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race, color, religion, sex, handicap,
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hereby deleted to the extent such
restriction violate 42 USC 3604(d).

AFTER RECORDING RETURN TO:
OREGON TITLE CO.
1800 NW 169th Pl, Suite 1508
Beaverton OR 97006

BOOK 351 PAGE 271

603609-111

AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIONS FOR THE CAPES

THIS DECLARATION is made this 25th day of May, 1993, by
THE CAPES DEVELOPMENT COMPANY, an Oregon corporation
("Declarant").

Recitals:

Declarant owns approximately 79 acres of land in
Tillamook County, Oregon. Declarant is platting and developing
this property as a planned unit development known as "The Capes."
The Capes will be platted and developed in several phases.
Declarant intends to submit all platted property included in the
above property to this Amended and Restated Declaration of
Covenants, Conditions and Restrictions for The Capes (the
"Declaration" or the "Covenants") in phases, as each phase is
platted and developed.

Declarant has previously recorded the Declaration of
Covenants, Conditions and Restrictions dated June 22, 1992,
recorded June 30, 1992, at Book 343, Page 404. Tillamook County
records (the "Original Declaration"). Declaration continues to
own all of the property which is subject to the Original
Declaration. Declarant desires to terminate the Original
Declaration by this Declaration. Upon the recording of this
Declaration, the Original Declaration is hereby terminated and
superseded and replaced by this Declaration.

Declarant has recorded the Plat of The Capes in the
plat records of Tillamook County, Oregon. Declarant desires to
subject the property described in such plat to the Covenants, for
the benefit of such property and its present and subsequent
owners, and to establish such property as the first phase of The
Capes. Additional areas may be annexed to The Capes in
accordance with the provisions set forth in this Declaration and
with applicable Tillamook County ordinances.

By adoption of this Declaration, Declarant is not
committing itself to take any action for which definitive
provision is not made below nor is Declarant prohibited from
undertaking any activity not prohibited in this Declaration.

Declaration:

NOW, THEREFORE, Declarant hereby declares that the
property described in the Plat of The Capes shall be held, sold,
and conveyed subject to this Declaration and the easements,
covenants, conditions, restrictions and charges set forth in this
Declaration, which shall run with such property and shall be
binding upon all parties having or acquiring any right, title or

recorded June 4/1993
#323628

interest in such property or any part thereof and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

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

1.1 "Architectural Review Committee" means the committee appointed pursuant to Article VII hereof.

1.2 "Association" means the nonprofit corporation to be formed to serve as the owners association as provided in Article VIII hereof, and its successors and assigns.

1.3 "The Capes" means the property designated in Section 2.1 of this Declaration and any other property designated in any declaration annexing such additional property to The Capes in accordance with Section 2.2 of this Declaration, but excluding any property withdrawn from The Capes in accordance with section 2.3 of this Declaration.

1.4 "Attached Lot" means any Lot on which an Attached Unit is or may be built, as shown on any plat subject to this Declaration.

1.5 "Attached Unit" means a single-family Living Unit which shares a common wall with another single-family Living Unit.

1.6 "Common Areas" means those tracts designated as "tracts" or "common area" or "open space" on any plat of the Property subject to this Declaration, or in any declaration annexing property to The Capes, including any Improvements thereon. The initial Common Areas shall include all areas designated Common Area on the Plat of The Capes, The Capes Drive, The Capes Loop, parking areas and a gate as shown on the plat subject to this Declaration.

1.7 "Condominium Unit" means a Living Unit in a condominium which may be created in accordance with ORS Chapter 100 on a parcel of land within The Capes.

1.8 "Declarant" means The Capes Development Company, an Oregon corporation, and its successors who succeed to any special Declarant right and to whom all of Declarant's ownership in The Capes is transferred or any person, other than the Association, to whom Declarant has transferred all of Declarant's ownership interest in the Property.

1.9 "Declaration" means the easements, covenants, conditions, restrictions, and charges set forth herein, together

with any rules or regulations promulgated hereunder, as the same may be amended or supplemented from time to time in accordance with the provisions hereof.

1.10 "Detached Lot" means any Lot on which an unattached single family Living Unit is or may be built, as shown on any plat subject to this Declaration.

1.11 "Detached Unit" means a single-family Living Unit which is not attached to any other Living Unit.

1.12 "Improvement" means every temporary or permanent structure or improvement of any kind, including but not limited to any fence, wall, driveway, swimming pool, landscaping, storage shelter or other product of construction efforts on or pertaining to the Property, and every alteration, painting or reconstruction thereof.

1.13 "Initial Development" means the property described in Section 2.1.

1.14 "Living Unit" means a building or a portion of a building located upon a Lot within the Property and designated for single family residential occupancy.

1.15 "Lot" means a platted or partitioned lot within the Property, including both Attached Lots and Detached Lots, and a Condominium Unit.

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

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

1.18 "Phase" means a phase of development of The Capes and the land which is included in that phase, as shown on the phased development plan of The Capes as approved by Tillamook County.

1.19 "Property" means all platted property in The Capes.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

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

All that certain real property located in Tillamook County designated on that certain plat entitled "Plat" of The Capes filed in the plat records of Tillamook County, Oregon, on the 30th day of June, 1992 in Plat Cabinet B at page 345.

This property is also known as Phase 1 of The Capes.

2.2 Annexation of Additional Property. Subject to the ordinances of Tillamook County, Declarant may from time to time and in its sole discretion annex to The Capes any adjacent real property now owned or hereafter acquired by it, and may also from time to time and in its sole discretion permit other holders of adjacent real property to annex the adjacent real property owned by them to The Capes. The annexation of such adjacent real property shall be as approved by the County of Tillamook and shall be accomplished as follows:

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

2.2.2 The property included in any such annexation shall thereby become a part of The Capes and this Declaration, and Declarant and the Association shall have and shall accept and exercise administration of this Declaration with respect to such property.

2.2.3 Notwithstanding any provision apparently or specifically to the contrary, a declaration with respect to any annexed property may:

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

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

2.2.4 There is no limitation on the number of Lots or Living Units which Declarant may create or annex to The Capes, except as may be established by applicable decisions or ordinances of Tillamook County. Similarly, there is no limitation on the right of Declarant to annex common property, except as may be established by Tillamook County.

2.2.5 Upon annexation, additional Lots so annexed shall be entitled to voting rights as set forth in Section 8.3 below.

2.2.6 The formula to be used for reallocating the common expenses if additional Lots are annexed and the manner of reapportioning the common expenses if additional Lots are annexed during a fiscal year are set forth in Section 10.5 below.

2.3 Withdrawal of Property. Subject to the ordinances of Tillamook County, Declarant may withdraw property from The Capes only by a duly adopted amendment to this Declaration, except that Declarant may withdraw all or a portion of any property annexed pursuant to a declaration described in Section 2.2 above at any time prior to the sale of the first Lot in the property previously annexed by the supplemental declaration. Such withdrawal shall be by a declaration executed by Declarant and recorded in the deed records of Tillamook County. If a portion of the Property is so withdrawn, all voting rights otherwise allocated to Lots being withdrawn shall be eliminated, and the common expenses shall be reallocated as provided in Section 10.5 below. Such right of withdrawal shall not expire except upon sale of the first Lot within the property previously annexed by a supplemental declaration.

ARTICLE III

LAND CLASSIFICATIONS

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

3.1.1 Attached Lots, which shall consist of all Lots on the plat in the Initial Development on each of which may be constructed one Attached Unit.

3.1.2 Detached Lots, which shall consist of all Lots on the plat of the Initial Development which are not Attached Lots.

3.1.3 Common Areas, which shall include the gate, the areas marked as "Tracts" on the plat of the Initial Development, and all streets and paved parking areas as shown on the plat of the Initial Development.

3.1.4 Manager's Unit, which is a Lot and Detached Unit occupied by the resident manager, as shown on the plat of the Initial Development. There shall be no assessments pursuant to Article 4 against or upon the Manager's Unit.

3.2 Annexed Property. The following land classification and uses may be established on lands to be annexed to The Capes:

3.2.1 Attached Lots, which shall consist of all Lots on a plat subject to this Declaration, upon which may be constructed on Attached Unit.

3.2.2 Detached Lots, which shall consist of all Lots on a plat subject to this Declaration, upon which may be constructed on Detached Unit.

3.2.3 Condominium Units, which shall consist of all condominium units shown on a condominium plat subject to this Declaration, upon which may be constructed Condominium Units.

3.2.4 Common Areas as they may be designated on any plat which is subject to this Declaration.

3.3 Conversion of Lots to Common Areas. Subject to any approvals required by Tillamook County, Declarant may elect to designate one or more Lots, whether improved or not, as Common Areas by a declaration recorded in the deed records of Tillamook County. Such declaration shall be executed by Declarant, as owner of the Lots, and bear a certificate of the president or secretary of the Association reciting that the holders of a majority of the voting rights in the Association have approved such conversion to Common Areas.

3.4 Consolidation of Lots. The Owner of two adjoining Lots, with the approval of Tillamook County and of the Architectural Review Committee, may elect to consolidate such Lots into one Lot. The consolidation shall be effected by the Owner's recording in the deed records in Tillamook County a declaration stating that the two Lots are consolidated, which declaration shall include a written consent executed on behalf of the Architectural Review Committee by at least one member thereof. Thereafter, the consolidated Lots shall constitute two Lots for all purposes of this Declaration, including voting rights and assessments.

ARTICLE IV

PROPERTY RIGHTS IN COMMON AREAS

4.1 Owners' Easements of Enjoyment. Subject to provisions of this Article, every Owner and such Owner's invitees shall have a right and easement of enjoyment in and to the Common Areas and a right and easement for vehicular and pedestrian access and travel over any roads included in the Common Areas, which rights and easements shall be appurtenant to and shall pass with the title to every Lot.

4.2 Title to Common Areas. Title to the Common Areas shall be conveyed to the Association by Declarant prior to the date on which Class B membership in the Association ceases and is converted to Class A membership as described in Section 8.3.2.

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

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

(a) An easement on all Common Areas for underground installation and maintenance of power, gas, electric, water and other utility and communication lines and services installed by Declarant or with the approval of the Board of Directors of the Association and any such easement shown on any plat of the Property.

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

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

4.3.2 Limitation. So long as Declarant owns any Lot, Declarant reserves an easement over, under and across the Common Areas in order to carry out development, construction, sales and rental activities necessary or convenient for discharging Declarant's obligations hereunder, for exercising any of Declarant's rights hereunder, or for the construction and sale or rental of Lots and Living Units.

4.3.3 Assignment to Public Utilities. Declarant or the Association may (and, to the extent required by law, shall) grant or assign such easements to municipalities or other utilities performing utility services and to communication companies, and the Association may grant free access thereon to police, fire and

other public officials and to employees of utility companies and communications companies serving the Property.

4.4 Use of the Common Areas. The Common Areas shall not be partitioned or otherwise divided into parcels for residential use, and no private structure of any type shall be constructed on the Common Areas. Declarant may improve the Common Areas with improvements or structures, as long as these structures or improvements do not constitute a Living Unit. 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. Nothing herein shall prevent the placing of informational or directional signs upon the Common Areas or signs identifying roads or identifying items of interest, provided such signs are approved by the Architectural Review Committee and comply with any applicable governmental sign ordinance. The Board of Directors of the Association shall have authority to abate any trespass or encroachment upon the Common Area at any time, by any reasonable means and with or without having to bring legal proceedings.

4.5 Alienation of the Common Areas. The Association may not by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas owned directly or indirectly by the Association for the benefit of the Lots unless the holders of at least 60 percent of the Class A Association voting rights and the Class B member, if any, have given their prior written approval and such action complies with all applicable governmental requirements. This provision shall not apply to the easements described in Section 4.3.1 with respect to utilities. The Association, upon approval in writing of at least 50 percent of the Class A Association voting rights and the Class B member, if any, and if approved by order or resolution of Tillamook County, may dedicate or convey any portion of the Common Areas to a park district or other public body for open space or recreational use. The sale, transfer, or encumbrance of the Common Area or any portion of the Common Area in accordance with this Section 4.5 may provide that the Common Area so conveyed shall be released from any restriction imposed on such Common Area by this Declaration. No sale, transfer, or encumbrance, may, however, deprive any Lot of such Lot's right of access or support without the prior written consent of the Owner of the Lot.

4.6 Limitations on Use. Use of the Common Areas by the Owners shall be subject to the provisions of this Declaration and to the following:

4.6.1 The right of the Association to suspend such use rights of an Owner to the extent provided in Article XI below.

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

4.7 Delegation of Use. Any Owner may delegate, in accordance with the Bylaws of the Association, such Owner's right of enjoyment of the Common Areas to the members of such Owner's family and such Owner's tenants or contract purchasers when those parties are residing on the Owner's Lot.

4.8 Non-Exclusive Use. The Common Areas are for the use of all Owners in common with all other Owners. However, subject to rules and regulations to be adopted by the Association, The Capes House may be rented to a given Owner for their exclusive use for a meeting, party, gathering or similar event; provided that The Capes House may not be rented to non-Owners.

ARTICLE V

PROPERTY RIGHTS IN LOTS

5.1 Use and Occupancy. The Owner of a Lot shall be entitled to the exclusive use and benefit of such Lot, except as otherwise expressly provided in this Declaration.

5.2 Easements Reserved. Declarant hereby reserves the following easements for the benefit of Declarant and the Association:

5.2.1 Adjacent Common Area. The Owner of any Lot adjacent to any Common Area shall, if the Association elects from time to time to so require, permit the Association to enter upon the Lot to perform the maintenance of such Common Area.

5.2.2 Right of Entry. Declarant, the Architectural Review Committee and any representative of the Association authorized by it may, at any reasonable time, and from time to time at reasonable intervals, enter upon any Lot for the purpose of determining whether or not the use and/or improvements of such Lot are then in compliance with this Declaration and/or to perform maintenance and repair as required or allowed by this Declaration. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Lot.

5.2.3 Utility Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved over the front, rear and side five (5) feet of each Lot. Such other easements as may be shown on a recorded plat subject to this Declaration are also hereby reserved. Within the easements, no improvements (except for utilities), 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 channels in the easements. The easement area of each Lot shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or

utility company is responsible. Notwithstanding the provisions of this paragraph, no such easements shall exist along adjoining side lot lines on which a common wall, as defined in Section 5.3, exists or which has been approved for zero lot line development.

5.3 Common Walls. Each wall which is built as a part of the original construction of a dwelling unit within the Property and placed upon the dividing line between Lots shall constitute a "common wall," and the following provisions shall apply:

5.3.1 General Rules of Law to Apply. The general rules of law of the State of Oregon regarding common walls and of liability for property damage due to negligence or willful acts or omissions shall apply to all such common walls, to the extent such rules are not inconsistent with the provisions of this Section 5.3.

5.3.2 Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a common wall shall be shared by the Owners who make use of the wall in proportion to such use. The word "use" as referred to in this section means ownership of a Living Unit or other structure which incorporates such wall or any part thereof. Either Owner sharing a common wall may cause such repairs and maintenance and seek contribution of the portion of the cost attributable to other Owners using the common wall.

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

5.3.4 Weatherproofing. Notwithstanding any other provision of this Section 5.3, an Owner who by such Owner's negligent or willful act causes the common wall to be exposed to the elements shall bear the cost of furnishing the necessary protection against such elements or repairing any damage caused by such exposure.

5.3.5 Right to Contribution Runs with the Land. The right of any Owner to contribution from any other Owner hereunder shall be appurtenant to the Owners' respective Lots; shall pass to such Owner's successors in title; and shall also be the personal obligation of the Owner owning a Lot at the time such costs are incurred.

5.3.6 Arbitration. In the event of any dispute arising concerning a common wall, or under the provisions of this Section 5.3, the Board of Directors of the Association shall act as arbitrators and their decision shall be final. In their

reasonable discretion, the Board of Directors may award costs and attorneys fees, if any, to the prevailing party.

ARTICLE VI

RESTRICTIONS ON USE OF LOTS

6.1 Structures Permitted. No structures shall be erected or permitted to remain on any Lot except structures containing Living Units and structures normally accessory thereto. The foregoing provision shall not exclude the following on Detached Lots: construction of a private greenhouse, storage unit, private swimming pool, or enclosed garage structure for the storage of a boat and/or camping trailer for personal use, provided the location of such structure is in conformity with the applicable Tillamook County regulations, is compatible in design and decoration with the Living Unit constructed on such Lot, and has been approved by the Architectural Review Committee. No structures or Improvements shall be built without the prior issuance of any Tillamook County required permits.

6.2 Residential Use. Lots shall only be used for residential purposes. No trade, craft, business, profession, commercial or similar activity of any kind shall be conducted on any Lot, nor shall any goods, equipment, vehicles, materials or supplies used in connection with any trade, service or business be kept or stored on any Lot. Nothing in this paragraph shall be deemed to prohibit: activities relating to the rental or sale of Living Units; the right of Declarant or its agents or an Owner to construct Living Units on any Lot, to store construction materials and equipment on such Lots in the normal course of construction, and to use any Living Unit as a model home for purposes of sales or rental in The Capes; and the right of the Owner of a Lot to maintain such Owner's professional personal library, keep such Owner's personal business or professional records or accounts, handle such Owner's personal business or professional telephone calls or confer with business or professional associates, clients or customers, in such Owner's Living Unit. The Board of Directors shall not approve commercial activities otherwise prohibited by this paragraph unless the Board of Directors determines that only normal residential activities would be observable outside of the Living Unit and that the activities would not be in violation of applicable Tillamook County ordinances.

6.3 Offensive or Unlawful Activities. No noxious or offensive activities shall be carried on upon any Lot or Common Area, nor shall anything be done or placed on any Lot or Common Area which interferes with or jeopardizes the enjoyment of other Lots or the Common Areas, or which is a source of annoyance to residents. No unlawful use shall be made of a Lot nor any part thereof, and all valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction thereof, shall be observed. Without limiting the generality of the foregoing, no

heat pump or other heating, ventilating, or air conditioning equipment, or other equipment (such as hot tubs) the operation of which produces noise at a level higher than 80 decibels, shall be allowed on any Lot or Living Unit. Hot tubs shall have lockable covers and be covered at all times when not in use. The Board may promulgate special rules for the construction, use and operation of hot tubs. No unreasonably noisy activity shall occur on any Lot or Common Area. An unreasonably noisy activity consists of an activity that produces noise of a level inconsistent with the character of a high quality coastal recreational community. The Board shall determine what constitutes an unreasonably noisy activity and may promulgate rules regarding such activities. Outdoor activities that produce noise, excluding walking and normal conversation, shall not occur between the hours of 10:00 p.m. and 7:00 a.m.

6.4 Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept or permitted within any Lot other than two household pets (common domestic pets only) owned by the renter or Owner of the Lot and which are not kept, bred or raised for commercial purposes and which are reasonably controlled so as not to be a nuisance. Any inconvenience, damage or unpleasantness caused by such pets shall be the responsibility of the respective owners thereof. No dog or cat shall be permitted to roam the Property unattended, and all dogs and cats must be kept on a leash while outside a Lot. An Owner or resident may be required to remove a pet upon receipt of the third notice in writing from the Board of Directors of violations of any rule, regulation or restriction governing pets within the Property.

6.5 Maintenance of Structures and Grounds. Subject to the Association's rights and obligations as set forth in Section 9.3, each Owner shall maintain such Owner's Lot and improvements thereon in a clean and attractive condition, in good repair and in such fashion as not to create a fire hazard. Such maintenance shall include, without limitation, repair, replacement and care for roofs, windows, gutters, downspouts, exterior building surfaces, walks and other exterior improvements. 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. Landscaping on each Lot which was installed as part of the original construction shall be maintained by the Association; and landscaping installed by an Owner shall be the responsibility of that Owner.

6.6 Parking. Parking of boats, trailers, motorcycles, trucks, truck campers, or other recreational vehicles or equipment shall not be allowed on any part of the Property nor on public streets adjacent thereto, excepting only within areas designated for such purposes by the Board of Directors of the Association or within the confines of an enclosed garage. In the case of Detached Lots, such vehicles may be parked in enclosed areas, subject to the Architectural Review Committee's approval of the

enclosure. Pick-up trucks may be parked in a Living Unit's driveway while the Owner of a Living Unit is residing at that Living Unit. No parking of any vehicle shall be allowed except in areas designated for parking on any plat subject to this Declaration.

6.7 Vehicles in Disrepair. No Owner shall permit any vehicle which is in a state of visible disrepair to be abandoned or to remain parked upon any Lot or on the Common Area or on any street for a period in excess of forty-eight (48) hours. A vehicle shall be deemed in an "a state of visible disrepair" when the Board of Directors reasonably determines that its presence offends the occupants of the neighborhood. Should any Owner fail to remove such vehicle within five (5) days following the date on which notice is mailed to such Owner by the Association, the Association may have the vehicle removed from the Property and charge the expense of such removal to the Owner.

6.8 Signs. No signs shall be erected or maintained on any Lot except that not more than one "For Sale" sign placed by the Owner, Declarant or by a licensed real estate agent, not exceeding twenty-four (24) inches high and thirty-six (36) inches long, may be temporarily displayed on any Lot. In addition, Declarant only may maintain one or more "For Rent" signs and one or more signs identifying the name of the project and the location of the rental office, provided such signs comply with applicable ordinances of Tillamook County and are approved as to appearance and location by the Architectural Review Committee. The restrictions contained in this paragraph shall not prohibit the temporary placement of "political" signs (not larger than twenty-four (24) inches high and thirty-six (36) inches long) on any Lot by the Owner.

6.9 Rubbish and Trash. No Lot nor any part of the Common Area shall be used as a dumping ground for trash or rubbish of any kind. All garbage and other waste shall be kept in appropriate sanitary containers for proper disposal and out of public view. Yard rakings, dirt and other material resulting from landscaping work shall not be dumped onto Common Areas, or on any Lots. Should any Owner fail to remove any trash, rubbish, garbage, yard rakings or any such materials from any Lot or Common Area where deposited by such Owner within five (5) days following the date on which notice is mailed to such Owner by the Board of Directors of the Association, the Association may have such materials removed and charge the expense of such removal to the Owner.

6.10 Completion of Construction. The construction of any building on any Lot, including painting and all exterior finish, shall be completed within eight (8) months from the beginning of construction so as to present a finished appearance when viewed from any angle. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon written approval from the Architectural Review Committee. The building area shall be kept reasonably clean and

in workmanlike order during the construction period. All unimproved Lots shall be kept free of dead trees and man-made debris, but may otherwise be left in their natural condition until construction commences.

6.11 Landscape Completion, Type. All landscaping must be completed within six (6) months from the date of occupancy of the Living Unit. 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 Architectural Review Committee. All landscaping shall be natural, indigenous vegetation suitable to The Capes, as determined by the Architectural Review Committee. The Architectural Review Committee may allow nonindigenous plant species. Owners may plant nonindigenous plants in flower boxes, pots and similar temporary containers; however, all in-ground plantings of a nonindigenous species must be approved by the Architectural Review Committee. No landscaping shall be installed by a Lot Owner which materially interferes with another Lot Owner's ocean or bay view and no landscaping shall be allowed to grow so as to materially interfere with another Lot Owner's ocean or bay view. Disputes regarding whether landscaping violates this requirement shall be resolved by the Architectural Review Committee.

6.12 Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuildings shall be built or used on any Lot at any time.

6.13 Fence and Hedges Along Lot Lines. No fences or hedges along Lot lines shall be installed by Owners except for Detached Lots.

6.14 Tree Removal; Topping. No trees with a diameter of four (4) inches or more, or four (4) feet in height or more, may be removed without the prior written approval of the Architectural Review Committee. No trees may be topped without the prior written approval of the Architectural Review Committee, and any applicable Tillamook County ordinances.

6.15 Service Yards. Service yards (garbage, clotheslines, etc.) shall be screened such that the elements screened are not visible at any time from the street or a neighboring property.

6.16 Antennas and Satellite Disks. Exterior antennas and satellite dishes shall not be permitted to be placed upon any Lot.

6.17 Maximum Height and Minimum Yard Requirements. Each Lot shall be subject to the maximum height and the minimum yard requirements established by Tillamook County or other governmental entity with jurisdiction over each such Lot (subject to any variance granted by Tillamook County or other such governmental entity). In addition, all Lots are subject to any more restrictive maximum height or minimum yard requirements as shown

on any plat subject to this Declaration, or as established from time to time by the Architectural Review Committee (subject to any variance granted by the Architectural Review Committee). No Living Unit may be rebuilt, reconstructed or remodelled to a height any greater than its height at the time it was originally constructed.

6.18 Association Rules and Regulations. The Association from time to time may adopt, modify, or revoke such rules and regulations governing the conduct of persons and the operation and use of Lots and the Common Areas as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Property. A copy of the rules and regulations, upon adoption, and a copy of each amendment, modification or revocation thereof, shall be delivered by the Association Board of Directors promptly to each Owner and shall be binding upon all Owners and occupants of all Lots upon the date of delivery. The method of adoption of such rules shall be as provided in the Bylaws of the Association.

6.19 Miscellaneous Restrictions. No basketball hoops, lawn ornaments (such as cement seagulls) or any other exterior sports equipment, ornament or decoration on a Living Unit visible from any street, garage or carport, shall be permitted on any Lot without the prior written permission of the Architectural Review Committee. All outside lighting placed on the Lots must be directed downward. No plaques, lettering, or signs visible from any road shall be permitted on the exterior wall of any Living Unit without the prior written permission of the Architectural Review Committee, except for house numbers in accordance with Tillamook County ordinances. No rollerskating, roller blading, skateboarding or any similar activities shall be allowed anywhere at The Capes. Bicycles, tricycles, and electric powered vehicles are allowed on the paved portions of the Common Areas. Gasoline powered motorcycles, mopeds, and similar vehicles are allowed on the roads within The Capes only when arriving at and departing from The Capes; however, the Board of Directors may ban any such vehicle if in the opinion of the Board the vehicle is too noisy. No Owner or the Owner's family, friends, or guests may walk upon the westerly most bluff or hillside of The Capes, unless on an improved walkway. No firewood may be stored outside of a Living Unit. Each Owner shall be responsible for any tree on an Owners Lot which falls outside of an Owner's Lot and the Owner shall be responsible for removing any such tree which has fallen. No Owner may recontour, excavate, fill, remove sand from or otherwise alter a Lot, unless in connection with Improvements approved of by the Architectural Review Committee.

ARTICLE VII

ARCHITECTURAL REVIEW COMMITTEE

7.1 Architectural Review. No Improvement shall be commenced, erected, placed or altered on any Lot until the construction plans and specifications showing the nature, shape, heights, materials, colors and proposed location of the Improvement and evidence of proper water drainage have been submitted to and approved in writing by the Architectural Review Committee. It is the intent and purpose of this Declaration to assure quality of workmanship and materials, to assure harmony of external design with the existing Improvements and with respect to topography and finished grade elevations. The procedure and specific requirements for review and approval of residential construction may be set forth in Design Guidelines adopted from time to time by the Architectural Review Committee. The Architectural Review Committee may charge a reasonable fee to cover the cost of processing the application. In all cases where the Architectural Review Committee's consent is required by this Declaration, the provisions of this Article shall apply.

7.2 Committee Decision. The Architectural Review Committee shall render its decision with respect to a construction proposal within thirty (30) working days after it has received all material required by it with respect to the application. In the event the Committee fails to render its approval or disapproval within thirty (30) working days after the Committee has received all material required by it with respect to the proposal, or if no suit to enforce this Declaration has been commenced within one year after completion thereof, approval will not be required and the related provisions of this Declaration shall be deemed to have been fully complied with.

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

7.4 Membership, Appointment and Removal. The Architectural 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 Committee from office at any time and may appoint new or additional members at any time. The

Association shall keep on file at its principal office a list of the names and addresses of the members of the Committee. Declarant may at any time delegate to the Board of Directors of the Association the right to appoint or remove members of the Architectural Review Committee. In such event, or in the event Declarant fails to appoint an Architectural Review Committee, the Board of Directors shall assume responsibility for appointment and removal of members of the Architectural Review Committee, or if it fails to do so, the Board of Directors shall serve as the Architectural Review Committee. Declarant shall retain the right to appoint members of the Architectural Review Committee until the later of: the date Declarant delegates this right to the Board, or when as a matter of law the Declarant may not retain this right.

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

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

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

7.8 Appeal. After Declarant has delegated appointment of the members of the Architectural Review Committee to the Board of Directors of the Association, any Owner adversely affected by action of the Architectural Review Committee may appeal such action to the Board of Directors of the Association. Appeals shall be made in writing within ten (10) days of the Committee's action and shall contain specific objections or mitigating circumstances justifying the appeal. A final, conclusive decision shall be made by the Board of Directors of the Association within fifteen (15) working days after receipt of such notification.

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

7.10 Estoppel Certificate. Within fifteen (15) working days after written request is delivered to the Architectural Review Committee by any Owner, and upon payment to the Committee of a reasonable fee fixed by the Committee to cover costs, the Committee shall provide such Owner with an estoppel certificate executed by a member of the Committee and acknowledged, certifying with respect to any Lot owned by the Owner, that as of the date thereof, either: all Improvements made or done upon or within such Lot by the Owner comply with this Declaration, or 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 therein, such matters being conclusive as between Declarant, the Architectural Review Committee, the Association and all Owners, and such purchaser or mortgagee.

7.11 Construction by Declarant. Improvements constructed by Declarant on any property owned by Declarant are not subject to the requirements of this Article VII.

ARTICLE VIII

ASSOCIATION

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

8.1 Organization. Declarant shall, before the first Lot is conveyed to an Owner, organize the Association as a nonprofit corporation under the general nonprofit corporation laws of the State of Oregon. The Articles of Incorporation of the Association shall provide for its perpetual existence, but in the event the Association is at any time dissolved, whether inadvertently or deliberately, it shall automatically be succeeded by an unincorporated association of the same name. In that event 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.

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

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

8.3.1 Lots. Lots shall be allocated one vote per Lot.

8.3.2 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 Declarant (except that beginning on the date on which the Class B membership is converted to Class A membership, and thereafter, Class A members shall be all Owners including Declarant). Class A members shall be entitled to voting rights for each Lot owned computed in accordance with paragraph 8.3.1 above. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more voting rights be cast with respect to any Lot than as set forth in paragraph 8.3.1 above.

Class B. The Class B members shall be Declarant and shall be entitled to three times the voting rights computed under paragraph 8.3.1 for each Lot owned by Declarant. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) Within 120 days after Lots representing seventy-five percent (75%) of the votes in the Association in the final Phase of development of The Capes have been sold and conveyed to Owners other than Declarant; or

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

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

8.4.1 The powers, duties and obligations granted to the Association by this Declaration.

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

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

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

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

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

8.7 Transitional Advisory Committee. Declarant or Owners shall form a transitional advisory committee (the "Transitional Advisory Committee") to provide for the transition from administrative responsibility by Declarant of The Capes to administrative responsibility by the Association. Not later than the sixtieth (60th) day after Declarant has conveyed to Owners other than Declarant Lots representing fifty percent (50%) of the votes of all Phases in The Capes computed in accordance with Section 8.3.1 above, Declarant shall call a meeting of Owners for the purpose of selecting the Transitional Advisory Committee. The Transitional Advisory Committee shall consist of three or more members. The Owners, other than Declarant, shall select two or more members. Declarant may select no more than one member. The Transitional Advisory Committee shall have reasonable access to all information and documents which Declarant is required to turn over to the Association under OKS 94.616, or any successor statute.

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

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

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

8.8 Declarant Control After Turnover. After the turnover meeting described in Section 8.6 above, Declarant shall continue to have the voting rights described in Section 8.3.2 above. In addition, a majority of the Board of Directors of the Association shall be elected by Declarant, as Class B member, with the balance of the Board of Directors elected by the Class A members. After termination of Class B membership, all directors shall be elected by the Class A members.

8.9 Subassociations. Nothing in this Declaration shall be construed as prohibiting the formation of subassociations within The Capes, including, without limitation, a subassociation for Owners of Detached Lots, a subassociation for Owners of Attached Lots, or a subassociation for Owners of Condominium Units.

8.10 Association Rules and Regulations. The Association from time to time may adopt, modify, or revoke such rules and regulations governing the conduct of persons and the operation and use of Lots and the Common Areas as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the property within The Capes. A copy of the rules and regulations, upon adoption, and a copy of each amendment,

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

ARTICLE IX

MAINTENANCE, UTILITIES AND SERVICES

9.1 Maintenance and Lighting of Common Areas. The Association shall provide exterior lighting for and perform all maintenance upon the Common Areas and the Improvements thereon, including but not limited to grass, trees, walks, landscaping, any tennis court or gate on the Common Areas, private roads, entrance gates and signs, parking areas, and trails, unless the maintenance thereof is assumed by a public body. Such areas shall be maintained in a safe condition and in a good and workmanlike manner such as to carry out the purpose for which such areas are intended.

9.2 Maintenance of Utilities. The Association shall perform or contract for the performance of maintenance of all private utilities within Common Areas and up to the boundary of each Lot, such as sanitary sewer service lines, domestic water service lines, storm water detention facilities, and storm drainage lines, except to the extent such maintenance is performed by the utilities furnishing such services. Each Owner shall be responsible for maintaining utility lines within such Owner's Lot.

9.3 Repair and Maintenance of Attached Units.

9.3.1 Except as specifically provided below, all exterior maintenance and repair of Living Units shall be the responsibility of the Owners of the Living Units.

9.3.2 The Association will maintain all original landscaping on a Lot.

9.3.3 The Association will perform painting maintenance on all exterior painted surfaces of each Attached Unit.

9.3.4 In the case of any storm or similar casualty (but not a fire) which causes damage to an Attached Unit, the Association will be responsible for emergency repairs, designated to keep the Attached Unit weather tight, to chimneys, roofs, gutters and drains, garage doors, exterior siding, windows, and walkways. Thereafter, the Owner shall be responsible for permanent repairs, which shall be completed within thirty (30) days of such damage.

9.3.5 If an Owner fails to maintain the exterior of its Living Unit in a manner consistent with the general standard of

exterior maintenance of The Capes then the Association may perform necessary maintenance and repair and charge the cost of such maintenance and repair to the Owner of such Living Unit and the amount so charged shall be an Article X assessment.

ARTICLE X

ASSESSMENTS

10.1 Annual Budgets. The Association Board of Directors shall from time to time and at least annually prepare an operating budget for the Association, taking into account the current costs of maintenance and services and future needs of the Association, any previous overassessment and any surplus 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. The method of adoption of the budget shall be as provided in the Bylaws.

10.2 Assessment Formula. All lots shall be subject to assessment on the following basis:

10.2.1 Each Lot shall pay one General Assessment Unit per Lot, based upon the Association's costs and capital needs for the activities of the Association common to all Living Units regardless whether the Living Unit is a Detached Unit, Attached Unit or Condominium Unit.

10.2.2 Each Detached Unit shall pay one Detached Unit Assessment for the Association's costs and capital needs for services or expenditures attributable only to the Association's responsibilities with respect to all Detached Units, and not common to all Lots.

10.2.3 Each Attached Unit shall pay one Attached Unit Assessment for the Association's costs and capital needs for services or expenditures attributable only to the Association's responsibilities with respect to all Attached Units and not common to all Lots.

10.2.4 Each Condominium Unit shall pay one Condominium Unit Assessment for the Association's costs and capital needs for services or expenditures attributable only to the Association's responsibilities with respect to all Condominium Units and not common to all Lots.

10.3 Capital Improvement Assessments. The Association may elect to purchase, construct or otherwise acquire additional equipment, facilities, property or other capital improvements for the general use and benefit of all the members of the Association, and for that purpose may impose a special assessment to be called a "Capital Improvement Assessment." The Association shall also establish a reserve account for replacement of all items of common

property which will normally require replacement, in whole or in part, in more than three and less than 30 years. Any such assessment described in this Section 10.3 shall be against the Lots within the Property on the same formula as set forth in Section 10.2. Any expenditure by the Association pursuant to this section in an aggregate amount of \$10,000 or more shall be effective only if approved by the vote or written consent of the Class B member, if any, and not less than seventy-five percent (75%) of the votes of the Class A members who are voting in person, by absentee ballot or by proxy at a meeting duly called for this purpose.

10.4 Separate Accounts. The Association shall keep separate segregated accounts for: assessments and expenditures referred to in Section 10.2.1, assessments and expenditures referred to in Section 10.2.2, and assessment and expenditures referred to in Section 10.2.3. Within those accounts, the Association shall keep separately segregated accounts for annual operating expenditures and for reserves or capital improvements.

10.5 Payment of Assessments. The Association shall, not less than annually, provide notice to the Owner of each Lot of the amount of the assessment for such Lot calculated in accordance with Article X of this Declaration. Assessments shall be due and payable on or before a date set forth in the notice which shall be not less than 30 days from the date the notice is mailed or at such other time or times set in accordance with this Declaration or the Bylaws of the Association.

10.6 Creation of Lien and Personal Obligation of Assessments. Declarant, for each Lot owned by it within the Property, does hereby covenant, and each Owner of any Lot by acceptance of a conveyance thereof, whether or not so expressed in any such conveyance, shall be deemed to covenant to pay to the Association all assessments or other charges as may be fixed, established and collected from time to time in the manner provided in this Declaration or the Association Bylaws. Such assessments and charges, together with any interest, expenses or attorneys' fees imposed pursuant to Section 11.6, shall be a charge on a Lot and shall be a continuing lien upon the Lot against which each such assessment or charge is made. Such assessments, charges and other costs shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment or charge fell due. Such liens and personal obligations shall be enforced in the manner set forth in Article XI below.

ARTICLE XI

ENFORCEMENT

11.1 Use of Common Areas. In the event any Owner shall violate any provision of this Declaration, the Bylaws of the Association or other rules adopted by the Association governing

the use of Common Areas, then the Association, acting through its Board of Directors, shall notify the Owner in writing that the violations exist and that such Owner is responsible for them, and may, after reasonable notice and opportunity to be heard, do any or all of the following: suspend such Owner's voting rights and right to use the Common Areas for the period that the violations remain unabated, or for any period not to exceed sixty (60) days for any infraction of its rules and regulations; impose reasonable fines upon the Owner, in the manner and amount the Board deems appropriate in relation to the violation, which fines shall be paid to the Association; or bring suit or action against such Owner to enforce this Declaration. Nothing in this section, however, shall give the Association the right to deprive any Owner of access to and from such Owner's Lot.

11.2 Nonqualifying Improvements and Violation of General Protective Covenants. In the event any Owner constructs or permits to be constructed on such Owner's Lot an Improvement contrary to the provisions of this Declaration, or causes or permits any Improvement, activity, condition or nuisance contrary to the provisions of this Declaration to remain uncorrected or unabated on such Owner's Lot, then the Association acting through its Board of Directors shall notify the Owner in writing of any such specific violations of this Declaration and shall require the Owner to remedy or abate the same in order to bring such Owner's Lot, the Improvements thereon and such Owner's use thereof, into conformance with this Declaration. If the Owner is unable, unwilling or refuses to comply with the Association's specific directives 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 sixty (60) days of written notice to the Owner, then the Association acting through its Board of Directors, shall have the right to do any or all of the following:

11.2.1 Impose reasonable fines against such Owner in the manner and amount the Board deems appropriate in relation to the violation,

11.2.2 Enter the offending Lot and remove the cause of such violation, or alter, repair or change the item which is in violation of the Declaration in such a manner as to make it conform thereto, in which case the Association may assess such Owner for the entire cost of the work done, which amount shall be payable to the Association, provided that no Improvements shall be altered or demolished in the absence of judicial proceedings, or

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

11.3 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 of 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:

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

11.3.2 The Association shall have a lien against each Lot for any assessment levied against the Lot and any fines or other charges imposed under this Declaration or the Eylaws against the Owner of the Lot from the date on which the assessment, fine or charge is due. The provisions regarding the attachment, notice, recordation and duration of liens established on real property under ORS 87.252 to 87.382 shall apply to the Association's lien. The lien shall be foreclosed in accordance with the provisions regarding the foreclosure of liens under ORS Chapter 88. The Association, through its duly authorized agents, may bid on the Lot at such foreclosure sale, and may acquire and hold, lease, mortgage and convey the Lot.

11.3.3 The Association may bring an action to recover a money judgment for unpaid assessments, fines and charges under this Declaration without foreclosing or waiving the lien described in Section 11.3.2 above. Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.

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

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

11.5 Subordination of Lien to Mortgages. The lien of the assessments or charges provided for in this Declaration shall be subordinate to the lien of any mortgage or deed of trust on such Lot 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 Lot shall not affect the assessment lien, but the sale or transfer of any Lot which is subject to any mortgage or deed of trust pursuant to a decree of foreclosure thereunder or any deed or proceeding, deed or assignment in lieu of foreclosure shall extinguish any lien of an assessment notice of which was

recorded after the recording of the mortgage or trust deed. Such sale or transfer, however, shall not release the Lot from liability for any assessments or charges thereafter becoming due or from the lien of such assessments or charges.

11.6 Interest, Expenses and Attorneys' Fees. Any amount not paid to the Association when due in accordance with this Declaration shall bear interest from the due date until paid at a rate three percentage points per annum above the prevailing prime rate declared by the bank in Portland, Oregon with the largest number of deposits, 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 of the Association not to exceed thirty percent (30%) of such assessment. In the event the Association shall file a notice of lien, the lien amount shall also include the recording fees associated with filing the notice, and a fee for preparing the notice of lien established from time to time by resolution of the Board of Directors of the Association. In the event the Association shall bring any suit or action to enforce this Declaration, or to collect any money due hereunder or to foreclose a lien, the Owner-defendant shall pay to the Association all costs and expenses incurred by it in connection with such suit or action, including a foreclosure title report, and the prevailing party in such suit or action shall recover such amount as the court may determine to be reasonable as attorneys' fees at trial and upon any appeal or petition for review thereof.

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

ARTICLE XII

OWNERSHIP, USE AND RENTAL RESTRICTIONS

12.1 Ownership Restriction. Title to any Lot may not be conveyed (whether by operation of law or otherwise) to more than four (4) co-owners. A co-owner consists of either an individual or a married couple. Time share ownership of any Lot shall not be permitted. "Time share ownership" means a right to occupy a

Living Unit during five or more separate periods over a period of at least five years.

12.2 Use Restriction. No Living Unit may be used for overnight accommodation for more than two people multiplied by the number of bedrooms or sleeping areas in such Unit. Children under twelve (12) years of age do not count in the preceding limitation.

12.3 Rental Restrictions: Each Owner shall be allowed personally to rent the use of such Owner's Living Unit; provided, however, that an Owner may not rent its Unit without first giving notice to the Association of the dates during which the Unit is or will be rented and the person(s) to whom the Unit will be rented. All persons renting Units are required to register with the on-site manager at the times of their arrival and departure. No sub-rentals or any other form of occupancy right other than a direct rental from an Owner are allowed. Unless otherwise allowed by the Board of Directors of the Association, no Owner may rent a Living Unit for a period of time of less than seven (7) continuous days and no Owner may rent a Living Unit for more than a cumulative total of thirty (30) days during a calendar year. If an Owner rents a Living Unit to any person or entity who during the term of such rental violates any of the provisions of this Declaration or any rules or regulations established by the Association, then the Board of Directors of the Association may order that no Living Unit may be rented to such person or entity in the future. Such restriction is for the overall benefit of the Property and is intended to maintain quality in rental activities, and to restrict traffic, an excessive number of occupants, and the excessive use of the Living Units by persons other than Owner.

ARTICLE XIII

MISCELLANEOUS PROVISIONS

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

13.2 Regulatory Amendments. Notwithstanding the provisions of Section 13.1 above, until termination of the Class B membership Declarant shall have the right to amend this Declaration or the Bylaws of the Association in order to comply with the requirements of any applicable statute, ordinance or regulation or of the Federal Housing Administration, the Veterans Administration, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, any department, bureau, board, commission or agency of the United States or the State of Oregon, or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon which insures, guarantees or provides financing for a planned community or lots in a planned community.

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

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

be disregarded completely in determining the proportion of votes or consents given with respect to such matter.

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

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

13.7 Construction; Severability; Number; Captions. This Declaration shall be liberally construed as an entire document to accomplish the purposes thereof as stated in the introductory paragraphs hereof. Nevertheless, each provision of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision shall not affect the validity or enforceability of the remaining part of that or any other provision. As used herein, the singular shall include the plural and the plural the singular, and the masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration.

13.8 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: If to Declarant or the Association, to Dr. and Mrs. Franklin D. Piacentini, at 1034 S.W. Myrtle Drive, Portland, Oregon 97201, with a copy to Ball, Janik & Novack, 101 S.W. Main Street, Suite 1100, Portland, Oregon 97204, attn: Stephen T. Janik; and if to an Owner, at the address given by such Owner at the time of such Owner's purchase of a Lot, or at such Owner's Lot. The address of a party may be changed by such Owner at any time by notice in writing delivered as provided herein.

13.9 Compliance with Laws. All Lots and Units shall be used and occupied in conformance with all applicable federal, state, and county laws and regulations.

IN WITNESS WHEREOF, Declarant has executed this Declaration this 25th day of May, 1993

THE CAPES DEVELOPMENT COMPANY, an Oregon corporation

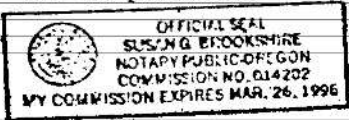
By [Signature]
Its President

By Deborah Piacentini
Its Vice President

By [Signature]
Its Vice President

STATE OF OREGON)
County of) ss.

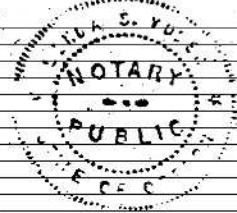
The foregoing instrument was acknowledged before me on this 26th day of May, 1993 by Francis P. Bacatta who is the President of The Capes Development Company, on behalf of the corporation.



[Signature]
Notary Public for Oregon
My Commission Expires: 3-26-96

STATE OF OREGON)
County of Multnomah) ss.

The foregoing instrument was acknowledged before me on this 25th day of May, 1993 by Deborah Piacentini who is the Vice President of The Capes Development Company, on behalf of the corporation.



[Signature]
Notary Public for Oregon
My Commission Expires: 3-5-54

STATE OF OREGON)
) SS.
County of Multnomah

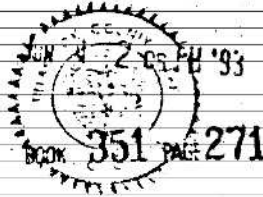
The foregoing instrument was acknowledged before me on this 26th day of May, 1993 by Stephen L. Link who is the Vice President of The Capes Development Company, on behalf of the corporation.

Ainda S. Uoder
Notary Public for Oregon
My Commission Expires: 3-3-94

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I hereby certify that the within instrument was received for record and recorded in the County of Tillamook, State of Oregon.



Witness my hand and seal affixed.
JOSEPHINE VELTRI, County Clerk

Sharon Geck Deputy

Deed	AAT	\$20
Mtg	PLCP	\$5
Lien	Adm	\$1
NS		\$20