

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

This Amendment amends the Amended and Restated Declaration of Covenants, Conditions and Restrictions for The Capes recorded on June 1, 1993 in Book 351, pages 271, et. seq. in the Tillamook County Deed Records (the "Declaration").

RECITALS

11000

The Capes Development Company, an Oregon corporation, is Declarant under the Declaration which created a planned unit development known as "The Capes." The Declarant wishes to relinquish its rights as Declarant of The Capes.

The Capes has suffered erosion, landslide and earth movement in a manner and to an extent that endangers certain Lots and Living Units within The Capes. Tillamook County officials have declared certain of the ocean front Living Units within The Capes to be uninhabitable as a result of such earth movement. This Amendment is intended to clarify the obligations of the Owners and the Association in the event such Owners Living Unit is declared uninhabitable or is damaged by such earth movement.

The Declarant owns certain Lots identified as Lots 1, 2, 131 and 172, which the Declarant wishes to transfer to the Association and the Association wishes to convert to Common Area. The transfer of Lot 131 will be subject to the Declarant's indemnity obligation regarding certain utilities as provided below.

*After recording, return to:  
Terra Title Inc.  
P.O. Box 519  
Tillamook*

## AMENDMENT

1. Relinquishment of Declarant Rights. The Declarant, for itself, successors and assigns, hereby irrevocably relinquishes its rights as Declarant under the Declaration and under the Bylaws of The Capes Homeowners' Association, Inc. Without limiting the generality of the foregoing, the Declarant shall have and enjoy the same rights and obligations with respect to each Lot owned by the Declarant as are had and enjoyed by any other Owner with respect to such other Owner's Lot.

2. Manager's Unit. Section 3.1.4 of the Declaration is hereby amended to read as follows:

3.1.4 Manager's Unit, which, upon its conveyance to the Association, is hereby converted to Common Area.

3. Amendments Relating to Earth Movement.

a. Owners' Obligations. It shall be the unconditional continuing personal obligation of each Owner of a Living Unit to remove completely all improvements from such Owner's Lot when such Living Unit has been declared permanently uninhabitable by any governmental agency in a final, unappealable matter. Such removal may be effected by the relocation of such Living Unit by specialized, licensed, insured movers expert in the movement of such structures, or by the demolition and removal of such Living Unit by licensed, bonded and insured contractors expert in such work. In any event, such Owner's obligation shall include the complete removal of the Living Unit's foundation and all improvements located on the Owner's Lot, and shall include the capping of all utilities serving such Living Unit. The relocation of such utility systems will not be the Owner's responsibility. In all events, the work done pursuant to this Section shall be accomplished in accordance with specifications established

by the Association and all applicable governmental agencies (which agencies' specifications shall control in the event the Association's specifications conflict with, rather than supplement, those of such agencies), reasonably designed to achieve the purpose of restoring the Owner's Lot as nearly as possible to its natural state so as to minimize the collateral effects of such Lot's eventual subsidence.

b. Association's Obligations. The Declaration is hereby amended to provide that the Association shall not have any obligation with respect to the maintenance or repair of any kind (including, without limitation, emergency repair) or replacement of any Living Unit or any other improvement upon any Owner's Lot to the extent that such maintenance, repair or replacement arises out of or is related to landslide, erosion or other earth movement. The Association shall have no obligation to take any steps to provide lateral or subjacent support to any Owner's Lot where the loss of lateral or subjacent support arises out of erosion, landslide or earth movement, or out of any act of God. The Association shall have the right, but not the obligation, to enforce the obligations of an individual Owner under Section 3.a above, including, without limitation, the right, in the event an Owner fails or refuses to perform such obligations within the time provided, to perform such obligations on such Owner's behalf and to recover the amounts so expended from such defaulting Owner, including, without limitation, all costs and expenses associated with the completion of such work, including the costs and expenses of permits, consultants' and experts' fees, attorneys' fees, and the costs of any damage to the Common Areas occasioned by the performance of such work. The Association shall be entitled to interest at a reasonable rate established from time to time by the Board of Directors, in addition to all other sums due hereunder. Any Mortgagee of a Living Unit shall have the right

to enforce the obligations of such Mortgagee's Owner under Section 3.a. above, and to enjoy the same rights as the Association described in this Section 3.b.

c. Timing of Owners' Obligations. An Owner shall effect the removal of the Living Unit, as required under Section 3.a, and improvements from such Owner's Lot no later than the earlier of: (a) ninety (90) days after the date such Living Unit is declared uninhabitable by any governmental agency in a final, unappealable manner; or (b) ninety (90) days after the Association has reasonably determined the Living Unit suffers material damage related to the earth movement. An Owner who removes a Living Unit before such removal is required under Section 3.c may do so, but in accordance with the standards of Section 3.a, and such work must be completed not more than ninety (90) days after it has begun.

d. No Liability. Neither the Association nor any Mortgagee of any Living Unit exercising any of the rights set forth in Section 3.b above shall be liable to the Owner of the Lot and Living Unit whose failure or refusal to perform such obligations occasioned the performance of such work.

4. Conversion of Lots to Common Area.

a. Lots 1, 2, 131 and 172. Contemporaneously with the execution and recordation of this Amendment, Lots 1, 2, 131 and 172 are being conveyed to the Association free and clear of any lien, encumbrance, past assessment or taxes. Such Lots are hereby converted into Common Area pursuant to the Declaration. As a material part of the consideration for the Association's agreement to receive conveyance of Lot 131 and convert that lot to Common Area, the Declarant hereby agrees to defend, indemnify, and hold harmless the Association and its officers and directors from any and all costs, expenses, claims, loss, liability or damages asserted by any governmental entity arising out of or associated with that certain



sewer line under or adjacent to Lot 131. To the extent of such indemnification, the Association, and its officers and directors hereby assign to the Declarant any and all claims the Association and its officers and directors may have now or in the future with respect to this sewer line.

b. **Uninhabitable Unit Lots.** Upon the satisfactory completion of an Owner's obligations described in Section 3 of this Amendment, such Owner may convey such Owner's Lot to the Association free and clear of all liens and encumbrances, whereupon such Lot shall be converted to Common Area.

5. **Assessments: Voting.** Upon the earlier of (1) a final, unappealable governmental declaration that the Living Unit is uninhabitable due to the risk of imminent harm from earth movement (i.e., red-tagging) or (2) the date an Owner removes a Living Unit and all improvements from the Lot in accordance with Section 3.a above, such Lot and Living Unit shall not be subject to assessments accruing after such date. No Lot exempt from assessment under this section shall have any vote on any matter relating to the Association, and such Lot shall not be considered to be a Lot for purposes of calculating quorum or approval requirements, voting thresholds, etc.

IN WITNESS WHEREOF, the undersigned Association and the Declarant of the subject property have caused this Amendment to be executed this 25<sup>th</sup> day of October, 2000, and hereby certify that this Amendment has been approved by more than seventy-five percent (75%) of the owners of the Association and by the Declarant as the sole Class B Member.

**THE CAPES DEVELOPMENT COMPANY, an Oregon corporation**

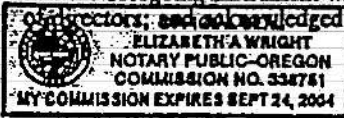
By: [Signature]  
Its Secretary

By: Sue Blatner  
President

By: [Signature]  
Secretary

STATE OF OREGON )  
County of Multnomah ss. Sept. 24, 2000

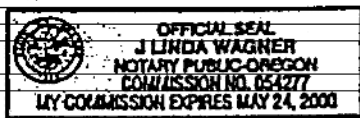
Personally appeared Stephen T. Janik who, being duly sworn, did say that he is the Secretary of THE CAPES DEVELOPMENT COMPANY, and that the foregoing instrument was signed in behalf of said corporation by authority of its board of directors; and he acknowledged said instrument to be its voluntary act and deed.



Elizabeth A. Wright  
NOTARY PUBLIC FOR OREGON

STATE OF OREGON )  
County of Multnomah ss. October 25, 2000

Personally appeared Sue Blatner and Jessie Schultze who, being duly sworn, did say that they are the President and Secretary, respectively, of THE CAPES HOMEOWNERS' ASSOCIATION, INC., and that the foregoing instrument was signed in behalf of said corporation by authority of its board of directors; and they acknowledged said instrument to be its voluntary act and deed.



[Signature]  
NOTARY PUBLIC FOR OREGON

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CAPES PORTLAND AMENDMENT II

68393929

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

OCT. 26 2 31 PM '00

BOOK 421 PAGE 126

Witness my hand and seal affixed.  
JOSEPHINE W. [Signature] Clerk

DEPUTY  
36.00  
18.00  
1.00  
1.00  
9.00

REC'D  
NAT  
MURKIN  
ULISF  
PLCP