.

The Appellant cannot now claim that the units within each cabin should not count. The time to appeal that determination has long passed.

2. Different Facts.

Because the record as it existed on appeal in the *Landwatch* case did not include evidence that Pine Forest could not show that its overnight lodging units were all separately rentable, the Court remanded the decision to the County to require fact-finding on the issue.

In this case, the Appellant has already provided significantly more evidence than Pine Forest did in the *Landwatch* case that the units are separately rentable. However, that was not the basis of appeal by Appellants here. Accordingly, we need not repeat the evidence provided in the Planning Commission hearings and the prior appeal to the County Court.

The Applicant will summarize, however. Pine Forest was unable to show any proof that it was marketing or renting the cabin lock-off units as individual units. The Applicant has provided the County with hundreds of pages of reservation-level data from 2019 through 2021. This data clearly shows that the individual units within the cabins are marketed and rented. The Applicant has stated it can provide the data for 2014 through 2018 but it did not do so given the size of the file.

c. Appellant's False Claim #6: Because 91 cabins, including 236 OLUs, were built to the R-3 standard, the Applicant may only count a cabin as one or a maximum of two OLUs.

As the Applicant testified at the remand hearing before the Planning Commission, the County changed its interpretation of construction for the cabins. The County determined that, going forward, the cabins would need to be constructed to an R-1 standard rather than the R-3 standard that had previously been used. See the May 2, 2019 letter from Assistant Crook County Counsel [attached as **Exhibit 6**]. In the letter, Crook County changed its interpretation of the Oregon Structural Specialty Code (the "OSSC") and informed the Applicant that any **NEW** OLU buildings would need to be constructed to the R-1 building standard.

This change in interpretation of the OSSC does not render the existing, previously approved 91 cabins and 236 deed-restricted OLUs invalid. It simply means that when Brasada Ranch built additional OLUs, they would be processed under the R-1 standard; this is true of 16 OLUs the Applicant is currently building around the Cascade Pool.

Deschutes County acted similarly and provided notice of its pending decision. On July 10, 2017, the County communicated with all its destination resorts that it would "process lock-off units as R-3 provided that construction plans are submitted to the Building Safety Decision by no later than January 2, 2019." After that date, it would process lock-off units as R-1. (attached as **Exhibit 7**).

The Appellant argues that it has a right to attack these units because they

believe the units should have been built to an R-1 standard. For the reasons set forth above, this is an impermissible collateral attack. When the units were first counted, any objection should have been made to those decisions. The units were approved and counted, and the Appellant did not appeal those earlier decisions.

The Appellant's claim that the units should suddenly not count because they do not meet the existing code is also wrong. The Oregon Structural Specialty Code is revised regularly. With new technology and experience, the experts learn new things that can make construction safer. But when the codes are updated or reinterpreted, old buildings do not suddenly become obsolete. They do not have to be taken out of service or immediately retrofitted.

OSSC Section 102.6 states that occupancy of existing structures "shall be permitted to continue without change, except as otherwise specifically provided in this code."

For the reasons set forth in A, B and C above, the Applicant respectfully requests that the County Court finds that the cabin OLUs approved before 2019 and built to the R-3 standard are indeed OLUs.

d. Appellant's False Claim #7: Because the Applicant "applied for Single-Family Residences on each [cabin lot]", and "most cabins contain findings & decisions that include a Conclusion of an "approval for an Overnight Lodging Unit", the Applicant may only count a multi-unit cabin as one OLU.
[Page 6 of Appellant's 43-page rebuttal]

This is another new appeal claim not included in the Appellant's actual appeal. It should be disregarded by the County.

Nonetheless, in an abundance of caution, the Applicant explains why this is incorrect.

The applications that the Appellant is referring to were building permit applications. The land use decisions, as detailed above, described these "cabins" on multiple occasions as having multiple units within them. See the 2006 Amendment and the 2021 Phase 14 tentative plat decisions referenced above and attached as **Exhibits 4** and **5**, respectively.

As provided by the Appellant, the Planning Commission's decisions to approve cabins make it clear the Commission knew it was approving multiple OLUs within each cabin.

> On page 3 of the decision for Lot 244 approving the construction of a three-unit cabin, the Commission states, "[Phase 2] consists of 81 stand-alone lodging units, for a total of 162 units."
>
> On page 4 of the decision for Lot 244, under Conclusionary Findings of Fact, the Commission states, "Units are to be sold subject to a deed restriction that limit their use to overnight lodging units."

In addition, this is another attempt at an impermissible collateral attack on prior decisions of the County. These units have been counted as multi-unit cabins in multiple decisions. To the extent the Appellant wanted to challenge the validity of such units, it should have done so the first time these units were counted for purposes of meeting the required ratio.

e. Appellant's False Claim #8: The "OLU Map Evidence Submitted by Appellant May 11, 2022 is FALSE."

This is another new appeal claim not included in the Appellant's actual appeal. It should be disregarded by the County.

Nonetheless, in an abundance of caution, the Applicant explains why this is incorrect.

The map requested by the Planning Commission and prepared by the Applicant does not include 5-bedroom cabins as the Appellant claims; it includes "5-Guestroom Deed-restricted Units." These are 4-bedroom cabins where the living room is the fifth OLU, including a separate entrance and full bathroom with shower.

f. Appellant's False Claim #9: "Cabins are advertised both as fully rentable and room-by-room rentable to multiple parties. They can no longer be separately counted for OLUs if a family rents the entire cabin."

This is another new appeal claim not included in the Appellant's actual appeal. It should be disregarded by the County.

Nonetheless, in an abundance of caution, the Applicant explains why this is incorrect.

This claim is ludicrous. Hotels worldwide feature connecting rooms. When rented to a group or family, the hotel does not change its available room count or deduct the second, third, fourth, or more connecting rooms reserved and consumed. Indeed, when Tetherow sells two connecting rooms on any given night, Deschutes County does not claim its OLU count has declined by one.

So long as the units are separately rentable (and the Applicant has shown that they are advertised as separately rentable and they have, and continue to be, actually separately rented), they do not have to ALWAYS be separately rented. Lots of families rent more than one unit. Many families and friends travel together and wish to lodge in close proximity to each other. The fact that some groups take more than one unit does not mean that all the units they rent at the same time have to be counted together as one unit for overnight lodging purposes.

CONCLUSION:

For the reasons set forth above, and as provided in the Applicant's prior submissions and testimony, the Applicant respectfully requests that the County

Court reject the Appellant's appeal and affirm the Planning Commission decision.

Exhibit 1

PROPERTY BOUNDARY

25' SETBACK - SINGLE FAMILY DWELLINGS, ROADS, GOLF AND TRAILS

100' SETBACK - VISITOR-ORIENTED LODGING

250' SETBACK - COMMERCIAL USES

PROPOSED COMMERCIAL/RECREATIONAL DEVELOPMENT BOUNDARY

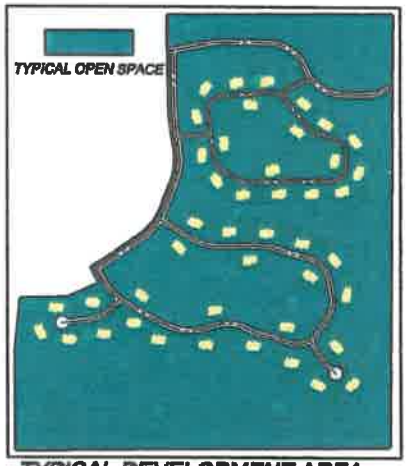
PROPOSED RESIDENTIAL/RECREATIONAL DEVELOPMENT BOUNDARY

PROPOSED MAJOR ROADWAY

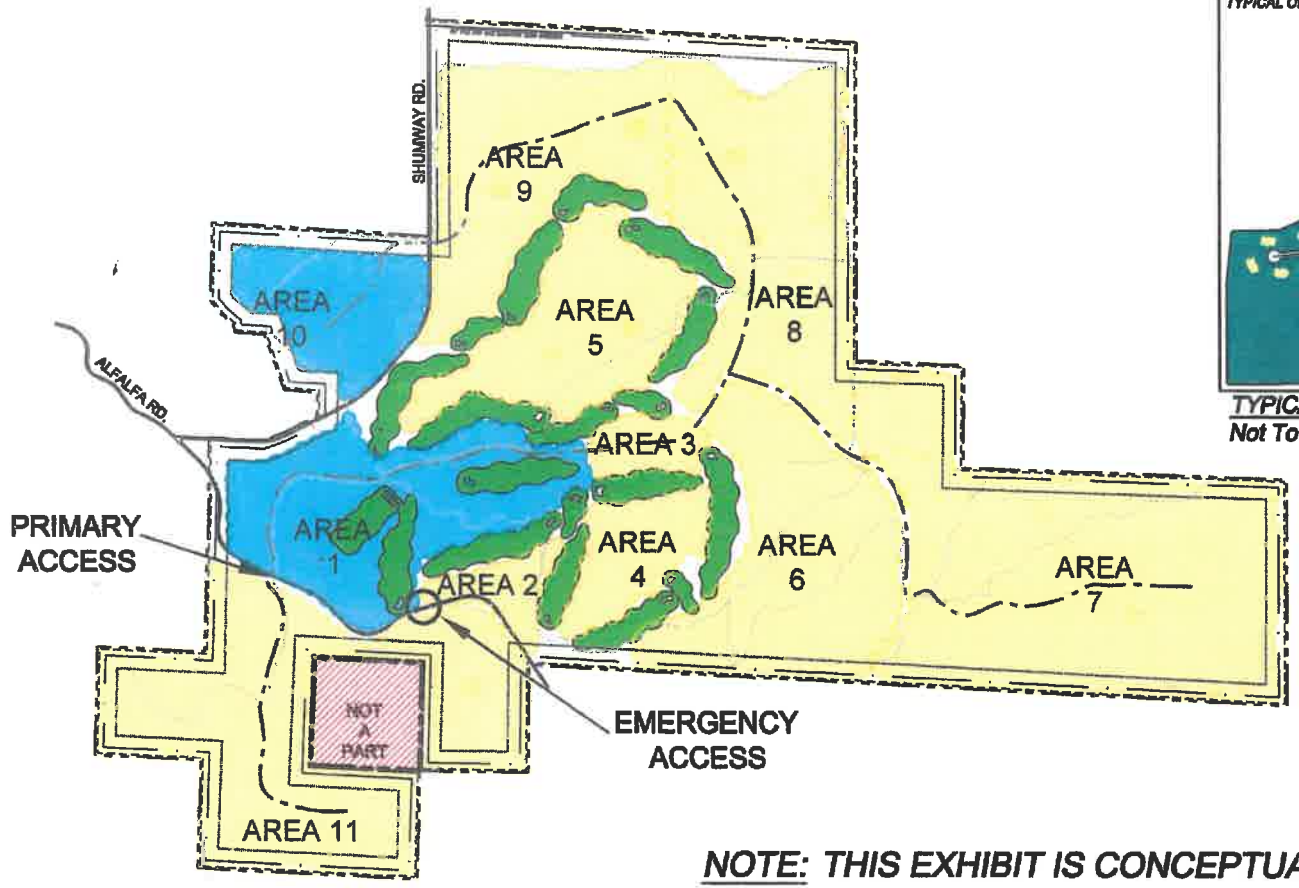
PROPOSED TRAILS

PHASING NOTES:

1. DEVELOPMENT IS EXPECTED TO OCCUR IN NUMEROUS PHASES OVER THE NEXT 10-15 YEARS.
2. THE COMMERCIAL AREA WILL INCLUDE ITEMS FROM THE DEVELOPMENT USES LIST. SEE EXHIBIT ____.
3. VISITOR ORIENTED LODGING MAY BE LOCATED IN VARIOUS AREAS AND/OR COMMERCIAL AREAS. THE RATIO OF INDIVIDUALLY OWNED RESIDENTIAL UNITS TO VISITOR ORIENTED UNITS SHALL NOT EXCEED 2:1.
4. RESIDENTIAL DWELLING UNITS WILL NOT EXCEED A DENSITY OF ONE AND A HALF UNITS/ACRE.
5. ALL RESIDENTIAL COMMERCIAL AND RECREATIONAL FACILITIES WILL BE PHASED. THIS PLAN DENOTES A SCHEMATIC ESTIMATE FOR THE LOCATION, SIZES, USES, AND ORIENTATION. ALL ELEMENTS ARE SUBJECT TO CHANGE WITH FINAL DESIGN AND MARKET DEMAND.
6. DIMENSIONAL STANDARDS SET FORTH IN DRO ZONING ORDINANCE CC20 § 12.040 SUBSECTION J&K, WILL APPLY.



TYPICAL DEVELOPMENT AREA
Not To Scale



N

SCALE
1000 0 500 1000 2000
(FEET)
1 INCH = 1000 FT

NOTE: THIS EXHIBIT IS CONCEPTUAL AND IS SUBJECT TO CHANGE.

EAGLE CREST
CROOK COUNTY
PROPOSED DESTINATION RESORT
DEVELOPMENT PLAN MAP - EXHIBIT A

EXH. 'A'

10

Exhibit 2

Crook County Official Records 2005-200430
DEED-CCR 06/02/05 11:23 AM
Cnt=1 Stn=6 CCOUNTER $501.00
$480.00 $11.00 $10.00
01004833200502004300960962
I, Deanna Berman, County Clerk for Crook County, Oregon, certify that the instrument identified herein was recorded in the Clerk records
Deanna L. Berman

After Recording Return To:
Resort Resources, Inc.
P.O. Box 1466
Bend, Oregon 97709
Attn: Karen Smith

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR BRASADA RANCH RESIDENTIAL AREAS

BRASADA RANCH, INC.

Declarant

(96 pgs)

TABLE OF CONTENTS

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR BRASADA RANCH RESIDENTIAL AREAS

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS ("**Declaration**") is dated for reference purposes June 1, 2005, by **BRASADA RANCH, INC.**, an Oregon corporation, as the owner of all of the Residential Areas currently being subjected to this Declaration ("**Declarant**").

RECITALS

A. Declarant owns certain real property in Crook County, Oregon, which Declarant proposes to develop as a destination resort planned development to be known as "**Brasada Ranch**" pursuant to a Development Plan approved by Crook County, Oregon ("**Development Plan**"). Declarant reserves the right to amend the Development Plan, subject to any approvals required by Crook County or any other applicable governmental authority. Brasada Ranch will be a Class I planned community under the Oregon Planned Community Act, ORS 94.550 to 94.783.

B. A portion of Brasada Ranch referred to herein as the "**Residential Areas**" will be developed for residential purposes pursuant to this Declaration. All owners, tenants, licensees, invitees and mortgagees of property within the Residential Areas of Brasada Ranch shall acquire their respective interests in such property subject to this Declaration, as the same may hereafter be amended. By adoption of this Declaration, Declarant is not committing itself to take any action for which it is not specifically obligated under the express terms of the Development Plan or this Declaration. Any Person who acquires a property interest in the Residential Areas of Brasada Ranch shall have no legal right to insist that there be any particular development of Brasada Ranch except as required by this Declaration, the Development Plan or any recorded instruments annexing areas to Brasada Ranch.

C. Declarant anticipates that Brasada Ranch will include a variety of uses. Such uses may include, without limitation, commercial, retail, residential, lodge, recreational, shared use, fractional fee interest, and other uses as Declarant may determine to be appropriate. Recreational facilities may include facilities for equestrian, golf, swimming, hiking, bicycling, and other uses that are commonly associated with a multi-purpose development such as Brasada Ranch, but Declarant makes no assurances as to the construction or availability of any specific recreational facility. Some recreational facilities, including one or more golf courses, may be privately owned by Declarant or third parties and may be available for use by members only, by the public or both.

D. All property within Brasada Ranch will be subject to a Declaration of Covenants and Easements for Brasada Ranch Community Improvements which will establish and provide for the use, maintenance and operation of those community improvements which are deemed to provide a community-wide benefit to all property and uses within Brasada Ranch.

E. This Declaration establishes covenants, conditions, restrictions and easements for the benefit of the Residential Areas within Brasada Ranch. The first such Residential Areas to be subject to this Declaration are described in the attached Exhibit A. Additional Property may

be annexed to Brasada Ranch in accordance with the provisions of this Declaration. Certain Residential Areas, but only if and when they are described herein or in a Supplemental Declaration, shall be within "**Neighborhoods**" which will either be discreet neighborhoods or share a common type of development.

NOW, THEREFORE, Declarant hereby declares that the Residential Areas described in Exhibit A attached hereto shall be owned, sold, conveyed, leased, encumbered, occupied, improved and used subject to this Declaration, which will run with such property and shall be binding upon all parties having or acquiring any right, title or interest in such property or any part thereof and shall inure to the benefit of each owner thereof and their respective successors and assigns.

Article 1

DEFINITIONS

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

1.1 "**Additional Property**" means any land described on the attached Exhibit B, whether or not owned by Declarant, which is made subject to this Declaration as provided in Section 2.2.

1.2 "**Affiliate**" means any entity which controls, is under the common control with or is controlled by Declarant.

1.3 "**Articles**" means the Articles of Incorporation of the Association.

1.4 "**Assessments**" means all assessments and other charges, fines and fees imposed by the Association on an Owner in accordance with this Declaration, including, without limitation, General Assessments, Neighborhood Assessments, Special Assessments, Emergency Assessments, Limited Common Area Assessments and Individual Assessments as described in Article 11.

1.5 "**Association**" means the Brasada Ranch Residential Owners Association, an Oregon nonprofit corporation to be formed to serve as the owners' association as provided in Article 9, and its successors and assigns.

1.6 "**Board" or "Board of Directors**" means the Board of Directors of the Association.

1.7 "**Brasada Ranch**" means all property now or hereafter made subject to the Community Improvements Declaration.

1.8 "**Bylaws**" means the bylaws of the Association as adopted and amended by the Board from time to time.

1.9 "**Common Areas**" means all real and personal property, including easements, that the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners, subject to use restrictions that may be described herein or in any

Supplemental Declaration. Common Areas shall be designated as such in this Declaration, any Supplemental Declaration, any plat of the Residential Areas, or any conveyance from Declarant to the Association. Common Areas shall include any Improvements thereon, and may be further designated as Public Areas, Restricted Areas, Limited Common Areas, or Neighborhood Common Areas. Common Areas shall also include any Units converted to Common Areas as provided in Section 3.5.

1.10 "**Common Expenses**" shall mean all of the expenses incurred by or on behalf of the Association from time to time including such reserves as the Board may deem appropriate from time to time.

1.11 "**Community Council**" means the Brasada Ranch Community Council established pursuant to the Community Improvements Declaration.

1.12 "**Community Improvements**" means those areas or facilities for which the Community Council has maintenance, insurance, operating, or other responsibility under the Community Improvements Declaration. The Community Improvements shall include, but need not be limited to, all real and personal property which the Community Council owns, leases, or otherwise holds possessory or use rights in for the common use and enjoyment of all owners and occupants within Brasada Ranch.

1.13 "**Community Improvements Declaration**" means the Declaration of Covenants and Easements for Brasada Ranch Community Improvements Recorded on June 6, 2005, as Document No. 2005-20429

1.14 "**Community-Wide Standard**" means the standard of conduct, quality, maintenance and design generally prevalent in the Brasada Ranch Residential Areas. Such standard shall be established initially by Declarant and may contain both objective and subjective elements. The Community-Wide Standard may evolve as development progresses and as the needs and demands of Brasada Ranch or the Residential Areas change.

1.15 "**Condominium**" means any property submitted to the Oregon Condominium Act in the manner provided by ORS Chapter 100, as amended.

1.16 "**Declarant**" means Brasada Ranch, Inc., an Oregon corporation, and its successors and assigns, if a recorded instrument executed by Declarant assigns to the transferee all of the rights reserved to Declarant under this Declaration with respect to all or any portion of the Residential Areas.

1.17 "**Declaration**" means this Declaration of Covenants, Conditions, Restrictions and Easements for Brasada Ranch Residential Areas as the same may be amended or supplemented from time to time in accordance with the provisions hereof.

1.18 "**Design Guidelines**" shall have the meaning given that term in Section 8.3.

1.19 "**Design Review Committee**" means the committee appointed pursuant to Article 8.

1.20 "**Development Period**" means the period of time between the date this Declaration is Recorded and the earliest of (a) when all of the property within the Development Plan has been developed and seventy-five percent (75%) of the Units in the last area to be annexed to this Declaration have been conveyed to Persons other than Declarant or an Affiliate; or (b) when, in its discretion, Declarant so determines, as evidenced by a Recorded document executed by Declarant to that effect.

1.21 "**Development Plan**" means the Development Plan approved by Crook County, as the same may hereafter be amended.

1.22 "**Emergency Assessments**" shall have the meaning given that term in Section 11.3(d) below.

1.23 "**General Assessments**" shall have the meaning given that term in Section 11.3(a).

1.24 "**Golf Course**" means any parcel of land adjacent to, in the vicinity of, or within Brasada Ranch which is privately owned and operated as a golf course by Persons other than the Association, and related and supporting facilities and improvements operated and/or maintained in connection with or incidental to such golf course.

1.25 "**Golf Course Owner**" means the Person owning any Golf Course.

1.26 "**Governing Documents**" means the Development Plan, the Community Improvements Declaration, this Declaration, the Articles of Incorporation, the Bylaws, any Supplemental Declaration and any Policies and Procedures adopted by the Community Council or the Board.

1.27 "**Governmental Authority**" means the County of Crook, the State of Oregon, the United States of America or other governmental entity or agency that has or acquires jurisdiction over the Residential Areas or any portion thereof, or over sales of the Residential Areas, from time to time.

1.28 "**Improvement**" means any structure or improvement of any kind, including but not limited to any building, fence, wall, driveway, swimming pool, storage shelter, signage, monumentation or other product of construction efforts on the Residential Areas.

1.29 "**Individual Assessments**" shall have the meaning given that term in Section 11.3.5.

1.30 "**Initial Development**" means the real property identified in Section 2.1.

1.31 "**Limited Common Area Assessments**" shall have the meaning given that term in Section 11.3(e).

1.32 "**Limited Common Areas**" means those Common Areas that are restricted to the exclusive use of the owners or occupants of certain Units as designated in this Declaration or a Supplemental Declaration.

1.33 "**Mortgage**" means a mortgage, deed of trust or real estate installment sale contract.

1.34 "**Mortgagee**" means a mortgagee under a mortgage, a beneficiary under a deed of trust, or a seller under a real estate installment sale contract.

1.35 "**Neighborhood**" means any area or areas designated by Declarant and comprised of discrete types of development, use or ownership within a portion of the Residential Areas, as established and restricted in this Declaration or a Supplemental Declaration.

1.36 "**Neighborhood Assessments**" means Assessments levied against Units in a specific Neighborhood to fund Neighborhood Expenses pursuant to Section 11.3(b).

1.37 "**Neighborhood Association**" means any association established for a specific Neighborhood pursuant to a Neighborhood Declaration.

1.38 "**Neighborhood Committee**" means a committee appointed or elected for a Neighborhood pursuant to Section 3.4.

1.39 "**Neighborhood Common Area**" means a portion of the Common Areas within a Neighborhood restricted in whole or in part to common use primarily by or for the benefit of the Owners owning Units within the Neighborhood and their families, tenants, employees, guests and invitees.

1.40 "**Neighborhood Declaration**" means a declaration of easements, covenants, conditions and restrictions and all amendments thereto Recorded by an Owner establishing a plan of Condominium ownership, cabin ownership, fractional ownership, shared use ownership, planned unit development, or otherwise imposing use restrictions on Units within a particular Neighborhood.

1.41 "**Neighborhood Expenses**" shall mean the portion of the costs and expenses incurred by the Association in connection with the ownership, administration, management, maintenance, repair, insurance and other activities for Neighborhood Common Areas.

1.42 "**Operations Fund**" shall have the meaning given that term in Section 11.6.

1.43 "**Owner**" means the Person, including Declarant, owning any Unit within the Residential Areas, but, except as otherwise provided below, does not include a tenant or holder of a leasehold interest or a Mortgagee or other Person holding only a security interest in a Unit. If a Unit is sold under a recorded real estate installment sale contract, the purchaser (rather than the seller) will be considered the Owner unless the contract specifically provides to the contrary. If a Unit is subject to a written lease with a term in excess of one year and the lease specifically so provides, then upon filing a copy of the lease with the Board, the lessee (rather than the fee owner) will be considered the Owner during the term of the lease for the purpose of exercising any rights related to such Unit under this Declaration. The rights, obligations and other status of being an Owner commence upon acquisition of the ownership of a Unit and terminate upon disposition of such ownership, but termination of ownership shall not discharge an Owner from its obligations incurred prior to termination.

1.44 "**Person**" means a human being, a corporation, partnership, limited liability company, trustee or other legal entity.

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

1.46 "**Privately Owned Amenity**" shall mean certain real property and any improvements and facilities thereon located within Brasada Ranch, which are privately owned and operated by Persons other than the Association for recreational and related purposes, on a club membership basis or otherwise. The Privately Owned Amenities shall include, but need not be limited to, any Golf Course and may include other facilities.

1.47 "**Public Areas**" means any portion of the Common Areas made available for use on a general or conditional basis by members of the public in any conveyance thereof executed by Declarant, in any plat of the Residential Areas, in this Declaration or in any Supplemental Declaration.

1.48 "**Recorded**" means filed in the official records of Crook County, Oregon.

1.49 "**Reserve Fund**" shall have the meaning given that term in Section 11.7.

1.50 "**Residential Areas**" means that real property described on the attached Exhibit A and any Additional Property annexed to this Declaration, and all existing and future Improvements located thereon, but excluding any property withdrawn from the provisions of this Declaration.

1.51 "**Restricted Areas**" means portions of the Common Areas to which the Owners have limited or no access and which are so designated in any conveyance thereof executed by Declarant, in any plat of the Residential Areas, in this Declaration or any Supplemental Declaration, or by the Declarant or Board.

1.52 "**Shared Use**" shall mean any timeshare, vacation club, right to use, license, undivided or fractional fee interest or other means of acquiring ownership or access to a Unit for a specified period of time to the exclusion of other Persons holding comparable interests in or rights to the same portion of the Unit.

1.53 "**Special Assessments**" shall have the meaning given that term in Section 11.3(c).

1.54 "**Supplemental Declaration**" means an instrument recorded pursuant to Section 2.2 which subjects Additional Property to this Declaration, designates Neighborhoods, and/or imposes, expressly or by reference, additional or different restrictions and obligations on the Additional Property described in such instrument. The term shall also refer to an instrument recorded by Declarant to establish Voting Groups.

1.55 "**Turnover Meeting**" means the meeting called by Declarant pursuant to Section 9.6(e) below, at which Declarant will turn over administration responsibility for the Brasada Ranch Residential Areas to the Association.

1.56 "**Unit**" means a portion of the Residential Areas, whether improved or unimproved, which may be independently owned and is intended for development, use and occupancy as an attached or detached residence. A Privately Owned Amenity is not a Unit for purposes of this Declaration. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. In the case of a building within a condominium or other structure containing multiple dwellings, each dwelling shall be deemed to be a separate Unit. Prior to the recording of a subdivision plan, a parcel of vacant land, or land on which improvements are under construction, shall be deemed to contain the number of Units designated for residential use for such parcel by Declarant in a written notice to the Board and in conformance with the Development Plan.

1.57 "**Voting Group**" means a group of Owners who vote on a common slate for election of directors of the Board, as more particularly described in Section 9.7.

1.58 "**Work**" shall have the meaning given that term in Section 8.4(a).

Article 2

RESIDENTIAL AREAS SUBJECT TO THIS DECLARATION

2.1 **Initial Development**. The portion of the Residential Areas initially made subject to this Declaration is described in the attached Exhibit A and may, but need not, include Neighborhoods, Common Areas, Limited Common Areas, Neighborhood Common Areas, Public Areas, or Restricted Areas.

2.2 **Annexation of Additional Property**. Declarant may from time to time and in its sole discretion annex Additional Property to the Residential Areas. The annexation of such Additional Property shall be accomplished as follows:

(a) Declarant and, if applicable, the owner or owners of such real property, shall execute and Record a Supplemental Declaration that shall, among other things, describe the real property to be annexed, designate the Neighborhood that such addition creates or of which it is a part, if any, establish any additional limitations, uses, restrictions, covenants and conditions that are intended to be applicable to such Additional Property, and declare that such real property is held and shall be held, conveyed, hypothecated, encumbered, used, leased, occupied and improved subject to this Declaration.

(b) The Additional Property described in any such Supplemental Declaration shall thereby become a part of the Residential Areas, shall be subject to this Declaration, and the Association shall have and shall accept and exercise administration of this Declaration with respect to such Additional Property.

(c) Notwithstanding any provision apparently to the contrary, a Supplemental Declaration with respect to any Additional Property may:

(i) modify or exclude any then existing restrictions and establish such new limitations, uses, restrictions, covenants and conditions with respect to such

property as Declarant may deem to be appropriate for the development of the Additional Property; and

(ii) with respect to existing land classifications, modify or exclude any then existing restrictions and establish additional or different limitations, uses, restrictions, covenants and conditions with respect to such property as Declarant may deem to be appropriate for the development of such Additional Property.

(d) There is no limitation on the number of Units which Declarant may create or annex to the Brasada Ranch Residential Areas, except as may be established by a Governmental Authority or by any applicable agreement. Similarly, there is no limitation on the right of Declarant to annex Common Areas, except as may be established by a Governmental Authority.

(e) Declarant does not agree to build any specific future Improvement, but does not choose to limit Declarant's right to add additional Improvements.

(f) Nothing in this Declaration shall establish any duty or obligation on Declarant to annex any property to this Declaration, and no owner of property excluded from this Declaration shall have any right to have such property annexed to this Declaration or Brasada Ranch Residential Areas.

(g) Upon annexation, the Owners of such additional Units shall be entitled to Association voting rights that are consistent with the voting rights of Owners of other portions of the Residential Areas.

(h) The formula to be used for reallocating the Common Expenses, shall be as set forth in Section 11.4.

2.3 **Withdrawal of Residential Areas**. Declarant may withdraw property from the Residential Areas by an amendment to this Declaration executed by Declarant and Recorded. All voting rights otherwise allocated to Units being withdrawn shall be eliminated, and the Common Expenses shall be reallocated to the remaining Units as provided in Section 11.4. Such withdrawal may be accomplished without prior notice and without the consent of any Owner if such withdrawal (a) is of all or a portion of the Residential Areas initially subject to this Declaration or Additional Property annexed pursuant to a Supplemental Declaration at any time prior to the first sale of a Unit in the Residential Areas initially subjected to this Declaration, or in the case of Additional Property, prior to the first sale of a Unit in such property so annexed or (b) if the property to be withdrawn was originally included in error or if the withdrawal is for the purpose of making minor adjustments to boundary lines which do not reduce the total number of Units. In addition, Declarant may withdraw any real property then owned by Declarant or any Common Areas if such withdrawal is a result of any changes in Declarant's plans for the Residential Areas, provided that such withdrawal is approved by a majority of the voting rights in the Association. If a portion of the Residential Areas is withdrawn, all voting rights otherwise allocated to Units being withdrawn shall be eliminated, and the common expenses shall be reallocated as provided in Section 11.4 below.

2.4 **Annexations into Municipalities and Other Governmental Actions**. Declarant reserves the right with respect to all or any portion of the Residential Areas then owned by Declarant, and from time to time, to petition for and obtain rezonings of such property; exchanges of properties; annexations to or incorporations within any boundary or jurisdiction of a Governmental Authority; inclusions within any urban growth area; amendments to the Development Plan; and such licenses, permits and approvals from any Governmental Authority as Declarant may deem to be appropriate from time to time in connection with the then or anticipated use of such portion of the Residential Areas.

2.5 **Dedications**. Declarant reserves the right to dedicate any portions of the Residential Areas then owned by Declarant to any Governmental Authority, quasi-governmental entity or entity qualifying under Section 501(c)(3) of the Internal Revenue Code or similar provisions, from time to time, for such purposes as Declarant may deem to be appropriate, including, without limitation, for utility stations, equipment, fixtures and lines; streets and roads; sidewalks; trails; open space; recreational facilities; schools; fire, police, security, medical and similar services; and such other purposes as Declarant and such Governmental Authority or quasi-governmental entity shall determine to be appropriate from time to time. Any consideration received by Declarant as a result of such dedication, by reason of any condemnation or any conveyance in lieu of condemnation, shall belong solely to Declarant.

Article 3

NEIGHBORHOOD DESIGNATION, LAND CLASSIFICATIONS, CLUB RELATIONSHIP

3.1 **Creation of Neighborhoods**. The Residential Areas may contain one or more Neighborhoods, each of which may contain areas that have common uses, have access to certain Neighborhood Common Areas, are treated similarly for assessment or voting purposes, or share other common characteristics as determined by Declarant. Declarant reserves the right to designate which portions of the Residential Areas shall constitute a Neighborhood. Neighborhoods need not comprise the entirety of the Residential Areas, nor must all Units be part of a Neighborhood. A Neighborhood may be comprised of more than one housing type. Neighborhoods may include noncontiguous parcels of the Residential Areas.

3.2 **Supplemental Declarations**. Declarant reserves the right to record against each of the Neighborhoods, as the same may be from time to time delineated in this Declaration or a Supplemental Declaration, or amendments thereto, additional covenants, conditions, restrictions, and reservations governing, expanding or confining the use of any such Neighborhood, reserving additional easements therein, and imposing Neighborhood Assessments upon the Owners of Units in such Neighborhood for the ongoing operation, maintenance, and repair of Neighborhood Common Areas.

3.3 **Neighborhood Associations**. The establishment of a Neighborhood may be accompanied by the formation of a Neighborhood Association. Neighborhood Associations shall be nonprofit corporations with memberships comprised of the Owners of the Units within such Neighborhoods. Declarant or, subject to Declarant's approval pursuant to Section 14.2, any other Owner of all of the property comprising a Neighborhood may elect to cause any such

Neighborhood Association to be formed for such purposes at any time after the Neighborhood Declaration is recorded and before any Units therein are conveyed to Owners. Following the Development Period, the Owners of Units within a Neighborhood, by majority vote and with the written consent of the Board, may elect to establish a Neighborhood Association. At the time a Neighborhood Association is formed, or at any time thereafter, Declarant or the Board may delegate to the Neighborhood Association certain of their respective rights and obligations with respect to the portion of the Residential Areas located within the Neighborhood and other Common Areas to which members of such Neighborhood have access. Such rights and duties may include, without limitation, the obligation to maintain Neighborhood Common Areas within the Neighborhood; establish and enforce policies and procedures; and hold title to and administer, manage, operate, and insure property and/or easements located within such Neighborhood. Certain obligations and rights with respect to matters affecting more than one Neighborhood may be delegated by Declarant or the Board to two or more of such Neighborhoods.

3.4 **Neighborhood Committees**. With respect to any Neighborhood within Brasada Ranch Residential Areas that does not have a Neighborhood Association, the Board may appoint a Neighborhood Committee composed of three (3) to five (5) Owners of Units within such Neighborhood, which committee shall be responsible for recommending to the Board any Policies and Procedures pertaining to Neighborhood Common Areas, for decisions pertaining to the operation, use, maintenance, repair, replacement or improvement of such Neighborhood Common Areas, and for such other matters pertaining to the Neighborhood as the Board may elect to delegate to the Neighborhood Committee.

3.5 **Conversion of Units into Common Areas**. Declarant may elect to build common facilities on one or more Units and designate such Unit or Units as Common Areas by recording an amendment to this Declaration or by conveying such Units to the Association.

3.6 **Conversion to Different Uses**. Declarant reserves the right to withdraw portions of the Residential Areas from any Neighborhood and its related Supplemental Declaration and may also include the portion so withdrawn in a different Neighborhood pursuant to the provisions of a different Supplemental Declaration. Such withdrawal shall be accomplished by and effective upon recording an amendment to the applicable Supplemental Declaration(s).

3.7 **Subdivisions**. Declarant reserves the right to subdivide any Units then owned by Declarant from time to time upon receiving all required approvals from any Governmental Authority. In the event any two or more Units are so subdivided, they shall be deemed separate Units for the purposes of allocating Assessments under this Declaration. No other Owner of any Unit in the Residential Areas may subdivide any Unit without the prior written approval of the Declarant during the Development Period and thereafter by the Design Review Committee, which consent may be granted or denied at the sole discretion of the Declarant or Design Review Committee, as applicable.

3.8 **Consolidations**. Declarant reserves the right to consolidate any two or more Units then owned by Declarant upon receipt of any required approvals from any applicable Governmental Authority and recording any necessary amendment to this Declaration or the applicable Supplemental Declaration. No other Owner may consolidate any Units without the

prior written approval of the Declarant during the Development Period and thereafter by the Design Review Committee, which may be granted or denied at the sole discretion of the Declarant or Design Review Committee, as applicable. An approved consolidation shall be effected by the Recording of a declaration stating that the affected Units are consolidated, which declaration shall be executed by the Owner(s) of the affected Units and by the president of the Association. Once so consolidated, the consolidated Unit may not thereafter be partitioned nor may the consolidation be revoked except as provided in Section 3.7 above. Any Units consolidated pursuant to this section shall be considered one Unit thereafter for the purposes of this Declaration, including voting rights and allocation of assessments.

3.9 **Condominium Conversions**. Declarant reserves the right to convert any Units then owned by Declarant into a condominium or other form of ownership in any manner permitted by Oregon law and to otherwise create and terminate any condominium containing Units owned solely by Declarant and other Owners who consent thereto.

3.10 **Land Classifications within Initial Development**. The Initial Development contains those land classifications and Neighborhoods as set forth in the attached Exhibit B.

3.11 **Relationship to Brasada Club**. Declarant or others intend to develop a private club (the "Brasada Club" or the "Club") including a golf course together with other facilities to be developed on a portion of property within Brasada Ranch (the "Club Property"). The Brasada Club and the Club Property will be separate and distinct from the Association and the Brasada Ranch Residential Areas, and the Club and related facilities shall be governed by their own rules, regulations and requirements. Each Owner of a Unit shall be a member of the Club, and his or her rights to use the Club Property shall depend upon the membership options that such Owner chooses and the related membership agreements and documents. The Club Property will be privately owned and operated by the Club and is not a part of the Common Area hereunder. Neither the Association nor any Owner shall have any rights in or privileges to the Brasada Club or any of its facilities by virtue of this Declaration or the location of the Club Property. The Club has the exclusive right to determine from time to time, in its sole discretion and without notice or approval of any change, how and by whom the Club Property shall be used. OWNERSHIP OF A UNIT OR MEMBERSHIP IN THE ASSOCIATION DOES NOT GIVE ANY VESTED RIGHT OR EASEMENT, PRESCRIPTIVE OR OTHERWISE, TO USE THE CLUB PROPERTY AND DOES NOT GRANT ANY OWNERSHIP OR MEMBERSHIP INTEREST IN THE CLUB OR THE CLUB PROPERTY.

Article 4

UNITS, MEMBERSHIPS AND FEES

4.1 **Use and Occupancy**. The Owner of a Unit in the Residential Areas shall be entitled to the exclusive use and benefit of such Unit, except as otherwise expressly provided in this Declaration, but the Unit shall be bound by and the Owner shall comply with the restrictions made applicable to such Unit by this Declaration, any Supplemental Declaration or any applicable Neighborhood Declaration.

4.2 **Easements Reserved by Declarant**. In addition to any easements shown on recorded plats, Declarant hereby reserves or grants, as applicable, the following perpetual easements:

(a) **Adjacent Common Areas**. The Owner of any Unit which adjoins any Common Areas shall, if the Association elects from time to time to so require, permit the Association to enter upon the Unit to perform the maintenance of such Common Areas. The Owner and occupant of each Unit shall be responsible for controlling such Owner's or occupant's pets so as to not harm or otherwise disturb persons performing such maintenance on behalf of the Association.

(b) **Utility Easements**. Easements for the benefit of Declarant, the Community Council and/or the Association for installation and maintenance of utilities and drainage facilities are reserved over portions of certain Units and Common Areas as shown on the Recorded plat or as otherwise reserved in any Recorded document. Within the easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage systems, or in drainage infiltration facilities.

(c) **Utility Inspection and Repairs**. Each utility service provider and its agents or employees shall have authority to access all Units, but not Improvements constructed thereon, and the Common Areas, on which communication, power, gas, drainage, sewage or water facilities may be located for the purpose of installing, operating, maintaining, improving or constructing such facilities, reading meters, inspecting the condition of pipes and facilities, and completing repairs. The Owner of any such Unit will be given advance notice if possible. In the case of an emergency, as determined solely by the utility service provider, no prior notice will be required.

(d) **Easements for Encroachments**. Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Areas and between adjacent Units due to the unintentional placement or settling or shifting of the Improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration and the Design Guidelines) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

(e) **Easements for Maintenance, Emergency, and Enforcement**. Declarant grants to the Association easements over the Residential Areas as necessary to enable the Association to fulfill its maintenance responsibilities. The Association shall also have the right, but not the obligation, to enter upon any Unit (including any dwelling thereon) for emergency, security, and safety reasons, to perform maintenance and to enter any portion of the Unit other than the dwelling located thereon to inspect for the purpose of ensuring compliance with and enforce the Governing Documents. Such right may be exercised by any member of the Board, any duly authorized agents and assignees of the Association, or any member or duly authorized

representative of the Design Review Committee and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

(f) **Rights to Storm Water Runoff and Water Reclamation**. Declarant reserves for itself, and its designees, which may include any Golf Course Owner, all rights to ground water, surface water, and storm water runoff within the Residential Areas, and each Owner agrees, by acceptance of a deed to a Unit, that Declarant shall have all such rights. Such rights shall include an easement over the Residential Areas for access, and for installation and maintenance of facilities and equipment to capture and transport such water and runoff.

(g) **Future Easements**. Declarant reserves the non-exclusive right and power to grant and record such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the development of any of the Residential Areas. The location of any such easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed or conditioned.

4.3 **Membership and Sales of Units.**

(a) **Membership and Sales of Units**. No Unit within the Residential Areas may be sold or transferred to any person, person(s) or entity (collectively, the "Transferee") unless and until such Transferee has been approved for membership in the Brasada Club and complies with all applicable requirements related thereto, including payment of all applicable membership fees and/or dues. The foregoing requirement shall not apply to institutional lenders who assume title to a Unit through foreclosure of a mortgage or trust deed on such Unit, but shall apply to any Transferee of such institutional lender. The Brasada Club is a private club, which shall approve or disapprove potential Transferees in its sole and absolute discretion. There shall be no appeal of a denial of membership to a potential Transferee except as may be established by the Brasada Club from time to time in its sole and absolute discretion. Each Transferee shall be bound by the terms and conditions of membership in the Brasada Club, including all fees, dues, rules and regulations established by the Brasada Club as the same may be amended from time to time in the sole and absolute discretion of the Brasada Club.

(b) **Membership Terms**. Each Owner, by acceptance of a deed or recorded contract of sale to a Unit acknowledges that privileges to use any property owned or operated by the Club shall be subject to the terms and conditions of the membership documents for Brasada Club, as the same may be amended from time to time (the "Membership Plan Documents"). All Owners (excluding the Declarant) approved for membership must acquire and maintain in good standing at least an "Athletic Membership" in Brasada Club as described in the Membership Plan Documents. Acquisition of a membership in the Club requires the payment of a membership purchase price called a membership deposit, and membership dues, fees and other amounts. The Club owner, as set forth in the Membership Plan Documents, shall determine these amounts for Brasada Club. Notwithstanding the fact that the Club Property is open space or a recreation area for purposes of applicable zoning ordinances and regulations, each Owner by acquisition of title to a Unit releases and discharges forever the Declarant, the Club, their affiliates, successors and assigns and their respective members, partners, shareholders, officers, directors, employees and agents from: (1) any claim that the Club Property is, or must be, owned and/or operated by the

Association or the Owners, and/or (2) any claim that the Owners are entitled to use the Club Property by virtue of their ownership of a Unit without acquiring a membership in the Club, paying the applicable membership deposit and dues, fees and charges established by the Club from time to time, and complying with the terms and conditions of the Membership Plan Documents for the Club.

4.4 **Transfer Fee**. At the time of closing the sale of each Unit within the Residential Areas, each seller of a Unit (excluding Declarant) shall be subject to a transfer fee (the "Transfer Fee") in the amount of one-quarter percent (0.25%) of the gross sales price of such Unit which shall be payable to the Brasada Ranch Community Enhancement Fund (the "Fund") or such other non-profit corporation as may be designated by Declarant prior to the Turnover Meeting for the purpose of creating and providing activities, services and programs for the common good of Brasada Ranch and surrounding areas. The Transfer Fee shall be paid out of escrow at closing. The Transfer Fee shall not apply to the initial sale by Declarant, but shall apply to all subsequent re-sales or transfers of each Unit within the Residential Areas except: (a) sales by a commercial builder following development of a Unit, (b) sales or transfers to a co-owner of the Unit, (c) sales or transfers to a family trust or partnership controlled by the transferring Owner, (d) transfer by gift, devise or inheritance, (e) transfers to an entity owned or controlled by the transferring Owner, and (f) transfers to a institutional lender acquiring the Unit pursuant to foreclosure or deed in lieu of foreclosure; provided, however, that in each such case any non-exempt subsequent transfer shall be subject to the Transfer Fee. In the event that the Brasada Ranch Community Enhancement Fund shall ever cease to exist, the Transfer Fee shall be paid to a non-profit corporation designated by Declarant before the Turnover Meeting or by the Board after the Turnover Meeting. The Fund is not a third-party beneficiary hereof and shall have no rights of enforcement for payment of the Transfer Fee in any case.

Article 5
COMMON AREAS

5.1 **Title to Common Areas**. Except for the portions thereof dedicated to the public or any Governmental Authority, title to the Common Areas (other than easements) shall be conveyed to and shall be accepted by the Association by Declarant AS IS, but free and clear of monetary liens (except for nondelinquent taxes and assessments) on or before the Turnover Meeting.

5.2 **Use of Common Areas**. The Common Areas shall not be partitioned or otherwise divided into parcels for residential use, and no private structure of any type (except utility or similar facilities permitted by Declarant or the Association) shall be constructed on the Common Areas. Except as otherwise provided in this Declaration, the Common Areas shall be reserved for the use and enjoyment of all Owners and no private use may be made of the Common Areas. No Owner shall place or cause to be placed on the Common Areas any trash, structure, equipment, furniture, package or object of any kind. Nothing in this Declaration shall prevent the placing of a sign or signs upon the Common Areas by Declarant or the Association identifying the Residential Areas or any Neighborhood or identifying trails or identifying items of interest, including traffic and directional signs, provided such signs are approved by the Design Review Committee and comply with any applicable sign ordinances. The Board shall have authority to abate or enjoin any trespass or encroachment upon the Common Areas at any

time, by any reasonable means and with or without having to bring legal proceedings. A Supplemental Declaration annexing Additional Property may provide that the Owners of such Additional Property do not have the right to use a particular Common Area or facility located on such Common Area, in which event the same shall automatically become Limited Common Areas assigned to the Units having access thereto as described in such Supplemental Declaration.

5.3 **Easements Retained by Declarant**. So long as Declarant owns any Unit, Declarant shall retain an easement over, under and across the Common Areas to carry out management, sales and rental activities necessary or convenient for the sale or rental of Units, including, without limitation, advertising and "For Sale" signs. Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under and across the Common Areas and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the Improvements on the Residential Areas or other real property owned by Declarant or an Affiliate thereof; provided, however, that no such rights shall be exercised by Declarant in such a way as to unreasonably interfere with the occupancy, use, enjoyment or access to a Unit by the Owner thereof or such Owner's family, tenants, employees, guests or invitees.

5.4 **Easement to Serve Other Residential Areas**. Declarant reserves for itself and its duly authorized agents, successors, assigns, and mortgagees, and the developers of Improvements in all future phases of Brasada Ranch, a perpetual easement over the Common Areas for the purposes of enjoyment, use, access, and development of the property subject to the Development Plan, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Areas for construction, utilities, water and sanitary sewer lines, communication lines, drainage facilities, irrigation systems, signs and ingress and egress for the benefit of other portions of Brasada Ranch and any Additional Property that becomes subject to this Declaration or any property in the vicinity of the Residential Areas or additional property that is then owned by Declarant or an Affiliate thereof. Declarant agrees that such users shall be responsible for any damage caused to the Common Areas as a result of their actions in connection with development of such property. If the easement is exercised for permanent use by such property and such property or any portion thereof benefiting from such easement is not made subject to this Declaration, Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of any maintenance of such facilities. The allocation of costs in any such agreement shall be based on the relative extent of use of such facilities.

5.5 **Owners' Easements**. Subject to provisions of this Article, and except for the Restricted Areas, every Owner and the Owner's tenants and guests shall have a right and easement in and to the Common Areas for the uses for which they are established, which easement shall be appurtenant to and shall pass with the title to every Unit. The use of Limited Common Areas, however, shall be limited to the Owners of the Units to which the Limited Common Areas are assigned in this Declaration or any applicable Supplemental Declaration and their respective tenants, invitees and licensees.

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

(a) The Governing Documents;

(b) Any restrictions or limitations contained in any deed or other instrument conveying such property to the Association;

(c) Easements reserved to Declarant for itself and the Association for underground installation and maintenance of power, gas, electric, water and other utility and communication lines and services installed by or with the consent of Declarant or with the approval of the Board and any such easement shown on any plat of the Residential Areas and for construction, maintenance, repair and use of Common Areas and any Improvements thereon;

(d) Easements granted by Declarant or the Association to Governmental Authorities or companies providing utility and communications services and to police, fire and other public officials and to employees of utility companies and communications companies serving the Residential Areas;

(e) The Board's right to:

(i) adopt Policies and Procedures regulating use and enjoyment of the Common Areas, including rules limiting the number of guests who may use the Common Areas;

(ii) suspend the right of an Owner to use recreational facilities within the Common Areas as provided in this Declaration;

(iii) dedicate or transfer all or any part of the Common Areas, subject to such approval requirements as may be set forth in this Declaration;

(iv) impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon the Common Areas;

(v) permit use of any recreational facilities situated on the Common Areas by persons other than Owners, their families, lessees, and guests with or without payment of use fees established by the Board;

(vi) designate areas and facilities of Common Areas as Public Areas or Restricted Areas; and

(vii) provide certain Owners the rights to the exclusive use of those portions of the Common Areas designated Limited Common Areas or Neighborhood Common Areas.

5.7 **Enjoyment of Owners' Rights.** Any Owner may extend the Owner's right of use and enjoyment of the Common Areas to the members of the Owner's family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases the Owner's Unit shall be deemed to have assigned all such rights to the lessee of such Unit for the period of the lease.

5.8 **Alienation of the Common Areas**. The Association may not encumber, sell or transfer title to the Common Areas owned directly or indirectly by the Association for the benefit of the Owners unless such encumbrance, sale or transfer has been approved by at least eighty percent (80%) of the Class A voting rights and the Class B Member. Such approvals shall not be required for the granting of easements as otherwise permitted in this Declaration.

5.9 **Community Improvements**. Portions of the Brasada Ranch may be designated as Community Improvements. The use, maintenance and operation of the Community Improvements shall be governed by the Community Improvements Declaration.

5.10 **Public, Recreational or Service Areas**. Declarant, at the time Declarant designates Common Areas or conveys Common Areas to the Association, or thereafter the Association, may designate certain portions of such Common Areas as Public Areas which may be used by members of the public on a free or on a fee-paying basis as set forth in such designation or conveyance or as determined by the Board. Owners shall be permitted to use such Public Areas either on a free basis or for fees that are no higher than those charged to members of the public for an equivalent use or service, as determined solely by the Association. Any proceeds from such Public Areas shall be paid to the Association.

5.11 **Open Space Areas**. Any portion of the Residential Areas designated as open space on any plat or in this Declaration is reserved as open space which, except as otherwise shown on the Development Plan, shall be free of Improvements.

5.12 **Restricted Areas**. Declarant or the Association shall have the right from time to time to designate portions of the Common Areas that may not be entered or used by any of the Owners other than Declarant and the Association or such of their respective agents or representatives as may be reasonably required for their preservation, care, maintenance or renewal, to enforce these restrictions, or for such other limited purposes that are permitted by Declarant or the Board. Restricted Areas may include environmentally or historically sensitive areas, riparian corridors, wetlands, and other areas Declarant or Board desire to preserve in their natural state or otherwise preserve for the protection of wildlife, personal safety, security or other mutually beneficial purposes. The Restricted Areas may be removed, enlarged or reduced or other portions of the Residential Areas may be added to the Restricted Areas by Declarant or the Board from time to time to the extent reasonably necessary to achieve such purposes.

5.13 **Easements**. Easements may be reserved as part of the Common Areas for signage and visual landscape features, or as otherwise provided in the Supplemental Declaration or other instrument establishing the easement. Such easements are to be maintained by the Association and no changes in landscaping will be permitted without written authorization by the Design Review Committee. No building, wall, fence, paving, landscaping or construction of any type shall be erected or maintained by any Owner so as to trespass or encroach upon easements included in the Common Areas.

5.14 **Limited Common Areas**.

(a) **Purpose**. Certain portions of the Common Areas may be designated by Declarant or the Association as Limited Common Areas and reserved for the exclusive use or

primary benefit of Owners and occupants of specified Units. By way of illustration and not limitation, Limited Common Areas may include private access roads serving certain Units. All costs associated with maintenance, repair, replacement, and insurance of Limited Common Areas shall be allocated among the Owners of the Units to which the Limited Common Areas are assigned.

(b) **Initial Designation**. Limited Common Areas may be designated as such in the instrument by which they are conveyed to the Association or in any Supplemental Declaration annexing Additional Property to this Declaration, but any such assignment shall not preclude Declarant from later assigning use of the same Limited Common Areas to additional Units.

(c) **Subsequent Assignments**. Limited Common Areas may be converted to Common Areas and Limited Common Areas may be reassigned upon (i) approval by the Board and (ii) the vote of two-thirds of the voting rights of Units to whom any of such Limited Common Areas are then assigned. Any such conversion or reassignment shall also require Declarant's written consent if made during the Development Period.

(d) **Use by Others**. Upon approval of a majority of the voting rights of Owners of Units to which any Limited Common Area is assigned, the Association may permit other Owners to use all or a portion of such Limited Common Area upon payment of reasonable user fees, which fees shall be used to offset the expenses attributable to such Limited Common Area.

5.15 **Neighborhood Common Areas**.

(a) **Purpose**. Certain portions of the Common Areas may be designated by Declarant or the Association as Neighborhood Common Areas and reserved for the exclusive use or primary benefit of Owners and occupants within a particular Neighborhood or Neighborhoods. By way of illustration and not limitation, Neighborhood Common Areas may include entry features, recreational facilities, landscaped medians and cul-de-sacs, lakes, community gardens or open space. All costs associated with maintenance, repair, replacement, and insurance of Neighborhood Common Areas shall be a Neighborhood Expense allocated among the Owners in the Neighborhood(s) to which the Neighborhood Common Areas are assigned.

(b) **Initial Designation**. Any Neighborhood Common Areas shall be designated as such in the instrument by which they are conveyed to the Association or in any applicable Supplemental Declaration but any such assignment shall not preclude Declarant from later assigning use of the same Neighborhood Common Areas to additional Neighborhoods.

(c) **Subsequent Assignments**. A portion of the Common Areas may be assigned as Neighborhood Common Areas and Neighborhood Common Areas may be reassigned upon (i) approval by the Board, (ii) the vote of a majority of the votes in the Neighborhood or Neighborhoods in which such Common Areas are and will be located, if any, and (iii) for reassignments of Neighborhood Common Areas or conversion of Neighborhood Common Areas to Common Areas, the vote of two-thirds of the voting rights of Units to whom

any of such Neighborhood Common Areas are then assigned. Any such assignment or reassignment shall also require Declarant's written consent if made during the Development Period.

(d) **Use by Others**. Upon approval of a majority of the voting rights of Owners of Units within the Neighborhood to which any Neighborhood Common Areas is assigned, the Association may permit Owners of Units in other Neighborhoods to use all or a portion of such Neighborhood Common Areas upon payment of reasonable user fees, which fees shall be used to offset the Neighborhood Expenses attributable to such Neighborhood Common Areas.

5.16 **Easements for Lot A**. Lot A shall be entitled to an easement over all Common Area roadways (including gate access) and over Lot B for ingress and egress access to and from such lot for purposes of operating, maintaining, repairing and replacing a water reservoir on such lot.

Article 6

PRIVATELY OWNED AMENITIES

6.1 **General**. Portions of Brasada Ranch may be a Privately Owned Amenity that is privately owned and used by their respective owners for commercial or other purposes, such as, without limitation, Golf Courses, equestrian areas and stables, sports or recreational facilities, and private clubs. Neither membership in the Association nor any Neighborhood Association nor ownership or occupancy of a Unit shall confer any ownership interest in or right to use any Privately Owned Amenity. Rights to use the Privately Owned Amenities will be granted only to such Persons, and on such terms and conditions, as may be determined from time to time by the respective owners of the Privately Owned Amenities. The owners of the Privately Owned Amenities shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of their respective Privately Owned Amenities, including, without limitation, eligibility for and duration of use rights, categories of use, and extent of use privileges, and number of users, and shall also have the right to reserve use rights and to terminate use rights altogether, subject to the terms of any written agreements with their respective members.

6.2 **View Impairment**. Declarant, the Association, or the owner of any Privately Owned Amenity, does not guarantee or represent that any view over and across any Privately Owned Amenity from a Unit adjacent to the Privately Owned Amenity will be preserved without impairment. Owners of Privately Owned Amenities, if any, shall have no obligation to prune or thin trees or other landscaping, and shall have the right, in their sole and absolute discretion, to add trees and other landscaping to the Privately Owned Amenities from time to time. In addition, any Golf Course Owner, may, in its sole and absolute discretion, change the location, configuration, size and elevation of the tees, bunkers, fairways, and greens from time to time. Any such additions or changes may diminish or obstruct any view from a Unit, and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

6.3 **Rights of Access and Parking**. There is hereby granted for the benefit of each Privately Owned Amenity and their members (regardless of whether such members are Owners hereunder), guests, invitees, employees, agents, contractors, and designees, a right and nonexclusive easement of access and use over all roadways located within the Residential Areas reasonably necessary to travel between the entrance to the Residential Areas and the Privately Owned Amenity and over those portions of the Residential Areas (whether Common Areas or otherwise) reasonably necessary to the operation, maintenance, repair, and replacement of the Privately Owned Amenity. Without limiting the generality of the foregoing, members of the Privately Owned Amenity and guests and invitees of the Privately Owned Amenity shall have the right to park their vehicles on the roadways located within the Residential Areas at reasonable times before, during, and after golf tournaments and other special functions held by or at the Privately Owned Amenity to the extent that the Privately Owned Amenity has insufficient parking to accommodate such vehicles; provided, however, such roadways must be kept free and clear of all obstructions and in a safe condition for vehicular use at all times.

6.4 **Design Control**. Declarant, the Association, any Neighborhood Association, or any Design Review Committee, shall not approve any construction, addition, alteration, change, or installation on or to any portion of the Residential Areas which is adjacent to, or otherwise in the direct line of sight of, any Privately Owned Amenity without (i) giving the Owner of the Privately Owned Amenity at least fifteen (15) days prior written notice of its intent to approve the same, together with copies of the request and all other documents and information finally submitted in such regard and (ii) receiving approval from the Owner of the Privately Owned Amenity. The Owner of the Privately Owned Amenity shall then have fifteen (15) days to respond in writing approving or disapproving the proposal, stating in detail the reasons for any disapproval. The failure of the Owner of the Privately Owned Amenity to respond to the notice within the fifteen (15) day period shall constitute a waiver of such Owner's right to object to the matter. This section shall also apply to any work on the Common Area or any Neighborhood Common Area, but shall not apply to any construction, addition, alteration, change or installation by Declarant. This section may not be amended in a manner which would adversely affect the rights of the Owner of any Privately Owned Amenity without such Owner's written consent.

6.5 **Limitation on Amendments**. In recognition of the fact that the provisions of this Article are for the benefit of the Privately Owned Amenities, no amendment to this Article, and no amendment in derogation of any other provisions of this Declaration benefiting any Privately Owned Amenity, may be made without the written approval of the affected Privately Owned Amenity. The foregoing shall not apply, however, to amendments made by Declarant in exercising any rights reserved under this Declaration.

6.6 **Ownership and Operation of Privately Owned Amenities**. All Persons, including all Owners, are hereby advised that no representations or warranties have been or are made by Declarant or any other Person with regard to the continuing existence, ownership or operation of any Privately Owned Amenity, including, without limitation, any Golf Course, and no purported representation or warranty in such regard, either written or oral, shall ever be effective without an amendment to this Declaration executed or joined into by Declarant. Further, the ownership and/or operation of any Privately Owned Amenity, if any, may change at any time and from time to time by virtue of, but without limitation, (a) the sale to or assumption of operations of the Privately Owned Amenity by an independent entity or entities; (b) the

creation or conversion of the ownership and/or operating structure of the Privately Owned Amenity to an "equity" club or similar arrangement whereby the Privately Owned Amenity or the rights to operate it are transferred to an entity which is owned or controlled by its members; or (c) the transfer of ownership or control of the Privately Owned Amenity to one or more affiliates, shareholders, employees, or independent contractors of Declarant. Declarant may cause any Privately Owned Amenity to initially be public or private, to convert any public Privately Owned Amenity to a private Privately Owned Amenity available to specified members only, and to convert any private Privately Owned Amenity to a public Privately Owned Amenity with the approval of the requisite number of the Privately Owned Amenity members pursuant to the Governing Documents for the Privately Owned Amenity. No consent of the Association or any Owner shall be required to effectuate such transfer or conversion.

6.7 **Additional Restrictions**. Declarant hereby reserves for itself and grants for the benefit of any Owner of any Privately Owned Amenity the easements set forth in this Article. Declarant reserves the right to impose such additional restrictions relating to such easements as may from time to time reasonably be required to effectuate the purposes of such easements.

6.8 **Jurisdiction and Cooperation**. It is Declarant's intention that the Association and any Golf Course Owner shall cooperate to the maximum extent possible in the operation of the Residential Areas. The Association shall have no power to promulgate rules and regulations that would materially and adversely affect the typical golfing activities on or use of any Golf Course.

6.9 **Appearance of Privately Owned Amenities**. Each Owner acknowledges and agrees that neither any Owner nor the Association shall have any right to compel any Privately Owned Amenity owner including, but not limited to, the Golf Course Owner to maintain the Privately Owned Amenity or any improvements thereon to any particular standard of care and that the appearance of the Privately Owned Amenity and improvements thereon shall be determined in the sole discretion of the respective owner of the Privately Owned Amenity.

6.10 **Golf Course Uses**. Any Golf Course is intended to be used for activities typically associated with the game of golf, and except for golf carts and vehicles used by the Golf Course Owner to improve, maintain and repair any Golf Course, no motorized vehicles, including snowmobiles, all terrain vehicles, dirt bikes and other vehicles designed primarily for off-road use shall be permitted on any Golf Course. Snowshoeing and cross-country skiing during appropriate periods will be allowed only with the Golf Course Owner's consent. Additionally, the following provisions relate to any Golf Course and to portions of the Residential Areas:

(a) **Private Ways**. All Common Areas immediately adjacent to any Golf Course shall be subject to an easement for Golf Course purposes, including signs, cart paths, irrigation systems and the right of ingress and egress for making improvements and changes to any Golf Course, Golf Course management, Golf Course maintenance and repair, and for players during the regular course of play on any Golf Course.

(b) **Golf Cart Path Easement**. Any easements for golf cart paths or trails designated as such on any plat of the Residential Areas or in any Supplemental Declaration annexing Additional Property or any pathway serving any Golf Course that is designated as a

cart path by signage or by rules adopted by the Association shall be used for golf cart paths, pedestrian walkways, maintenance and vehicle access, and access to any Golf Course. Nothing shall be placed in or maintained on any golf cart path easement which shall interfere with utilization thereof for the purposes for which it was intended.

(c) **Golf Course Easements over Adjoining Units**. Any Golf Course easements over adjoining Units designated as such on any Plat may be developed as part of any Golf Course and may be used as part of the Golf Course. No Owner may landscape or place any Improvement, fence, rope or barrier within a Golf Course easement without the prior written consent of the Golf Course Owner and the approval of the Design Review Committee. Nothing in this provision shall be construed as requiring the Golf Course Owner to water or landscape such easement areas.

(d) **Overspray.** Any portion of the Residential Areas immediately adjacent to any Golf Course is hereby burdened with a non-exclusive easement in favor of the adjacent Golf Course for overspray of water from the irrigation system serving such Golf Course to the extent reasonably required for the maintenance of such Golf Course. Under no circumstances shall the Association or the owner of such Golf Course be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

(e) **Irrigation System**. The Golf Course Owner, its respective agents, employees, and contractors, successors, and assigns, shall have a perpetual non-exclusive easement, to the extent reasonably necessary, over the Residential Areas, but not under or through any buildings, for the installation, operation, maintenance, repair, replacement, monitoring, and controlling of irrigation systems and equipment, including without limitation, well, pumps, and pipelines, serving all or portions of any Golf Course.

(f) **Golf Course Utilities**. The Golf Course Owner, its respective agents, successors, and assigns, employees, and contractors shall have a perpetual, non-exclusive easement to the extent reasonably necessary, over the Residential Areas (but not under or through any buildings) for the installation, maintenance, repair, replacement, and monitoring of utility lines, wires, drainage swales, pipelines and structures serving all or portions of any Golf Course.

(g) **Natural Water Runoff**. The Residential Areas are hereby burdened with easements in favor of any Golf Course for natural drainage of storm water runoff from such Golf Course.

(h) **Lakes and Water Features**. The Golf Course Owner may own one or more lakes, water retention ponds or other water features within Brasada Ranch. Notwithstanding the ownership of such lakes or water retention ponds, the Golf Course Owner may use any and all lakes, water retention ponds or other water features within Brasada Ranch for the purpose of irrigating and maintaining the Golf Course with the result that the water level in such lakes, water retention ponds or other water features may from time to time vary. Each Owner of a Unit acknowledges such right on the part of the Golf Course Owner and agrees not to commence any cause of action or other proceeding involving the Golf Course Owner based on the exercise of such right or otherwise interfere therewith.

(i) **Golf Balls**. Each Unit, Common Area and Neighborhood Common Area adjoining or adjacent to any Golf Course shall be subject to an easement permitting (i) golf balls to come onto such property, and (ii) except for any part of Improvements constructed on a Unit, for golfers at reasonable times and in a reasonable manner to come upon such property to retrieve golf balls.

(j) **Golf Tournaments**. Golf tournaments or similar functions may be held at any Golf Course from time to time to which members of the public will be invited as spectators or participants. Each Owner acknowledges that certain inconveniences to Owners may result from holding such tournaments. The types of inconveniences occurring during such tournaments may include, by way of example and not limitation, construction by Declarant, the Golf Course Owner, tournament operators or sponsors, of television towers or other structures on any Golf Course property which would be visible from a Unit and which may obstruct the view of such Golf Course from a Unit; noise associated with the construction and destruction of structures and equipment associated with such tournaments, encroachment on a Unit by spectators, and other inconveniences relating to or caused by spectators, golfers and others involved with the operation of tournaments. Each Owner, including Owners of Units adjacent to any Golf Course, further acknowledges that no representations are made by Declarant, the Association, the Golf Course Owner, or any other entity that Owners will be afforded any rights to view or attend such tournaments or functions other than such rights as are afforded members of the general public.

(k) **Intrusion Onto Golf Course**. Neither the Association nor any Owner shall have any right of entry onto any portion of the Golf Course without the prior written consent of the Golf Course Owner. All permitted entry shall be made only through entry points designated by the Golf Course Owner; no Owner may access any portion of the Golf Course from any adjacent residential Unit. Neither the Association nor any Owner may permit any irrigation water to overspray or drain from its Common Area or Unit onto any portion of the Golf Course without approval of the Golf Course Owner. Neither the Association nor any Owner may permit any fertilizer, pesticides or other chemical substances to overspray, drain, flow or be disposed of in any manner upon any portion of the Golf Course. If the Association or any Owner violates the provisions of this paragraph, it shall be liable to the Golf Course Owner for all damages to the turf resulting from the violation and all damages, including consequential damages suffered by the Golf Course Owner.

(l) **Right of Maintenance and Entry**. If either the Association or an Owner ("Defaulting Party") fails to maintain any landscaping or Improvements situated adjacent to any portion of the Golf Course and within twenty (20) feet of any portion of the Golf Course, the Golf Course Owner shall have the right, but not the duty, to maintain the landscaping or Improvement at the sole cost and expense of the Defaulting Party. If the Golf Course Owner desires to perform any such maintenance authorized by the preceding sentence, the Golf Course Owner shall first notify the Defaulting Party in writing and provide the Defaulting Party with at least thirty (30) days from the date of the notice to perform such maintenance. If the Defaulting Party fails to commence and complete such maintenance within said thirty (30) day period, the Golf Course Owner shall have the right to enter the Unit, except for any dwelling located on such Unit, or Common Area on which the maintenance is required during reasonable business hours and perform such maintenance. Written notice of the costs incurred by the Golf Course Owner

in performing such maintenance and/or repair shall be given to the Defaulting Party who shall have ten (10) days to reimburse the Golf Course Owner in full.

6.11 **Waiver and Indemnity. In some cases, golf balls may have sufficient force and velocity to do serious harm to Persons, pets, Improvements or personal property. Each Owner, for such Owner's family members, visitors, tenants, licensees, invitees and guests, assumes such risk and waives any right any such Persons otherwise would have against Declarant, the Association, the Design Review Committee and the Golf Course Owner, operator and designer, to the fullest extent permissible by law, for each injury resulting from the design of any Golf Course, or the location of a Unit, Common Area or Neighborhood Common Area in relation to any Golf Course, and agrees to indemnify and hold Declarant, the Association, the Design Review Committee and the Golf Course Owner, operator, designer and contractor harmless from and against all claims and liability, including without limitation, legal fees and costs, in the event any Person while on or in the vicinity of a Unit, Common Area or Neighborhood Common Area, receives any injury or suffers property damage and thereafter seeks to recover against such Persons or entities for compensation for such injury or damage, whether directly or indirectly, or as a result of a third-party claim or cross claim. Each Owner and such Owner's family members, visitors, tenants, licensees, invitees and guests waives each and every claim or right they may have to claim that the normal and customary operation of any such Golf Course constitutes a nuisance, or that any aspect of any such Golf Course operation should be limited to any specific hours of the day or to any specific days of the week. Each such Person assumes the risks which are associated with the game of golf and the flight of golf balls over and upon their Unit, the Common Areas and Limited Common Areas, including, without limitation, the possibility of damage to their property, real or personal, and injury to themselves, their family, pets, friends, visitors, tenants, licensees, invitees, guests, or any other Person.**

Article 7

RESIDENTIAL AREAS USE RESTRICTIONS

7.1 **Structures Permitted**. No structures shall be erected or permitted to remain on any Unit except structures containing residential dwellings and structures normally accessory thereto as approved by the Design Review Committee. Each dwelling shall contain a minimum square footage as set forth in this Declaration or in the Supplemental Declaration subjecting the Unit to this Declaration. Each dwelling within the Initial Development shall contain not less than 2,000 square feet, excluding any garage.

7.2 **Residential Use**. Units shall only be used for residential purposes. Except with the consent of the Board, no trade, craft, business, profession, commercial or similar activity of any kind shall be conducted on any Unit, nor shall any goods, equipment, vehicles, materials or supplies used in connection with any trade, service or business be kept or stored on any Unit. The mere parking on a Unit of a vehicle bearing the name of a business shall not, in itself, constitute a violation of this provision. Nothing in this paragraph shall be deemed to prohibit (a) activities relating to the rental or sale of Units, (b) the right of Declarant or any contractor or home builder to construct Improvements on any Unit, to store construction materials and

equipment on such Units in the normal course of construction, and to use Units as sales or rental offices or model homes or apartments for purposes of sales or rental in Brasada Ranch, and (c) the right of the Owner of a Unit to maintain his or her professional personal library, keep his personal business or professional records or accounts, handle his or her personal business or professional telephone calls or confer with business or professional associates, clients or customers, in his or her Unit by appointment only. The Board shall not approve commercial activities otherwise prohibited by this paragraph unless the Board determines that only normal residential activities would be observable outside of the Unit (which activities may be specified in Policies and Procedures adopted by the Board) and that the activities would not be in violation of applicable governmental ordinances.

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

7.4 **Animals**. No animals of any kind shall be raised, bred or kept in or upon any Unit, except dogs, cats and such other household pets as may be approved by the Board, and then only provided they are not kept, bred or maintained for any commercial purposes or in unreasonable numbers and provided they are not prohibited by any Neighborhood Declaration or Supplemental Declaration annexing Additional Property to the Residential Areas; provided, however, that nothing herein shall prohibit horses to be kept on any Units as permitted by, and in conformance with, any Supplemental Declaration approving equestrian use of a Unit. The Association may adopt reasonable Policies and Procedures designed to minimize damage and disturbance to other Owners and occupants, including regulations requiring damage deposits, waste removal, leash controls, noise controls, occupancy limits based on size and facilities of the Unit and fair share use of the Common Areas. Nothing in this provision shall prevent the Association from requiring removal of any animal that presents an actual threat to health or safety of residents or from requiring abatement of any nuisance or unreasonable source of annoyance.

7.5 **Maintenance of Structures**. Each Owner shall maintain the Owner's Unit and Improvements thereon in a clean and attractive condition, in good repair and in such fashion as not to create a fire or other hazard. Such maintenance shall include, without limitation, exterior painting or staining, repair, replacement and care for roofs, gutters, downspouts, exterior building surfaces, walks, lights and perimeter fences and other exterior Improvements and glass surfaces. All repainting or restaining, any change in type of roof or roof color and any exterior remodeling or changes shall be subject to prior review and approval by the Design Review Committee. Damage caused by fire, flood, storm, earthquake, riot, vandalism, or other causes shall likewise be the responsibility of each Owner and shall be restored within a reasonable

period of time. Any change in appearance must first be approved by the Design Review Committee.

7.6 **Maintenance of Landscape**. Each Owner shall keep all sidewalks, shrubs, trees, grass and plantings of every kind on the Owner's Unit neatly trimmed, properly cultivated and free of trash, weeds and other unsightly material.

7.7 **Prohibited Vehicles**. No mobile home, recreational vehicle (including campers), snowmobiles, all terrain vehicles, dirt bikes and other vehicles designed primarily for off-road use, commercial vehicles, any vehicles exceeding 9,000 pounds in gross vehicle weight, any trailer of any kind, any truck with a rated load capacity greater than one ton, or any boat, shall be kept, placed, maintained or parked for more than 48 hours or such other period as may be permitted pursuant to the Association Policies and Procedures on any Unit or Common Area except in enclosed garages approved by the Design Review Committee, areas designated by the Board, or screened from view in a manner approved by the Design Review Committee. No motor vehicle of any type may be constructed, reconstructed or repaired in such a manner as will be visible from neighboring property, nor may any such vehicle be occupied for residential purposes while located within Brasada Ranch. No stripped down, partially wrecked, inoperative or junk motor vehicle, or sizeable part thereof, shall be permitted to be parked on any Unit or Common Area. Except to the extent specifically authorized in the Policies and Procedures, off-road vehicles may not be operated within the Residential Areas. The Association Policies and Procedures may restrict the amount of noise vehicles may generate.

7.8 **Parking and Street Obstructions**. Parking of vehicles of any type whatsoever on any portion of the streets or trails within the Residential Areas shall be permitted only as set forth in the Association Policies and Procedures. No Owner shall do anything which will in any manner prevent the streets within the Residential Areas from at all times being free and clear of all obstructions and in a safe condition for vehicular use.

7.9 **Grades, Slopes and Drainage**. Each Owner shall accept the burden of, and shall not in any manner alter, modify or interfere with, the established drainage pattern and grades, slopes and courses related thereto over any Unit or Common Area without the express written permission of the Design Review Committee, and then only to the extent and in the manner specifically approved. Except with the express written permission of the Design Review Committee, no structure, plantings or other materials shall be placed or permitted to remain on or within any grades, slopes, or courses, nor shall any other activities be undertaken that may damage or interfere with established slope ratios, create erosion or sliding problems, or change the direction of or obstruct or retard the flow of water through drainage and infiltration systems.

7.10 **Subsurface Sewage Disposal Systems and Wells**. Owners are required to hook into community water and sewer systems. No septic tanks or private wells shall be installed on any Unit, except for temporary systems utilized by Declarant or a builder, with Declarant's approval, during the Development Period.

7.11 **Signage**.

(a) **General Prohibition; Exceptions**. No sign or billboard of any kind (including, but not limited to, commercial or political signs to the extent such prohibition is permitted by law) shall be displayed on any Unit to public view, except for:

(i) traffic and directional signs established by Declarant or the Board;

(ii) signs that are required for legal proceedings;

(iii) during the time of construction of any Improvement, one job identification sign, the size, color and design of which shall be subject to the approval of the Design Review Committee; and

(iv) signs, billboards or other advertising devices or structures used by Declarant or any builder authorized by Declarant in connection with the development, marketing, advertising, sale or rental of any interest in a Unit or other portion of the Residential Areas.

(b) **Design Review Committee Regulation**. The size and design of any signs shall be in accordance with the Design Guidelines established by the Design Review Committee. Except as provided in Section 7.11(a)(iv), signs advertising any interest in a Unit "for sale" or "for rent" shall be prohibited anywhere within the Unit that would be visible from outside the Unit.

7.12 **Outside Storage**. Storage areas, machinery and equipment shall be prohibited upon any Unit, unless obscured from view of neighboring property and streets by an appropriate screen or enclosure approved by the Design Review Committee. Tarps and covers shall be prohibited except as otherwise provided in the Policies and Procedures and the Design Guidelines. Trash cans and other moveable rubbish containers shall be allowed to be visible from the street or adjacent Unit within the Residential Areas only during the days on which rubbish is collected and after 9 p.m. of the preceding evening.

7.13 **Completion of Construction**. The construction of any building on any Unit, including painting and all exterior finish, shall be completed within twelve (12) months from the beginning of construction so as to present a finished appearance when viewed from any angle and the Unit shall not be occupied until so completed. In the event of undue hardship due to weather conditions or other causes beyond the reasonable control of the Owner, this time period may be extended for a reasonable length of time upon written approval from the Design Review Committee. The building area shall be kept reasonably clean and in workmanlike order during the construction period. All unimproved Units shall be kept in a neat and orderly condition, free of brush, vines, weeds and other debris, and grass thereon shall be cut or mowed at sufficient intervals to prevent creation of a nuisance or fire hazard and to be in compliance with forest fuels management and fire prevention practices required by the applicable Governmental Authority.

7.14 **Landscape**. Landscaping plans for each Unit shall be submitted to the Design Review Committee and shall be in compliance with sod and planting limitations and tree preservation guidelines as may be established by such Committee or the Association from time

to time. Such landscaping must be completed within nine (9) months from the date occupancy of the Unit constructed thereon is approved by the applicable Governmental Authority. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon written approval of the Design Review Committee.

7.15 **Temporary Structures**. No structure of a temporary character, trailer, tent, shack, garage, barn or other outbuildings nor any uncompleted building shall be used on any Unit at any time as a residence either temporarily or permanently.

7.16 **Antennas and Satellite Dishes**. Over-the-air reception devices are not permitted within the Residential Areas except standard TV antennas and satellite dishes are permitted so long as they comply with the Design Guidelines and any other applicable restrictions adopted by Declarant, the Design Review Committee, the Board, or the Association, pertaining to the size, means, method and location of their installation.

7.17 **Limitations on Open Fires**. No incinerators or other open fires shall be kept or maintained on any Unit; provided, however, that the foregoing restrictions shall not apply to outdoor cooking facilities such as propane or natural gas grills or portable barbeque units or to burning in connection with certain construction and other activities as permitted by the Design Guidelines or the Association Policies and Procedures.

7.18 **Recreational Equipment**. No playground, athletic or recreational equipment or structures, including without limitation, basketball backboards, hoops and related supporting structures, shall be placed, installed or utilized on any Unit in view from any street, sidewalk or Common Area within the Brasada Ranch.

7.19 **Pest and Weed Control**. No Owner shall permit any thing or condition to exist upon any Unit which shall induce, breed or harbor infectious plant diseases or noxious insects or vermin. Each owner shall control noxious weeds on the Owner's unit and shall comply with the noxious weed plan for Brasada Ranch as submitted to the Crook County Weed Master and as required by the Crook County Weed Control Enforcement Ordinance.

7.20 **Exterior Lighting**. All exterior lighting shall be subject to approval of the Design Review Committee. Seasonal holiday lighting and decorations are permissible if consistent with any applicable Policies and Procedures and if removed within thirty (30) days after the celebrated holiday. The Design Review Committee may regulate the shielding or hours of use of lighting in order to reduce annoyance to neighboring properties.

7.21 **Paths and Trails**. No Owner, other than Declarant or the Association, may create any paths or trails within the Residential Areas without the prior written approval of the Design Review Committee.

7.22 **Drainage**. Design and construction of drainage facilities for each Unit shall conform to the requirements of the Design Guidelines. The Design Guidelines generally require disposal of stormwater by infiltration and/or dispersion on each Unit.

7.23 **Landscape Irrigation**. Design, construction and operation of landscape irrigation systems shall conform to the requirements of the Design Guidelines and the water

utility serving the Residential Areas. The area irrigated on each Unit shall not exceed the maximum set forth in the Design Guidelines. The irrigation system and controls installed on each Unit shall be capable of meeting, and be operated to meet, the irrigation efficiency and water conservation goals of the water utility.

7.24 **Solid Waste**. No part of the Residential Areas shall be used as a dumping ground for trash or rubbish of any kind, and no rubbish, refuse or garbage shall be allowed to accumulate. Disposal of solid waste, including normal household waste, yard waste and household hazardous waste from each Unit, shall conform to the requirements and procedures set forth by the Association. Should any Owner or occupant responsible for its generation fail to remove any trash, rubbish, garbage, yard rakings or any other such materials from any streets or the Residential Areas where deposited by such Person within ten (10) days following the date on which notice is mailed to the Owner or occupant by the Board of Directors, the Association may have such materials removed and charge the expense of such removal to the Owner.

7.25 **Association Policies and Procedures**. In addition to the restrictions in this Declaration, the Association from time to time may adopt, modify or revoke such Policies and Procedures governing the conduct of Persons and the operation and use of Units and the Common Areas as it may deem necessary or appropriate to insure the peaceful and orderly use and enjoyment of the Residential Areas. A copy of the Policies and Procedures, upon adoption, and a copy of each amendment, modification or revocation thereof, shall be furnished by the Board to each Owner and shall be binding upon all Owners and occupants of all Units. The method of adoption of such Policies and Procedures shall be as provided in the Bylaws.

7.26 **Application to Additional Property**. The Supplemental Declaration subjecting Additional Property to this Declaration may establish additional or different restrictions governing the use of such Additional Property.

7.27 **Right to Approve Changes in the Standards Within the Community**. No amendment to or modification of any use restrictions contained in this Declaration or any Supplemental Declaration shall be effective without the prior notice to and the written consent of Declarant so long as Declarant owns property subject to this Declaration or prior to the expiration of the Development Period.

Article 8

DESIGN REVIEW COMMITTEE

8.1 **Design Review Requirements**. Except for Units owned by Declarant, no Improvement shall be commenced, erected, placed or altered on any Unit until the construction plans and specifications showing the nature, shape, heights, materials, colors and proposed location of the Improvement have been submitted to and approved in writing by the Design Review Committee. It is the intent and purpose of this Declaration to assure quality of workmanship and materials and to assure harmony of external design with the then existing Improvements and as to location with respect to topography and finished grade elevations. The procedure and specific requirements for review and approval of construction shall be set forth in Design Guidelines adopted from time to time by the Design Review Committee.

8.2 **Membership: Appointment and Removal.** The Design Review Committee shall consist of as many persons, but not less than three, as Declarant may from time to time appoint. Declarant may remove any member of the Design Review Committee at its discretion at any time and may appoint new or additional members at any time. The members of the Design Review Committee need not be Owners or representatives of Owners, and may, but need not, include architects, engineers, or similar professionals, whose compensation, if any, shall be established from time to time by the Board. The Design Review Committee may be broken into or may form subcommittees to preside over particular areas of review (e.g., a new construction subcommittee and a modifications subcommittee). Any reference in this Declaration to the Design Review Committee should be deemed to include a reference to any such subcommittee. The Association shall keep on file at its principal office a list of the names and addresses of the members of the Design Review Committee. Declarant may at any time, and shall when Declarant no longer owns any property within the Residential Areas or which may be annexed to the Residential Areas, delegate to the Board the right to appoint or remove members of the Design Review Committee. In such event, or in the event Declarant fails to appoint a Design Review Committee, the Board shall assume responsibility for appointment and removal of members of the Design Review Committee, or if it fails to do so, the Board shall serve as the Design Review Committee.

8.3 **Design Guidelines.**

(a) **Adoption of Design Guidelines.** Declarant or the Design Review Committee shall prepare Design Guidelines, which may contain general provisions applicable to all of the Residential Areas as well as specific provisions which vary from Neighborhood to Neighborhood or any portions of a Neighborhood or Neighborhoods or types of use or Improvements. The Design Guidelines may establish building envelopes for each Unit and will require compliance with forest fuels management and fire prevention practices required by the applicable Governmental Authority. The Design Guidelines are not the exclusive basis for decisions of the Design Review Committee and compliance with the Design Guidelines does not guarantee approval of any application.

(b) **Publication of Design Guidelines.** The Design Review Committee shall make the Design Guidelines available to Owners who seek to engage in development or construction within the Residential Areas. In Declarant's discretion, the Design Guidelines may be recorded, in which event the recorded version, as it may be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

(c) **Amendment of Design Guidelines.** Declarant shall have sole and full authority to amend the Design Guidelines during the Development Period notwithstanding a delegation of reviewing authority to the Design Review Committee unless Declarant also delegates the power to amend to the Design Review Committee. Upon termination or delegation of Declarant's right to amend, the Design Review Committee shall have the authority to amend the Design Guidelines with the consent of the Board. Any amendments to the Design Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines, and such

amendments may remove requirements previously imposed or otherwise make the Design Guidelines less restrictive.

8.4 **Approval Procedures**.

(a) **Applications**. Except as otherwise stated in this Article, Owners desiring to construct, alter, repair or replace any Improvements shall apply for an approval therefor from the Design Review Committee. Such application shall include plans and specifications showing site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction (the "**Work**"), as applicable. The Design Guidelines or the Design Review Committee may require the submission of such additional information as may be reasonably necessary to consider any application.

(b) **Committee Discretion**. The Design Review Committee may, at its sole discretion, withhold consent to any proposed Work if the Design Review Committee finds the proposed Work would be inappropriate for the particular Unit or incompatible with the Design Guidelines. In reviewing each submission, the Design Review Committee may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements. Considerations such as siting, shape, size, color, design, height, solar access, impairment of the view from other Units within Brasada Ranch or other effect on the enjoyment of other Common Areas, disturbance of existing terrain and vegetation, wildlife protection and any other factors which the Design Review Committee reasonably believes to be relevant, may be taken into account by the Design Review Committee in determining whether or not to consent to any proposed Work. In the case of any Unit adjoining, adjacent to or otherwise in a direct line of sight of any Privately Owned Amenity, the Design Review Committee shall forward the plans and specifications for the proposed Work to the Owner of the Privately Owned Amenity for review and approval in accordance with Section 6.4 of this Declaration.

(c) **Committee Decision**. The Design Review Committee shall render its decision with respect to the construction proposal within thirty (30) working days after it has received all materials required by it with respect to the application. The response may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application. The Design Review Committee may, but shall not be obligated to, specify the reasons for any objections and/or offer suggestions for curing any objections. Notice shall be deemed to have been given at the time the envelope containing the response is deposited with the U.S. Postal Service. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the applicant. In the event the Design Review Committee fails to render its approval or disapproval within forty-five (45) working days after the Design Review Committee has received all materials required by it with respect to the proposal, or if no written notice of noncompliance has been given to the Owner within two (2) years after the completion thereof is readily apparent, approval will not be required and the related provisions of this Declaration shall be deemed to have been fully complied with; provided that the Owner must first issue a written

notice to the Design Review Committee of the Owner's intent to proceed without such approval and no response from the Design Review Committee is forthcoming within ten (10) days after such notice is given.

(d) **Majority Action**. Except as otherwise provided in this Declaration, a majority of the members of the Design Review Committee shall have the power to act on behalf of the Design Review Committee, without the necessity of a meeting and without the necessity of consulting the remaining members of the Design Review Committee. The Design Review Committee may render its decision only by written instrument setting forth the action taken by the consenting members.

(e) **Design Review Committee Fees; Assistance**. The Design Review Committee may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Compliance fees and deposits may also be required. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals. Declarant and the Association may employ architects, engineers, or other persons as deemed necessary to perform the review. The Board may include the compensation of such persons in the Association's annual operating budget as a Common Expense.

(f) **Appeal**. At any time after Declarant has delegated appointment of the members of the Design Review Committee to the Board pursuant to Section 8.2, any Owner adversely affected by action of the Design Review Committee may appeal such action to the Board. Appeals shall be made in writing within ten (10) days of the Design Review Committee's action and shall contain specific objections or mitigating circumstances justifying the appeal. If the Board of Directors is already acting as the Design Review Committee, the appeal shall be treated as a request for a rehearing, in which case the Board shall meet and receive evidence and argument on the matter. A final, conclusive decision shall be made by the Board within thirty (30) working days after receipt of such notification.

(g) **Effective Period of Consent**. The Design Review Committee's consent to any proposed Work shall automatically be revoked one year after issuance unless construction of the Work has been commenced or the Owner has applied for and received an extension of time from the Design Review Committee.

(h) **Notice to Declarant**. In the event Declarant delegates the right to appoint or remove members of the Design Review Committee to the Board prior to expiration of the Development Period, then until expiration of the Development Period, the Design Review Committee shall notify Declarant in writing within three (3) business days after the Design Review Committee has approved any application relating to proposed Work within the scope of matters delegated to the Design Review Committee by Declarant. The notice shall be accompanied by a copy of the application and any additional information which Declarant may require. Declarant shall have five (5) business days after receipt of such notice to veto any such action, in its sole discretion, by written notice to the Design Review Committee and the applicant.

8.5 **Variances**. The Design Review Committee may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the Design Review Committee from denying a variance in other circumstances.

8.6 **Approval Exceptions**. No approval shall be required to rebuild in accordance with originally approved plans and specifications. Any Owner may remodel, paint, or redecorate the interior of the Owner's Unit without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structure and modifications to enclose garages as living space shall be subject to approval. Any request to enclose a garage must include plans for a replacement garage on the Unit. If approval of a garage enclosure is granted by the Design Review Committee such approval may be conditional on the construction of a replacement garage.

8.7 **Approval Exemptions**. This Article shall not apply to Declarant's activities during the Development Period. Municipal, state, federal and other governmental or quasi-governmental buildings and facilities, including post offices, are subject to architectural review under this Article. However, such review shall be binding upon any Governmental Authority only to the extent permitted by law.

8.8 **No Waiver of Future Approvals**. Each Owner acknowledges that the persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features of proposed Work until the Work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the Design Review Committee may refuse to approve similar proposals in the future. Approval of applications or plans and specifications for any Work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, plans and specifications, or other matters subsequently or additionally submitted for approval.

8.9 **Estoppel Certificate**. Within fifteen (15) business days after written request is delivered to the Design Review Committee by any Owner, and upon payment to the Design Review Committee of a reasonable fee fixed by the Design Review Committee to cover costs, the Design Review Committee shall provide such Owner with an estoppel certificate executed by a member of the Design Review Committee and acknowledged, certifying with respect to any Unit owned by the Owner, that as of the date of the certificate, either: (a) all Improvements made or done upon or within such Unit by the Owner comply with this Declaration, or (b) such Improvements do not so comply, in which event the certificate shall also identify the noncomplying Improvements and set forth with particularity the nature of such noncompliance. Any purchaser from the Owner, and any mortgagee or other encumbrancer, shall be entitled to rely on such certificate with respect to the matters set forth in the certificate, such matters being

conclusive as between Declarant, the Design Review Committee, the Association and all Owners, and such purchaser or mortgagee.

8.10 **Enforcement**. If during or after the construction the Design Review Committee finds that the Work was not performed in substantial conformance with the approval granted, or that the required approval was not obtained, the Committee shall notify the Owner in writing of the noncompliance, specifying the particulars of the noncompliance. The Committee may require conforming changes to be made or that construction be stopped. The cost of any required changes shall be borne by the Owner. The Committee shall have the power and authority to order any manner of changes or complete removal of any Improvement, alteration or other activity for which prior written approval from the Committee is required and has not been obtained or waived in writing. If an owner fails to comply with an order of the Committee, then, subject to the Owner's right of appeal under Section 8.4(f), either the Design Review Committee or the Board may enforce compliance in accordance with the procedures set forth in Section 12.1 below.

8.11 **Limitation of Liability**. Neither the Design Review Committee nor any member of the Design Review Committee shall be liable to any Owner, occupant, builder or developer for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the Design Review Committee or a member of the Design Review Committee, provided only that the Design Review Committee or the member has, in accordance with the actual knowledge possessed by the Committee or Member, acted in good faith. Any such damages or expenses for which the Committee or any Member is liable and to which any Owner becomes entitled shall be a Common Expense. The standards and procedures established by this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Residential Areas; they do not create any duty to any Person. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and the Design Review Committee shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all dwellings are of comparable quality, value, or size, or of similar design. Declarant, the Association, the Board, any committee, or member of any of the foregoing shall not be held liable for soil conditions, drainage or other general site work, any defects in plans revised or approved hereunder, or any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Unit.

Article 9

OWNERS ASSOCIATION

Declarant shall organize the Association as the association of all of the Owners within the Residential Areas. Such Association, and its successors and assigns, shall have such property, powers and obligations as are set forth in this Declaration for the benefit of the Residential Areas and all Owners of property located therein.

9.1 **Organization**. Declarant shall, before the first Unit is conveyed to an Owner, organize the Association as a nonprofit corporation under the general nonprofit corporation laws of the State of Oregon. The Articles of Incorporation of the Association shall provide for its

perpetual existence, but in the event the Association is at any time dissolved, whether inadvertently or deliberately, it shall automatically be succeeded by an unincorporated association of the same name. In that event all of the property, powers and obligations of the incorporated Association existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated Association, and such vesting shall thereafter be confirmed as evidenced by appropriate conveyances and assignments by the incorporated Association. To the greatest extent possible, any successor unincorporated Association shall be governed by the Articles of Incorporation and Bylaws of the Association as if they had been made to constitute the governing documents of the unincorporated Association.

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

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

(a) **Allocation**. Subject to Declarant's right to designate the number of Units attributable to any vacant land prior to its development in accordance with the Development Plan, each Unit shall be allocated one vote.

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

Class A. Class A Members shall be all Owners with the exception of the Class B Member and shall be entitled to voting rights for each Unit owned computed in accordance with Section 9.3(a) above. When more than one Person holds an interest in any Unit, all such Persons shall be members. Except as may otherwise be specified in the Supplemental Declaration annexing such Unit to the Residential Areas, the vote for such Unit shall be exercised as they among themselves determine. In no event, however, shall more voting rights be cast with respect to any Unit than as set forth in Section 9.3(a) above.

Class B. The Class B Member shall be the Declarant and shall be entitled to three times the voting rights computed under Section 9.3(a) for each Unit owned by Declarant. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(i) Expiration of the Development Period; or

(ii) At such earlier time as Declarant may elect in writing to terminate Class B membership.

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

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

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

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

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

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

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

(a) **Maintenance**. The Association shall provide maintenance for portions of the Residential Areas as provided in Article 10 and other provisions of this Declaration.

(b) **Insurance**. The Association shall obtain and maintain in force certain policies of insurance as determined by the Board.

(c) **Restoring Damaged Improvements**. In the event of damage to or destruction of Common Areas or other property which the Association insures, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes. If a decision is made not to restore the damaged improvements, and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. If insurance proceeds are insufficient to cover the costs of reconstruction, the Board may levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage. Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by the Association for the benefit of all or some of the Owners, as appropriate, and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

(d) **Rulemaking**. The Association shall make, establish, promulgate, amend and repeal Policies and Procedures as provided in Section 7.27.

(e) **Assessments**. The Association shall adopt budgets and impose and collect certain Assessments as provided in Article 11.

(f) **Community-Wide Standards**. The Association shall have the authority to establish a minimum Community-Wide Standard of maintenance and aesthetic appearance for the Residential Areas, including, without limitation, Units, Common Areas and Neighborhood Common Areas. The Association shall have the authority to enforce such standards including, without limitation, the right to levy fines which if unpaid shall constitute an Individual Assessment and a lien on the violator's property as set forth in this Declaration. The Association also shall have the right of self-help to abate any violations or nonconforming use or activity, which shall not be deemed a trespass, and the costs of which shall be recovered by Individual Assessments. The Association shall have the right, but not the obligation, to enforce any provision of this Declaration or the governing documents of a Neighborhood Association if it fails or refuses to do so, provided that the Neighborhood Association shall be the primary entity responsible for enforcing its own Neighborhood Declaration and rules and regulations.

(g) **Enforcement**. The Association may perform such acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce the provisions of this Declaration and the Policies and Procedures adopted by the Association, including, without limitation, enforcement of the decisions of the Design Review Committee. Nothing in this Declaration shall be construed as requiring the Association to take any specific action to enforce violations.

(h) **Employment of Agents, Advisers and Contractors**. The Association may employ the services of any Person as managers, hire employees to manage, conduct and perform the business, obligations and duties of the Association, employ professional counsel and obtain advice from such persons or firms or corporations such as, but not limited to, landscape architects, recreational experts, architects, planners, attorneys and accountants, and contract for or otherwise provide for all services necessary or convenient for the management, maintenance and operation of the Residential Areas; provided, however, the Board may not incur or commit the Association to incur legal fees in excess of $5,000 for any specific litigation or claim matter or enter into any contingent fee contract on any claim in excess of $100,000 unless the Unit Owners have enacted a resolution authorizing the incurring of such fees or contract by a vote of seventy-five percent (75%) of the total voting rights of the Association. These limitations shall not be applicable to legal fees incurred in defending the Association of the Board of Directors from claims or litigation brought against them. The limitation set forth in this paragraph shall increase by ten percent on each fifth anniversary of the Recording of this Declaration.

(i) **Borrow Money**. The Association may borrow and repay moneys for the purpose of maintaining and improving the Common Areas and, subject to Section 5.8, encumber the Common Areas as security for the repayment of such borrowed money.

(j) **Hold Title and Make Conveyances**. The Association may acquire, hold title to and convey, with or without consideration, real and personal property and interests therein, including but not limited to easements across all or any portion of the Common Area, and shall accept any real or personal property, leasehold or other property interests within the Residential Areas conveyed to the Association by Declarant.

(k) **Transfer, Dedication and Encumbrance of Common Areas**. Except as otherwise provided in Section 5.8, the Association may sell, transfer or encumber all or any portion of the Common Areas to which it then holds title of record to a person, firm or entity, whether public or private, and dedicate or transfer all or any portion of the Common Areas to any public agency, authority, or utility for public purposes.

(l) **Create Classes of Service and Make Appropriate Charges**. The Association may, in its sole discretion, create various classes of service and make appropriate Individual Assessments or charges therefor to the users of such services, including but not limited to reasonable admission and other fees for the use of any and all recreational facilities situated on the Common Areas, without being required to render such services to those who do not assent to such charges and to such other Policies and Procedures as the Board deems proper. In addition, the Board shall have the right to discontinue any service upon nonpayment of Assessments or to eliminate any service for which there is no demand or for which there are inadequate funds to maintain the same.

(m) **Joint Use Agreements**. The Association may enter into joint use agreements with other associations, entities or persons relating to the joint use of recreational or other facilities, including the joint use of the Common Areas. The Association may enter into agreements with one or more Neighborhood Associations or other Persons within Brasada Ranch to provide joint use, management, and administrative services, and to perform such other community related activities as may be agreed upon by the Association and such Neighborhood Association(s) or Persons. Without limitation, the Association may enter into agreements with the Community Council for the disposal of snow from roads within Brasada Ranch on designated Common Areas. The expense of providing such services by the Association shall be allocated by agreement between the parties.

(n) **Administration of Particular Areas Within Residential Areas**. In addition to its other powers and obligations, the Association may be obligated by Declarant or agreement to provide maintenance, architectural review, assessment collection, rules enforcement, or other services to, and levy assessments against, Owners within particular areas of the Residential Areas (e.g., one or more Neighborhoods). In such event, the Association shall provide such services in the manner prescribed, and the expenses of such services shall be allocated and assessed as provided in the covenants, easements, or agreement obligating the Association. In the event of a conflict between such other covenants, easements, or agreements and this Declaration, this Declaration shall control.

(o) **Additional Services**. Any Neighborhood, acting either through a Neighborhood Committee or through a Neighborhood Association, if any, may request that the Association provide a higher level of service than that which the Association generally provides to all Neighborhoods, or may request that the Association provide special services for the benefit of Units in such Neighborhood. Upon the affirmative vote, written consent, or a combination thereof, of Owners of a majority of the voting rights within the Neighborhood, the Association may provide the requested services. The cost of such services, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided, any such administrative charge shall apply at a uniform rate per Unit to all Neighborhoods receiving the

same service), shall be assessed against the Units within such Neighborhood as a Neighborhood Assessment.

(p) **Assumption of Other's Maintenance Responsibility**. The Association may, but shall not be obligated to, assume maintenance responsibility for property which is the responsibility of another Person (e.g., a Neighborhood Association or any local or state governmental authority) if, in the discretion of the Board, the maintenance of such property provides a benefit to the Brasada Ranch Residential Areas and/or such property is not otherwise being maintained in accordance with the Community-Wide Standard. The cost of maintenance assumed in accordance with this section may be a Common Expense to be allocated among all Owners or may be assessed to a Neighborhood Association or as Individual Assessments levied only against the benefited parties.

(q) **Security**. The Association may, but shall not be obligated to, maintain or support certain activities within Brasada Ranch Residential Areas designed to make the Residential Areas more enjoyable or safer than it otherwise might be. **Neither the Association, Declarant nor any managing agent shall be considered insurers or guarantors of security or safety within the Residential Areas nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security or safety measures undertaken. No representation or warranty is made that any system or measure, including any mechanism or system for limiting access to the Residential Areas, cannot be compromised or circumvented, nor that any such system or measure undertaken will in all cases prevent loss or provide the detection or protection for which it is designed or intended. Each Owner acknowledges and agrees that the Association, the Board and any managing agent are not insurers and that each person using the Residential Areas assumes all risks for personal injury and loss or damage to property resulting from acts of third parties.**

(r) **Municipal Services.** In addition to any obligations it may have under this Declaration to share costs, the Association may, but is not obligated by this Declaration to, contribute funds to any Governmental Authority for the purpose of increasing its capacity to provide services, such as, but not limited to, maintenance of roads, storm drainage facilities, sidewalks, lighting, trails and roadside landscaping, and police and fire protection services within the Residential Areas.

(s) **Other Services**. The Association may provide or contract for such services as the Board may reasonably deem to be of benefit to the Residential Areas, including, without limitation, garbage and trash removal.

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

(u) **Contracts Entered into by Declarant or Before Turnover Meeting**. Notwithstanding any other provision of this Declaration, any management contracts, service contracts or employment contracts entered into by Declarant or the Board of Directors on behalf

of the Association before the Turnover Meeting shall have a term of not more than three (3) years. In addition, any such contract shall provide that it may be terminated without cause or penalty by the Association or Board of Directors upon not less than thirty (30) days' notice to the other party given not later than sixty (60) days after the Turnover Meeting.

9.6 **Board of Directors**. The powers and duties of the Association and the affairs of the Association shall be conducted by its Board of Directors duly appointed or elected as provided in this section, except to the extent that a vote of the members is required by this Declaration or the Bylaws.

(a) **Initial Board**. Upon incorporation of the Association and until the first annual meeting after twenty-five percent (25%) of the Units authorized by the Development Plan have been sold and conveyed to individual residential purchasers (as opposed to builders), the Board shall be composed of three directors, all of whom shall be appointed by Declarant.

(b) **When Twenty-Five Percent (25%) of the Units Have Been Sold**. Commencing on the first annual meeting after twenty-five percent (25%) of the Units authorized by the Development Plan have been sold and conveyed to ultimate purchasers and until the first annual meeting after fifty percent (50%) of such Units have been conveyed, the Board shall be composed of three members, two of whom shall be appointed by Declarant and one of whom shall be elected by the Class A Members.

(c) **When Fifty Percent (50%) of the Units Have Sold**. Commencing on the first annual meeting after fifty percent (50%) of the Units authorized by the Development Plan have been sold and conveyed to ultimate purchasers and until the first annual meeting after ninety percent (90%) of the Units have been conveyed, the Board shall be composed of five directors, three of whom shall be appointed by Declarant and two of whom shall be elected by the Class A Members.

(d) **When Ninety Percent (90%) of the Units Have Been Sold**. Commencing on the first annual meeting after ninety percent (90%) of the Units authorized by the Development Plan have been sold and conveyed to ultimate purchasers and until the first annual meeting after expiration of the Development Period, the Board shall be composed of five directors, two of whom shall be appointed by Declarant and three of whom shall be elected by the Class A Members.

(e) **Turnover Meeting After Termination of Class B Membership**. The first annual meeting after termination of the Class B membership shall be the Turnover Meeting, at which time Declarant will turn over administrative control to the Owners. Commencing with the Turnover meeting, the Board shall be composed of seven directors, all of whom shall be elected by the Owners. The method of election, terms of office and method of removal and filling of vacancies shall be governed by the Bylaws.

9.7 **Voting Groups**. In connection with the election of those directors to be elected by the Class A Members, Declarant may, from time to time, in its discretion, designate Voting Groups consisting of one or more Neighborhoods (or the Units outside any Neighborhood) for the purpose of electing directors to the Board, in addition to any at-large directors elected by all

Class A Members. Voting Groups may be designated to ensure groups with dissimilar interests are represented on the Board and to avoid allowing Owners representing similar Neighborhoods to elect the entire Board, due to the number of Units in such Neighborhoods, excluding the representation of others. The number of Voting Groups within the Residential Areas shall not exceed the total number of directors to be elected by the Class A Members. The Owners in Neighborhoods within each Voting Group shall vote on a separate slate of candidates for election to the Board. Declarant shall establish Voting Groups, if at all, not later than the termination of Class B membership by filing with the Association and Recording a supplemental declaration identifying each Voting Group by legal description or other means such that the Units within each Voting Group can easily be determined. Such designation may be amended from time to time by Declarant, acting alone, at any time prior to termination of the Class B membership. After termination of the Class B membership, the Board shall have the right to Record a supplemental declaration changing the Voting Groups upon the vote of a majority of the total number of directors and approval of a majority of the voting rights in the Association. Neither recordation nor amendment of such supplemental declaration by Declarant shall constitute an amendment to this Declaration and no consent or approval of the Owners shall be required, except as stated in this section. Until such time as Voting Groups are established, all of the members shall constitute a single Voting Group. After a Supplemental Declaration establishing Voting Groups has been Recorded, any and all portions of the Residential Areas which are not assigned to a specific Voting Group shall constitute a single Voting Group.

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

9.9 **Neighborhood Associations**. The Board may assist the Neighborhood Associations in the performance of their duties and obligations under their respective Neighborhood Declarations, and the Association shall cooperate with each Neighborhood Association so that each of those entities can most efficiently and economically provide their respective services to Owners. The Association or a Neighborhood Association may use the services of the other in the furtherance of their respective obligations, and they may contract with each other to better provide for such cooperation. The payment for such contract services or a variance in services provided may be reflected in an increased Assessment by the Association for

Owners within the particular Neighborhood or by an item in the Neighborhood Association's budget which shall be collected through Neighborhood Assessments and remitted to the Association. If a Neighborhood Association fails or is unable to perform a duty or obligation required by its Neighborhood Declaration, then the Association may, after reasonable notice and an opportunity to cure given to the Neighborhood Association, perform such duties or obligations until such time as the Neighborhood Association is able to resume such functions, and the Association may charge the Neighborhood Association a reasonable fee for the performance of such functions.

9.10 **Powers of the Association Relating to Neighborhoods**. Each Neighborhood Committee shall be a committee of the Association. The Board shall have all of the power and control over any Neighborhood Committee that it has under applicable law over other committees of the Association. The Association shall have the power to veto any action taken or contemplated to be taken by any Neighborhood Committee or Neighborhood Association which the Board reasonably determines to be adverse to the interests of the Association or the Owners or inconsistent with the Community-Wide Standard. The Association also shall have the power to require specific action to be taken by any Neighborhood Association in connection with its obligations and responsibilities, such as requiring maintenance or repairs or aesthetic changes to be effectuated and requiring that a proposed budget include certain items and that expenditures be made therefor. A Neighborhood Association shall take appropriate action required by the Association in a written notice within the reasonable time frame set by the Association in the notice. If the Neighborhood Association fails to comply, the Association shall have the right to effect such action on behalf of the Neighborhood Association and levy Neighborhood or Individual Assessments to cover the costs, as well as an administrative charge and sanctions.

9.11 **Bylaws**. The Bylaws of the Association and any amendment or modification of the Bylaws shall be Recorded. Declarant hereby adopts, on behalf of the Association, the initial Bylaws attached as Exhibit C to this Declaration.

Article 10

MAINTENANCE

10.1 **Maintenance of Units**. Each Owner shall maintain the Owner's Unit and Improvements thereon in a clean and attractive condition, in good repair, in such fashion as not to create a fire or other hazard and in accordance with the Community-Wide Standard. Such maintenance shall include, without limitation, painting or staining, repair, replacement and care for roofs, gutters, downpours, exterior building surfaces, walks and other exterior improvements and glass surfaces. All repainting or re-staining and exterior remodeling shall be subject to prior review and approval by the Design Review Committee. In addition, each Owner shall keep all shrubs, trees, grass and plantings of every kind on the Owner's Unit neatly trimmed, properly cultivated and free of trash, weeds and other unsightly material. Damage caused by fire, flood, storm, earthquake, riot, vandalism, or other causes shall likewise be the responsibility of each Owner and shall be restored within such period of time as may be specified in the Design Guidelines, or if no such period is specified, within a reasonable period of time.

10.2 **Maintenance of Common Areas**. The Association shall be responsible for exterior lighting for and perform all maintenance upon the Common Areas and Limited Common Areas within or immediately adjoining rights of way, including but not limited to grass, trees, walks, private roads, entrance gates, street lighting and signs, parking areas, walkways and trails, unless the maintenance thereof is assumed by a public body. Such areas shall be maintained in a good and workmanlike manner such as to render them fit for the purposes for which they are intended.

10.3 **Maintenance of Utilities**. The Association shall perform or contract to perform maintenance of all private utilities within Common Areas, such as sanitary sewer service lines, domestic water service lines and storm drainage lines, except to the extent such maintenance is performed by the utilities furnishing such services. Each Owner shall be responsible for the cost of maintaining utility lines within his or her Unit.

10.4 **Corrective Maintenance**. The Association may assume the maintenance responsibilities set out in this Declaration or any Neighborhood Declaration for any Neighborhood or Owner, after giving the responsible Neighborhood Association or Owner reasonable notice and an opportunity to correct its deficient maintenance. In such event, all costs of such maintenance shall be assessed only against those Owners to which the services are provided and shall be Neighborhood Assessments or Individual Assessments as determined by the Board. The assumption of this responsibility may take place either by contract or because, in the opinion of the Board, the level and quality of service then being provided is not consistent with the Community-Wide Standard.

10.5 **Damage Liability**. Any damage to any Common Area caused by Owners, their children, agents, visitors, friends, relatives, tenants, occupants or service personnel shall be repaired by the Owner within fifteen (15) days following the date on which notice is mailed by the Association informing the Owner of such violation. If the damage has not been repaired within such time, then the Association shall perform such repair and the cost shall be assessed to the Owner as an Individual Assessment.

Article 11

ASSESSMENTS

11.1 **Power to Assess**. The Association may levy Assessments. The Assessments levied by the Association shall be used to promote the recreation, health, safety, and welfare of the Owners and occupants of the Residential Areas and for the improvement, operation and maintenance of the Common Areas.

11.2 **Apportionment of Assessments**. All Units, other than Units exempted from assessment pursuant to Section 11.5, shall pay a pro rata share of the General Assessments, Neighborhood Assessments, Special Assessments, Emergency Assessments and Limited Common Area Assessments commencing upon the date such Units are made subject to this Declaration. The pro rata share shall be based upon the total amount of each such Assessment divided by the total number of Units subject to such Assessment. Notwithstanding the provisions of this section, however, an amendment to this Declaration may specify a special

allocation of assessing the costs of operating and maintaining the facility on a Common Area in order to more fairly allocate such cost, taking into the account the extent of use or other factors.

11.3 **Types of Assessments**.

(a) **General Assessments**. The Association is hereby authorized to levy General Assessments against all Units subject to Assessments to fund the Common Expenses. The amount of the General Assessment allocated to each Unit shall be determined in the manner described in Section 11.2. In determining the General Assessments, the Board may consider any Assessment income expected to be generated from any additional Units or changes in the status of the then-existing Units anticipated during the fiscal year. The Board shall from time to time and at least annually prepare an operating budget for the Association, taking into account the current costs of maintenance and services and future needs of the Association, any previous over Assessment and any common profits of the Association. The budget shall provide for such reserve or contingency funds as the Board deems necessary or as may be required by law, but not less than the reserves required by Section 11.7. The Board may revise the budget and adjust the General Assessment from time to time during the year. Within 30 days after the adoption of a final budget by the Board, the Board shall send to each Owner a copy of the final budget. If the Board fails to adopt a budget, the last adopted budget shall continue in effect.

(b) **Neighborhood Assessments**. The Association or, after Declarant or the Board delegate the same thereto, a Neighborhood Association, is authorized to levy Neighborhood Assessments against all of the Units within such Neighborhood to fund Neighborhood Common Expenses. The determination of the allocation of Neighborhood Common Expenses may be undertaken in the same manner applicable to the Association with respect to allocating General Assessments, Special Assessments or Emergency Assessments, as applicable, unless otherwise provided in the Neighborhood Declaration.

(c) **Special Assessments**. The Board may levy during any fiscal year a Special Assessment, applicable to that year only, for the purpose of deferring all or any part of the cost of any construction or reconstruction, unexpected repair, or acquisition or replacement of a described capital improvement, or for any other one-time expenditure not to be paid for out of General Assessments. Special Assessments for acquisition or construction of new capital improvements or additions which in the aggregate in any fiscal year exceed an amount equal to fifteen percent (15%) of the budgeted gross expenses of the Association for the fiscal year may be levied only if approved by a majority of the voting rights voting on such matter, together with the written consent of the Class B Member, if any. Prior to the Turnover Meeting, any Special Assessment for acquisition or construction of new capital improvements or additions must be approved by not less than fifty percent (50%) of the Class A voting rights, together with the written consent of the Class B Member. Special Assessments shall be apportioned as provided in Section 11.2 and may be payable in lump sum or in installments, with or without interest or discount, as determined by the Board.

(d) **Emergency Assessments**. If the Annual Assessments levied at any time are or will become inadequate to meet all expenses incurred under this Declaration for any reason, including nonpayment of any Owner's Assessments on a current basis, the Board of Directors shall immediately determine the approximate amount of such inadequacy and issue a

supplemental budget, noting the reason therefor, and levy an Emergency Assessment for the amount required to meet all such expenses on a current basis. Emergency Assessments shall be apportioned as set forth in Section 11.2 above and payable as determined by the Board of Directors.

(e) **Limited Common Area Assessments**. General Assessments, Special Assessments and Emergency Assessments relating to maintenance, upkeep, repair, replacement or improvements to Limited Common Areas shall be assessed exclusively to the Units having the right to use such Limited Common Areas.

(f) **Individual Assessments**. Any Common Expense or any part of a Common Expense benefiting fewer than all of the Units may be assessed exclusively against the Units benefited as an Individual Assessment. Individual Assessments shall also include default Assessments levied against any Unit to reimburse the Association or Neighborhood Association for costs incurred in bringing such Unit or its Owner into compliance with the provisions of this Declaration or the Policies and Procedures of the Association and for fines or other charges imposed pursuant to this Declaration for violation thereof. Unless otherwise provided by the Board, Individual Assessments shall be due thirty (30) days after the Board has given written notice thereof to the Owners subject to Individual Assessments.

11.4 **Assessment of Additional Property**. When Additional Property is annexed to the Residential Areas, the Units included therein shall become subject to Assessments from the date of such annexation, except for those Units exempt from assessment pursuant to Section 11.5. All other Units shall pay such Assessments in the amount then being paid by other Units. The Board, however, at its option may elect to recompute the budget based upon the additional Units subject to assessment and additional Common Areas and recompute Assessments for all Units, including the new Units, for the balance of the fiscal year. Notwithstanding any provision of this Declaration apparently to the contrary, a Supplemental Declaration annexing Additional Property may provide that such Additional Property does not have the right to use a particular Common Area or facility located thereon, in which case such Additional Property shall not be assessed for the costs of operating, maintaining, repairing, replacing or improving such Common Area or facility.

11.5 **Exempt Property**. The following property shall be exempt from payment of General Assessments, Neighborhood Assessments, Special Assessments, Emergency Assessments and Limited Common Area Assessments:

(a) All Common Areas, Neighborhood Common Areas, Limited Common Areas and Community Improvements;

(b) Any property dedicated to and accepted by any Governmental Authority or public utility;

(c) Property owned by any Neighborhood Association for the common use and enjoyment of the Owners or the members of a Neighborhood Association or owned by the Association or the members of a Neighborhood Association as tenants-in-common;

(d) Units owned by Declarant until such time as a dwelling has been constructed on the Unit and the Unit is occupied for residential use, except that Units owned by Declarant shall be subject to assessments for reserves under Section 11.7; and

(e) Units owned by any developer or builder who has purchased one or more parcels from Declarant for development and resale until the earlier of (i) such time as the Unit is occupied for a residential use or (ii) six (6) months after conveyance of such parcel to the developer or builder from Declarant. The exemption contained in this paragraph 11.5(e) shall not apply to assessments for reserves as required by Section 11.7.

In addition, Declarant and/or the Association shall have the right, but not the obligation, to grant exemptions to certain Persons qualifying for tax exempt status under Section 501(c) of the Internal Revenue Code so long as such Persons own property subject to this Declaration for purposes listed in Section 501(c).

11.6 **Operations Fund.** The Association shall keep all funds received by it as Assessments, other than reserves described in Section 11.7, separate and apart from its other funds, in an Operations Fund held in a bank account in the State of Oregon in the name of the Association. The Association shall use such fund for the purpose of promoting the recreation, health, safety and welfare of the residents within the Residential Areas and in particular for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas and of the Units, including but not limited to:

(a) Payment of the cost of maintenance, utilities and services, repairs, replacements of that portion of the Residential Areas for which the Association is responsible.

(b) Payment of the cost of insurance maintained by the Association.

(c) Payment of taxes assessed against the Common Areas and any Improvements thereon.

(d) Payment of the cost of other services which the Association deems to be of general benefit to the Owners, including but not limited to accounting, legal and secretarial services.

(e) Payment of assessments imposed on the Association by the Community Council under the Community Improvements Declaration.

11.7 **Reserve Fund.**

(a) **Establishment of Account.** Declarant shall conduct a reserve study as described in paragraph (c) of this section and establish a Reserve Fund in a bank account in the State of Oregon in the name of the Association for replacement of common properties that will normally require replacement in whole or in part in more than three (3) and less than thirty (30) years, for exterior painting if the Common Areas or other property to be maintained by the Association include exterior painted surfaces, and for other items, whether or not involving Common Areas, if the Association has responsibility to maintain the items. The Reserve Fund

need not include those items that could reasonably be funded from operating Assessments or for those items for which one or more Owners are responsible for maintenance and replacement under the provisions of this Declaration or the Bylaws.

(b) **Funding of Reserve Fund**. The Reserve Fund shall be funded by Assessments against the individual Unit assessed for maintenance of the items for which the Reserve Fund is being established, which sums shall be included in the regular General Assessment for the Unit. The Reserve Fund shall be established in the name of the Association. The Association is responsible for administering the Reserve Fund and making periodic payments into it.

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

(i) Identification of all items for which reserves are to be established;

(ii) The estimated remaining useful life of each item as of the date of the reserve study;

(iii) The estimated cost of maintenance, repair or replacement of each item at the end of its useful life;

(iv) A thirty (30) year plan with regular and adequate contributions, adjusted by estimated inflation and interest earned on reserves, to meet the maintenance, repair and replacement schedule.

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

11.8 **Declarant's Subsidy**. Declarant may, but shall not be obligated to, reduce the General Assessments for any fiscal year by payment of a subsidy (in addition to any other amounts then owed by Declarant), which may be either a contribution, an advance against future assessments due from Declarant, or a loan, in Declarant's discretion. Any such subsidy shall be disclosed as a line item in the income portion of the Association's budget. Payment of such subsidy in any year shall not obligate Declarant to continue payment of such subsidy in future years unless otherwise provided in a written agreement between the Association and Declarant.

11.9 **Commencement of Assessment Obligation; Time of Payment**. The obligation to pay Assessments under this Declaration shall commence as to each Unit, on the first day of the month after such Unit becomes subject to this Declaration, or the Unit ceases to be exempt from Assessments, whichever is later. The first annual General Assessment levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time Assessments commence for such Unit.

11.10 **Payment of Assessments**. Assessments shall be paid in such manner and on such dates as the Board may establish. Unless the Board otherwise provides, the General Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any Assessments or other charges levied on his Unit, the Board may require the outstanding balance on all Assessments to be paid in full immediately. Until termination of the Development Period, any obligation of Declarant to pay Assessments may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these.

11.11 **Advance Payments Upon Sale**. The Association or any Neighborhood Association may require any Owner to obtain, in conjunction with the closing of any sale of such Owner's Unit, a deposit from the purchaser equal to the then estimated amount of assessments for three (3) months due to such Association. Any Owner entering into such a contract shall be obligated to collect or otherwise deposit such Assessments with the appropriate Association upon the closing of such conveyance and shall be liable therefor after such conveyance if those Assessments are ultimately not received by the Association. No failure to require or collect such estimated Assessments shall impair any contract of sale or provide any grounds for a rescission of such sale.

11.12 **Transfer Assessment**. In addition to all other assessments provided for herein, each Person acquiring fee title to a Unit shall pay an assessment or fee in the amount of Three Hundred Dollars ($300) to the Association, except that in the case of simultaneous transfers of multiple Units to a single developer for development and resale, only one such fee shall be assessed. Such assessment shall be paid at closing of the purchase of the Unit and shall apply each time the Unit is re-sold. The assessment may be used by the Association to defray the costs of reflecting the Unit ownership change on its books and records or such other expenses as it deems appropriate in its sole and absolute discretion.

11.13 **Personal Obligations for Assessments**. Declarant, for each Unit owned by it within the Residential Areas, hereby covenants, and each Owner of any Unit by acceptance of a conveyance thereof, whether or not so expressed in any such conveyance, shall be deemed to covenant to pay to the Association all Assessments or other charges as may be fixed, established and collected from time to time in the manner provided in this Declaration or the Bylaws. Such

Assessments and charges, together with any interest, late charges, expenses or attorneys' fees imposed pursuant to Sections 12.3 and 12.4, shall be a charge on the land and shall be a continuing lien upon the Unit against which each such Assessment or charge is made. Such Assessments, charges and other costs shall also be the personal obligation of the Person who was the Owner of such Unit at the time when the Assessment or charge fell due. Such liens and personal obligations shall be enforced in the manner set forth in Article 12.

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

11.15 **Neighborhood Association's Obligation to Pay Assessments**. A Neighborhood Association shall be jointly and severally obligated with the Owners of Units subject to its jurisdiction for all General, Special and Emergency Assessments levied against such Units. Each such Neighborhood Association shall include as a line item in its common expense budget, and shall be responsible for collecting and paying to the Association, the total amount of all General, Special, Emergency and Limited Common Area Assessments levied by the Association against the Units within its jurisdiction and such amount shall have first priority for payment out of the income of the Neighborhood Association. The obligation of each Neighborhood Association for collection and payment of Assessments to the Association shall be enforceable by the Association, and the Association may bring suit against any Neighborhood Association to collect delinquent Assessments, in addition to any other rights or remedies it may have hereunder or at law or in equity. The foregoing collection remedies shall not, however, constitute a lien upon all property subject to the jurisdiction of a particular Neighborhood Association. The obligation of each Neighborhood Association to collect and pay such Assessments to the Association pursuant to this section shall not relieve any Owner of liability for its pro rata share of any amounts not paid by the Neighborhood Association.

11.16 **No Waiver**. Failure of the Board to fix Assessment amounts or rates or to deliver or mail each Owner an Assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay Assessments. In such event, each Owner shall continue to pay Assessments on the same basis as during the last year for which an Assessment was made, if any, until a new Assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

11.17 **No Option to Exempt**. No Owner may exempt himself from liability for Assessments by non-use of Common Areas or Community Improvements, abandonment of his Unit, or any other means. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

11.18 **Certificate**. Upon written request, the Association shall furnish to any Owner liable for any type of Assessment a certificate in writing signed by an Association officer setting forth whether such Assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

Article 12

ENFORCEMENT

12.1 **Violation of General Protective Covenants**. In the event that any Owner constructs or permits to be constructed on his Unit an Improvement contrary to the provisions of this Declaration, or violates any provisions of the Governing Documents, then the Association acting through the Board shall notify the Owner in writing of any such specific violations. If the Owner is unable, is unwilling, or refuses to comply with the Association's specific directives for remedy or abatement, or the Owner and the Association cannot agree to a mutually acceptable solution within the framework and intent of this Declaration, after notice and opportunity to be heard and within fifteen (15) days after issuing written notice to the Owner, then the Association acting through the Board, shall have the right to do any or all of the following:

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

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

(c) Cause any vehicle parked in violation of this Declaration or the Policies and Procedures to be towed and impounded at the Owners' expense;

(d) Suspend the voting rights, any utility services paid for out of Assessments and the right to use the Common Areas for the period that the violations remain unabated, provided that the Association shall not deprive any Owner of access to and from his Unit in the absence of a foreclosure thereof or court order to such effect; and

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

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

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

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

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

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

12.3 **Interest, Late Charges and Expenses**. Any amount not paid to the Association when due in accordance with this Declaration shall bear interest from the due date until paid at a rate that is the greater of eighteen percent (18%) per annum or three percentage points per annum above the prevailing Portland, Oregon prime rate as of the due date, or such other rate as may be established by the Board of Directors, but not to exceed the lawful rate of interest under the laws of the State of Oregon. A late charge may be charged for each delinquent Assessment in an amount established from time to time by resolution of the Board of Directors, which resolution is delivered to each Unit, mailed to the mailing address of each Unit or mailed to the mailing address designated by the Owner in writing, together with all expenses incurred by the Association in collecting such unpaid assessments, including attorneys' fees (whether or not suit is instituted). In the event the Association shall file a notice of lien, the lien amount shall also include the recording fees associated with filing the notice, and a fee for preparing the notice of lien, established from time to time by resolution of the Board of Directors.

12.4 **Costs and Attorneys' Fees**. In the event the Association shall bring any suit or action to enforce this Declaration, the Bylaws of the Association or the Rules and Regulations, or to collect any money due hereunder or to foreclose a lien, the Owner-defendant shall pay to the Association all costs and expenses incurred by it in connection with such suit or action, including a foreclosure title report, and the prevailing party in such suit or action shall recover such amount as the court may determine to be reasonable as attorneys' fees at trial and upon any appeal or petition for review thereof or in connection with any bankruptcy proceedings or special bankruptcy remedies.

12.5 **Assignment of Rents**. As security for the payment of all liens arising pursuant to this Article 12, each Owner hereby gives to and confers upon the Association the right, power and authority, during the continuance of such ownership, to collect the rents, issues and profits of the Owner's Unit, reserving unto the Owner the right, prior to any default by such Owner in

performance of that Owner's obligation under this Declaration or the Bylaws to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, the Association may, at any time after ten (10) days written notice to such Owner, either in person, by agent or by a receiver to be appointed by a court of competent jurisdiction, and without regard to the adequacy of any security for such indebtedness, enter upon and take possession of such Owner's Unit or any part thereof, in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, in payment of any indebtedness to the Association or in performance of any agreement hereunder, and in such order as the Association may determine. Such action shall not cure nor waive any default hereunder or invalidate any act done pursuant to this Declaration. The assignment of rents and powers described in the foregoing section shall not affect, and shall in all respects be subordinate to, the rights and powers of the holder of any first or second Mortgage on any Unit, or any part thereof, to do the same or similar acts.

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

12.7 **Dispute Resolution.**

(a) **Mediation.**

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

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

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

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

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

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

(b) **Costs and Attorneys' Fees**. The fees of any mediator and the costs of mediation shall be divided and paid equally by the parties. Each party shall pay its own attorneys' fees and costs in connection with any mediation. Should any suit, action or arbitration be commenced in connection with any dispute related to or arising out of this Declaration or the Bylaws, to obtain a judicial construction of any provision of the Declaration or the Bylaws, to rescind this Declaration or the Bylaws or to enforce or collect any judgment or decree of any court or any award obtained during arbitration, the prevailing party shall be entitled to recover its costs and disbursements, together with such investigation, expert witness and attorneys' fees incurred in connection with such dispute, as the court or arbitrator may adjudge reasonable, at trial, in the arbitration, upon any motion for reconsideration, upon petition for review, and on any appeal of such suit, action or arbitration proceeding. The determination of who is the prevailing party and the amount of reasonable attorneys' fees to be paid to the prevailing party shall be decided by the arbitrator (with respect to attorneys' fees incurred prior to and during the arbitration proceeding) and by the court or courts, including any appellate or review court, in which such matter is tried, heard or decided.

(c) **Survival**. The mediation agreement set forth in this Section 12.7 shall survive the transfer by any party of its interest or involvement in the Residential Areas and any Unit therein and the termination of this Declaration.

Article 13

MORTGAGEES

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

13.1 **Subordination of Lien to Mortgages**. The lien of the Assessments or charges provided for in this Declaration shall be subordinate to the lien of any Mortgage on such Unit which was made in good faith and for value and which was recorded prior to the recordation of the notice of lien. Sale or transfer of any Unit shall not affect the Assessment lien, but the sale or transfer of any Unit which is subject to any mortgage or deed of trust pursuant to a decree of foreclosure or nonjudicial sale thereunder shall extinguish any lien of an Assessment notice of which was recorded after the recording of the Mortgage. Such sale or transfer, however, shall not release the Unit from liability for any Assessments or charges thereafter becoming due or from the lien of such Assessments or charges.

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

13.3 **Notification of First Mortgagee**. If a first Mortgagee has requested such notice in writing from the Association, the Board shall notify such Mortgagee of any individual Unit of any default in performance of this Declaration by the Owner which is not cured within sixty (60) days after notice of default to the Owner.

13.4 **Notice to Association**. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

Article 14

AMENDMENT AND REPEAL

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

14.2 **Approval Required**. This Declaration, or any provision thereof, as from time to time in effect with respect to all or any part of the Residential Areas, may be amended or repealed by the vote or written consent of Owners representing not less than seventy-five percent (75%) of the Units, based upon one vote for each such Unit, together with the written consent of

the Class B Member, if such Class B membership has not been terminated as provided in this Declaration. In no event shall an amendment under this section create, limit or diminish special Declarant rights without Declarant's written consent, or change the boundaries of any Unit or any uses to which any Unit is restricted under this Declaration or change the method of determining liability for common expenses, the method of determining the right to common profits or the method of determining voting rights of any Unit unless the Owners of the affected Units unanimously consent to the amendment. Declarant may not amend this Declaration to increase the scope of special Declarant rights reserved in this Declaration after the sale of the first Unit unless Owners representing seventy-five percent (75%) of the total vote, other than Declarant, agree to the amendment.

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

14.4 **Regulatory Amendments**. Notwithstanding the provisions of Section 14.2 above, until the Turnover Meeting has occurred, Declarant shall have the right to amend this Declaration or the Bylaws of the Association in order to comply with the requirements of any applicable statute, ordinance or regulation or of the Federal Housing Administration; the United States Department of Veterans Affairs; the Farmers Home Administration of the United States; the Federal National Mortgage Association; the Government National Mortgage Association; the Federal Home Mortgage Loan Corporation, any department, bureau, board, commission or agency of the United States or the State of Oregon; or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon that insures, guarantees or provides financing for a planned community or lots in a planned community. After the Turnover Meeting, any such amendment shall require the approval of a majority of the voting rights of the Association voting in person, by proxy or by ballot at a meeting or ballot meeting of the Association at which a quorum is represented.

Article 15

MISCELLANEOUS PROVISIONS

15.1 **No Implied Obligations**. Nothing in this Declaration shall be construed to require Declarant or any successor to subject Additional Property to this Declaration or to improve or develop any of the Residential Areas or to do so for any particular uses.

15.2 **Right to Approve Additional Covenants**. No Person shall record any declaration of covenants, conditions, and restrictions, declaration of condominium or similar instrument affecting any portion of the Residential Areas without Declarant's prior written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force or effect unless subsequently approved in writing by Declarant.

15.3 **Right to Transfer or Assign Declarant's Rights**. Any or all of Declarant's rights and related obligations under this Declaration may be transferred in whole or in part to other Persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant then has under this Declaration. No such transfer or assignment shall be effective unless it is in a written instrument signed by Declarant and Recorded. The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to record any written assignment.

15.4 **Joint Owners**. Unless otherwise provided in a Neighborhood Declaration, in any case in which two or more Persons share the ownership of any Unit, regardless of the form of ownership, the responsibility of such Persons to comply with this Declaration shall be a joint and several responsibility and the act or consent of any one or more of such Persons shall constitute the act or consent of the entire ownership interest; provided, however, that in the event such Persons disagree among themselves as to the manner in which any consent shall be given with respect to a pending matter, any such Person may deliver written notice of such disagreement to the Association, and the right of consent involved shall then be disregarded completely in determining the proportion of consents given with respect to such matter.

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

15.6 **Notice of Sale or Transfer of Title**. Any Owner selling or otherwise transferring title to his or her Unit shall give the Association written notice within seven (7) days after such transfer of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Association may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including Assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

15.7 **Exclusive Rights to Use Name of Development**. No Person shall use the name "Brasada Ranch" or any derivative of such name in any printed, digital (i.e. internet) or other promotional or commercial material without Declarant's prior written consent. However, an Owner may use the name "Brasada Ranch" where such term is used solely to specify that the Owner's property is located within the Residential Areas and Neighborhood Associations shall be entitled to use the words "Brasada Ranch" in their names. In no event shall any Owner enter into an agreement with any third party for the sale, rental or management of the Owner's Unit which agreement purports to grant any right to such third party to use the name "Brasada Ranch" or any derivative of such name in violation of this provision.

15.8 **Nonwaiver**. Failure by the Association or by any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

15.9 **Construction; Severability; Number; Captions**. This Declaration shall be governed and construed under the laws of the State of Oregon. It shall be liberally construed as an entire document to accomplish the purposes hereof as stated in the introductory sections of this Declaration. Nevertheless, each provision of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision shall not affect the validity or enforceability of the remaining part of that or any other provision.

15.10 **Terminology and Captions**. As used in this Declaration, the singular shall include the plural and the plural the singular, and the masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions used in this Declaration are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration.

15.11 **Notices and Other Documents**. Any notice or other document permitted or required by this Declaration may be delivered either personally or by mail. Delivery by mail shall be deemed made twenty-four (24) hours after having been deposited in the United States mail as certified or registered mail, with postage prepaid, addressed as follows: (a) If to Declarant or the Association, PO Box 1215, Redmond, Oregon 97756; (b) if to a Neighborhood Association, to the address designated by such Neighborhood Association in writing with the Association, or at the principal office of such Neighborhood Association; or (c) if to an Owner, to such Owner at the address of such Owner's property within the jurisdiction of the Association or such other address as it has registered with the Association. If to an Owner, at the address given by the Owner at the time of purchase of a Unit, or at the Unit. The address of a party may be changed at any time by notice in writing delivered as provided in this section.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day and year first written above.

BRASADA RANCH, INC.,
an Oregon corporation

By _____
Jerol Andres, President

STATE OF OREGON)
)ss.
COUNTY OF Deschutes)

This instrument was acknowledged before me this 1st day of June, 2005, by Jerol Andres, President of Brasada Ranch, Inc., an Oregon corporation, on its behalf.

Notary Public
My commission expires: Oct. 17, 2008
Commission No.: 385887

EXHIBIT A

Property Initially Subject to this Declaration

All of the real property shown on the plat of Brasada Ranch 1 recorded April 25, 2005, in the Records of Crook County, Oregon, as MF No. 199243, except Lot A and Golf Lot 1.

EXHIBIT B

Neighborhoods and Land Classifications Within Initial Development

Neighborhoods - There are no Neighborhoods in the Initial Development at this time.

Units - Lots 1 through 201.

Common Areas - Lots B, C, D, E, and F, and all private streets within the Initial Development, except as designated as Community Improvements below.

Community Improvements – That portion of Brasada Ranch Road between the main entry at Alfalfa Road and the gate to the Residential Areas.

Excluded Areas – Golf Lot 1, which will be a Privately Owned Amenity, and Lot A.

EXHIBIT C

BYLAWS OF

BRASADA RANCH RESIDENTIAL OWNERS ASSOCIATION

TABLE OF CONTENTS

BYLAWS OF

BRASADA RANCH RESIDENTIAL OWNERS ASSOCIATION

Article 1

DEFINITIONS

1.1 **Association**. "Association" means **BRASADA RANCH RESIDENTIAL OWNERS ASSOCIATION**, a nonprofit corporation organized and existing under the laws of the State of Oregon.

1.2 **Articles of Incorporation**. "Articles of Incorporation" means the Articles of Incorporation of the Association.

1.3 **Declaration**. The "Declaration" means the Declaration of Covenants, Conditions, Restrictions and Easements for Brasada Ranch Residential Areas to which these Bylaws are attached, as the same may be subsequently amended or supplemented pursuant to the terms thereof.

1.4 **Incorporation by Reference**. Except as otherwise provided herein, the terms that are defined in Article 1 of the Declaration are used in these Bylaws as therein defined.

Article 2

MEMBERSHIP

2.1 **Membership**. Every Owner of one or more Units within the Property shall, immediately upon creation of the Association and thereafter during the entire period of such ownership, be a member of the Association. Such membership shall commence, exist and continue simply by virtue of such ownership, shall expire automatically upon termination of such ownership, and need not be confirmed or evidenced by any certificate or acceptance of membership. The Association shall have two classes of membership, Class A and Class B, as set forth in the Declaration.

2.2 **Membership List**. The Secretary shall maintain at the principal office of the Association a membership list showing the name and address of the Owner of each Unit. The Secretary may accept as satisfactory proof of such ownership a duly executed and acknowledged conveyance, a title insurance policy, or other evidence reasonably acceptable to the Board of Directors.

Article 3

MEETINGS AND VOTING

3.1 **Place of Meetings**. Meetings of the members of the Association shall be held at such reasonable place convenient to the members as may be designated in the notice of the meeting.

3.2 **First Meeting**. Declarant shall call the first meeting of the Owners to organize the Association within one year following the closing of the first sale of a Unit to an individual purchaser (as opposed to a builder). Notice of such meeting shall be given to all Owners as provided in Section 3.5.

3.3 **Annual Meeting**. Annual meetings of the members for the election of directors or for the transaction of such other business as may properly come before the meeting shall be held at such reasonable hour and on such reasonable day as may be established by the Board of Directors.

3.4 **Special Meetings**. A special meeting of the Association may be called at any time by the President or by a majority of the Board of Directors. A special meeting shall be called upon receipt of a written request stating the purpose of the meeting from members having at least thirty percent (30%) of the voting rights entitled to be cast at such meeting. Business transacted at a special meeting shall be confined to the purposes stated in the notice of meeting.

3.5 **Notice of Meeting**.

(a) Written or printed notice stating the place, day and hour of the meeting, the items on the agenda, including the general nature of any proposed amendment to the Declaration or these Bylaws, any budget changes, any proposal to remove a director or officer and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) or more than fifty (50) days before the date of the meeting. Such notice shall be given either personally or by mail, by or at the direction of the President, the Secretary, or the persons calling the meeting, to each member entitled to vote at such meeting and to all mortgagees who have requested such notice. Notices to Declarant shall be mailed. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, with postage fully prepaid thereon, addressed to the member at his or her most recent address as it appears on the records of the Association or to the mailing address of his or her Unit.

(b) When a meeting is adjourned for thirty (30) days or more, or when a redetermination of the persons entitled to receive notice of the adjourned meeting is required by law, notice of the adjourned meeting shall be given as for an original meeting. In all other cases, no notice of the adjournment or of the business to be transacted at the adjourned meeting need be given other than by announcement at the meeting at which such adjournment is taken.

3.6 **Quorum**. At any meeting of the Association, members having at least twenty percent (20%) of the voting rights entitled to be cast at such meeting, present in person or by proxy, shall constitute a quorum, except when a larger quorum is required by the Declaration. When a quorum is once present to organize a meeting, it cannot be broken by the subsequent

withdrawal of a member or members. If any meeting of members cannot be organized because of a lack of quorum, the members who are present, either in person or by proxy, may adjourn the meeting from time to time not less than forty-eight (48) hours or more than thirty (30) days from the time the original meeting was called until a quorum is present. The quorum for the adjourned meeting shall be reduced to ten percent (10%) of the voting rights entitled to be cast at the meeting, present in person or by proxy.

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

(a) **Allocation**. Subject to Declarant's right to designate the number of Units attributable to any vacant land prior to its development in accordance with the Development Plan, each Unit shall be allocated one vote.

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

Class A. Class A Members shall be all Owners with the exception of the Class B Member and shall be entitled to voting rights for each Unit owned computed in accordance with Section 3.7(a) above. When more than one Person holds an interest in any Unit, all such Persons shall be members. Except as may otherwise be specified in the Supplemental Declaration annexing such Unit to the Residential Areas, the vote for such Unit shall be exercised as they among themselves determine. In no event, however, shall more voting rights be cast with respect to any Unit than as set forth in Section 3.7(a) above.

Class B. The Class B Member shall be the Declarant and shall be entitled to three times the voting rights computed under Section 3.7(a) for each Unit 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:

(1) Expiration of the Development Period; or

(2) At such earlier time as Declarant may elect in writing to terminate Class B membership.

3.8 **Fiduciaries and Joint Owners**. An executor, administrator, guardian or trustee may vote, in person or by proxy, at any meeting of the Association with respect to any Unit owned or held in such capacity, whether or not the same shall have been transferred to his or her name; provided that such person shall satisfy the Secretary that he or she is the executor, administrator, guardian or trustee, holding such Unit in such capacity. Whenever any Unit is owned by two or more persons jointly, according to the records of the Association, the vote or proxy of such Unit may be exercised by any one of the Owners then present, in the absence of protest by a co-Owner. In the event of disagreement among the co-Owners, the vote of such Unit shall be disregarded completely in determining the proportion of votes given with respect to such matter, unless a valid court order establishes the authority of a co-Owner to vote.

3.9 **Tenants and Contract Vendors**. Unless otherwise expressly stated in the rental agreement or lease, all voting rights allocated to a Unit shall be exercised by the Owner. Unless

otherwise stated in the contract, all voting rights allocated to a Unit shall be exercised by the vendee of any recorded land sale contract on the Unit.

3.10 **Absentee Ballots and Proxies**. A vote may be cast in person, by absentee ballot or by proxy. A proxy given by an Owner to any person who represents such Owner at meetings of the Association shall be in writing and signed by such Owner, and shall be filed with the secretary, at any time prior to or at the start of the meeting. An Owner may not revoke a proxy given pursuant to this Section except by actual notice of revocation to the person presiding over a meeting or to the Board of Directors if a vote is being conducted by written ballot in lieu of a meeting. A proxy shall not be valid if it is undated or purports to be revocable without notice. A proxy shall terminate one (1) year after its date unless the proxy specifies a shorter term. Every proxy shall automatically cease upon sale of the Unit by its Owner. An Owner may pledge or assign such Owner's voting rights to a mortgagee. In such a case, the mortgagee or its designated representative shall be entitled to receive all notices to which the Owner is entitled under these Bylaws and to exercise the Owner's voting rights from and after the time that the mortgagee shall give written notice of such pledge or assignment to the Board of Directors. Any first mortgagee may designate a representative to attend all or any meetings of the Association.

3.11 **Majority Vote**. The vote of a majority of the voting rights entitled to be cast by the members present or represented by absentee ballot or proxy, at a meeting at which a quorum is present, shall be necessary for the adoption of any matter voted upon by the members, unless a greater proportion is required by law, by the Declaration, by the Articles of Incorporation, or by these Bylaws.

3.12 **Rules of Order**. Unless other rules of order are adopted by resolution of the Association or the Board of Directors, all meetings of the Association shall be conducted according to the latest edition of *Robert's Rules of Order*, published by Robert's Rules Association.

3.13 **Ballot Meetings**.

(a) At the discretion of the Board of Directors, any action that may be taken at any annual, regular or special meeting of the Association may be taken without a meeting if the Association delivers a written ballot to every member who is entitled to vote on the matter; provided, however, that a ballot meeting may not substitute for the Turnover Meeting or, if a majority of the Units are the principal residences of the occupants, for the annual meetings of the Association. The written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action.

(b) The Board of Directors shall provide Owners with at least ten (10) days' notice before written ballots are mailed or otherwise delivered. If, at least three (3) days before written ballots are scheduled to be mailed or otherwise distributed, at least ten percent (10%) of the Owners petition the Board of Directors requesting secrecy procedures, a written ballot must be accompanied by a secrecy envelope, a return identification envelope to be signed by the Owner, and instructions for marking and returning the ballot. The notice shall state the general subject matter of the vote, the right of the Owners to request secrecy procedures, the date after which ballots may be distributed, the date and time by which any petition must be received by

the Board requesting secrecy procedures and the address where any petition must be received. Notwithstanding the applicable provisions of paragraph (c) of this section, written ballots that are returned in secrecy envelopes may not be examined or counted before the deadline for returning ballots has passed.

(c) If approval of a proposed action would otherwise require a meeting at which a certain quorum must be present and at which a certain percentage of total votes cast is required to authorize the action, the proposal will be deemed to be approved when the date for return of ballots has passed, a quorum of Unit Owners has voted, and the required percentage of approving votes has been received. Otherwise, the proposal shall be deemed to be rejected. If approval of a proposed action otherwise would require a meeting at which a specified percentage of Unit Owners must authorize the action, the proposal shall be deemed to be approved when the percentage of total votes cast in favor of the proposal equals or exceeds such required percentage. The proposal shall be deemed to be rejected when the number of votes cast in opposition renders approval impossible or when both the date for return of ballots has passed and such required percentage has not been met. Except as otherwise provided in paragraph (b) of this section, votes may be counted from time to time before the final return date to determine whether the proposal has passed or failed by the votes already cast on the date they are entered.

(d) All solicitations for votes by written ballot shall state the number of responses needed to meet any applicable quorum requirement and the total percentage of votes needed for approval. All such solicitations for votes shall specify the period during which the Association will accept written ballots for counting, which period shall end on the earliest of (i) the date on which the Association has received a sufficient number of approving ballots to pass the proposal, (ii) the date on which the Association has received a sufficient number of disapproving ballots to render the proposal impossible of passage, or (iii) a date certain by which all ballots must be returned to be counted. A written ballot may not be revoked.

Article 4

DIRECTORS: MANAGEMENT

4.1 **Number and Qualification**. The affairs of the Association shall be governed by a Board of Directors of three (3) to seven (7) persons as provided in the Declaration. All directors, other than directors appointed by Declarant, shall be Owners or co-Owners of Units. For purposes of this section, the officers of any corporate Owner, the members of any limited liability company and the partners of any partnership shall be considered co-Owners of any Units owned by such corporation or partnership.

4.2 **Interim Directors**. Upon incorporation of the Association and until the first annual meeting after twenty-five percent (25%) of the Units authorized by the Development Plan have been sold and conveyed to individual residential purchasers (as opposed to builders), the Board shall be composed of three directors all of whom shall be appointed by Declarant.

4.3 **Transitional Advisory Committee**. Unless the Turnover Meeting has already been held, Declarant shall call a meeting of the Owners for the purpose of forming a Transitional Advisory Committee. The meeting shall be called within sixty (60) days after the date Declarant

conveys fifty percent (50%) or more of the Units then existing in the Residential Areas to Owners other than a successor Declarant. The committee shall consist of two (2) or more Owners elected by the Owners other than Declarant and not more than one (1) representative of Declarant. Once the Class A Member commences electing directors pursuant to Section 4.4 below, the directors so elected by the Class A Members shall be Owner elected members of the Transitional Advisory Committee. The Transitional Advisory Committee shall be advisory only, and its purpose shall be to enable ease of transition from administrative control of the Association by Declarant to control by the Owners. The committee shall have access to any information, documents and records that Declarant must turn over to the Owners at the time of the Turnover Meeting. If Declarant fails to call the meeting to elect a Transitional Advisory Committee within the time specified, the meeting may be called and notice given by any Owner. If the Owners fail to elect a Transitional Advisory Committee at the meeting called for such purpose, Declarant shall have no further obligation to form the committee.

4.4 **Appointment, Nomination and Election**.

(a) **When Twenty-Five Percent (25%) of the Units Have Been Sold**. Commencing on the first annual meeting after twenty-five percent (25%) of the Units authorized by the Development Plan have been sold and conveyed to ultimate purchasers and until the first annual meeting after fifty percent (50%) of such Units have been conveyed, the Board shall be composed of three members, two of whom shall be appointed by Declarant and one of whom shall be elected by the Class A Members.

(b) **When Fifty Percent (50%) of the Units Have Sold**. Commencing on the first annual meeting after fifty percent (50%) of the Units authorized by the Development Plan have been sold and conveyed to ultimate purchasers and until the first annual meeting after ninety percent (90%) of the Units have been conveyed, the Board shall be composed of five directors, three of whom shall be appointed by Declarant and two of whom shall be elected by the Class A Members.

(c) **When Ninety Percent (90%) of the Units Have Been Sold**. Commencing on the first annual meeting after ninety percent (90%) of the Units authorized by the Development Plan have been sold and conveyed to ultimate purchasers and until the first annual meeting after expiration of the Development Period, the Board shall be composed of five directors, two of whom shall be appointed by Declarant and three of whom shall be elected by the Class A Members.

(d) **Turnover Meeting After Termination of Class B Membership**. The first annual meeting after termination of the Class B membership shall be the Turnover Meeting, at which time Declarant will turn over administrative control to the Owners. Commencing with the Turnover meeting, the Board shall be composed of seven directors, all of whom shall be elected by the Owners. The method of election, terms of office and method of removal and filling of vacancies shall be governed by the Bylaws.

(e) **Nomination Procedures**. Nominations for election to the Board shall be made by a Nominating Committee. The Nominating Committee shall consist of a chairman, who shall be a member of the Board, and two or more Class A Members or representatives of Class A

Members. The Nominating Committee shall be appointed by the Board not less than 90 days prior to each election to serve a term of one year or until their successors are appointed. The Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but in no event less than the number of positions to be filled. Nominations shall also be permitted from the Class A Members. The Nominating Committee shall nominate separate slates for the directors to be elected at large by all Class A votes, and for the director(s), if any, to be elected by the votes within each Voting Group. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity that exists within the pool of potential candidates.

4.5 **Voting Groups**. In connection with the election of those directors to be elected by the Class A Members, Declarant may, from time to time, in its discretion, designate Voting Groups consisting of one or more Neighborhoods (or the Units outside any Neighborhood) for the purpose of electing directors to the Board, in addition to any at-large directors elected by all Class A Members. Voting Groups may be designated to ensure groups with dissimilar interests are represented on the Board and to avoid allowing Owners representing similar Neighborhoods to elect the entire Board, due to the number of Units in such Neighborhoods, excluding the representation of others. The number of Voting Groups within the Residential Areas shall not exceed the total number of directors to be elected by the Class A Members. The Owners in Neighborhoods within each Voting Group shall vote on a separate slate of candidates for election to the Board. Declarant shall establish Voting Groups, if at all, not later than the termination of Class B membership by filing with the Association and Recording a supplemental declaration identifying each Voting Group by legal description or other means such that the Units within each Voting Group can easily be determined. Such designation may be amended from time to time by Declarant, acting alone, at any time prior to termination of the Class B membership. After termination of the Class B membership, the Board shall have the right to Record a supplemental declaration changing the Voting Groups upon the vote of a majority of the total number of directors and approval of a majority of the voting rights in the Association. Neither recordation nor amendment of such supplemental declaration by Declarant shall constitute an amendment to this Declaration and no consent or approval of the Owners shall be required, except as stated in this section. Until such time as Voting Groups are established, all of the members shall constitute a single Voting Group. After a Supplemental Declaration establishing Voting Groups has been Recorded, any and all portions of the Residential Areas which are not assigned to a specific Voting Group shall constitute a single Voting Group.

4.6 **Vacancies**.

(a) A vacancy in the Board of Directors shall exist upon the death, resignation or removal of any director, or if the authorized number of directors is increased, or if the members fail at any annual or special meeting of members at which any director or directors are to be elected to elect the full authorized number of directors to be voted for at that meeting.

(b) Vacancies in the Board of Directors, other than interim directors, may be filled by a majority of the remaining directors, even though less than a quorum, or by a sole remaining director, from the Voting Group represented by the director who vacated the position. Each director so elected shall hold office for the balance of the unexpired term and until his or her successor is elected. Vacancies in interim directors shall be filled by Declarant.

4.7 **Removal of Directors.**

(a) All or any number of the directors, other than interim directors, may be removed, with or without cause, at any meeting of members at which a quorum is present, by a vote of 67% of the votes of the Voting Group that elected such director. No removal of a director shall be effective unless the matter of removal was an item on the agenda and stated in the notice of the meeting as provided in these Bylaws.

(b) Any elected director who has three consecutive unexcused absences from Board meetings or who is delinquent in the payment of any assessment or other charge due the Association for more than 30 days may be removed by a majority of the directors present at a regular or special Board meeting at which a quorum is present, and the Board may appoint a successor to fill the vacancy for the remainder of the term.

4.8 **Powers**. The Board of Directors shall have all the powers and duties necessary for the administration of the affairs of the Association, except such powers and duties as by law or by the Declaration or by these Bylaws may not be delegated to the Board of Directors by the Owners. The Board of Directors may delegate responsibilities to committees or a managing agent, but shall retain ultimate control and supervision. The powers and duties to be exercised by the Board of Directors shall include, but not be limited to, those set forth in Section 9.5 of the Declaration and the following:

(a) Carry out the program for maintenance, upkeep, repair and replacement of any property required to be maintained by the Association as described in the Declaration and these Bylaws.

(b) Determine the amounts required for operation, maintenance and other affairs of the Association, and the making of such expenditures.

(c) Prepare a budget for the Association, and assessment and collection of the Assessments.

(d) Employ and dismiss such personnel as may be necessary for such maintenance, upkeep and repair.

(e) Employ legal, accounting or other personnel for reasonable compensation to perform such services as may be required for the proper administration of the Association; provided, however, the Board may not incur or commit the Association to incur legal fees in excess of $5,000 for any specific litigation or claim matter or enter into any contingent fee contract on any claim in excess of $100,000 unless the Owners have enacted a resolution authorizing the incurring of such fees by a vote of seventy-five percent (75%) of the voting rights. These limitations shall not be applicable to legal fees incurred in defending the Association or the Board of Directors from claims or litigation brought against them. The limitations set forth in this paragraph shall increase by ten percent on each fifth anniversary of the recording of the Declaration. To the extent required by the Oregon Planned Community Act, the Board shall notify the Owners before instituting litigation or administrative proceedings. With regard to any pending litigation involving the Association, the Board shall periodically report to the Unit Owners as to the status (including settlement offers), progress, and method of

funding such litigation. Nothing in this paragraph shall be construed as requiring the Board to disclose any privileged communication between the Association and its counsel.

(f) Open bank accounts on behalf of the Association and designating the signatories required therefor.

(g) Prepare and file, or cause to be prepared and filed, any required income tax returns or forms for the Association.

(h) Purchase Units at foreclosure or other judicial sales in the name of the Association or its designee.

(i) Sell, lease, mortgage, vote the votes appurtenant to (other than for the election of directors), or otherwise deal with Units acquired by the Association or its designee.

(j) Obtain insurance or bonds pursuant to the provisions of these Bylaws and review such insurance coverage at least annually.

(k) Make additions and improvements to, or alterations of, the Common Areas, or modify, close, remove, eliminate or discontinue use of any common facility, including any improvement or landscaping, except that any such modification, closure, removal, elimination or discontinuance (other than on a temporary basis) of any swimming pool, spa or recreational or community building must be approved by a majority vote of the members at a meeting or by written ballot held or conducted in accordance with these Bylaws.

(l) From time to time adopt, modify, or revoke such Policies and Procedures governing the details for the operation of the Association, the conduct of persons and the operation and use of the Property as the Board of Directors may deem necessary or appropriate to ensure the peaceful and orderly use and enjoyment of the Property. Such action may be overruled or modified by vote of not less than seventy-five percent (75%) of the voting rights of each class of members present, in person or by proxy, at any meeting, the notice of which shall have stated that such modification or revocation of Policies and Procedures will be under consideration.

(m) Enforce by legal means the provisions of the Declaration, these Bylaws and any Policies and Procedures adopted hereunder.

(n) In the name of the Association, maintain a current mailing address of the Association, file annual reports with the Oregon Secretary of State, and maintain and keep current the information required to enable the Association to comply with ORS 94.670(7).

(o) Subject to Section 9.5(v) of the Declaration, enter into management agreements with professional management firms.

4.9 **Meetings.**

(a) Meetings of the Board of Directors shall be held at such place as may be designated from time to time by the Board of Directors or other persons calling the meeting.

(b) Annual meetings of the Board of Directors shall be held within thirty (30) days following the adjournment of the annual meetings of the members.

(c) Special meetings of the Board of Directors for any purpose or purposes may be called at any time by the President or by any two directors.

Unless other rules of order are adopted by resolution of the Association or the Board of Directors, all meetings of the Board of Directors shall be conducted according to the latest edition of *Robert's Rules of Order*, published by Robert's Rules Association.

4.10 **Open Meetings.**

(a) All meetings of the Board of Directors shall be open to Owners except that, in the discretion of the Board, the following matters may be considered in executive session: (i) consultation with legal counsel concerning the rights and duties of the Association regarding existing or potential litigation, or criminal matters; (ii) personnel matters, including salary negotiations and employee discipline; (iii) negotiation of contracts with third parties and (iv) collection of unpaid assessments. Except in the case of an emergency, the Board of Directors shall vote in an open meeting on whether to meet in executive session. If the Board of Directors votes to meet in executive session, the presiding officer shall state the general nature of the action to be considered and, as precisely as possible, when and under what circumstances the deliberations can be disclosed to Owners. The statement, motion or decision to meet in the executive session shall be included in the minutes of the meeting, and any contract or action considered in executive session shall not become effective unless the Board, following the executive session, reconvenes in open meeting and votes on the contract or action, which shall be reasonably identified in the open meeting and included in the minutes.

(b) Meetings of the Board of Directors may be conducted by telephonic communication or by other means of communication that allows all members of the Board participating to hear each other simultaneously or otherwise to be able to communicate during the meeting, except that if a majority of the Units are principal residences of the occupants, then: (i) for other than emergency meetings, notice of each Board of Directors' meeting shall be posted at a place or places on the property at least three (3) days before the meeting, or notice shall be provided by a method otherwise reasonably calculated to inform the Owners of such meeting; and (ii) only emergency meetings of the Board of Directors may be conducted by telephonic communication. The meeting and notice requirements of this section may not be circumvented by chance, social meetings, or any other means.

4.11 **Notice of Meetings.**

(a) Notice of the time and place of meetings shall be given to each director orally, or delivered in writing personally or by mail or telecopy, at least twenty-four (24) hours before the meeting. Notice shall be sufficient if actually received at the required time or if

mailed or telecopied not less than seventy-two (72) hours before the meeting. Notice mailed or telecopied shall be directed to the address shown on the Association's records or to the director's actual address ascertained by the person giving the notice. Such notice need not be given for an adjourned meeting if such time and place is fixed at the meeting adjourned.

(b) Attendance of a director at a meeting shall constitute a waiver of notice of such meeting except when a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

4.12 **Quorum and Vote**.

(a) A majority of the directors shall constitute a quorum for the transaction of business. A minority of the directors, in the absence of a quorum, may adjourn from time to time but may not transact any business.

(b) The action of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors unless a greater number is required by law, the Declaration, the Articles of Incorporation or these Bylaws.

4.13 **Right Of Declarant To Disapprove Actions.** So long as Declarant or any affiliate of Declarant owns any property within the Residential Areas, directly or indirectly, in whole or in part, Declarant shall have a right to disapprove any action, policy or program of the Association, the Board and any committee which, in the sole judgment of the Declarant, would tend to impair the rights of Declarant or builders under the Declaration or these Bylaws, or interfere with development, construction or marketing of any portion of the Residential Areas, or diminish the level of services being provided by the Association. This right to disapprove is in addition to, and not in lieu of, any right to approve or disapprove specific actions of the Association, the Board or any committee as may be granted to the Class B Member or Declarant in the Declaration or these Bylaws.

(a) The Declarant shall be given written notice of all meetings of the Association, the Board or any committee thereof and of all proposed actions of the Association, the Board or any committee thereof to be approved at such meetings or by written request in lieu of a meeting. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, which notice complies with the requirements for Board meetings set forth in these Bylaws and which notice shall, except in the case of the regular meetings held pursuant to the Bylaws, set forth with reasonable particularity the agenda to be followed at such meeting.

(b) The Declarant shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein. The Declarant, its representatives or agents may make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee.

(c) No action, policy or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of

subsections (a) and (b) above have been met and the time period set forth in subsection (d) below has expired.

(d) The Declarant, acting through any officer or director, agent or authorized representative, may exercise its right to disapprove at any time within 10 days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within 10 days following receipt of written notice of the proposed action. This right to disapprove may be used to block proposed actions, but shall not include a right to require any action or counteraction on behalf of any committee, the Board or the Association unless such action or counteraction countermands an action, policy or program that was not properly noticed and implemented. The Declarant shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

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

4.15 **Compensation**. No director shall receive any compensation from the Association for acting as such.

4.16 **Executive, Covenants and Other Committees**.

(a) Subject to law, the provisions of the Declaration and these Bylaws, the Board of Directors, may appoint an Executive Committee, a Covenants Committee to be responsible for covenant enforcement as provided in Section 4.17 and such other standing or temporary committees as may be necessary from time to time consisting of Owners and at least one member of the Board of Directors and having such powers as the Board of Directors may designate. Such committees shall hold office at the pleasure of the Board.

(b) Each Neighborhood Committee shall be a committee of the Association. The Board shall have all of the power and control over any Neighborhood Committee that it has

under applicable law over other committees of the Association. The Board shall have the power to veto any action taken or contemplated to be taken by any Neighborhood Committee or Neighborhood Association which the Board reasonably determines to be adverse to the interests of the Association or the Owners or inconsistent with the Community-Wide Standard.

4.17 **Enforcement Procedures** The Association shall have the power, as provided in the Declaration, to impose sanctions for any violation of the Declaration, these Bylaws or the Policies and Procedures. To the extent specifically required by the Declaration, the Board of Directors shall comply with the following procedures prior to the imposition of sanctions:

(a) **Notice**. The Board of Directors or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a statement that the alleged violator shall have fourteen (14) days to present a written request for a hearing before the Board of Directors or a Covenants Committee appointed by the Board of Directors, if any; and (iv) a statement that the proposed sanction may be imposed as contained in the notice unless a hearing is requested within fourteen (14) days of the notice.

(b) **Response**. The alleged violator shall respond to the notice of the alleged violation in writing within such fourteen (14) day period, regardless of whether the alleged violator is challenging the imposition of the proposed sanction. If the alleged violator cures the alleged violation and notifies the Board of Directors in writing within such fourteen (14) day period the Board of Directors may, but shall not be obligated to, waive the sanction. Such waiver shall not constitute a waiver of the right to sanction future violations of the same or other provisions by any person. If a timely request for a hearing is not made, the sanction stated in the notice shall be imposed; provided, however, that the Board of Directors or Covenants Committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the fourteen (14) day period. Any response or request for a hearing shall be delivered to the Association's manager, President or Secretary, or as otherwise specified in the notice of violation.

(c) **Proof of Notice**. Prior to the effectiveness of sanctions imposed pursuant to this section, proof of proper notice shall be placed in the minutes of the Board of Directors or Covenants Committee, as applicable. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative requests and appears at the hearing.

(d) **Hearing**. If a hearing is requested within the allotted fourteen (14) day period, the hearing shall be held before the Board of Directors or the Covenants Committee, as applicable. The alleged violator shall be afforded a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing (i.e., the decision) and the sanction, if any, to be imposed.

(e) **Appeal**. Following a hearing before the Covenants Committee, if applicable, the violator shall have the right to appeal the decision to the Board of Directors. To

exercise this right, the violator must deliver a written notice of appeal to the Association's manager, President or Secretary within ten (10) days after the hearing date.

(f) **Enforcement Policies**. The Board of Directors, by Resolution, may adopt additional Policies and Procedures governing enforcement of the Declaration, these Bylaws or the Policies and Procedures.

Article 5

OFFICERS

5.1 **Designation and Qualification**. The officers of the Association shall be the President, the Secretary, the Treasurer, and such Vice Presidents and subordinate officers as the Board of Directors shall from time to time appoint. The President shall be a member of the Board of Directors, but other officers need not be members of the Board. Any two offices, except the offices of President and Secretary, may be held by the same person.

5.2 **Election and Vacancies**. The officers of the Association shall be elected annually by the Board of Directors at the organization meeting of each new Board to serve for one (1) year and until their respective successors are elected. If any office shall become vacant by reason of death, resignation, removal, disqualification or any other cause, the Board of Directors shall elect a successor to fill the unexpired term at any meeting of the Board of Directors.

5.3 **Removal and Resignation**.

(a) Any officer may be removed upon the affirmative vote of a majority of the directors whenever, in their judgment, the best interests of the Association will be served thereby. The removal of an officer shall be without prejudice to the contract rights, if any, of the officer so removed.

(b) Any officer may resign at any time by giving written notice to the Board of Directors, the President or the Secretary of the Association. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective, provided, however, that the Board of Directors may reject any postdated resignation by notice in writing to the resigning officer. The effectiveness of such resignation shall not prejudice the contract rights, if any, of the Association against the officer so resigning.

5.4 **President**. The President shall be the chief executive officer of the Association and shall, subject to the control of the Board of Directors, have powers of general supervision, direction and control of the business and affairs of the Association. He or she shall preside at all meetings of the members and of the Board of Directors. He or she shall be an ex officio member of all the standing committees, including the executive committee, if any, shall have the general powers and duties of management usually vested in the office of president of a nonprofit corporation, and shall have such other powers and duties as may be prescribed by the Board of Directors or these Bylaws.

5.5 **Vice Presidents**. The Vice Presidents, if any, shall perform such duties as the Board of Directors shall prescribe. In the absence or disability of the President, the President's duties and powers shall be performed and exercised by the Senior Vice President as designated by the Board of Directors.

5.6 **Secretary**.

(a) The Secretary shall keep or cause to be kept a book of minutes of all meetings of directors and members showing the time and place of the meeting, whether it was regular or special, and if special, how authorized, the notice given, the names of those present at directors' meetings, the number of memberships present or represented at members' meetings and the proceedings thereof.

(b) The Secretary shall give or cause to be given such notice of the meetings of the members and of the Board of Directors as is required by these Bylaws or by law. The Secretary shall keep the seal of the Association, if any, and affix it to all documents requiring a seal, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or these Bylaws.

(c) If there are no Vice Presidents, then in the absence or disability of the President, the President's duties and powers shall be performed and exercised by the Secretary.

5.7 **Treasurer**. The Treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Association, including accounts of its assets, liabilities, receipts and disbursements. The books of accounts shall at all reasonable times be open to inspection by any director. The Treasurer shall deposit or cause to be deposited all moneys and other valuables in the name and to the credit of the Association with such depositories as may be designated by the Board. The Treasurer shall disburse or cause to be disbursed the funds of the Association as may be ordered by the Board, shall render to the President and directors, whenever they request it, an account of all of the Treasurer's transactions as Treasurer and of the financial condition of the Association, and shall have such other powers and perform such other duties as may be prescribed by the Board or these Bylaws.

5.8 **Compensation of Officers**. No officer who is a member of the Board of Directors shall receive any compensation from the Association for acting as an officer, unless such compensation is authorized by a resolution duly adopted by the members. The Board of Directors may fix any compensation to be paid to other officers.

Article 6

ASSESSMENTS, RECORDS AND REPORTS

6.1 **Assessments**. As provided in the Declaration, the Association, through its Board of Directors, shall do the following:

(a) Assess and collect from every Owner Assessments in the manner described in the Declaration.

(b) Keep all funds received by the Association as Assessments, other than reserves described in the Declaration, in the Operations Fund and keep all reserves collected pursuant to the Declaration in the Reserve Fund and use such funds only for the purposes described in the Declaration.

(c) From time to time, and at least annually, prepare a budget for the Association, estimating the common expenses expected to be incurred with adequate allowance for reserves based upon the reserve study required by the Declaration, and determine whether the General Assessment should be increased or decreased. Within thirty (30) days after adopting a proposed annual budget, the Board of Directors shall provide a summary of the budget to all Owners. If the Board of Directors fails to adopt a budget, the last adopted annual budget shall continue in effect.

(d) Fix the amount of the General Assessment against each Unit at least thirty (30) days in advance of each General Assessment period. Written notice of any Assessment shall be sent to every Owner subject thereto and to any first mortgagee requesting such notice. The due dates shall be established by the Board of Directors, which may fix a regular flat Assessment payable on a monthly, quarterly, semiannual or annual basis. The Board of Directors shall cause to be prepared a roster of the Units showing Assessments applicable to each Unit. The roster shall be kept in the Association office and shall be subject to inspection by any Owner or mortgagee during regular business hours. Within ten (10) business days after receiving a written request, and for a reasonable charge, the Association shall furnish to any Owner or mortgagee a recordable certificate setting forth the unpaid Assessments against such Owner's Unit. Such certificate shall be binding upon the Association, the Board of Directors, and every Owner as to the amounts of unpaid Assessments

(e) When Additional Properties are annexed, the Board of Directors shall assess any Units included therein in accordance with Section 11.4 of the Declaration.

(f) Enforce the Assessments in the manner provided in the Declaration.

(g) Keep records of the receipts and expenditures affecting the Operations Fund and Reserve Fund and make the same available for examination by members and their mortgagees at convenient hours, maintain an Assessment roll showing the amount of each Assessment against each Owner, the amounts paid upon the account and the balance due on the Assessments, give each member written notice of each Assessment at least 30 days before the time when such Assessments shall become due and payable; and for a reasonable charge, promptly provide any Owner or mortgagee who makes a request in writing with a written certificate of such Owner's unpaid Assessments.

6.2 **Records**. The Association shall keep within the State of Oregon correct and complete financial records sufficiently detailed for proper accounting purposes, keep minutes of the proceedings of its members, Board of Directors and committees having any of the authority of the Board of Directors, and retain all documents, information and records turned over to the Association by Declarant. All documents, information and records delivered to the Association by Declarant pursuant to ORS 94.616 shall be kept within the State of Oregon.

6.3 **Statement of Assessments Due**. The Association shall provide, within ten (10) business days after receipt of a written request from an Owner, a written statement that provides: (a) the amount of assessments due from the Owner and unpaid at the time the request was received, including regular and special assessments, fines and other charges, accrued interest, and late-payment charges; (b) the percentage rate at which interest accrues on assessments that are not paid when due; and (c) the percentage rate used to calculate the charges for late payment or the amount of a fixed-rate charge for late payment. The Association is not required to comply with this section if the Association has commenced litigation by filing a complaint against the Owner and the litigation is pending when the statement would otherwise be due.

6.4 **Inspection of Books and Records**. Except as otherwise provided in ORS 94.670(5), during normal business hours or under other reasonable circumstances, the Association shall make reasonably available for examination and, upon written request, available for duplication, by Owners, lenders, and holders of any mortgage of a Unit that make the request in good faith for a proper purpose, current copies of the Declaration, Articles, Bylaws, Policies and Procedures, amendments or supplements to such documents and the books, records, financial statements and current operating budget of the Association. The Association shall maintain a copy, suitable for purposes of duplication, of each of the following: (a) the Declaration, these Bylaws, the Policies and Procedures and any amendments or supplements thereto, (b) the most recent financial statement of the Association, and (c) the current operating budget of the Association. The Association, within ten (10) business days after receipt of a written request by an Owner, shall furnish copies of such documents to the requesting Owner. Upon written request, the Association shall make such documents, information and records available to such persons for duplication during reasonable hours. The Board of Directors, by resolution, may adopt reasonable rules governing the frequency, time, location, notice and manner of examination and duplication of Association records and the imposition of a reasonable fee for furnishing copies of such documents, information or records. The fee may include reasonable personnel costs for furnishing the documents, information or records.

6.5 **Payment of Vouchers**. The Treasurer or managing agent shall pay all vouchers for all budgeted items and for any nonbudgeted items, up to $1,000 signed by the President, managing agent, manager or other person authorized by the Board of Directors. Any voucher for nonbudgeted items in excess of $1,000 shall require the authorization of the President or a resolution of the Board of Directors.

6.6 **Execution of Documents**. The Board of Directors may, except as otherwise provided in the Declaration, Articles of Incorporation, or these Bylaws, authorize any officer or agent to enter into any contract or execute any instrument in the name of and on behalf of the Association. Such authority may be general or confined to specific instances. Unless so authorized by the Board of Directors, no officer, agent, or employee shall have any power or authority to bind the Association by any contract or engagement, to pledge its credit, or to render it liable for any purpose or for any amount.

6.7 **Reports and Audits**. An annual financial statement consisting of a balance sheet and an income and expense statement for the preceding year shall be rendered by the Board of Directors to all Owners and to all mortgagees who have requested the same within ninety (90) days after the end of each fiscal year. Commencing with the fiscal year following the Turnover

Meeting, if the Annual Assessments exceed $75,000 for the year, then the Board of Directors shall cause such financial statements to be reviewed within 180 days after the end of the fiscal year by an independent certified public accountant licensed in Oregon in accordance with the Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants, or if the Annual Assessments are $75,000 or less, shall cause such review within 180 days after receipt of a petition requesting such review signed by at least a majority of owners. The Board of Directors need not cause such a review to be performed if so directed by an affirmative vote of at least sixty percent (60%) of the Owners, not including votes of Declarant with respect to Units owned by Declarant. From time to time, the Board of Directors, at the expense of the Association, may obtain an audit of the books and records pertaining to the Association and furnish copies thereof to the members. At any time any Owner or holder of a mortgage may, at their own expense, cause an audit or inspection to be made of the books and records of the Association.

Article 7

INSURANCE

7.1 **Types of Insurance.** For the benefit of the Association and the Owners, the Board of Directors shall obtain and maintain at all times, and shall pay for out of the Operations Fund, the following insurance:

(a) **Property Damage Insurance.**

(1) The Association shall maintain a policy or policies of insurance covering loss or damage from fire, with standard extended coverage and "all risk" endorsements, and such other coverages as the Association may deem desirable.

(2) The amount of the coverage shall be for not less than one hundred percent (100%) of the current replacement cost of the improvements on the Common Areas (exclusive of land, foundation, excavation and other items normally excluded from coverage), subject to a reasonable deductible.

(3) The policy or policies shall include all fixtures and building service equipment to the extent that they are part of the Common Areas and all personal property and supplies belonging to the Association.

(b) **Liability Insurance.**

(1) The Association shall maintain comprehensive general liability insurance coverage insuring the Declarant, the Association, the Board of Directors, and the managing agent, against liability to the public or to Owners and their invitees or tenants, incident to the operation, maintenance, ownership or use of the Common Areas, including legal liability arising out of lawsuits related to employment contracts of the Association. There may be excluded from such policy or policies coverage of an Owner (other than as a member of the Association or Board of Directors) for liability arising out of acts or omissions of such Owner and liability incident to the ownership and/or use of the part of the Property as to which such Owner has the exclusive use or occupancy.

(2) Limits of liability under such insurance shall not be less than One Million Dollars ($1,000,000) on a combined single-limit basis.

(3) Such policy or policies shall be issued on a comprehensive liability basis and shall provide a cross-liability endorsement wherein the rights of named insureds under the policy or policies shall not be prejudiced as respects his, her or their action against another named insured.

(c) **Workers' Compensation Insurance**. The Association shall maintain workers' compensation insurance to the extent necessary to comply with any applicable laws.

(d) **Fidelity Insurance**.

(1) The Board of Directors may cause the Association to maintain blanket fidelity insurance for all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of, or administered by, the Association. In the event that the Association has retained a management agent, the Board of Directors may require such agent to maintain fidelity insurance for its officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association. The cost of such insurance, if any, may be borne by the Association.

(2) The total amount of fidelity insurance coverage required shall be based upon the best business judgment of the Board of Directors.

(3) Such fidelity insurance shall name the Association as obligee and shall contain waivers by the insurers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. The insurance shall provide that it may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days' prior written notice to the Association.

7.2 **Insurance by Unit Owners**. Each Owner shall be responsible for obtaining, at his or her own expense, homeowner's insurance covering the Improvements on the Owner's Unit and liability resulting from use or ownership of the Unit, unless the Association agrees otherwise. The insurance coverage maintained by the Association shall not be brought into contribution with the insurance obtained under this section by the Owners.

7.3 **Planned Community Act Requirements**. The insurance maintained by the Association shall comply with the requirements of the Oregon Planned Community Act, ORS 94.550 to 94.780.

Article 8

GENERAL PROVISIONS

8.1 **Seal**. The Board of Directors may, by resolution, adopt a corporate seal.

8.2 **Notice**. All notices to the Association or to the Board of Directors shall be sent care of the managing agent or, if there is no managing agent, to the principal office of the Association or to such other address as the Board of Directors may hereafter designate from time to time. All notices to members shall be sent to the member's Unit or to such other address as may have been designated by the member from time to time in writing to the Board of Directors.

8.3 **Waiver of Notice**. Whenever any notice to any member or director is required by law, the Declaration, the Articles of Incorporation, or these Bylaws, a waiver of notice in writing signed at any time by the person entitled to notice shall be equivalent to the giving of the notice.

8.4 **Action Without Meeting**. Any action that the law, the Declaration, the Articles of Incorporation or the Bylaws require or permit the members or directors to take at any meeting may be taken without a meeting or ballot meeting if a consent in writing setting forth the action so taken is signed by all of the members or directors entitled to vote on the matter. The consent, which shall have the same effect as a unanimous vote of the members or directors, shall be filed in the records of minutes of the Association.

8.5 **Conflicts**. These Bylaws are intended to comply with the Oregon Planned Community Act, the Oregon Nonprofit Corporation Law, the Declaration and the Articles of Incorporation. In case of any irreconcilable conflict, such statutes and documents shall control over these Bylaws.

Article 9

AMENDMENTS TO BYLAWS

9.1 **How Proposed**. Amendments to these Bylaws shall be proposed by either a majority of the Board of Directors or by members holding at least thirty percent (30%) of the voting rights entitled to be cast for such amendment. The proposed amendment must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon or be attached to any request for consent to the amendment.

9.2 **Adoption**.

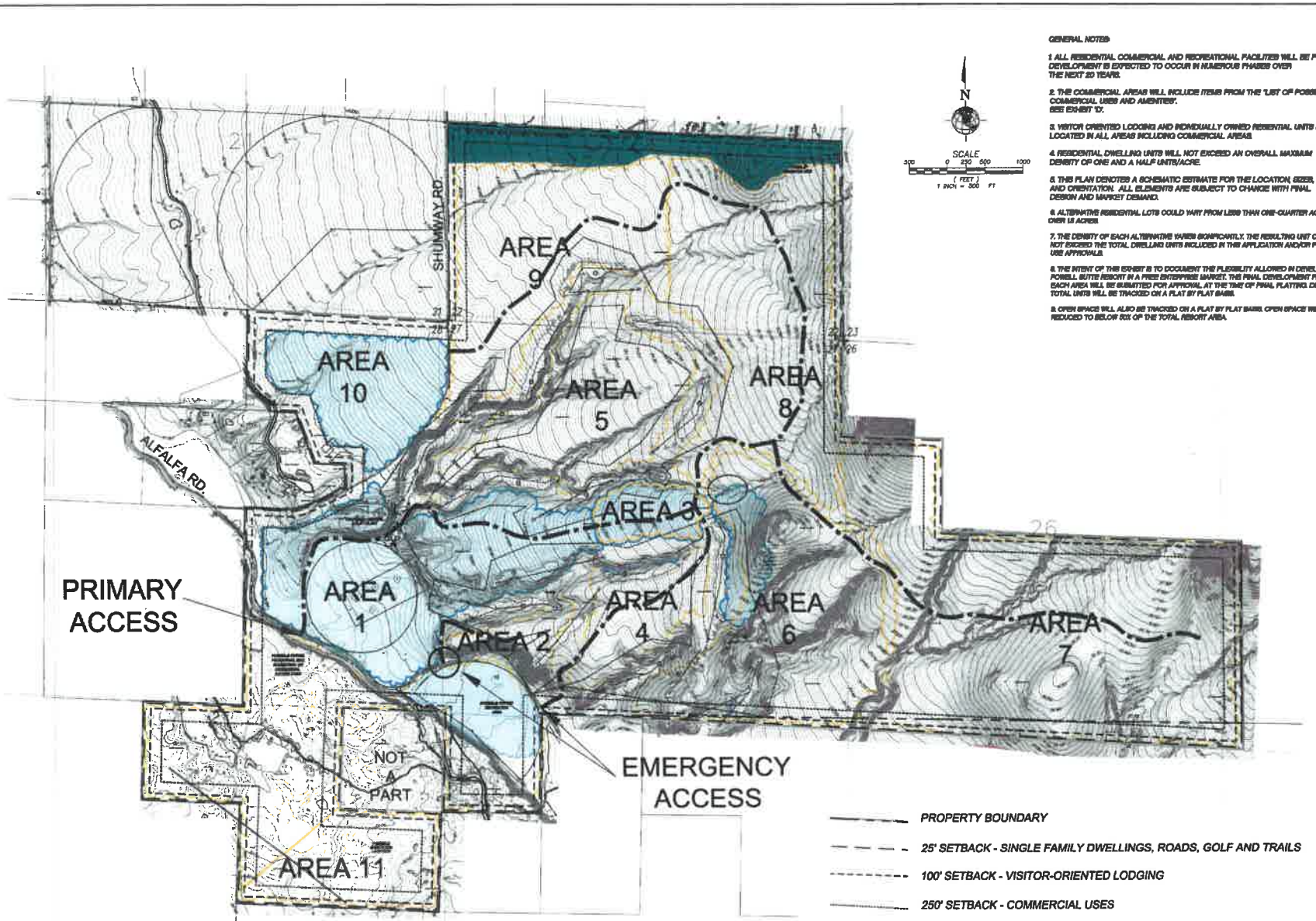
(a) A resolution adopting a proposed amendment may be proposed by either the Board of Directors or by the members and may be approved by the membership at a meeting called for such purpose, by a ballot meeting pursuant to Section 3.13, or by written consent of the members. Members not present at the meeting considering such amendment may express their approval in writing or by proxy. Any resolution must be approved by members holding a majority of the voting rights, together with the written consent of the Class B member, if any. Amendment or repeal of any provision of these Bylaws that is also contained in the Declaration must be approved by the same voting requirement for amendment of such provision of the Declaration.

(b) Notwithstanding the provisions of the preceding paragraph, until the Turnover Meeting has occurred, Declarant shall have the right to amend these Bylaws in order to comply with the requirements of the Federal Housing Administration, the United States Department of Veterans Affairs, the Farmers Home Administration of the United States, the

Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Mortgage Loan Corporation, any department, bureau, board, commission or agency of the United States or the State of Oregon, or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon that insures, guarantees or provides financing for a planned community or lots in a planned community. After the Turnover Meeting, any such amendment shall require the approval of a majority of the voting rights of the Association, voting in person, by proxy, or by ballot, at a meeting or ballot meeting of the Association at which a quorum is represented.

9.3 **Execution and Recording**. An amendment shall not be effective until certified by the President and Secretary of the Association as being adopted in accordance with these Bylaws and ORS 94.625 and recorded in the Deed Records of Crook County, Oregon.

Exhibit 3



GENERAL NOTES:

1. ALL RESIDENTIAL, COMMERCIAL AND RECREATIONAL FACILITIES WILL BE PHASED. DEVELOPMENT IS EXPECTED TO OCCUR IN NUMEROUS PHASES OVER THE NEXT 20 YEARS.
2. THE COMMERCIAL AREAS WILL INCLUDE ITEMS FROM THE "LIST OF POSSIBLE COMMERCIAL USES AND AMENITIES". SEE EXHIBIT "D".
3. VISITOR ORIENTED LODGING AND INDIVIDUALLY OWNED RESIDENTIAL UNITS MAY BE LOCATED IN ALL AREAS INCLUDING COMMERCIAL AREAS.
4. RESIDENTIAL DWELLING UNITS WILL NOT EXCEED AN OVERALL MAXIMUM DENSITY OF ONE AND A HALF UNITS/ACRE.
5. THIS PLAN DENOTES A SCHEMATIC ESTIMATE FOR THE LOCATION, SIZES, USES, AND ORIENTATION. ALL ELEMENTS ARE SUBJECT TO CHANGE WITH FINAL DESIGN AND MARKET DEMAND.
6. ALTERNATIVE RESIDENTIAL LOTS COULD VARY FROM LESS THAN ONE-QUARTER ACRE TO OVER 1/2 ACRE.
7. THE DENSITY OF EACH ALTERNATIVE VARIES SIGNIFICANTLY. THE RESULTING UNIT COUNT WILL NOT EXCEED THE TOTAL DWELLING UNITS INCLUDED IN THIS APPLICATION AND/OR PRIOR LAND USE APPROVALS.
8. THE INTENT OF THIS EXHIBIT IS TO DOCUMENT THE FLEXIBILITY ALLOWED IN DEVELOPING THE POWELL BUTTE RESORT IN A FREE ENTERPRISE MARKET. THE FINAL DEVELOPMENT PLANS FOR EACH AREA WILL BE SUBMITTED FOR APPROVAL AT THE TIME OF FINAL PLATTING. DENSITY AND TOTAL UNITS WILL BE TRACKED ON A FLAT BY FLAT BASIS.
9. OPEN SPACE WILL ALSO BE TRACKED ON A FLAT BY FLAT BASIS. OPEN SPACE WILL NOT BE REDUCED TO BELOW 50% OF THE TOTAL RESORT AREA.

NOTE: THIS EXHIBIT IS CONCEPTUAL AND IS SUBJECT TO CHANGE.

EAGLE CREST
POWELL BUTTE RESORT
PROPOSED DESTINATION RESORT
FINAL DEVELOPMENT PLAN

DRAWING FILE NAME: pbdestfd_FMP
PROJECT NO. 30028
CROOK COUNTY
SCALE: 1" = 500'

DESIGNED BY:
DRAWN BY:
LAST EDIT:
CHECKED BY: TAW
APPROVED BY: RH
PLOT DATE: 05/13/04
REVISION:
DATE BY

SHEET 1/1

10

Exhibit 4

Crook County
Before the Planning Commission

In the Matter of An Application for Final Development Plan Amendment

No. C-CU-001_04
Final Decision

APPLICANT/ PROPERTY OWNER: Brasada Ranch, Inc./Eagle Crest, Inc.
c/o Brett Hudson
P.O. Box 1215
Redmond, OR 97756

SUBJECT: Amendment to Final Development Plan for the Brasada Resort.

I. Procedural History

The Applicant obtained Development Plan approval on May 5, 2004 (File No. C-CU-DES-01-03). LUBA affirmed the County Court's decision on October 6, 2004, and the Court of Appeals affirmed LUBA's decision on January 26, 2005. The Applicant gained Final Development Plan approval on August 25, 2004. The Applicant then gained tentative and final subdivision plat approval for Phases 1 and 2. The Tentative Plan approval authorized 335 single family lots and 166 overnight lodging cabins. The Phase 1 final plat established 201 single family lots, and the Phase 2 final plat established 81 overnight lodging cabins, with 2 to 3 separately rentable, lock-off areas per cabin, for a minimum of 162 overnight lodging units. Phase 5 final plat was recently recorded including 38 additional overnight lodging cabins, with 2 to 3 separately rentable, lock-offs per cabin, for an additional minimum of 76 overnight lodging units. The number of overnight lodging cabins in Phase 2 and 5 total 119, a minimum of 238 overnight lodging units. Concurrent with the plat approvals, the County Court also approved an improvement agreement and a bond for the minimum required resort amenities, including 150 overnight lodging units. The Applicant recently received preliminary plat approval for Phases 3 (93 single-family lots) and 4 (126 single-family lots), and is seeking approval for Phase 6 (22 single-family lots) concurrent with this amendment. (File No. C-LS (M)136-05(DES); C-RV-004-06).

This amendment relocates a portion of Shumway Road through the resort and clarifies the number of units to be provided within the 900 structures originally approved in the Final Development Plan

II. Compliance with Final Development Plan Standards

Pursuant to CCC 18.16.110, a Final Development Plan for a destination resort shall meet the following standards:

> ***1.. Following approval of the Development Plan, the applicant shall submit for review a Final Development Plan that meets the requirements of Section 9.040 and addresses all conditions of the Development Plan.***

> ***2.. The Planning Commission shall review a Final Development Plan pursuant to Section 9.060. The Planning Commission shall approve a Final Development Plan if it conforms to the approved Development Plan and its conditions of approval.***
>
> ***3. If the Planning Commission finds that the Final Development Plan is materially different from the approved Development Plan, the applicant shall submit an amended Development Plan for review. "Materially different," as used in this subsection, means a change in the type, scale, location, or other characteristics of the proposed development such that findings of fact on which the original approval was based would be materially affected. Submission of an amended plan shall be considered in the same manner as the original application, except that the review of an amended plan shall be limited to aspects of the proposed development that are materially different from the approved Development Plan. (Emphasis added).***

The Planning Commission finds that the amendment to the Final Development Plan has been considered in the same manner as the original application. The Commission conducted public hearings on August 23, 2006 and October 11, 2006, and received both written and oral testimony from the applicant and the public.

The Commission finds that the amendment amends the Final Development Plan in two ways. First, the amendment to the Final Development Plan modifies the original approval with regard to the nature of the project's overnight units. There is no change in the total 900 structures authorized by the original approvals; however, the amendment clarifies the plans to construct 150 overnight lodging cabins and 750 single-family dwellings. The lodging cabins will each contain 2 to 3 lock-off units, for a total of 375 separately rentable overnight lodging units. Secondly, the Final Development Plan is modified to relocate a portion of Shumway Road within the project to facilitate development of Phase 6.

III. Compliance with Conditions of Development Plan Approval

Per CCC 18.116.110(3), above, the Commission addresses those conditions of the Development Plan conditions that are relevant to the changes proposed in this amendment.

> ***2. The resort shall contain a minimum of 150 units of overnight lodging, as that term is defined in Goal 8, ORS 197, and CCZO § 12.030(E).***
>
> ***The resort may provide the 150 overnight lodging units in phases as follows: At least 75 units of overnight lodging shall be constructed or guaranteed pursuant to Article 12 through surety bonding or equivalent financial assurance prior to the closure of sale of individual lots or units.***

The remaining 75 overnight lodging units shall be constructed or guaranteed pursuant to Article 12 through surety bonding or equivalent financial assurance within five years of the initial individual lot sales.

The resort meets the requirement of providing a minimum of 150 units of overnight lodging. It has received final plat approval for 119 overnight lodging cabins (with 2 to 3 lock-off units per cabin, for a minimum of 238 overnight lodging units), and has also provided financial assurance for 150 overnight lodging units. Thus, the resort has already provided the minimum required overnight lodging units. This amendment clarifies the total number and configuration of overnight lodging units to be provided at full buildout. The project will construct 150 overnight lodging cabins, each with 2 to 3 lock-off rooms, for a total of 375 separately rentable overnight lodging units.

3. The resort shall maintain a 2:1 ratio between permanent dwellings and overnight lodging units, as that term is defined in Goal 8, ORS 197, and CCZO § 12.030(E). The resort shall document compliance with this ratio prior to preliminary plat approval for each phase of resort development.

As detailed above, this amendment clarifies that Brasada Ranch will maintain the 2:1 ratio. Per the 2:1 ratio, this allows 375 overnight lodging units and 750 single-family dwellings. Accordingly, Brasada Ranch will construct 150 overnight lodging cabins with 2 to 3 lock-off rooms in each cabin, for a total of 375 separately rentable overnight lodging units. As the cabins are constructed, the resort will document the number of rentable units provided in each cabin to show continued compliance with the ratio. As noted above, the resort has received final plat approval for 238 overnight lodging units and bonded for 150 overnight lodging units. This would allow the platting of the 750 single family lots authorized by this decision.

7. Over 50% of the resort site, including the area devoted to golf course uses but excluding yards, streets, and parking areas, shall be maintained as open space throughout the life of the resort...

This amendment will not alter compliance with this criterion because the updated Final Development Plan continues to propose a total of 900 residential structures on 1,800 acres. Thus, the amendment will not alter the total acreage of developed area vs. open space areas. Brasada Ranch shall document compliance with the 50% open space standard during plat and site plan reviews.

18. Prior to final plat approval for the first phase of resort development, the applicant shall provide plans of the proposed Phase One internal road network and demonstrate compliance with the applicable County Road Department standards for private roadways. The location of the primary entrance to the development shall be submitted and approved by the County Road Department prior to Final Development approval. The

design for the Final Development approval shall incorporate the existing "underpass" on Alfalfa Road connecting the property to each other.

The resort entrance remains the same as that depicted on the Final Development Plan map. However, the southernmost 5,800 lineal feet of Shumway Road will be relocated and be improved to accommodate the development of Phase 6 of the resort and to meet conditions of the revised MOU. The road relocation will be entirely within property owned by Brasada Ranch. Therefore, to ensure that the relocated road depicted on the Phase 6 tentative plan is consistent with the Final Development Plan, the Applicant shall be required to depict the road relocation on the Phase 6 final plat and shall be required to work with the County Road Department during the relocation project to ensure road standards and specifications are met.

26. Prior to final plat approval for the first phase of the resort, the applicant shall obtain a WPCF permit from DEQ for the resort's interim sewage treatment facilities. Prior to construction of the long-term sewage treatment plant, the applicant shall obtain a WPCF permit from DEQ and site plan approval for the plant structure and location from the County Planning Commission.

The Commission finds that the project's sewage collection and disposal system authorized by its WPCF permit can accommodate the full contribution of sewage generated by the amended unit proposal. Thus, the treatment facilities proposed under the resort's WPCF permit will be sufficient to provide both the interim facilities needed during the early stages of development, and the long-term needs for the number of residential units proposed in the amended Final Development Plan. Therefore, this amendment does not alter the Commission's original findings that the resort will have adequate sewage collection and treatment facilities.

27. The applicant shall provide evidence that the resort has secured an adequate supply of water to serve the resort's domestic and irrigation needs as follows:

a. If the applicant chooses to contract with Avion Water Company to provide water to the resort, the applicant shall provide written confirmation that a contract has been executed prior to Final Development Plan approval. The applicant shall also provide copies of the water right permit or certificate by which Avion will provide the resort water supply.

b. If the applicant chooses to provide water to the resort pursuant to a new groundwater permit, the applicant shall provide a copy of the OWRD groundwater permit prior to final plat approval for Phase One development. The submittal shall also include the terms of any mitigation plan imposed by OWRD. The water right is to be obtained from the Deschutes Aquifer formation.

c. If the applicant chooses to provide irrigation and/or domestic water to the resort pursuant to existing COID water rights appurtenant to the resort property, the applicant shall document the intended use of the water rights and, if necessary, provide a copy of any OWRD permit approving a transfer from irrigation to quasi-municipal use and/or from a surface diversion to a ground water well. The documentation shall include confirmation with COID taking into account how this may affect agricultural operations as well as the need for "water pushing" in the canal distribution system.

The Commission finds that Brasada Ranch as adequate water for the project and that its water rights permit and Avion contract exceed the anticipated domestic water demand under both the original and the modified residential unit concept under this amendment.

30. Prior to preliminary plat approval for the first phase of the resort, the applicant shall execute a memorandum of understanding (MOU) with ODOT and Crook County setting forth the parties' obligations with respect to the roadway improvements required to improve the sight distance at the intersections of Powell Butte Highway and Alfalfa Road and Powell Butte Highway and Shumway Road. The MOU shall contain the following terms:

a. The applicant shall contribute proportionally to the excavation of the intersections of Powell Butte Highway and Alfalfa Road and Powell Butte Highway and Shumway Road. The applicant's proportional share shall be based upon the percentage of resort trips traveling through each intersection in 2023. The proportionate share set forth in the MOU may or may not conform to the estimated percentages and costs set forth in Exhibit 24 depending upon the updated traffic study required in Condition 32.

b. The sight distance improvements shall be constructed and paid in the entirety by the applicant, contingent upon acquisition of ROW by ODOT and/or Crook County, and inspected and approved by the Crook County Road Department and ODOT in conformance with the MOU and any associated documents prior to building permits being issued for resort improvements.

c. The applicant shall be eligible for reimbursement for its contribution to all off-site improvements if Crook County adopts a Systems Development Charge (SDC) or Traffic Impact Fee (TIF) ordinance, or a similar method of collecting fees to alleviate system deficiencies.

The Commission finds that the amendment to the Final Development Plan results in a slight increase in the estimated percentage of overall resort trips traveling through the referenced intersections at full build-out. Therefore, Brasada Ranch's proportionate share of the sight distance improvements required by this condition will increase from 14.6% ($14,600) to 17.6% ($19,410) for the Shumway Road intersection, and 20.9% ($22,990) to 24.9% ($24,860) for the Alfalfa Road intersection. Thus, the total additional amount due is $56,580. (In addition, the Highway 126 intersection has increased from 15.40% ($246,400) to 18.5% ($296,300)). Because Condition No. 30 did not set forth a particular dollar amount, it is not necessary to revise Condition No. 30 to update the proportionate share contribution.

The Commission finds that the increased proportionate share payment for improvements to the two intersections on Powel Butte Highway and the additional pro rata payment for the Highway 126 interchange satisfies the requirements for transportation infrastructure mitigation. As a result, no other exactions are appropriate or permitted by law. The Commission also finds that the applicant has proposed to make additional transportation improvements to the county roads and county road intersections in the vicinity of Brasada Ranch. These improvements proposed by the applicant include the following:

a) Improvements to Shumway Road and Alfalfa Road intersection;

b) Shumway Road realignment and reconstruction as proposed by the Phase 6 application;

c) Alfalfa Road improvements from its intersection with Powell Butte Highway south to Brasada Ranch including the two accesses of the Equestrian Center;

d) Improvements to Alfalfa and Powell Butte intersection to AASHTO standards; and

e) Signage at Shumway Road and Powell Butte Highway intersection.

The Commission finds that these proposed additional improvements will greatly benefit users of the county road system in the Powell Butte area. The Memorandum of Understanding (MOU) referred to in Condition No. 30 should be amended to reflect these additional infrastructure improvements.

IV. Conclusion

The Commission finds that the Applicant's amended Final Development Plan is consistent with the approved Development Plan, and the Applicant has met all Development Plan conditions applicable at this stage. Therefore, the amended Final Development Plan is approved per CCC 18.116.110(3), subject to the following conditions.

1. The Applicant enter into an amended MOU consistent with this approval.

    a. The MOU shall set forth the percentages and contribution amounts authorized by this decision; and

b. So long as all future plats remain consistent with the unit counts approved by this Decision, no additional traffic exactions may be imposed as conditions of those plat approvals; and

c. The MOU shall include the items offered in addition by the developer outside of the Traffic Impact Study.

2. All future plats shall be consistent with this amended Final Development Plan.

3. The northern access road off Shumway Road is to be a gated emergency access road only.

DATED this 1st day of December, 2006

W.R. Gowen Chairman

William P. Zelenka Secretary

Appeal: The above approval may be appealed to the Crook County Court no later than 5:00 p.m. on the **13th day of December, 2006** with the appropriate fee.

Exhibit 5

Crook County
Community Development Department
300 NE 3rd Street, Prineville, OR 97754
(541)447-3211
plan@co.crook.or.us

CROOK COUNTY
BEFORE THE PLANNING COMMISSION

Final Decision – Brasada Ranch Phase 14 Tentative Plan

IN THE MATTER OF AN APPLICATION FOR A TENTATIVE PLAN APPROVAL	**APPLICATION 217-20-1217-PLNG** (Original File Number: C-CU-DES-001-03)
OWNER/APPLICANT:	FNF NV Brasada, LLC c/o Brent McLean 16986 SW Brasada Ranch Road Powell Butte, Oregon 97753
AGENT:	Adam Conway DOWL 963 SW Simpson Ave., Suite 200 Bend, Oregon 97702
LEGAL DESCRIPTION:	Portion of T16 S, R14 E WM, Section 26, tax lot 2801 Portion of T16 S, R14 E WM, Section 26, tax lot 2805 Portion of T16 S, R14 E WM, Section 26, tax lot 2803
NOTICE:	January 5, 2021
NEWSPAPER NOTICE:	January 4, 2021
PLANNING COMMISSION MEETING DATE:	January 27, 2021

REQUEST: Brasada Ranch Development LLC (the Applicant) requested approval from Crook County for the fourteenth phase of development of the Brasada Ranch destination resort. Phase 14 is the tenth single family residential phase and includes 51 lots (29 standard lots and 22 smaller lots) (See Attachment A).

THE ABOVE ENTITLED MATTER came before the Crook County Planning Commission for a public hearing on January 27, 2021. After consideration of the staff report, application

materials, findings and testimony related to the proposed tentative plan, the application received seven (7) in favor and no votes opposed from the Planning Commission members in attendance.

FINAL DECISION:	**Approved subject to conditions**	**__x__**
	Denied	**_____**

Based on the burden of proof statement and application submitted by the Applicant, the staff report and testimony, the proposed tentative plan is consistent with the approved Final Development Plan for Brasada Ranch. Phase 14 development complies with the requirements of the Destination Resort Overlay Zone (Chapter 18.116) related to open space and the ratio of overnight units to single family homes. The tentative plan meets the requirements of Chapter 17 of the Crook County Code. The tentative plan for Phase 14 of Brasada Ranch can be approved subject to the following conditions:

1. Within two years after the date of approval of the tentative plan, a final plat shall be submitted in conformance with the tentative plan as approved (Crook County Code 17.20.010).
2. All conditions of the Final Development Plan approval shall continue to be met.
3. All requirements of Crook County Code 18.116 (destination resorts) shall continue to be met, including requirements for overnight lodging units and open space.
4. The final plat shall be reviewed by Central Oregon Irrigation District.
5. Infrastructure improvements shall be constructed prior to submittal of the final plat for review.
6. The Applicant and Crook County Fire and Rescue shall agree on fire suppression for lots in Phase 14 to meet current Fire Code requirements prior to submittal of the final plat for review.

BACKGROUND: Brasada Ranch was approved by Crook County as a destination resort through a mapping process that was completed in 2002. Crook County subsequently approved a Development Plan and Final Development Plan for the property in 2004 (C-CU-DES-001-03). This process is described in detail in the Applicant's burden of proof statement and amended burden of proof statement. The first phase, Brasada Ranch 1, was approved in December 2004. Phase 2, the original overnight/cabin development, was approved in September 2005. Phases 3 – 13 followed. (Attachment B). Phase 12 was approved in spring 2019 as a non-residential phase for resort operations and utilities. Three phases include overnight lodging and the remaining phases include single family home development.

The original application (dated December 29, 2020) for Brasada Ranch Phase 14, included two development options – Option A with 41 lots and Option B with 59 lots. The Applicant has since revised the application to include a final option with 51 residential lots (amended burden of proof statement). This third option is the option reviewed by the Planning Commission.

PROPERTY CHARACTERISTICS: The total resort area is approximately 1800 acres and includes a mix of single-family homes and overnight lodging units. The resort includes a golf course, restaurants and other recreational amenities. Phase 14 includes approximately 34.63 acres including 29.89 acres of developed land for residential lots. The remaining acreage includes road right of way. Phase 14 will be accessed from an extension of Spirit Rock Drive.

ZONING: The property is zoned EFU-3 (Exclusive Farm Use, Powell Butte Area) with a destination resort overlay zone (Crook County Code 18.116).

APPLICABLE CRITERIA: The criteria used in reviewing the request for Phase 14 are found in Crook County Code 18.116 (Destination Resort Overlay Zone) and in Crook County Code 17.16 (Tentative Plans). Criteria are in standard font. Responses are in ***bold italics.***

Crook County Code 18.116 – Destination Resort Overlay

18.116.040 – Standards

The original approval of the tentative plan and final development plan for the Brasada Ranch destination resort addressed all the standards in 18.116.040 (see C-CU-DES-001-03). Many of the standards in 18.116.040 apply to the overall development. Only those standards that apply directly to the proposed Phase 14 are discussed below.

(1) Development shall be located on a tract that contains at least 160 acres.

(2) Development shall not be located on high value farmland.

The entire acreage of Brasada Ranch is approximately 1800 acres. No resort development will be located on high value farmland.

(3) Developments shall include meeting rooms, restaurants with seating for at least 100 persons, and a minimum of 150 separate rentable units for overnight lodging, oriented toward the needs of visitors rather than area residents. However, the rentable units may be phased in as follows:

(a) A total of 150 units of overnight lodging shall be provided as follows:

(i) At least 75 units of overnight lodging, not including any individually owned homes, lots or units, shall be constructed or guaranteed prior to the closure of sale of individual lots or units through an agreement and security provided to the county in accordance with CCC 17.40.080 and 17.40.090.

(ii) The remainder shall be provided as individually owned lots or units subject to deed restrictions that limit their use to overnight lodging units. The deed restrictions may be rescinded when the resort has constructed 150 units of permanent overnight lodging as required by this subsection.

According to the Applicant, there are a total of 243 overnight lodging units in Brasada Ranch. These overnight units are within Phases 2 and 5.

(b) The number of units approved for residential sale shall not be more than two units for each unit of permanent overnight lodging provided under subsection (3)(a)(i) of this section; provided, however, after an applicant has constructed its first 150 permanent overnight lodging units, the county may approve a final development plan modification to increase the ratio of units approved for residential sale to units of permanent overnight lodging from two to one to two and one-half to one.

Brasada Ranch has constructed the required 150 permanent overnight lodging units. Since the original approval of the development plan, the Crook County Code and Comprehensive Plan were amended to allow an increase in the maximum ratio of permanent housing to overnight lodging units from 2:1 to 2.5:1 (AM-11-0028). The 2011 action included a Master Plan amendment (C-CU-DES-001-03) to implement the changed ratio for Brasada Ranch.

The Applicant states that Brasada Ranch currently has 243 overnight lodging units, including eight guestrooms in The Ranch House and 91 two, three, and four-bedroom lock-off cabins. There are additional lots platted and designated for overnight units in phases 2, 5 and 7. The 243-overnight units allow for 608 single family residential lots (243 * 2.5 = 608). To date, the Applicant has gained final plat approval for 575 housing lots in Phases 1,3,4, 6, 8,9,10, 11 and 13.[1] Eighteen (18) of the housing lots have been consolidated for a net total of 557 residential lots.[2] Considering this, the Applicant suggests that 51 additional housing lots may be platted and improved (608 – 575 = 51.)

The proposed 51 additional lots will maintain the 2.5 to 1 ratio of dwellings to overnight units (51 + 557 = 608) . The proposed total of 608 dwelling units is at the cap of 608 units, given the current count of overnight lodging units.

(c) The development approval shall provide for the construction of other required overnight lodging units within five years of the initial lot sales.

The Applicant has met this requirement.

(4) Prior to closure of sale of individual lots or units, all required developed recreational facilities, key facilities intended to serve the entire development, and visitor-oriented accommodations shall be either fully constructed or guaranteed by providing an agreement and security in accordance with CCC 17.40.080 and 17.40.090.

---

[1] Phase 12 is a non-residential six-lot plat.

[2] Lot consolidations occur when property owners acquire two adjacent lots and combine them into one residential lot. This lot consolidation results in only one buildable lot for a single-family dwelling.

(5) At least $7,000,000 shall be spent on improvements for on-site developed recreational facilities and visitor-oriented accommodations exclusive of costs for land, sewer and water facilities, and roads.

The obligation to construct all developed recreational facilities has been met. The resort developers have completed an 18-hole golf course, which meets the requirement for recreational facility investment. The Sports Center, equestrian facilities and general recreational facilities have been constructed. Visitor facilities including restaurants and meeting rooms have been completed. The Resort has met required improvements in (5).

(6) Commercial uses

There are no new proposed commercial uses requested for Phase 14.

(7) At least 50 percent of the site shall be dedicated to permanent open space, excluding yards, streets and passing areas.

The Applicant acknowledges the obligation to assure 50% open space for the overall Brasada Ranch destination resort. Table 1 summarizes the platted lands within Brasada Resort and identifies the acreage designated as open space.

Table 1

Phase	Plat Area	Designated Open Space	Notes
Phase 1	255.4 acres	93.2 acres	Golf lot 1; lots A-G
Phase 2	51.9 acres	19.1 acres*	Golf Lot 1, tract Z
Phase 3	165 acres	95.4 acres	Golf lot 1, lots A-C
Phase 4	201.9 acres	100.1 acres	Lots A-D
Phase 5	13.7 acres	See below**	
Phase 6	44.0 acres	13.6 acres	Lot K
Phase 7	6.0 acres	See below***	
Phase 8	29.3 acres	13.5 acres	Lots M and N
Phase 9	32.3 acres	8.4 acres	Lots Q-S
Phase 10	62.8 acres	44.4 acres	Lot T
Phase 11	34.9 acres	0.0 acres	
Phase 12	78.0 acres	74.3 acres	Golf Lot 12-1; Lots U and V
Phase 13	22.7 acres	0.9	Lot W
Total – currently platted	997.9 acres	462.9acres	46.4% open space

Lots A and B include open space as trails, native vegetation and lawn areas that are not included in this calculation

****** Lots H and J include open space as trails, native vegetation and lawn areas that are not included in this calculation***

*****Lot K includes open space as trails, native vegetation, and lawn areas, not included in this calculation.***

Phase 14 would add an additional 34.63 acres with approximately 29.89 acres for residential development. The total resort boundary is approximately 1,800 acres. Recent calculations

identify almost half the lands within the resort boundary as unplatted, either as vacant land or golf course open space. Lands southeast of all current development and the proposed Brasada Ranch Phase 14 land have been preliminarily reviewed and laid out with future lots. The area consists of approximately 280 acres. The future lot and road layout are expected to occupy approximately 110 acres leaving approximately 60% of this new area as open space. Other areas of the golf and equestrian center represent the remaining areas of the resort.

The Applicant states that the total open space calculation is progressing per the master plan and the requirement for 50% open space will not be compromised. The lots within the proposed tentative plan for Phase 14 were anticipated at the time of the master plan. With approximately 45% of the 1800 resort acres not platted, and approximately 46% of platted areas designated as open space in current plats, the project is not in jeopardy of not complying with this requirement.

(8) ***(Goal 5 resources) and (9) (riparian areas) are not affected by the proposed Phase 14 development.***

(10) Dimensional standards were established during the final development plan process.

(11) Except where more restrictive minimum setbacks are called for, the minimum setback from exterior property lines, excluding public or private roadways through the resort, for all development (including structures and site-obscuring fences of over three feet in height but excepting existing buildings and uses) shall be as follows:

(a) Two hundred fifty feet for commercial development listed in CCC 18.116.070, including all associated parking areas;

(b) One hundred feet for visitor-oriented accommodations other than single-family residences, including all associated parking areas;

(c) Twenty-five feet for above-grade development other than that listed in subsections (11)(a) and (b) of this section;

(d) Twenty-five feet for internal roads;

(e) Twenty-five feet for golf courses and playing fields;

(f) Twenty-five feet for jogging trails, nature trails and bike paths where they abut private developed lots, and no setback where they abut public roads and public lands;

(g) The setbacks of this section shall not apply to entry roadways, landscaping, utilities, and signs.

According to the Applicant, the minimum setbacks for structures and internal roads will be met. Lots are set back a minimum of fifty (50) feet from the exterior property boundary. This exceeds the requirement for a setback of twenty-five (25) feet for above grade residential development.

(12) Alterations and nonresidential uses within the 100-year flood plain and alterations and all uses on slopes exceeding 25 percent are allowed only if the applicant submits and the planning commission approves a geotechnical report that demonstrates adequate soil stability and implements mitigation measures designed to mitigate adverse environmental effects.
There are no mapped flood hazard areas in Phase 14.

In addition to the criteria in 18.116.040 (standards), the following criteria were included in past tentative plan reviews.

The applicant shall provide a detailed depiction of the final location, surfacing, and size of all trails within a phase prior to preliminary plat approval for each phase of resort development.
Although there is an extensive network of trails within the resort, no new trails are identified within the boundaries of proposed Phase 14.

Site drainage plans shall be designed consistent with the drainage analysis prepared by W&H Pacific (Exhibit T to the Development Plan application) or as amended in consultation with the Crook County planning and or Road Department.
According to the Applicant, site drainage design has been analyzed and reviewed as part of preliminary plans and a detailed design will be provided with final construction drawings. Site drainage generally includes preservation of natural drainage ways, minimal concentration of stormwater, and stormwater disposal through surface infiltration whenever possible. The Applicants states that they believe these design recommendations are appropriate for the proposed development. The layout of the proposed housing lots has been designed to accommodate natural drainage ways.

CCC 18.116.060 Permitted Uses
The use of Phase 14 for single family residential dwellings is allowed by CCC 18.116.060(3).

18.116.080 Application procedures and contents.
The Applicant's agent consulted with Community Development staff prior to submitting the application. The proposed plan includes the elements required by 18.116.080(3) including the acreage, the proposed lots, the location of proposed development, the site characteristics, access, and open space. The proposed development will be served by the resort's existing wastewater treatment system and by Avion Water as described in the Final Development Plan. The Final Development Plan included a solid waste management plan, an open space plan, and a traffic study. Phase 14 is consistent with the Resort's adopted plans.

18.116.100 Approval criteria.
The planning commission or county court shall approve a development plan for a destination resort if it determines that all of the criteria in 18.116.100 are met.
Phase 14 is consistent with the final development plan for the Brasada Ranch Resort, approved by the Planning Commission in 2004. Phase 14 is on property included in the 1800-

acre destination resort overlay. The proposed residential uses are allowed as permitted uses in 18.116.060(3).When the destination resort overlay was applied to the subject property, the County found that the development would be reasonably compatible with surrounding land uses and would not cause a significant change in farm or forest practices on surrounding lands or significantly increase the cost of accepted farm or forest practices. The Brasada Ranch Final Development Plan addressed potential impacts to fish and wildlife.

(a) The traffic study required by CCC 18.116.080(3)(g) illustrates that the proposed development will not significantly affect a transportation facility. A resort development will significantly affect a transportation facility for purposes of this approval criterion if it would, at any point within a 20-year planning period:

(i) Change the functional classification of the transportation facility;

(ii) Result in levels of travel or access which are inconsistent with the functional classification of the transportation facility; or

(iii) Reduce the performance standards of the transportation facility below the minimum acceptable level identified in the applicable transportation system plan (TSP).

(b) If the traffic study required by CCC 18.116.080(3)(g) illustrates that the proposed development will significantly affect a transportation facility, the applicant for the destination resort shall assure that the development will be consistent with the identified function, capacity, and level of service of the facility.

(c) Where the option of providing transportation facilities is chosen in accordance with subsection (6)(b)(ii) of this section, the applicant shall be required to provide the transportation facilities to the full standards of the affected authority as a condition of approval. Timing of such improvements shall be based upon the timing of the impacts created by the development, as determined by the traffic study or the recommendations of the affected road authority.
The original approval of the Brasada Resort Final Development Plan included a full traffic assessment. As a result, the developer was required to bond for improvements on Alfalfa Road from the Equine Center north to the Powell Butte Highway. (Improvement Agreement signed December 4, 2013). The required improvements have been made.

(7) The water and sewer facilities master plan required by CCC 18.116.080(3)(b) illustrates that proposed water and sewer facilities can reasonably serve the destination resort.
Water for domestic and fire use will be provided to residences in Phase 14 under an existing contract between the Applicant and Avion Water. The resort is served by a water pollution control facility permitted by the Oregon Department of Environmental Quality (permit #102716).

(8) ***The development complies with other applicable standards of the County zoning code.***

17.16 Tentative Plan
The Applicant must also demonstrate that they meet the procedural and technical requirements for a tentative plan (Crook County Code Chapter 17.16).

17.16.010 Application Submission
The Applicant has complied with the Tentative plan application requirements, including by referencing supplemental materials describing the proposed Phase 14 development and by providing adequate detail to allow Crook County review and analysis. Many of the references are compiled in the Phase 1 Tentative Plan notebooks, submitted and approved in 2004.

17.16.020 Required findings for approval.
The commission shall not approve an outline development plan or a tentative plan for a proposed subdivision unless the commission finds, in addition to other requirements and standards set forth in this title, that the subdivision as proposed or modified will satisfy the intent of this title relating to subdivision development, the intent and requirements of the applicable zoning regulations, will be in compliance with the comprehensive plan, and the standards set forth in this chapter; such findings shall include the following:

(1) The subdivision is an effective, efficient and unified treatment of the development possibilities on the project site while remaining consistent with the comprehensive plan relative to orderly development and land use patterns in the area, and provides for the preservation of natural features and resources such as streams, lakes, natural vegetation, special terrain features, agricultural and forestlands, and other natural resources.

According to the Applicant, the Brasada development is an efficient and unified treatment that remains consistent with the comprehensive plan's policy regarding orderly development. The Applicant has retained the planning and engineering expertise of DOWL and other consultants to help ensure that the resort continues to meet these requirements.

The Applicant states that the proposed Brasada Ranch development has incorporated home sites and recreational facilities into the natural terrain. The Applicant states that the golf course follows natural canyons, a trail system weaves though home sites on both the north and south side of Alfalfa Road, and home sites in Phase 14 will offer spectacular views of the Cascade Mountains. All future homesites and residential units are near open space. The overall design for Brasada Ranch is effective, efficient, and unified in its correlation with natural terrain.

Agricultural operations will continue on the Brasada Ranch property. Grazing and other operations will continue to support the resort's equestrian facilities. The proposed development is not expected to interfere with agricultural activities on adjacent properties.

Development at Brasada Ranch will be served by standard utilities and a network of roads and existing trails. Infrastructure will be extended along the proposed extension of Spirit Rock Drive and the proposed new cul-de-sac road in the phase 14 development.

Fifty percent of the gross acreage of Brasada Ranch will be preserved as open space, golf course and other open space uses. No natural streams, lakes or water sources exist on the subject property. (Water and irrigation features do exist on the golf course and within other resort areas).

Special terrain features and natural vegetation have been preserved and will continue to be evaluated and protected where practical in the establishment of lot lines. Home construction will accommodate natural features on individual lots where appropriate.

In summary, the Applicant states that the proposed Phase 14 is effective, efficient and contributes to the orderly development of the property and provides for the preservation of natural features and special terrain.

(2) The subdivision will be compatible with the area surrounding the project site and will not create an excessive demand on public facilities and services required to serve the development.

The Resort's Final Development Plan approval addressed compatibility with the surrounding area. Crook County made findings and determined that destination resort development at Brasada Ranch was compatible with the surrounding area, subject to conditions of approval designed to minimize any potential impacts. As the development of the resort has progressed, the Applicant has demonstrated compliance with each of the original 33 approval conditions, ensuring compatibility with the area surrounding the project site.

The destination resort will not create an excessive demand on public facilities and services. The Final Development Plan and subsequent Tentative Plan and Site Plan approvals have addressed domestic water supplies, sewage disposal and transportation facilities. The Applicant has demonstrated that they have existing treatment capacity at the resort's wastewater treatment plant to accommodate additional residential development. The

contract with Avion provides water for domestic and fire use. Infrastructure (water and sewer) will be extended from Spirit Rock Drive in this Phase of the development. The Applicant has mitigated off-site transportation impacts as documented in agreements with Crook County and the Oregon Department of Transportation (ODOT). The Applicant completed the overlay of Alfalfa Road from the resort entrance to the intersection with the Powell Butte Highway and completed installation of the Resort's Sewage Treatment plant.

(3) Proof that financing is available to the applicant sufficient to assure completion of the subdivision as proposed or required.

The Applicant states that they have a track record of successful development in Central Oregon and that they have continued investment in Brasada Ranch since acquiring the property. They state that they have the capability and experience to complete the proposed development of Phase 14.

(4) That there will not be any adverse impacts on neighboring properties, natural resource quality, area livability, and public services and facilities.

Crook County's approval of the Final Development Plan (C-CU-DES-01-03) found that the proposed resort development would not have adverse impacts on neighboring properties, natural resource quality, area livability, or public services and facilities. Proposed Phase 14 of the development is consistent with the County's approved final development plan. Improvements for the 51 lots will be provided through continuation of Spirit Rock Drive and extension of utilities. The infrastructure will be developed prior to recording the final plat. The tentative plan identifies preliminary utility layouts. Final construction plans will be reviewed and approved by the Avion Water and Crook County Fire and Rescue. Housing types are reviewed by the Brasada Ranch Architectural Review team at the time of proposed building permits. Crook County is asked to review road designs, although the roads within the proposed development are all private.

17.16.030 Outline Development Plan

If an outline development plan is prepared and submitted with the application for a subdivision, it shall include both maps and written statements as set forth in this section. The information shall deal with enough of the area surrounding the proposed subdivision to demonstrate the relationship of the subdivision to adjoining land uses, both existing and allowable under applicable zoning.

(1) The map(s) which are part of the outline development plan may be in general schematic form, but shall be to scale, and shall contain the following information:

(a) The existing topographic character of the land.

(b) Existing and proposed land uses and the approximate location of buildings and other structures on the project site and adjoining lands.
(c) The character and approximate density of the proposed subdivision.
(d) The approximate location of streets and roads within and adjacent to the subdivision.
(e) Public uses including schools, parks, playgrounds, and other public open spaces or facilities.
(f) Common open spaces and facilities and a description of the proposed use of these spaces or facilities.
(g) Landscaping, irrigation, and drainage plans.

The maps submitted with the applications address the criteria listed above. The phase consists of single-family dwelling lots. There are no public uses proposed in this area. Drainage plans will be included in the road and utility construction documents for those elements within the right-of-way.

(2) Written statements which are part of the outline development plan shall contain the following information:

(a) An explanation of the character of the subdivision and the manner in which it has been planned and will be designed to be in compliance with the comprehensive plan, zoning, and this title.
(b) A statement and description of all proposed on-site and off-site improvements proposed.
(c) A statement of the proposed financing for completion of the subdivision as proposed.
(d) A statement of the present ownership of all the land included within the subdivision.
(e) A general schedule of development and improvements.
(f) A statement setting forth expected types of housing and other uses to be accommodated, traffic generation, population, and sectors thereof to be served, and any other information relative to demands on public services and facilities and public needs.
(g) A statement relative to compatibility with adjoining and area land uses, present and future.

The Applicant's burden of proof statement outlines the character of the subdivision and the manner in which it has been planned. Brasada Ranch Phase 14 is proposed as a continuation of Brasada Ranch Phases 1-13. Infrastructure improvements will be a continuation of roads and utilities adjacent to each end of the project (e.g., a continuation of Spirit Drive). The Applicant states that no financing will be required to complete Phase 14 and infrastructure will be provided prior to the final plat being recorded. All land within proposed Phase 14 is owned by Brasada Ranch Development LLC. The Applicant anticipates that Phase 14 infrastructure will be constructed in the Winter/Spring of 2021. The tentative plans identify preliminary utility layouts, but final construction plans will be reviewed and approved by the Avion Water Co., Southwest Water Company, Oregon Health Authority, and Crook County Fire and Rescue. Roads within the subdivision are private but Crook County will review road design prior to construction. The Brasada Ranch Architectural Review Committee reviews each proposed home prior to the developer applying for site plan review and building permits.

(3) Planning commission review of an outline development plan is intended only as a review relative to applicable zoning provisions and therefore is intended more as a service to the

developer than as a commitment of approval. Pursuant thereto, planning commission approval or general acceptance of an outline development plan for a subdivision shall constitute only a provisional and conceptual approval or acceptance of the proposed subdivision

17.16.040 Tentative plan required

The Applicant has provided Tentative plan drawings, a burden of proof statement and incorporates, by reference, the previously approved Development Plan, and the Final Development Plan in providing the information required for a tentative plan submittal. The tentative plan complies with the scale requirements of 17.16.050.

17.16.060 Informational requirements.

The following information shall be shown on the tentative subdivision plan or provided in accompanying materials. No tentative plan submittal shall be considered "complete" unless all such information is provided:

(1) General Information Required.

The Applicant has met all the informational requirements in 17.16.060 including providing the required contact information, the location of proposed lots and other basic information about the development.

(2) Information Concerning Existing Conditions.

The tentative plan provided by the Applicant includes the location, names and widths of streets and roads, relationship of Phase 14 to other Phases of the Brasada Resort development, location of structures and other features, location of easements, sewer and water lines, and location of contour lines.

(3) Information Concerning Proposed Subdivision.

(a) Location, names, width, typical improvements cross-sections, approximate grades, curve radii and lengths of all proposed streets, and the relationship to all existing and projected streets.

(b) Location, width and purpose of all proposed easements or rights-of-way and relationship to all existing easements and rights-of-way.

(c) Location of at least one temporary benchmark within the proposed subdivision boundary.

(d) Location, approximate area and dimensions of each lot, and proposed lot and block numbers.

(e) Location, approximate area and dimensions of any lot, or area proposed for public use, the use proposed, and plans for improvements or development thereof.

(f) Proposed use, location, approximate area and dimensions of any lot which is intended for nonresidential use.

(g) An outline of the area proposed for partial recording is contemplated or proposed.

(h) Source, method, and preliminary plans for domestic and other water supplies, sewage disposal, solid waste disposal, and all utilities.

(i) Description and location of any proposed community facility.

(j) Storm water and other drainage facility plans.

(k) Legal access to proposed subdivision.

The tentative plan includes location names, width, typical cross sections for improvements including utilities and roads. The plan includes the location, width, and purpose of proposed easements. It also includes the location, dimension, and lot number for each proposed lot.

17.16.080 Supplemental information required.

The following information shall be submitted with the tentative plan for subdivision. If such information cannot be shown practically on the tentative plan of a proposed subdivision, it shall be submitted in separate documents accompanying the plan at the time of filing.

(1) Proposed deed restrictions or protective covenants, if such are proposed to be utilized for the proposed subdivision.

According to the Applicant, the same CC&Rs that apply to the original residential phases of the Brasada Ranch development will apply to Phase 14. The Applicant notes that the current CC&Rs are subject to refinement and finalization as the resort's development proceeds.

(2) Two copies of a letter from a water purveyor providing a water supply system serving domestic water or a letter from a licensed well driller or registered engineer.

The water supply for Brasada Ranch was addressed in approval of the Final Development Plan for the resort. Previous applications incorporated the March 2003 Water Supply System Master Plan, prepared by WH Pacific, Inc. (Phase 1 Tentative Plan). The Master Plan described domestic water consumption, fire protection, irrigation requirements, source facility need, storage sizing and design criteria for the water distribution system.

The Final Development Plan application included the Avion Water Company, Inc. agreement and the associated Public Utility Commission approval for the contract with FNF NW BRASADA LLC. Avion Water continues to provide water for fire and domestic uses in all Phases of the Brasada Ranch resort development. In addition, the Oregon Water Resources Department has authorized a water right transfer to permit the use of COID (Central Oregon Irrigation District) agricultural water rights to irrigate the golf course. The Applicant has confirmed that an adequate water supply is available for both domestic and fire uses.

(3) Statement from each serving utility company proposed to serve the proposed subdivision stating that each such company is able and willing to serve the proposed subdivision as set forth in the tentative plan, and the conditions and estimated costs of such service shall be set forth.

According to the Applicant, letters from Central Electric Coop and Brasada Ranch Utility LLC demonstrate commitments to provide power, telephone, and cable service. These were included as Exhibit T in the Phase 1 Tentative Plan application. These utilities continue to serve all phases of the development. Since Phase 1, Cascade Natural gas has extended lines to Brasada Ranch and now provides natural gas to the development.

4) Proposed fire protection system for the proposed subdivision and written approval thereof by the appropriate serving fire protection agency.

The Water Supply Master Plan and associated Avion Water Company Water Service Agreement describe and assure adequate water for fire protection for the proposed Phase 14

residential development. The subject property is located within the Crook County Rural Fire Protection District and the Fire District will be asked to review design plans for Phase 14.

(5) Title or subdivision guarantee report from a licensed title company stating the record owner(s) of the land proposed to be subdivided and setting forth all encumbrances relative to the subject property.

The Applicant attached a current Western Title subdivision guarantee Status of Record Title, dated December 13, 2020.

(6) Reasons and justifications for any variances requested to the provisions of this title or any other applicable ordinance or regulation.

No variances are requested for the Phase 14 subdivision.

(7) Every application for division of property shall be accompanied by a water procurement plan approved by the county watermaster or their representative. Such plan shall explain in detail the proposed manner of providing domestic water. If irrigation water is to be provided, the water procurement plan shall also explain the manner of providing such irrigation water.

(8) Where a tract of land has water rights, an application for division of the tract shall be accompanied by a water rights division plan approved by the irrigation district or other water district holding the water rights, or when there is no such district, by the district watermaster or their representative serving the county area. Every plat and tentative plan shall indicate the water right that is to be transferred to each parcel or lot.

In addition to water provided by Avion Water for fire and domestic water uses, the Central Oregon Irrigation District Board authorized a transfer of irrigation water rights to accommodate golf course and other common area irrigation uses. This transfer has been approved by the Oregon Water Resources Department. The proposed Phase 14 development does not impact water rights at Brasada Ranch.

The Applicant states that the Avion Water Company Inc. contract demonstrates a perpetual supply of domestic water for the project. Avion provides domestic water for fire and domestic water usage. Hydrants are spaced and pressure is available per 2014 Oregon Fire Code requirements.

The Applicant notes that the final plat for Brasada Ranch Phase 14 is required to be reviewed by the Central Oregon Irrigation District. No water rights are anticipated to be affected by development of the lots proposed with this phase of development.

17.16.090 Approval of tentative subdivision plan.

(1) Tentative Plan Review. The planning commission shall, within 60 days from the first regular planning commission meeting following submission of a tentative subdivision plan to the planning commission, review the tentative plan and all reports and recommendations of appropriate officials and agencies. The planning commission may approve, modify, or disapprove the tentative plan for the proposed subdivision, and shall set forth findings for said decision.

(2) Tentative Plan Approval. Approval or disapproval of the tentative plan by the planning commission shall be final unless the decision is appealed to the county court.

The tentative plan shall be reviewed by the planning commission within 60 days following submission. The application was submitted on December 29, 2020 and was approved by the Planning Commission on January 27, 2021. The final decision is subject to a 12-day appeal period commencing with the Planning Commission Chair's signing of the final approval.

(3) Tentative Plan Approval Relative to Final Plat. Approval of the tentative plan shall not constitute final acceptance of the plat of the proposed subdivision for recording; however, approval of such tentative plan shall be binding upon the county for purposes of the preparation of the plat and the county may require only such changes in the plat as are necessary for compliance with the terms of its approval of the tentative plan for proposed subdivision.

(4) Planning Commission Report. The decision of the planning commission shall be set forth in writing in a formal report and, in the case of approval, be noted on three copies of the tentative plan, including references to any attached documents describing conditions. One copy of the planning commission report shall be sent to the subdivider, one copy sent to the county court, and the planning commission shall retain one copy. Such action shall be completed within five working days of the date of planning commission decision.

The report on the Planning Commission shall be prepared within the time frame established by this section.

17.16.100 Specific approval requirements.

In addition to the requirements set forth by the provisions of this title and applicable local and state regulations, specific requirements for tentative plan approval are as follows:

(1) No tentative plan of a subdivision shall be approved which bears a name using a word which is the same as, similar to or pronounced the same as a word in the name of any other subdivision in the same county, except the words "town," "city," "place," "court," "addition," or similar words, unless the land platted is contiguous to and platted by the same party that platted the subdivision bearing that name or unless the party files and

records the consent of the party that platted the subdivision bearing that name. All plats must continue the lot and block numbers of the plat of the same name, last filed.

The tentative plan meets requirements of 17.16.100. The Applicant states that they have consistently named plats to include "Brasada Ranch" in plat names. The Phase 14 proposal is consistent with previous plat names.

(2) No tentative plan for a proposed subdivision shall be approved unless:
(a) The streets and roads are laid out so as to conform to the plats of subdivisions and maps of partitions already approved for adjoining property as to width, improvements, general direction and in all other respects, unless the planning commission determines it is in the public interest to modify the street and road pattern.
(b) Streets and roads to be held for private use are approved by the planning commission and are clearly indicated on the tentative plan and all reservations or restrictions relating to such private streets and roads are set forth thereon, such as ownership and maintenance responsibilities.
(c) The tentative plan complies with the zoning ordinance.

The Tentative Plan for Brasada Ranch Phase 14 shows all adjacent developments. The extension of Spirit Rock Drive from Phase 13 and two roads terminating in a cul-de-sac are the new streets in Phase 14. All roads within the Brasada development are held for private use and are maintained by the Developer or the future Homeowner's Association. The tentative plan complies with Crook County Code 18.116 (destination resort overlay zone).

(3) No tentative plan for a proposed subdivision or planned unit development located within the urban growth boundary, but outside the city, shall be approved unless the subject proposal has been submitted to the city planning commission for review and until such time that a written review and recommendation therefrom has been received and considered.

The subject property is not located within the urban growth boundary and is not subject to City planning commission review.

17.20.010 Submission of the final plat.

The Applicant has experience preparing final plats and has entered into an agreement with DOWL, a Bend engineering/surveying form to prepare the final plat consistent with the requirements of 17.20.010 and Oregon Revised Statutes. The final plat for Phase 14 will be recorded upon completion of infrastructure for the Phase.

17.36.020 Road Standards

(1)(a) General. The location, width and grade of streets shall be considered in their relation to existing roads, to topographical conditions, to public convenience and safety, and to the

proposed use of land to be served by the road. The road system shall assure an adequate traffic circulation system with intersection angles, grades, tangents and curves appropriate for the traffic to be carried considering the terrain. The proposed road location and pattern shall be shown on a development plan and the arrangement of roads shall either:
Brasada Ranch and Crook County agreed to road standards for the development in the original Final Development Plan. Brasada Ranch roads are private and allow for roadway widths of 20 feet and greater and up to 12% grades on hillside conditions. The proposed road sections for Brasada Ranch 14 are consistent with these conditions. Crook County Fire and Rescue has reviewed the proposed extension of Spirit Rock Drive and has found that it will be sufficient for access for emergency services purposes.

17.40.010 Improvement Procedures
In addition to other land use and permitting requirements, improvements to be installed by an owner and/or developer, either as a requirement of this title, a land use permit, or other applicable regulations, shall conform to the requirements of this chapter.
The Applicant states that roads and utilities will be completed prior to submitting the final plat for approval. Construction plans are typically reviewed and approved by utility providers, Crook County Fire and Rescue and the Crook County Road Department (although it is noted that the roads in Brasada Ranch are private and not subject to County jurisdiction).

In the event that an improvement agreement is required, the Applicant's engineer or contract will prepare an estimate of the cost to complete construction. The Applicant's agent and Crook County legal counsel would then coordinate to determine a bond amount and to finalize an improvement agreement. Again, the need for an improvement agreement and financial security is not anticipated. The Applicant plans to complete infrastructure construction prior to submitting a final plat.

COMMENTS: At the time of this staff report, the Planning Department has received no comments from the public regarding Phase 14 of Brasada Ranch. Members of the subdivision review committee met on January 21, 2021 to get a project update from the Applicant and the consultant team. The subcommittee's report is found in Attachment B.

Several questions were raised during the meeting. Russ Deboodt, Crook County Fire and Rescue, asked about the length of the road to the cul-de-sac and mentioned that Phase 13 included emergency vehicle turn-outs. According to Russ, this is consistent with the current Oregon Fire Code requirements. It was agreed that gravel turn outs would be provided between Spirit Rock Drive and each cul-de-sac in Phase 14. Brasada has provided an updated drawing showing the location of the turnouts for the Planning Commission hearing. Adam Conway, Dowl, stated that fire hydrants would be provided every 400 feet.

Russ mentioned that the Fire Code requires either a secondary access or that homes have internal fire sprinklers when a single road serves more than 30 homes. Brent McClean mentioned that the topography posed limits to constructing a secondary access. Brent McClean said that he and his team would examine options to meet the Fire Code requirements. The Planning Commission added condition #6 to ensure that Fire Code requirements are met.

Bob O'Neal, Crook County Roadmaster, raised a concern about summer rain events and wanted to make sure that culverts were sized appropriately for major storms. Adam replied that they had taken major storm events into consideration when designing culverts.

No representatives of government agencies nor members of the public testified at the Planning Commission hearing. Brent McClean testified on behalf of the project and Adam Conway, Dowl responded to site development questions.

SITE VISIT:

Planning Commissioners Warren, Hermreck, Bedortha, Manning and Lundquist visited the site on January 27, prior to the Commission meeting. They were met by Alan Cornelius, Brasada, and Adam Conway, Dowl. They walked the future extension of Spirit Rock Drive to view the proposed location of the dwelling sites. They discussed the project layout. They were joined on the visit by neighboring property owners, Bob and Elise Firth. The Firths expressed support for the proposed project.

CONCLUSION:

The required findings have been made and this written narrative and accompanying documentation demonstrate that the application is consistent with the applicable provisions of the Crook County Code. The original Tentative Plan Approval, Final Development Plan approval, the Applicant's application and burden of proof statement, including amendments, and the January 20, 2021 staff report are incorporated by reference. The evidence in the record is substantial and supports approval of the Tentative Plan, for Brasada Ranch Phase 14, subject to the conditions of approval set forth in this decision.

The Planning Commission considered the testimony, the evidence provided, including the application, exhibits, the staff report, and testimony in reaching a decision to approve the request.

DATED THIS 1st **DAY OF** February, **2021.**

Michael Warren

Michael Warren II, Chair, Crook County Planning Commission

A Beier

Ann Beier, Planning Director

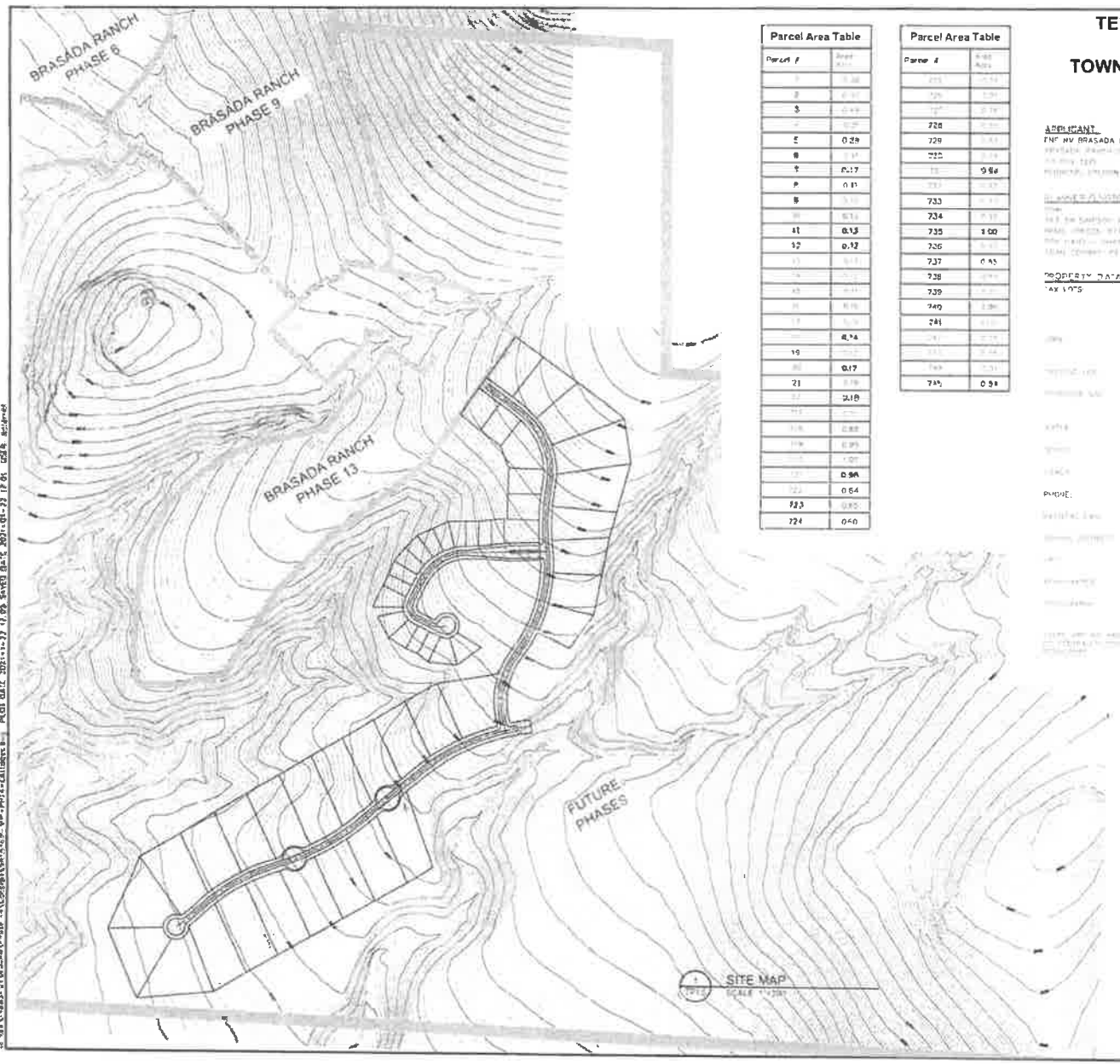
NOTICE TO PERSONS PROVIDING TESTIMONY

This approval may be appealed to the Crook County Court no later than **4:00 p.m. on February 15, 2021.** The written appeal must be submitted together with the appeal fee of $1,850 plus 20% of the application fee to the Crook County Community Development Department. The Crook County Community Development Department is located in the County Courthouse at 300 NE Third Street, Room 12, Prineville, Oregon 97754.

Attachment A – Proposed Phase 14 maps
Attachment B – Subdivision Review Committee report

Attachment A

TENTATIVE DEVELOPMENT PLAN
FOR BRASADA RANCH 14
TOWNSHIP 16 SOUTH, RANCH 14 EAST, SECTIONS 26 AND 27
CROOK COUNTY, OREGON



SITE MAP

Parcel Area Table	
Parcel #	Area (Acres)
1	0.38
2	0.31
3	0.44
4	0.37
5	0.39
6	0.31
7	0.17
8	0.31
9	0.16
10	0.16
11	0.13
12	0.12
13	0.11
14	0.11
15	0.11
16	0.16
17	0.13
18	0.14
19	0.14
20	0.17
21	0.19
22	0.18
23	0.11
24	0.88
25	0.85
26	1.07
27	0.94
723	0.64
723	0.80
724	0.60

Parcel Area Table	
Parcel #	Area (Acres)
727	0.53
728	0.54
729	0.43
730	0.34
731	0.58
732	0.57
733	0.51
734	0.51
735	1.00
736	0.51
737	0.55
738	0.51
739	0.51
740	1.36
741	0.51
742	0.77
743	0.54
744	0.51
745	0.58

APPLICANT
PNE NW BRASADA LLC

PROPERTY DATA
TAX LOTS
T16S, R14E, SECTION 26 07600
T16S, R14E, SECTION 27 07600
T16S, R14E, SECTION 26 07601

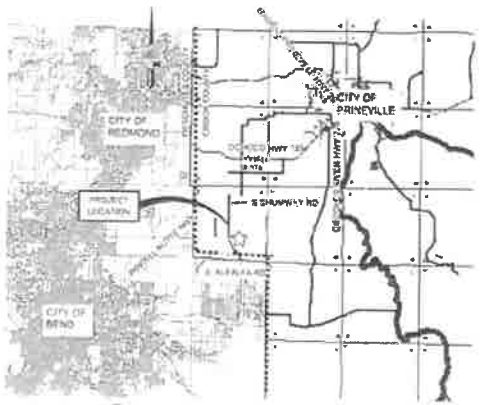
PURPOSE:

N

SCALE IN FEET

ROW PRIVATE ROAD

TOTAL PLATTED AREA



VICINITY MAP

NOT FOR CONSTRUCTION

PRELIMINARY

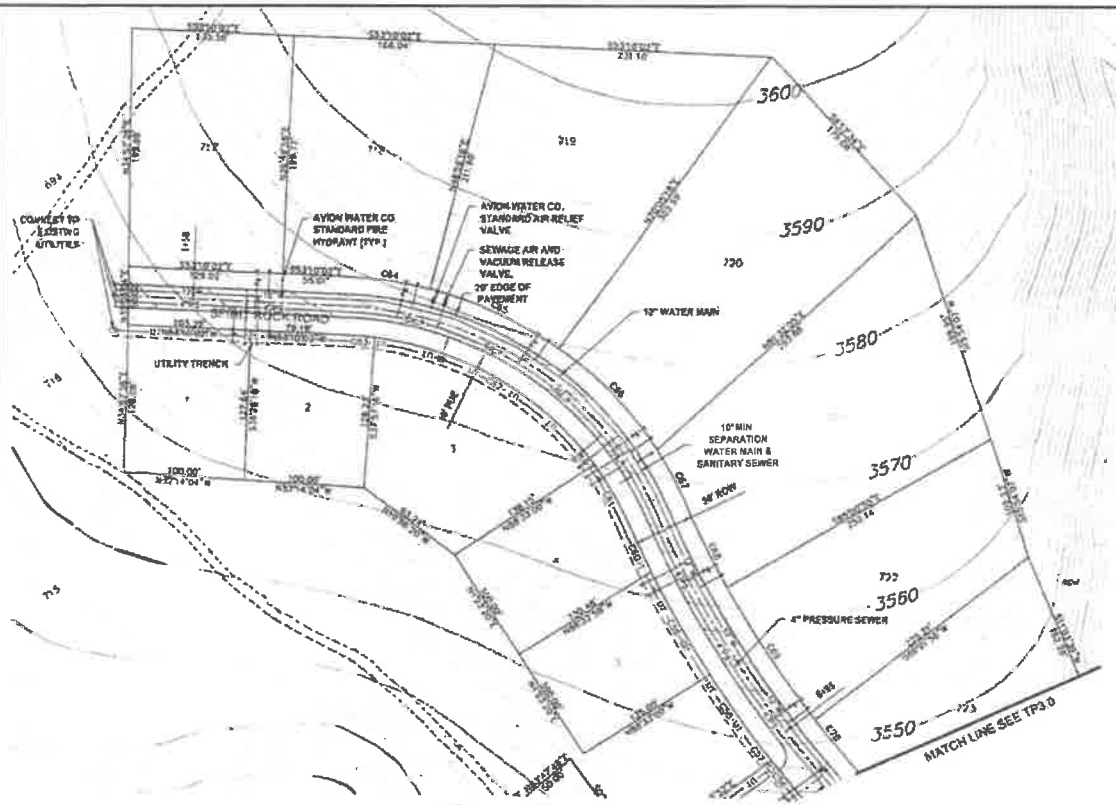
DOWL

NORTHVIEW HOTEL GROUP
PHASE 14 TENTATIVE SUBDIVISION PLAN BRASADA RANCH
PHASE 14 TENTATIVE PLAN

TP1.0

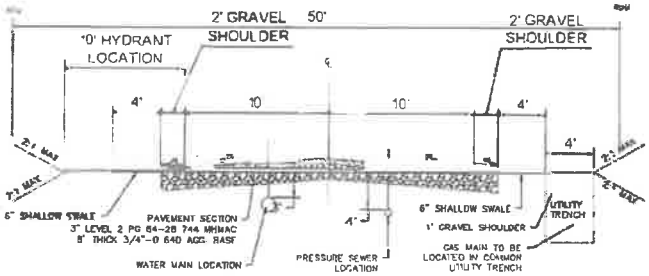
10

10

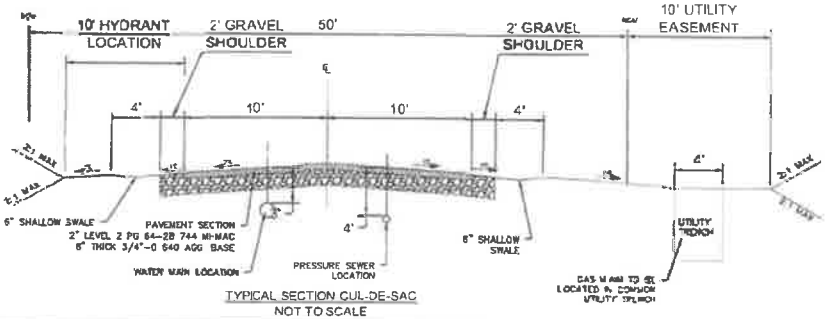


PHASE 14 TENTATIVE PLAN

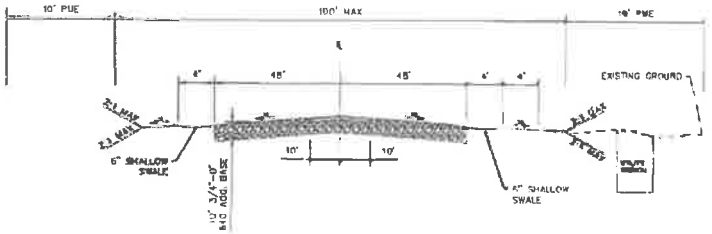
Curve Table					
Curve #	Length	Radius	Delta	Chord Direction	Chord Length
C56	32.61	945.10	1.98	N4° 56' 09"W	32.61
C57	23.95	945.10	1.45	N3° 16' 18"W	23.95
C58	55.09	945.00	4.01	N0° 30' 54"W	55.09
C59	100.19	945.00	6.07	N6° 31' 33"E	100.14
C60	40.48	945.00	2.45	N8° 47' 26"E	40.48
C61	58.86	275.00	12.26	N2° 44' 15"E	58.76
C62	213.99	275.00	44.62	N25° 19' 31"W	208.57
C63	24.15	275.00	5.03	N50° 39' 05"W	24.14
C64	68.94	326.85	12.08	S47° 00' 43"E	68.81
C65	119.65	326.85	20.98	S30° 28' 57"E	118.98
C66	118.72	326.85	20.39	S9° 30' 05"E	118.05
C67	55.46	326.85	9.47	S6° 43' 43"W	55.39
C68	62.71	895.00	4.01	S6° 58' 30"W	62.69
C69	134.64	895.00	8.62	S0° 40' 30"W	134.51
C70	26.55	895.00	2.24	5.4° 48' 15"E	26.55



TYPICAL SECTION SPIRIT ROCK ROAD
NOT TO SCALE



TYPICAL SECTION CUL-DE-SAC
NOT TO SCALE



EMERGENCY TURN AROUND TYPICAL SECTION
NOT TO SCALE

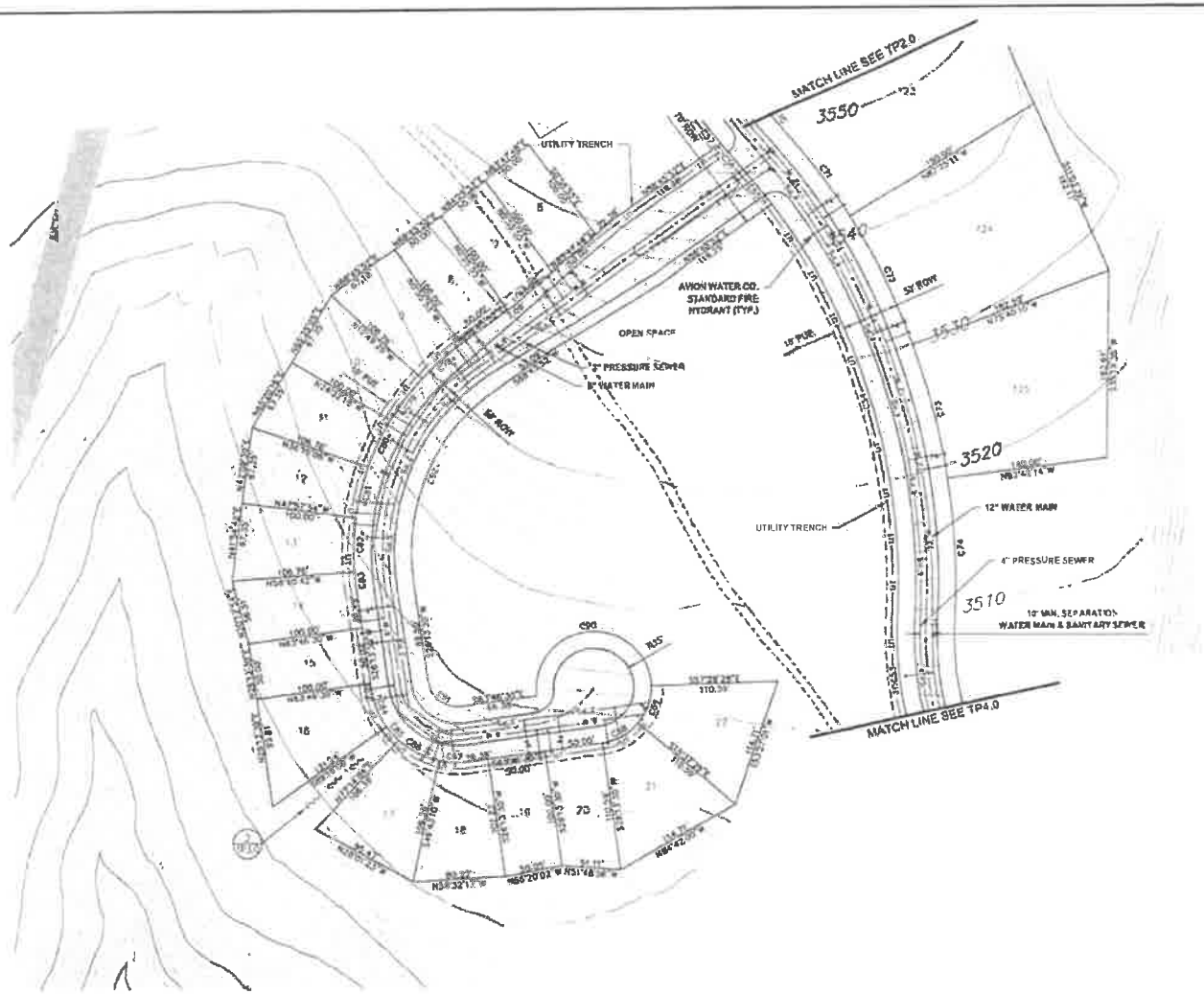
NOT FOR CONSTRUCTION

PRELIMINARY

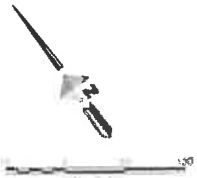
DOWL

NORTHVIEW HOTEL GROUP
PHASE 14 TENTATIVE SUBDIVISION PLAN BRASADA RANCH
PHASE 14 TENTATIVE PLAN

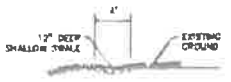
TP2.0



1 TP3.0 PHASE 14 TENTATIVE PLAN
1"=50'



Curve Table					
Curve #	Length	Radius	Delta	Chord Direction	Chord Length
C53	102.52	325.00	18.07	N26° 20' 21"E	102.10
C54	382.37	555.00	39.47	N17° 37' 28"E	374.85
C55	37.51	555.00	3.87	N4° 02' 56"W	37.51
C71	90.32	605.00	8.55	S1° 41' 51"E	90.24
C72	124.08	605.00	11.75	S8° 27' 17"W	123.86
C73	121.22	605.00	11.48	S20° 04' 11"W	121.01
C74	172.14	605.00	16.57	S31° 35' 35"W	171.93
C78	45.51	225.00	11.59	S82° 58' 12"W	45.43
C79	46.09	225.00	11.73	S71° 19' 07"W	45.92
C80	46.09	225.00	11.73	S59° 36' 18"W	45.92
C81	46.09	225.00	11.73	S47° 53' 30"W	45.92
C82	46.00	225.00	11.71	S36° 10' 42"W	45.92
C83	16.09	225.00	4.10	S28° 16' 24"W	16.08
C84	35.22	75.00	26.91	S12° 46' 19"W	34.90
C85	15.82	75.00	12.08	N6° 43' 23"W	15.79
C86	39.94	75.00	30.52	S28° 01' 23"E	39.47
C87	26.83	75.00	20.49	S53° 31' 40"E	26.68
C88	36.52	50.00	41.85	S84° 42' 00"E	35.71
C89	36.52	50.00	41.85	N53° 27' 01"E	35.71
C90	152.58	50.00	186.30	S6C° 37' 29"E	99.85
C91	39.27	25.00	90.00	S18° 46' 30"E	35.36
C92	191.02	175.00	62.54	S57° 29' 41"W	181.67



2 TP3.0 DRAINAGE SWALE TYPICAL SECTION

NOT FOR CONSTRUCTION

PRELIMINARY

DOWL
160 SW Simpson Avenue, #200
Bend Oregon 97702
541-385-4772

NORTHVIEW HOTEL GROUP
PHASE 14 TENTATIVE SUBDIVISION PLAN BRASADA RANCH
PHASE 14 TENTATIVE PLAN

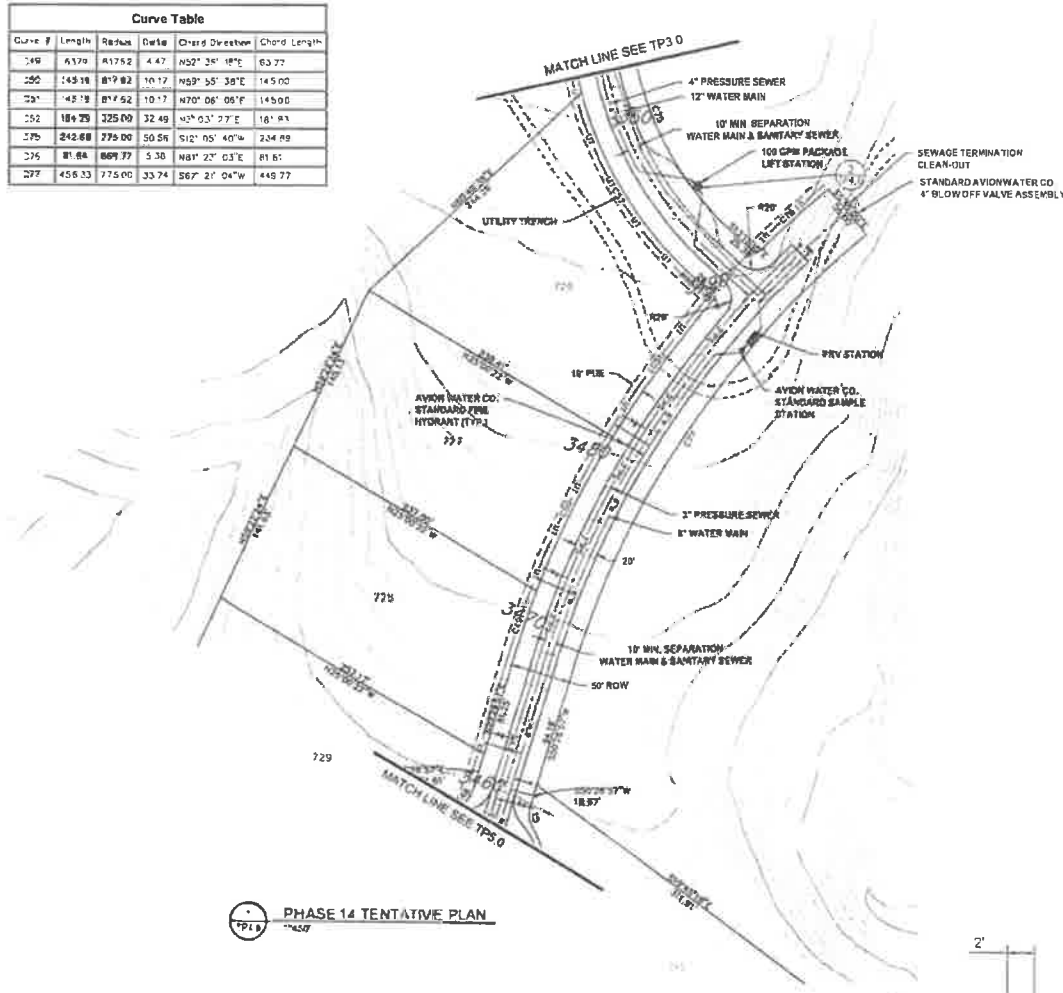
DATE 2021-01-14

SHEET TP3.0
2 OF 8

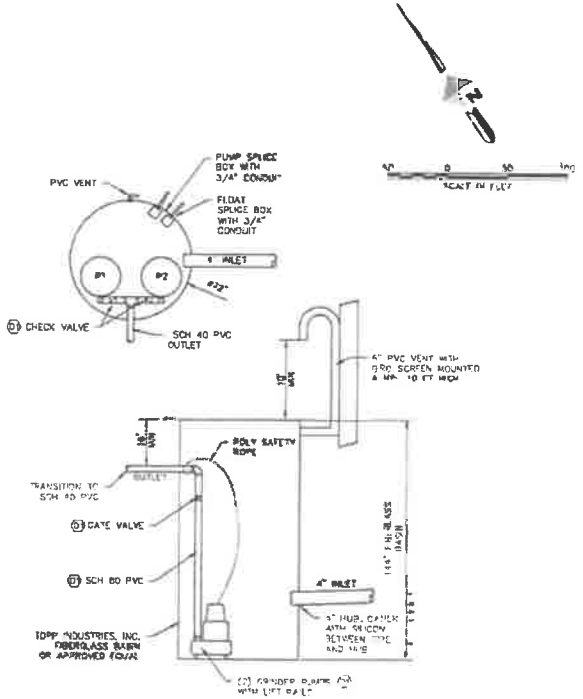
10

10

Curve Table					
Curve #	Length	Radius	Delta	Chord Direction	Chord Length
C49	63.79	1175.00	4°47'00"	N52° 35' 18"E	63.77
C50	145.18	817.92	10°17'00"	N59° 55' 38"E	145.00
C51	145.18	817.92	10°17'00"	N70° 06' 05"E	145.00
C52	184.25	325.00	32°49'00"	N35° 03' 27"E	181.83
C75	242.68	775.00	50°56'00"	S12° 05' 40"W	234.88
C76	81.64	869.77	5°38'00"	N81° 22' 03"E	81.61
C77	456.33	775.00	33°74'00"	S67° 21' 04"W	449.77



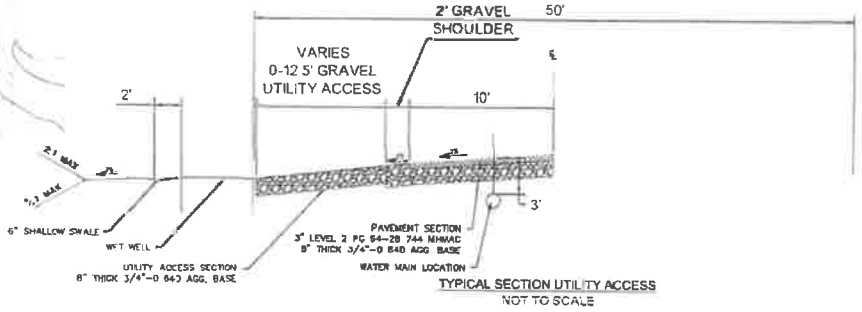
PHASE 14 TENTATIVE PLAN



WET WELL DETAIL

DETAIL NOTES

INSTALL SEWAGE PUMP STATION. PROVIDE A COMPLETE SEWAGE PUMP STATION, INCLUDING DUPLEX GRINDER PUMPS, LIFT RAILS, FLOATS AND CONTROLS, TO DELIVER 100 GPM AT 100 FT. TDH. PROVIDE FLOAT CONTROLS FOR: PUMP OFF, PUMP #1 ON, PUMP #2 ON, HIGH LEVEL ALARM. CONTROLS TO PROVIDE VISUAL AND AUDIBLE ALARM. PROVIDE SUBMITTAL PACKAGE TO ENGINEER FOR APPROVAL.



TYPICAL SECTION UTILITY ACCESS
NOT TO SCALE

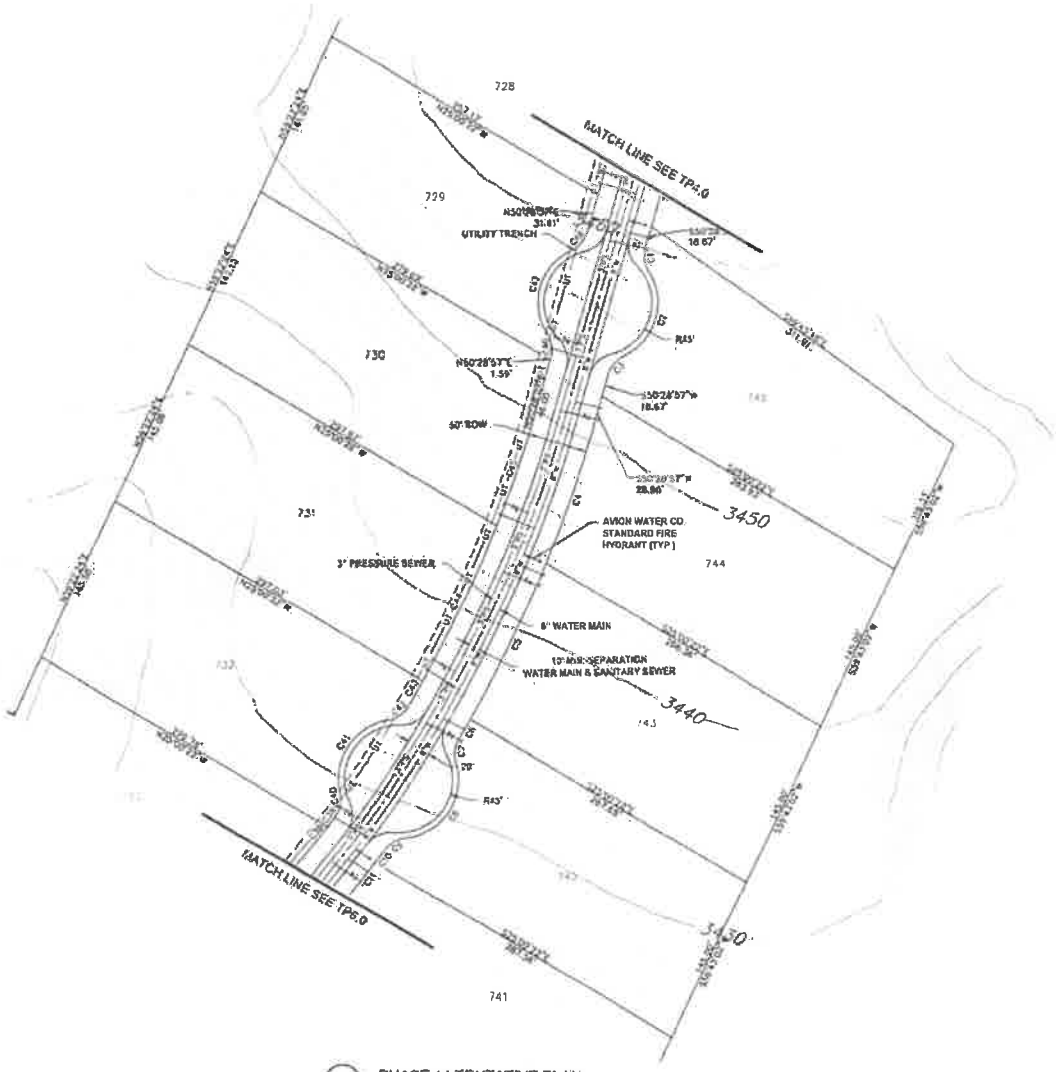
NOT FOR CONSTRUCTION

PRELIMINARY

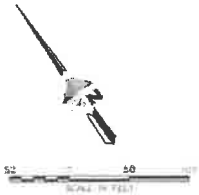
DOWL
963 SW Simpson Avenue, #200
Bend, Oregon 97702
541.382.4372

NORTHVIEW HOTEL GROUP
PHASE 14 TENTATIVE SUBDIVISION PLAN BRASADA RANCH
PHASE 14 TENTATIVE PLAN

TP4.0



4 PHASE 14 TENTATIVE PLAN
1"=50'



Curve Table					
Curve #	Length	Radius	Delta	Chord Direction	Chord Length
C1	31.03	25.00	48.19	S28° 23' 16"W	20.41
C2	84.11	50.00	96.38	S30° 28' 57"W	74.54
C3	31.03	25.00	48.19	S74° 34' 39"W	20.41
C4	118.78	1125.00	6.05	S53° 30' 26"W	118.73
C5	144.96	1125.00	7.38	S60° 13' 27"W	144.86
C6	16.68	1120.00	0.85	S64° 23' 30"W	16.68
C7	22.41	25.00	46.78	S41° 28' 36"W	19.85
C8	86.52	50.00	99.14	S61° 42' 55"W	76.19
C9	20.41	25.00	46.76	N85° 02' 43"W	19.85
C10	14.12	1125.00	0.72	S70° 55' 22"W	14.12
C11	27.50	1125.00	1.40	S71° 56' 37"W	27.50
C38	28.00	1075.00	1.49	N71° 56' 31"E	28.02
C39	9.99	1075.00	0.53	N70° 37' 44"E	9.99
C40	21.68	25.00	49.70	N43° 30' 53"E	21.01
C41	81.54	50.00	93.43	N87° 43' 35"E	72.80
C42	21.68	25.00	49.70	N89° 35' 09"E	21.01
C43	23.27	1075.00	1.24	N84° 08' 52"E	23.27
C44	145.61	1075.00	7.73	N59° 37' 34"E	145.00
C45	99.33	1075.00	5.28	N53° 01' 17"E	98.99
C46	21.03	25.00	48.19	N28° 23' 16"E	20.41
C47	84.11	50.00	96.38	N30° 28' 57"E	74.54
C48	31.03	25.00	48.19	N74° 34' 39"E	20.41

NOT FOR CONSTRUCTION

REVISIONS		
REV	DATE	DESCRIPTION

PRELIMINARY

DOWL
www.dowl.com
963 SW Simpson Avenue, #200
Bend, Oregon 97702
541.385.4772

NORTHVIEW HOTEL GROUP
PHASE 14 TENTATIVE SUBDIVISION PLAN BRASADA RANCH
PHASE 14 TENTATIVE PLAN

PROJECT 2021-01-17

TP5.0
5 of 8

NORTHVIEW HOTEL GROUP
PHASE 14 TENTATIVE SUBDIVISION PLAN BRASADA RANCH

PHASE 14 TENTATIVE PLAN

TP6.0

DOWL
963 SW Simpson Avenue, #200
Bend, Oregon 97702
541-383-4772

PRELIMINARY

NOT FOR CONSTRUCTION

Curve Table					
Curve #	Length	Radius	Delta	Chord Direction	Chord Length
C11	27.50	1125.00	1.40	S7° 38' 57"W	27.50
C12	117.37	855.00	7.87	S8° 32' 58"W	117.21
C13	143.79	855.00	9.64	S4° 07' 39"W	143.59
C14	50.75	855.00	3.40	S0° 39' 07"W	50.74
C15	84.37	785.00	6.16	S4° 51' 06"W	84.32
C27	103.28	50.00	118.34	S51° 32' 49"W	84.30
C28	60.87	50.00	69.76	N36° 07' 14"W	57.18
C33	100.62	50.00	115.30	N55° 24' 31"E	84.48
C34	77.38	655.00	6.77	N60° 45' 24"E	77.33
C35	[illegible]	[illegible]	4.09	N67° 56' 23"E	81.34
C36	155.87	785.00	12.87	N56° 48' 00"E	155.55
C37	117.91	750.00	9.53	N67° 51' 42"E	117.84
C38	28.02	1075.00	1.49	N71° 58' 31"E	28.02

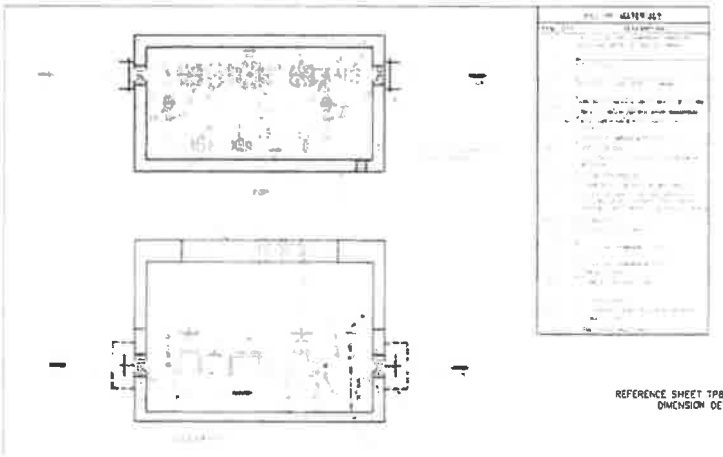
1 PHASE 14 TENTATIVE PLAN
TP6.0 1"=50'

GENERAL NOTES:

1. CONTRACTOR SHALL VERIFY ALL CONDITIONS ON THE JOB SITE INCLUDING BUT NOT LIMITED TO, ALL DIMENSIONS, GRADES, ELEVATIONS, EXTENT AND COMPATIBILITY TO THE EXISTING SITE CONDITIONS, AND WITH THE WORK OR NOTED ON THE ENGINEER'S DRAWINGS. ANY DISCREPANCIES OR UNEXPECTED CONDITIONS THAT AFFECT OR CHANGE THE WORK DESCRIBED IN THE CONTRACT DOCUMENTS SHALL BE BROUGHT TO THE ENGINEER'S ATTENTION IMMEDIATELY. CONTRACTOR SHALL NOT PROCEED WITH ANY OF THE WORK IN THE AREA OF DISCREPANCIES UNTIL ALL SUCH DISCREPANCIES ARE RESOLVED. IF THE CONTRACTOR CHOOSES TO DO SO, THEN IT IS UNDERSTOOD THAT THE CONTRACTOR IS CHOOSING TO PROCEED AT THE CONTRACTOR'S OWN RISK AND SHALL INCUR ALL COSTS, IF ANY TO RESOLVE THE ISSUES TO THE SATISFACTION OF THE ENGINEER.
2. IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO CONTACT "UNDERGROUND LOCATE SERVICE" AT 1-800-332-2344 AT LEAST 48 BUSINESS-DAY HOURS PRIOR TO THE START OF CONSTRUCTION FOR THE LOCATION OF POWER, GAS, CABLE TV AND TELEPHONE UNDERGROUND FACILITIES. THE CONTRACTOR WILL ALSO BE RESPONSIBLE FOR CONTACTING THE APPROPRIATE PUBLIC AGENCY FOR THE LOCATION OF UNDERGROUND FACILITIES.
3. ALL UTILITIES SHOWN ARE ACCURATE TO THE EXTENT OF AVAILABLE RECORDS AND KNOWLEDGE. NO POTHOLING TO VERIFY LOCATIONS AND ELEVATIONS WAS AUTHORIZED BY THE OWNER. THE CONTRACTOR HAS THE TOTAL RESPONSIBILITY TO VERIFY THE LOCATION OF EXISTING UNDERGROUND UTILITIES AND TO NOTIFY THE UTILITY COMPANIES WHEN WORKING IN THEIR PROXIMITY. CONTRACTOR TO VERIFY LOCATION OF EXISTING UTILITIES PRIOR TO CONSTRUCTION. OREGON LAW REQUIRES YOU TO FOLLOW RULES ADOPTED BY THE OREGON UTILITY NOTIFICATION CENTER. THOSE RULES ARE SET FORTH IN OAR 952-001-0010 THROUGH 952-001-0090. YOU MAY OBTAIN COPIES OF THE RULES BY CALLING THE CENTER. THE TELEPHONE NUMBER FOR THE OREGON UTILITY NOTIFICATION CENTER IS (503)232-1987.
4. ALL UNSUITABLE SOILS MATERIALS, RUBBISH AND DEBRIS RESULTING FROM GRADING OPERATIONS SHALL BE DISPOSED OF PROPERLY.
5. THE CONTRACTOR SHALL EMPLOY ALL LABOR, EQUIPMENT, AND METHODS REQUIRED TO PREVENT DUST IN AMOUNTS DAMAGING TO PROPERTY, CULTIVATION AND DOMESTIC ANIMALS OR CAUSING A NUISANCE TO PERSONS OCCUPYING BUILDINGS IN THE VICINITY OF THE JOB SITE. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ANY DAMAGE CAUSED BY DUST RESULTING FROM CONSTRUCTION.
6. THE CONTRACTOR SHALL FOLLOW ALL APPLICABLE INDUSTRIAL SAFETY REGULATIONS. CROOK COUNTY AND THEIR OFFICIALS, THE ENGINEER, AND THE OWNER SHALL NOT BE RESPONSIBLE FOR ENFORCING SAFETY REGULATIONS.
7. ALL WORKMANSHIP AND MATERIALS SHALL CONFORM TO THESE DRAWINGS AND SPECIFICATIONS, AVION WATER COMPANY, NATIONAL ELECTRICAL CODE, REQUIREMENTS OF THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY, OREGON HEALTH AUTHORITY, CROOK COUNTY ROAD DEPARTMENT AND OTHER APPLICABLE STATE AND LOCAL CODES, INCLUDING CURRENT APWA STANDARDS.
8. CONTRACTOR SHALL EXPOSE, VERIFY, CONNECT AND/OR MATCH EXISTING UTILITIES AND IMPROVEMENTS IN CONFORMANCE WITH THE INTENT OF THESE PLANS AND SPECIFICATIONS, TO PROVIDE COMPLETE AND/OR OPERATIONAL SYSTEMS.
9. CONTRACTOR SHALL RESTRICT ALL OPERATIONS TO DESIGNATED CONSTRUCTION AREAS WITHIN THE PROJECT BOUNDARIES. ANY DISRUPTION TO NATIVE LANDSCAPES, OUTSIDE OF DESIGNATED WORK AREAS, SHALL BE RESTORED AT NO COST TO THE OWNER.
10. CONTRACTOR SHALL MAINTAIN CONSTRUCTION RECORDS FOR ALL ASPECTS OF THE WORK, INCLUDING DETAILED DIMENSIONS AND TIES FOR UNDERGROUND UTILITIES, AND PROVIDE NOTES OR MARKED UP PLAN SETS TO THE ENGINEER AT THE COMPLETION OF THE WORK.
11. SEWER MAINS SHALL BE PRESSURE TESTED AT 1.5 TIMES NORMAL WORKING PRESSURE, OR 100 PSI, WHICHEVER IS GREATER. TEST FOR ONE HOUR.
12. AT WATER MAIN CROSSINGS, SEWER MAINS AND LATERALS SHALL BE CONSTRUCTED WITH A MINIMUM OF 20 LINEAR FEET OF AWWA C900 PIPE CENTERED OVER THE WATERLINE PER OAR 333-061-0050 (9).
13. CONTRACTOR SHALL INSTALL 12 AWG INSULATED COPPER WIRE DIRECTLY OVER ALL PVC PIPE. WIRE SHALL BE ELECTRICALLY CONTINUOUS.
14. WATER SERVICE LINES SHALL BE TYPE K COPPER SOFT ANNEALED (NON RIGID).
15. ACCESS TO ALL EXISTING RESIDENCES SHALL BE MAINTAINED AT ALL TIMES THROUGHOUT CONSTRUCTION.
16. CONTRACTOR SHALL RESTORE ALL AREAS DISTURBED BY HIS OPERATIONS TO ORIGINAL OR BETTER CONDITION. REMOVE ALL MATERIALS NOT PERTINENT TO THE COMPLETED SYSTEM, AND GRADE WORK SITE TO ESTABLISHED GRADE TO MATCH NATURAL CONDITIONS AND/OR PROMOTE POSITIVE DRAINAGE.
17. DISINFECTION OF WATER LINE SHALL BE COMPLETED IN ACCORDANCE WITH AWWA C651.
18. ALL ITEMS IN CONTACT WITH POTABLE WATER MUST MEET NSF STANDARD 61.
19. CONTRACTOR SHALL COORDINATE SEWER SHUTDOWN AND INSPECTION OF FACILITIES WITH BRETT LIMBECK AT 541 480 4523.

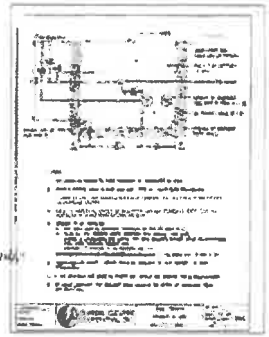
STANDARD SPECIFICATIONS SHALL FOLLOW THE 2015 OREGON STANDARD SPECIFICATIONS FOR CONSTRUCTION:

1. EROSION CONTROL: IN ACCORDANCE WITH SECTION 00280 OF THE 2015 OSSC
2. POLLUTION CONTROL PLAN: IN ACCORDANCE WITH SECTION 00290 OF THE 2015 OSSC
3. REMOVAL OF STRUCTURES AND OBSTRUCTIONS: IN ACCORDANCE WITH SECTION 00310 OF THE 2015 OSSC
4. ASPHALT PAVEMENT SAW CUTTING: IN ACCORDANCE WITH SECTION 00310 OF THE 2015 OSSC
5. CLEARING AND GRUBBING: IN ACCORDANCE WITH SECTION 00320 OF THE 2015 OSSC
6. EARTHWORK: IN ACCORDANCE WITH SECTION 00330 OF THE 2015 OSSC
7. WATERING: INCIDENTAL TO WORK. PAYMENT WILL BE INCLUDED IN PAYMENT MADE FOR APPROPRIATE ITEMS UNDER WHICH THE WORK IS PERFORMED
8. TRENCH EXCAVATION, BEDDING AND BACKFILL: IN ACCORDANCE WITH SECTION 00405 OF THE 2015 OSSC
9. COMMERCIAL GRADE CONCRETE (CGC): IN ACCORDANCE WITH SECTION 00440 OF THE 2015 OSSC. CGC SHALL HAVE A MINIMUM COMPRESSIVE STRENGTH OF 4,000 PSI AT 28 DAYS.
10. AGGREGATE BASE FOR ROADWAYS: IN ACCORDANCE WITH SECTION 00641 OF THE 2015 OSSC
11. EMULSIFIED ASPHALT TACK COAT: IN ACCORDANCE WITH SECTION 00730 OF THE 2015 OSSC. INCIDENTAL TO ASPHALT BID ITEM, THERE WILL BE NO SEPARATE PAYMENT FOR FURNISHING AND PLACING TACK COAT
12. ASPHALT CONCRETE PAVEMENT (ACP): IN ACCORDANCE WITH SECTION 00744 OF THE 2015 OSSC
13. MISCELLANEOUS PORTLAND CEMENT CONCRETE STRUCTURES: IN ACCORDANCE WITH SECTION 00756 OF THE 2015 OSSC

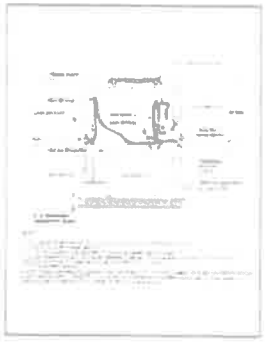


REFERENCE SHEET TP80 FOR VAULT DIMENSION DETAILS

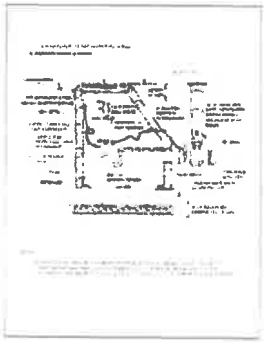
5 / TP7.0 PRV STATION & VAULT
SCALE: NTS



4 / TP7.0 CEG JOINT UTILITY TRENCH
N.T.S.



3 / TP7.0 SEWER AIR AND VACUUM RELEASE VALVE
N.T.S.



2 / TP7.0 TERMINATION CLEANOUT
N.T.S.

1 / TP7.0 UTILITY TRENCH
NTS

NOT FOR CONSTRUCTION

PRELIMINARY

DOWL
863 SW Bergman Avenue #200
Bend, Oregon 97702
541.383.4117

NORTHVIEW HOTEL GROUP
PHASE 14 TENTATIVE SUBDIVISION PLAN BRASADA RANCH
GENERAL NOTES AND STANDARD DETAILS

TP7.0

NORTHVIEW HOTEL GROUP
PHASE 14 TENTATIVE SUBDIVISION PLAN BRASADA RANCH

STANDARD DETAILS

TP8.0

DOWL
945 SW Simpson Avenue #200
Bend, Oregon 97702
541-385-4772

PRELIMINARY

NOT FOR CONSTRUCTION

AVION WATER CO
STANDARD AIR RELEASE DETAIL
For In Water Box Applications

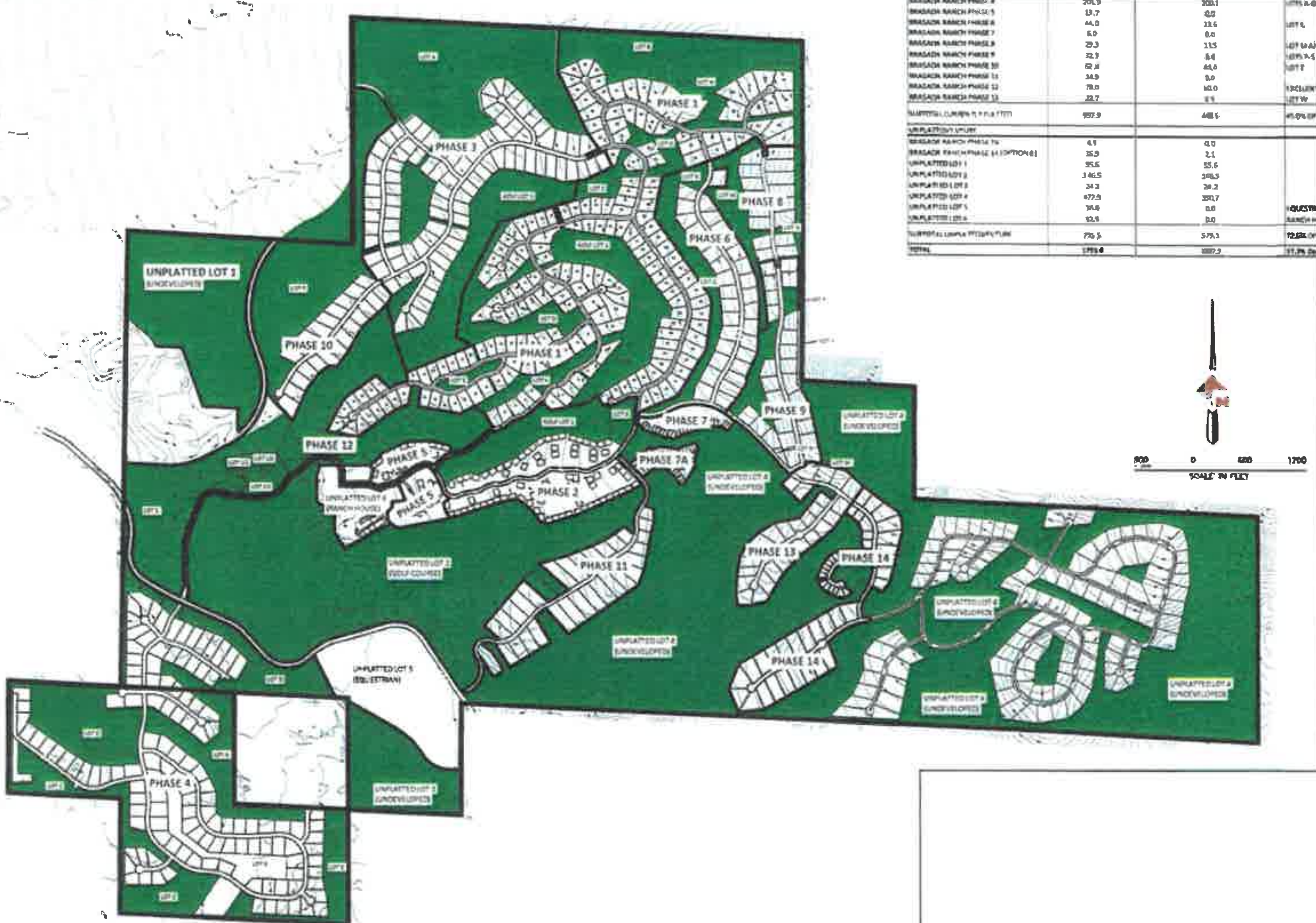
AVION WATER CO
STANDARD SAMPLE STATION DETAIL

AVION WATER CO
HYDRANT PAD DETAILS

4" or 6" BLOW OFF DETAIL

PRV STATION VAULT DIMENSION DETAIL
SCALE: N T S

REFERENCE SHEET TP8.0 FOR ADDITIONAL PRV STATION DETAILS


UNPLATTED LOT 1 (UNDEVELOPED)
UNPLATTED LOT 2 (GOLF COURSE)
UNPLATTED LOT 3 (UNDEVELOPED)
UNPLATTED LOT 4 (UNDEVELOPED)
UNPLATTED LOT 5 (EQUESTRIAN)
UNPLATTED LOT 6 (RANCH HOUSE)
PHASE 1
PHASE 2
PHASE 3
PHASE 4
PHASE 5
PHASE 6
PHASE 7
PHASE 7A
PHASE 8
PHASE 9
PHASE 10
PHASE 11
PHASE 12
PHASE 13
PHASE 14
SCALE IN FEET
600
0
600
1200

OPEN SPACE SUMMARY

PLATTED PHASE	PLAT AREA (ACRES)	DESIGNATED OPEN SPACE (ACRES)	NOTES
BRASADA RANCH PHASE 1	255.8	55.2	GOLF LOT L, LOTS A-G
BRASADA RANCH PHASE 2	51.9	19.8	GOLF LOT L, LOT F
BRASADA RANCH PHASE 3	[illegible]	75.8	GOLF LOT 1, LOTS A, C
BRASADA RANCH PHASE 4	201.9	200.1	LOTS A-G
BRASADA RANCH PHASE 5	13.7	0.0	
BRASADA RANCH PHASE 6	44.0	13.6	LOT L
BRASADA RANCH PHASE 7	6.0	0.0	
BRASADA RANCH PHASE 8	29.3	13.5	LOT M AND N
BRASADA RANCH PHASE 9	32.3	8.4	LOTS A-S
BRASADA RANCH PHASE 10	62.8	44.6	LOT T
BRASADA RANCH PHASE 11	34.9	0.0	
BRASADA RANCH PHASE 12	78.0	60.0	EXCLUDES LOTS LL, U1, U2, U3 AND 24' MAINTENANCE ROAD
BRASADA RANCH PHASE 13	22.7	5.5	LOT W
SUBTOTAL CURRENTLY PLATTED	957.9	448.5	45.0% OPEN SPACE
UNPLATTED/FUTURE			
BRASADA RANCH PHASE 7A	4.5	0.0	
BRASADA RANCH PHASE 14 (OPTION B)	35.9	2.1	
UNPLATTED LOT 1	95.6	55.6	
UNPLATTED LOT 2	346.5	306.5	
UNPLATTED LOT 3	24.2	20.2	
UNPLATTED LOT 4	477.9	350.7	
UNPLATTED LOT 5	35.6	0.0	EQUESTRIAN CENTER
UNPLATTED LOT 6	12.5	0.0	RANCH HOUSE AND ASSOCIATED DEVELOPMENT
SUBTOTAL UNPLATTED/FUTURE	776.5	579.1	72.5% OPEN SPACE
TOTAL	1733.4	1027.2	57.7% Open Space

DOWL

BRASADA RANCH

OPEN SPACE EXHIBIT

CROOK COUNTY OREGON

SHEET EX1.0

Attachment B

Brasada Ranch Phase 14

Report - Subdivision Review Committee Meeting 1-21-2021

Introductions

In Office	Via WebEx
Bob O'Neal, Crook County Road Master	**Adam Conway, Dowl**
Russ DeBoodt, CCF&R Fire Marshall	**Brent McLean, Brasada**
Jon Soliz, County Assessor	**Shannon Alleman, County Assessor's Office**
Katie McDonald, Crook County Planning	**John Eisler, Crook County Counsel's Office**
Hannah Elliott, Crook County Planning	
Ann Beier, Crook County Planning	

Review Committee Purpose

See Review factors (Attachment A)

Project Background: Phase 14 of Brasada Ranch Destination
Phase 14 – 51 lots including 29 "traditional" residential lots and 22 cottage lots.
No commercial uses are proposed in Phase 14

Location - extension from Spirit Rock Drive (Phase 13)
Approximately 34.63 acres (including road right of way); 29.89 acres developed land for residential lots.

All lots served by Avion Water
Wastewater treatment provided by Brasada Ranch Utility
Central Electric Cooperative provides electricity
Located within Crook County Fire and Rescue District
Project continues to meet open space requirements and requirements for a 2.5:1 ratio of dwellings to overnight lodging units

Discussion

Adam Conway described the utilities provided to each lot. He discussed the road layouts (20' wide asphalt with a 2-foot shoulder on each side). Bob O'Neal asked about the grade and Adam replied that the maximum grade would be 10 feet.

Russ Deboodt asked about the length of the road to the cul-de-sac and mentioned that Phase 13 included emergency vehicle turn-outs. It was agreed that gravel turn outs would be provided between Spirit Lane and each cul-de-sac in Phase 14. According to Russ, this is consistent with the current Oregon Fire Code requirements. Brasada has provided an updated drawing showing the location of the turnouts.

Hydrants will be provided every 400 feet.

Russ mentioned that the Fire Code requires either a secondary access or that homes have internal fire sprinklers when a single road serves more than 30 homes. Brent McClean mentioned that the topography posed limits to constructing a secondary access. He was also concerned about the additional cost/home of adding sprinkler systems. Russ estimated that the cost to add sprinklers ranged from $5,000 to $10,000 per dwelling. Russ also mentioned that because Brasada is more than 5 miles from the nearest fire station, insurance rates would be lower for homes with sprinklers. Brent McClean said that he and his team would examine options to meet the Fire Code requirements.

Bob O'Neal raised a concern about summer rain events and wanted to make sure that culverts were sized appropriately for major storms. Adam replied that they had taken major storm events into consideration when designing culverts.

ATTACHMENT A – Subcommittee review meeting notes

In review of proposed subdivisions, the committee shall consider the follow factors:

(1) Preliminary plat requirements.

(2) Conformance to the zoning ordinance.

(3) Quantity and quality of existing or proposed water supply, adequacy of the existing or proposed sewage disposal system to support the projected population; or in the event that subsurface sewage disposal is proposed for any or all of the parcels of the development, the capability of the soil for the proper long-term support of such a system or systems.

(4) Adequacy of public services, existing or committed and funded, in the area of the proposed development, such as schools, police and fire protection, health facilities, highway and arterial road networks, and other transportation facilities, parks and other recreational facilities, to serve the increase in population expected to be created by the development.

(5) Effect of the development on the scenic or natural beauty of the area, historic sites or rare and irreplaceable natural areas.

(6) Location of development in relation to industrial plants, livestock feedlots, solid waste disposal sites (existing and proposed), mining and quarrying operations and other possible conflicting land uses, particularly agricultural and forestry use.

(7) Possible adverse effects on the development by natural hazards, such as floods, slides or faults, etc.

(8) Possible adverse effects of the development on adjacent or area agricultural, grazing, forest or industrial lands and operations.

(9) Design and development for retention of the maximum feasible amount of vegetation and other natural amenities.

(10) Possible environmental damage to the area or possible effects on fish, wildlife or their habitat.

(11) Possible conflicts with easements acquired by the public for access through or use of property within or adjacent to the proposed development.

(12) Unusual conditions of the property involved such as high water table, slope, bedrock, or other topographic or geologic conditions, which might limit the capability to build on the land using ordinary and reasonable construction techniques.

(13) Marketable title or other interest contracted for.

(14) Adequate financial arrangements for on-site and off-site improvements proposed or required.

(15) Evidence that each and every parcel can be used for the purpose for which they are intended and to be offered.

(16) Agreement or bylaws to provide for management, construction, maintenance, or other services pertaining to common facilities or elements in the development.

(17) Protective covenants or deed restrictions

Exhibit 6

Crook County Counsel

203 NE Court St. • Prineville, Oregon 97754
Phone (541) 416-3919 • FAX (541) 323-2262

May 2, 2019

Brent McLean
Northview Hotel Group
185 SW Shevlin Hixon Drive, Suite 201
Bend, Oregon 97702

Re: Overnight lodging units and ADA-compliant units
Our file: Community Development #42

Dear Mr. McLean,

We have conferred regarding your questions on the interpretation of the Oregon Structural Specialty Code in regards to the overnight lodging units and the ratio of ADA-compliant structures at the Brasada Ranch Destination Resort. As you know, the County's interpretation of the OSSC is that the R-1 standard is the best fit for these structures. Although we will remain open-minded should alternative interpretations be presented, until the County has determined that a different standard is a better fit for new overnight lodging units, the R-1 standard will apply going forward.

Additionally, the County's review of the ratio required for ADA-compliant structures as described in the current Oregon Structural Specialty Code will be based upon the total number of overnight lodging units, including both existing units and proposed units submitted to the Community Development department for plan review. The County's interpretation of the OSSC rules is that the ratio may be met through any combination of lock-off cabins, hotel rooms, or any other style of overnight lodging unit.

Sincerely,

Eric Blaine
Assistant Crook County Counsel

CC: Ann Beier, Community Development Director
Randy Davis, Building Official

Exhibit 7

Community Development Department

Planning Division • Building Safety Division • Environmental Soils Division

P.O. Box 6005 • Bend, Oregon • 97708-6005
117 NW Lafayette Avenue • Bend, Oregon • 97701
(541) 388-6575 • FAX (541) 385-1764
http://www.deschutes.org/cdd/

July 10, 2017

NOTICE OF FINAL DECISION OF THE BUILDING OFFICIAL

Be advised:

This shall serve as a Final Decision of the Building Official.

1) Lock-off units with final planning approval (meaning that all appeal rights - local, LUBA and the courts - have been exhausted) as of August 10, 2017, will be processed as R-3 provided that construction plans are submitted to the Building Safety Division by no later than January 2, 2019;

2) ADA and related accessibility ratios for lock-off units processed as R-1 will not include consideration/allowance of existing ADA / accessible units

Thank you.

Randy Scheid
Deschutes County
Building Official

Cc: BOCC
CDD
Legal
BCD

Quality Services Performed with Pride