

AFTER RECORDING RETURN TO:

Hayden Enterprises Inc
2464 SW. Glacier Place #110
Redmond OR 97756

DOCUMENT TITLE(s) (or transactions contained therein):

1. Amended & Restated Declaration of
Covenants, Conditions & Restrictions for Orchard Park
Estates

REFERENCE NUMBER(s) of documents assigned or released:

2004-03702

GRANTOR(s):

1. Orchard Park Estates

GRANTEE(s):

Orchard Park Estates

LEGAL DESCRIPTION:

ASSESSOR'S PROPERTY TAX PARCEL ACCOUNT NUMBER(s):



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Hayden Enterprises, Inc.
2464 SW Glacier Place #110
Redmond, OR 97756

MISC 05-119
CHICAGO TITLE INSURANCE

**AMENDED AND RESTATED
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
ORCHARD PARK ESTATES**



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**AMENDED AND RESTATED
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR ORCHARD PARK ESTATES**

The undersigned Declarant hereby adopts this AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR Orchard Park Estates ("Declaration"), which amends and replaces in its entirety the Declaration of Covenants, Conditions and Restrictions for the Plat of Orchard Park Estates #1, recorded in County of ~~Spokane~~, State of Washington on October 18, 2004, in Book 15, Page 253 as Document No. 2004-037024.

* Benton EB

WHEREAS, the Declarant is the owner, or controls, all that certain real property and improvements thereon located in the City of Kennewick, County of ~~Spokane~~, State of Washington, described in Article 2, Section 2.1 herein, and also referred to as "The Plat of ORCHARD PARK ESTATES #1", recorded _____, 2004 in Book _____, Pages ____ through ____ (also referred to as "Property"); and * Benton EB

WHEREAS, Declarant intends to develop the Property as a planned community known as "Orchard Park Estates", and Declarant desires to impose these mutually beneficial covenants, conditions, restrictions, easements, assessments and liens on the Property under a comprehensive general plan of improvement and development for the benefit of all of the Owners, the Lots and Common Area within "Orchard Park Estates"; and

WHEREAS, Declarant has deemed it desirable for the preservation of the values and amenities in "Orchard Park Estates" to create a Homeowners Association, to which will be delegated and assigned the powers and authority to own, maintain and administer the Association and the Common Area and facilities, and administer and enforce the covenants, conditions, and restrictions of this Declaration, and collect and disburse the assessments and charges hereinafter created.

NOW THEREFORE, the Declarant declares that the Property shall be held, transferred, sold, conveyed and occupied subject to the following covenants, conditions, restrictions, easements, charges and liens, or as noted herein, which shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in the Property or any part thereof and shall inure to the benefit of the Association and for the benefit of each Lot Owner.

ARTICLE 1

DEFINITIONS

1.1. "Architectural Review Committee" or "ARC" shall mean the Declarant until turnover and thereafter shall refer to the Board of Directors unless the Board has appointed a separate body to carry out the functions described in Article 6 in which case "ARC" shall refer to this body.

1.2. "Articles" shall mean the Articles of Incorporation for the non-profit corporation, Association of Orchard Park Estates Owners, or such similar name approved by and filed with the Washington Department of Corporations.

1.3. "Association" shall mean and refer to Association of Orchard Park Estates Owners, its successors and assigns.

1.4. "Board" or "Board of Directors" shall mean the appointed or elected body of the Association, as applicable, having its normal meaning under Washington law.

1.5. "Bylaws" shall mean and refer to the Bylaws of the Association.

1.6. "Common Area" shall mean and refer to any areas of land shown on the Plat of the Property, including any improvements thereon, which are intended to be devoted to the common use and enjoyment of the members of the Association, and areas outlined herein as the maintenance responsibility of the Association, including all or parts of Tracts A, B and C.

1.7. "Declarant" shall mean and refer to Hayden Enterprises, Inc., its successors or assigns, or any successor or assign to all remainder of their interests in the development of the Property. All successors to Declarant shall have the same rights and interest as the initial Declarant. "Declarant" shall not refer to any other subsequent purchaser of a Lot or Home.

1.8. "Declaration" shall mean the covenants, conditions, restrictions, and all other provisions set forth in this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Orchard Park Estates.

1.9. "General Common Expenses" shall mean those Common Area expenses incurred by the Association for the benefit of all of the Owners of the Lots within the Property. Such definition shall also apply to the words "Common Expenses" as used in this Declaration.

1.10. "Home" shall mean and refer to any portion of a structure situated on a Lot designed and intended for use and occupancy as a residence by a single family or household.

1.11. "Lot" shall mean and refer to any plot of land indicated upon the recorded Plat map of the Property or any part thereof creating individual Home sites, including any annexations to Orchard Park Estates #1. These do not include Common Areas and areas deeded to a government authority or utility.

1.12. "Lot Easement Area" shall mean and refer to those portions of any Lot subject to any easement benefiting the Association. The term "Lot Easement Area" shall not refer to any portions of any Lot encumbered by an easement to any other party, including without limitation, any governmental entity.

1.13. "Members" shall mean and exclusively refer to the Owners of Lots in Orchard Park Estates, and who are members of the Association of Orchard Park Estates Owners.

1.14. "Occupant" shall mean and refer to the occupant of a Home who shall be the Owner, lessee or any other person authorized by the Owner to occupy the premises, and occupies any portion of a Home.

1.15. "Orchard Park Estates" shall mean the real property described on the recorded Plat for the Property, and any annexations of additional lands to Orchard Park Estates and all Common Area included within the Plat of Orchard Park Estates #1.

1.16. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of the fee simple title to any Lot or a purchaser in possession under a land sale contract. The foregoing does not include persons or entities that hold an interest in any Lot merely as security for the performance of an obligation.

1.17. "Plat" shall mean and refer to the recorded Plat of ORCHARD PARK ESTATES #1, and any annexations to the original Plat.

1.18. "Property" shall mean and refer to all real property described on the Plat of ORCHARD PARK ESTATES #1, and any annexations of additional property, including the Common Area Tracts, and all improvements located on the real property, as may be brought within the jurisdiction of the Association and be made subject to this Declaration.

1.19. "Rules and Regulations" shall mean and refer to the documents containing rules and regulations and policies adopted by the Board of the Association or the Architectural Review Committee ("ARC") and as may be from time to time amended by the Board and/or ARC.

1.20. "Supplemental Declaration" means an amendment or supplements to this Declaration which subject's additional property to this Declaration or imposes, expressly or by reference, additional restrictions and obligations on the Property described therein, or both.

1.21. "Tract" shall mean a parcel of land shown on the Plat and denoted by the word "Tract". Tract D shall be owned by the Declarant, its successors or assigns, and may be for future development and annexation under the provisions of Article 2, Section 2.2.

1.22. "Turnover Meeting" shall be the meeting called by the Declarant to turn over control of the Association to the Class A members, in accordance with the provisions of Article 8, Section 8.2.

ARTICLE 2

PROPERTY SUBJECT TO THIS DECLARATION

2.1. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Benton County, Washington, in that certain plat map entitled "ORCHARD PARK ESTATES #1", filed in the Plat Records of Benton County, Washington, more particularly described as Lots 1 through 55, and Tracts A, B, C and D of the ORCHARD PARK ESTATES #1 Plat.

2.2. At any time during the initial term of this Declaration, as described in Article 11, Section 11.8, the Declarant may, at its sole option, annex additional property into the Association to be subject to the terms hereof to the same extent as if originally included herein and subject to such other terms, covenants, conditions, easements and restrictions as may be imposed thereon by Declarant. Declarant currently anticipates that there will be a total of 110 Lots in the subdivision, including the Lots on this Plat, and Lots expected to be created in property to be annexed to the subdivision, but this number may be adjusted to be higher or lower at the sole discretion of Declarant. Declarant shall have no obligation of any kind to annex any additional land to the Property.

(a). Eligible Property. There is no limitation on the number of Lots that Declarant may annex to the Property, or the right of Declarant to annex common property, except as may be established by applicable ordinances, agreements, or land use approvals.

(b). Consent or Joinder Not Required. No consent or joinder of any Class A member as defined in this Declaration or other party except the record owner of the land being annexed shall be necessary to effect any annexation made pursuant to this Section.

(c). Declaration of Annexation. Annexation shall be evidenced by a written "Notice of Addition", or "Declaration of Annexation", executed by the Declarant, setting forth the legal description of the property being annexed and any additional covenants, conditions and restrictions to be applied to such annexed property. Notwithstanding any provision apparently to the contrary, a Notice of Addition or Declaration with respect to any annexed property may:

(i) 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;

(ii) 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; and/or

(iii) contain provisions necessary or appropriate to comply with any condition, requirement, or imposition of any governmental or regulatory authority.

Such Notice of Additional Property by Declarant shall contain at least the following provisions:

- (i) A reference to this Declaration stating the date of recording and the recording number, or book and page, where it was recorded;
- (ii) A statement that the provisions of this Declaration shall apply to such added Property; and
- (iii) A legal description of such added Property.

Without limitation of the meaning of the foregoing provisions of this Section, in any Declaration of Annexation the Declarant may, but shall not be obligated to, establish different Types of Lots and have particular rights and obligations pertain to different Types of Lots, establish easements particular to different Lots, establish assessments that pertain only to certain Types of Lots, establish maintenance obligations of the Association or of Owners that vary in accordance with different Types of Lots or different tracts of Common Area, establish insurance and casualty provisions that relate to certain Types of Lots and not others, and establish limited common areas that benefit particular Lots to the exclusions of other Lots and provisions particular to such limited common areas.

(d). Voting Rights; Allocation of Assessments. Upon annexation, additional lots so annexed shall be entitled to voting rights and shall be responsible for payments or assessments as required for that fiscal year. At the beginning of the next fiscal year, assessments shall be reallocated and reapportioned equally based on the total number of lots following such annexations.

(e). No Duty to Annex. Nothing herein contained shall establish any duty or obligation on the part of the Declarant or any member to annex any property into the Association and no owner of property excluded from the Association shall have any right to have such property annexed thereto.

ARTICLE 3

OWNERSHIP AND EASEMENTS

3.1. Non-Severability. The interest of each Owner in the use and benefit of the Common Area shall be appurtenant to the Lot owned by the Owner. No Lot shall be conveyed by the Owner separately from the interest in the Common Area, subject to the provisions of Section 3.3. Any conveyance of any Lot shall automatically transfer the right to use the Common Area without the necessity of express reference in the instrument of conveyance. There shall be no judicial partition of the Common Area. Each Owner, whether by deed, gift, devise or operation of law, for his own benefit and for the benefit of all other Owners, specifically waives and abandons all rights, interests and causes of action for judicial partition of any interest in the Common Area and does further agree that no action for judicial partition shall be instituted, prosecuted or reduced to judgment. The ownership interest in the Common Area and Lots described in this Article are subject to the easements granted and reserved in this Declaration. Each of the easements reserved or granted herein shall be deemed to be established upon the recordation of this Declaration and shall forever be deemed to be covenants running with the land for the use and benefit of the Owners and their Lots and shall be superior to all other encumbrances applied against or in favor of any portion of Orchard Park Estates.

3.2. Ownership of Lots. Title to each Lot in Orchard Park Estates #1 shall be conveyed in fee to an Owner. If more than one person and/or entity owns an undivided interest in the same Lot, such person and/or entities shall constitute one Owner.

3.3. Ownership of Common Areas. Title to the Common Areas shall be conveyed to the Association not later than sixty (60) days after eighty percent (80%) of the Lots have been conveyed to purchasers or seven years from the date this Declaration is recorded, whichever is earlier. The Association shall accept such conveyance, and such Property shall thereafter be Common Area Property to be maintained by the Association for the benefit of all of its Members. The Declarant or the Board of Directors may convey title to any present or future Common Area Tract(s), if any, to a City, County or other Government agency. Tracts A, B and C, or any additional Common Area Tracts which may be annexed in a future Plat, may not be sold or transferred without the express written approval of the City of Kennewick, and shall be considered subservient estates to all Lots within the Plat for the purpose of real estate taxes.

3.4. Easements. Individual deeds to Lots may, but shall not be required to, set forth the easements specified in this Article.

(a) Easements on Plat. The Common Area and Lots are subject to the easements and rights of way shown on, or noted, on the plat of Orchard Park Estates #1.

(b) Easements for Common Area. Every Owner shall have a non-exclusive right and easement of use and enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Lot.

(c) Easements Reserved by Declarant. So long as Declarant owns any Lot, Declarant reserves an easement over, under and across the Common Areas in order to carry out sales activities necessary or convenient for the sale of Lots. In addition, Declarant hereby reserves to itself, and for its successors and assigns, a perpetual easement and right-of-way for access over, upon and across the Common Areas for construction, utilities, communication lines, drainage, and ingress and egress for the benefit of the Lots or other property owned by Declarant. 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 Area 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 Property or other real property owned by Declarant in such a way as to not unreasonably interfere with the occupancy, use, enjoyment or access to an Owner's Lot by that Owner or his/her/their family, tenants, guests or invitees.

(d) Additional Easements. Notwithstanding anything expressed or implied to the contrary, this Declaration shall be subject to all easements granted by Declarant for the installation and maintenance of utilities and drainage facilities necessary for the development of Orchard Park Estates. No structure, planting or other material shall be placed or permitted to remain within any easement area or Tracts A, B and C, or any future Common Areas 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 or water through drainage channels in the easements. The easement area of each Lot and all improvements thereon shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority, utility company or the Association is responsible.

(e) Association's Easements. There are hereby reserved to the Association and its duly authorized agents and representatives such easements as are necessary to perform the duties and obligations of the Association set forth in this Declaration, the Bylaws and Articles, as the same may be amended or supplemented.

(f) Easement to Governmental Entities. There is hereby reserved and granted a non-exclusive easement over the Common Area to all governmental and quasi-governmental entities, agencies, utilities, and their agents for the purposes of performing their duties within Orchard Park Estates.

(g) Maintenance. The Association reserves a maintenance easement over Tracts A, B and C, as shown on the Plat of ORCHARD PARK ESTATES #1. The Association maintenance will include landscape maintenance of Tracts A, B and C. Additionally, the City of Kennewick is hereby granted a blanket easement for the right to enter Tracts A, B and C.

(h) Maintenance Obligations/Owner Restrictions. Except as noted in this document, the Owner, at his/her expense, shall maintain, repair and replace the

improvements and utility installations in any Lot Easement Area in a condition acceptable by the Board and shall hold the Association harmless from any such costs.

ARTICLE 4

LOTS AND HOMES

4.1. Residential Use. Lots shall be used for residential purposes only. Except with the consent of the Board of Directors of the Association, 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 (a) activities relating to the sale of residences, (b) the right of Declarant or any contractor or homebuilder to construct residences on any Lot, to store construction materials and equipment on such Lots in the normal course of construction of Orchard Park Estates, and to use any residence as a sales office or model home for purposes of sales in Orchard Park Estates, to maintain on site a temporary construction office or trailer, and (c) the right of the Owner of a Lot to maintain his professional or personal library, keep his personal business or professional records or accounts, handle his personal business or professional telephone calls or confer with business or professional associates, clients or customers, in his residence, so long as such activity is not observable outside of the residence, does not significantly increase parking or vehicular traffic, or is in violation of applicable local government ordinances. The Board of Directors 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 residence and that the activities would not be in violation of applicable local government ordinances.

4.2. Construction. Except for construction performed by or contracted for by Declarant, no construction, reconstruction or exterior alterations shall occur on any Lot, unless the approval of the ARC is first obtained pursuant to Article 6. Consideration such as siting or location on the Lot, shape, size, color, design, height, solar access, or material may be taken into account by the ARC in determining whether or not to consent to any proposed work. Such work includes, but is not limited to Homes, storage shelters, swimming pools, spas, landscaping, greenhouses, patios, fencing, basketball hoops or remodeling. The intent of this covenant is to ensure quality of workmanship and material, harmony of external design with the existing and planned structures as to location and visual compatibility and finish grade elevations. Original construction designs, materials and product specifications by Declarant may vary from any or all specified in this document. All construction performed by or contracted for by Declarant, shall be presumed to have met these minimum requirements or have been granted a variance thereto.

4.3. The following restrictions are minimum standards applicable to all Lots:

(a) Height. No Home shall exceed two (2) stories, excluding basement and/or garage levels, in height above the ground;

(b) Floor Area. The square footage area of a Home shall not be less than one thousand (1,000) square feet exclusive of attics, patios, decks, porches, balconies, roof overhangs, and garages;

(c) Garages. A garage must be constructed on each Lot. Garages may be used as a sales office by Declarant, but must be converted to a garage before permanent occupancy. Garages are to be maintained primarily for the storage of automobiles or similar vehicles. No garage may be enclosed or otherwise used for habitation, nor may any garage door be removed except when necessary to repair or replace a garage door with the same type of garage door.

(d) Security Doors/Windows and Screen Doors. No security doors and no exterior security bars or devices on windows and doors shall be installed without the prior written approval of the ARC. If the ARC approves any type security door or window security, such approval shall encourage or require a single style for all Homes so they will maintain a uniform and aesthetic appearance.

4.4. Completion of Construction. The construction of any building on any Lot, including painting and all exterior finish, shall be completed within six (6) months from the beginning of the 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 ARC. The Lot and building area shall be kept reasonably clean and in workmanlike order, free of litter, during the construction period with a garbage disposal facility located on site during such construction period. If construction has not commenced within three (3) months after the project has been approved by the ARC, the approval shall be deemed revoked unless the Owner has applied for and received an extension of time from the ARC. All provisions of this Article 4 shall exclude any construction by the Declarant.

4.5. Landscaping. Owners may use any enclosed side and rear yard for any purpose not prohibited hereunder, provided such use is not deemed, by the ARC or the Association to be a nuisance. Maintenance of all landscaping on Lots, including street trees and/or street frontage landscaping is the Owner's sole responsibility.

(a). Landscape installation on Lot by Owners is subject to approval by the ARC. Street frontage trees, landscaping and/or perimeter landscaping installed by Declarant on or abutting individual Lots are to be maintained by the Owner in good condition, including watering. Completed landscaping on Lots shall be installed by Owners no later than 6 months after occupancy. All landscaping on Lots shall be maintained by Owners in a good condition, including watering, weeding, pruning, fertilization, mowing and other forms of maintenance. If Owner fails to maintain said landscaping, Declarant, or Association in their place reserves the rights outlined in Section 4.21 to maintain.

(b). Declarant reserves the right to install and maintain landscape improvements on Lots for sales and marketing purposes, and hereby reserves a

landscape easement for this purpose. Declarant is not obligated to provide any landscaping in said areas noted in this section

4.6. Rental of Homes. An Owner shall be entitled to rent or lease his residence if:

(a) Written Rental Agreements Required. There is a written rental or lease agreement specifying that: (i) the tenant shall be subject to all provisions of the Declaration, Bylaws and Rules and Regulations, and (ii) failure to comply with any provision of the Declaration, Bylaws and Rules and Regulations shall constitute a default under the rental agreement.

(b) Minimum Rental Period. The period of the rental or lease is not less than thirty (30) days; and

(c) Tenant Must Be Given Documents. The Owner gives each tenant a copy of the Declaration, Bylaws and Rules and Regulations.

(d) Owner Responsibility. Owner shall be responsible for any violations by tenants and shall be solely responsible for either correcting or eliminating such violations, or getting tenant to do same.

4.7. Animals. No animals, livestock or poultry of any kind shall be raised, bred, kept or permitted within any Lot other than a reasonable number of domestic household pets 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, including noise, shall be the responsibility of the respective Owners thereof. No dogs shall be permitted to roam the Property unattended, and all dogs shall be kept on a leash while outside a Lot. An Owner may be required to remove a pet from the property upon the receipt of the third notice in writing from the Association Board of Directors of violation any rule, regulation or restriction governing pets within the Property. A "reasonable number of domestic household pets" and the definition of "domestic household pets" shall be subject to rules adopted and approved by the Board in its sole discretion.

4.8. Nuisance. No noxious, harmful 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, or which is a source of annoyance to the other Owners or Occupants.

4.9. Parking. Parking of boats, trailers, commercial vehicles, mobile homes, campers, other recreational vehicles or equipment regardless of weight shall not be allowed on any part of the Lot or Common Area, except as stated in this section. Parking shall only be in garages, or driveways if no portion of the vehicle overhangs the street, sidewalks or pathways, or along the side of a garage, as long as the item being stored is no more than five (5) feet from the front corner of the immediate garage structure. Garages shall be primarily used for vehicular parking and not solely for storage. In addition, parking of vehicles is

prohibited on any public or Common Area within the Property unless so designated as a parking area by the Association.

4.10. Vehicles in Disrepair. No Owner shall permit any vehicle, which is not currently licensed or is in an extreme state of disrepair to be abandoned or to remain parked upon any Lot for a period neither in excess of forty-eight (48) hours, nor on a Common Area for any length of time. A vehicle shall be deemed in an "extreme state of disrepair" when the Board of Directors reasonably determines that its presence offends the Owners and Occupants. Should any Owner fail to remove such vehicle within five (5) days following the date on which the notice is mailed to him/her by the Association, the Association may have the vehicle removed from the Property and charge the expense of such removal to the Owner. All oil or grease on roadways and/or driveways shall be cleaned up immediately by Owner.

4.11. Signs. No signs shall be erected or maintained on any Lot except that not more than one "For Sale" or "For Rent" 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, subject to the provisions of Section 9.2 below. The restrictions contained in this paragraph shall not prohibit the temporary placement of "political" signs on any Lot by the Owner or Occupant, or construction and marketing related signage by the Declarant or its contractors. No signs of any kind, other than Declarant's marketing signs, will be allowed on Common Areas.

4.12. Rubbish and Trash. No Lot or 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 containers for timely and proper disposal, out of public view. Yard rakings, dirt and other material resulting from landscaping work shall not be dumped onto streets, the Common Areas or any other Lots. Should any Owner fail to remove any trash, rubbish, garbage, yard rakings or any such materials from any Lot, any roadways or Common Area where deposited by him/her within five (5) days following the date on which notice is mailed to him/her by the Board of Directors, the Association may have such materials removed and charge the expense of such removal to the Owner. Each Owner is responsible for trash disposal, and shall remove individual trash containers within 12 hours of collection. No trash and/or storage containers shall be visible from any adjacent street or neighboring Lot, and shall not be allowed to emit any odors or attract insects or rodents.

4.13. Fences and Hedges. No fences or boundary hedges shall be installed without prior written approval of the ARC. Any fencing installed on Owner's Lots either by Owner, or by Declarant, will be Owner's maintenance responsibility. However, the Association shall maintain the perimeter fence at the rear of Lots 1 and 44 through 55 as to its structural elements and clear staining of the street side surfaces. All fences that are Owner's responsibility are to be maintained in a condition acceptable to Board and ARC. All side yard fencing shall maintain a five (5) foot setback from the front of the house. Further, no fencing will be allowed in the front yard. All fence materials, designs, and colors subject to prior approval of the ARC. No chain link fencing will be visible from the street.

4.14. Service Facilities; Utilities. Service facilities (e.g. garbage containers, clotheslines, air conditioning compressors, etc.) shall be screened such that the elements screened are not visible at any time from the street or a neighboring Home. All utility lines



shall be maintained, repaired and replaced by the Owner of each Lot or all Owners individually and/or collectively at their sole expense. The Association is not responsible for the maintenance of any utility, cable TV, or phone services of facilities. The exterior location of any heating and air conditioning compressors or heat pumps shall be approved in advance by the ARC. Said locations must take into consideration the noise and view from adjacent Homes.

4.15. Antennas, Satellite Dishes and Solar Collectors. No Owner may erect or maintain a television or radio receiving or transmitting antenna, satellite dish or similar implement or apparatus, or solar collector panels or equipment upon any Lot unless such apparatus is erected and maintained in such a way that it is screened from public view along the public street right-of-way directly in front (and side, in the case of a corner Lot) of the house erected on such Lot; and no such apparatus shall be erected without the prior written consent of the ARC. Exterior satellite dishes with a surface diameter of eighteen (18) inches or less may be placed on any Lot so long as they are not visible from the street and are screened from all neighboring Homes. The ARC, as designated in this Declaration, shall have the absolute authority to determine whether an accessory is adequately screened from public view. The authority of the ARC in this matter shall be subject to any regulations issued by the Federal Communications Commission ("FCC") or any other applicable governmental authority.

4.16. Exterior Lighting or Noisemaking Devices. Except with the consent of the ARC, no exterior lighting or noisemaking devices shall be installed or maintained on any Lot, other than security and fire alarms. However, false alarms of security and fire systems will not be allowed to repeatedly occur. Seasonal holiday lighting and decorations are permissible if consistent with any applicable rules and regulations and if installed no more than thirty (30) days before the celebrated holiday, and removed within thirty (30) days after the celebrated holiday.

4.17. Grades, Slopes, Drainage and/or Retaining Walls. There shall be no interference with the established drainage patterns or systems over or through any Lot within the Property so as to affect any other Lot or Common Area or any areas outside the Property unless adequate alternative provisions are made for proper drainage and are approved by the ARC. The term "established drainage" shall mean any wall, drainage swales, conduits, inlets and outlets designed and constructed on the Property or Common Areas. Retaining walls are designed for their intended use and may not be subjected to additional weight or force without an engineer's report allowing such additional structure. The ARC will have final right of approval to any such deviation from the original design of the retaining wall.

4.18. Damage or Destruction to Home and/or Lot. If all or any portion of a Lot or Home is damaged by fire or other casualty, the Owner shall either (i) restore the damaged improvements or (ii) remove all damaged improvements, including foundations, and leave the Lot in a clean and safe condition. Any restoration proceeding under (i) above must be performed so that the improvements are in substantially the same condition in which they existed prior to the damage, subject to current governmental regulations and building codes, provisions of Article 6 to be complied with by the Owner. The Owner must commence such



work within sixty (60) days after the damage occurs and must complete the work within six (6) months thereafter.

4.19. Detached Buildings. Detached accessory buildings, including, but not limited to, storage buildings, greenhouses, children's playhouses and similar structures, shall not be built without the prior written consent of the ARC. Every outbuilding shall be compatible with the dwelling to which it is appurtenant in terms of its design and material composition. Outbuildings shall be of a one (1) story design and the outside walls shall not exceed ten (10) feet in height, nor will the overall height exceed twenty (20) feet, measured from the existing Lot grade, or have total floor areas in excess of 450 square feet.

4.20. Owner's Maintenance Obligations. Each Owner shall maintain their Lot and Improvements in a clean and attractive condition, in good repair and in such a fashion as not to create a hazard of any kind. Such maintenance shall include, without limitation, painting or staining, repair, replacement and care of roofs, gutters, downspouts, surface water drainage, walks and other exterior improvements and glass surfaces. In addition, each Owner shall keep shrubs, trees, grass and plantings of every kind neatly trimmed, fertilized, property cultivated and free of trash, weeds and other unsightly materials. The provisions of this section include all areas on Lots, except as provided in 3.4 (g), above.

4.21. Right of Maintenance and Entry by Association. If an Owner fails to perform maintenance and/or repair which he/she is obligated to perform pursuant to this Declaration for buildings or landscaping, and if the Board determines, after notice and a hearing (given pursuant to the provisions of the Bylaws), that such maintenance and/or repair is necessary to preserve the attractiveness, quality, nature and/or value of Orchard Park Estates, the Board may cause such maintenance and/or repair in connection therewith to be performed and may enter any such Lot whenever entry is necessary in connection with the performance of any maintenance or construction which the Board is authorized to undertake. Entry shall be made with as little inconvenience to an Owner as practicable and only after advance written notice of not less than forty-eight (48) hours, except in emergency situations. Such right of maintenance shall include, but not be limited to, buildings, street trees, and front and side yard landscape. All maintenance performed on behalf of Lot Owners shall be at the Owners expense.

4.22. Association Rules and Regulations. The Board of Directors, from time to time, may adopt, modify or revoke Rules and Regulations governing the conduct of persons and the operation or use of Lots and 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 any Rules and Regulations, upon adoption, 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 or actual notice thereof. The method of adoption of such Rules and Regulations shall be provided in the Bylaws of the Association.

4.23. City and County Ordinances and Regulations. The standards and restrictions of the Article 4 shall be the minimum required. To the extent the ordinances and



regulations of The City of Kennewick, and/or Benton County are more restrictive or provide for a higher or different standard, the ordinances and regulations of the City of Kennewick, and/or Benton County, or any jurisdiction Property may be annexed into, shall prevail.

4.24. Violation. The Association may impose a fine, charge or penalty for any violation of this Declaration, the Bylaws and Rules and Regulations after reasonable notice of the violation and a reasonable opportunity for a hearing. Additionally, the Association may seek injunctions or other equitable relief or may file an action for money damages owing from such violations.

4.25. Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to make the Property safer than it otherwise might be. Neither the Association, any managing agent retained by the Association, Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Property, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or of ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system or other security system cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants that the Association, its Board of Directors and committees, any managing agent retained by the Association, Declarant, and any successor Declarant are not insurers and that each person using the Property assumes all risks for loss or damage to persons, to property and to the contents of Lots resulting from acts of third parties and releases such parties from any liability therefore.

ARTICLE 5

COMMON AREA

5.1 Use of Common Areas. Use of Common Areas is subject to the provisions of the Declaration, Bylaws, Articles Plat and Rules and Regulations promulgated by the Board of Directors. There shall be no use of the Common Area except by Owners and their invitees. There shall be no obstruction of any part of the Common Area. Nothing shall be stored or kept in the Common Area. No alterations or additions to the Common Area shall be permitted without the prior written approval by the Board of Directors. Nothing shall be stored or kept in the Homes or Common Area, which will increase the rate of insurance on the Common Area without the prior written consent of the Board. There shall be no access from Tracts A, B and C to W. 4th Ave.

5.2 Maintenance of Common Area. The Association shall be responsible for maintenance, repair, replacement, and upkeep of the Common Area, including, but not by way of limitation, all landscaping, any irrigation systems, any common area lighting not maintained by a public agency, fencing, including structural elements of fence along W. 4th Ave. and clear staining of street-side surfaces, pathways and any other Improvements that



may be included in Common Area Tracts. The Association shall keep the Common Area and improvements thereon in good condition and repair, provide for all necessary services and cause all acts to be done which may be necessary or proper to assure the maintenance of the Common Area in first class condition.

5.3 Alterations to Common Area. Only the Association shall construct, reconstruct, or alter any improvement situated upon the Common Area, subject to the conditions of the Plat. A proposal for any construction of, or alteration, maintenance or repair to an improvement may be made at any meeting. A proposal may be adopted by the Board, subject to the limitations contained in this Declaration, the Bylaws and the Plat.

5.4 Funding. Expenditures for alterations, maintenance or repairs to an existing capital improvement for which a reserve has been collected shall be made from the reserve account. As provided in Section 10.5, the Board may levy a special assessment to fund any construction, alteration, repair or maintenance of an improvement (or any other portions of the Common Area) for which no reserve has been collected or for which the reserve account is insufficient to cover the cost of the proposed improvement.

5.5 Landscaping. All landscaping on any Lot or portion of the Common Area shall be maintained and cared for in a manner consistent with the standard of design and quality as originally established by Declarant or the ARC. The Association shall be responsible for any landscaping located in Common Area Tracts A, B and C and adjacent street corridor landscaping between the curb and sidewalk, in perpetuity, including irrigation, debris and trash removal. Any Owner maintained areas shall be kept free of weeds and diseased or dead lawn, tree, ground cover or shrubs shall be promptly removed and replaced. All lawn areas shall be fertilized and neatly mowed, and trees and shrubs shall be fertilized and neatly trimmed on a regular basis.

5.6 Condemnation of Common Area. If all or any portion of the Common Area is taken for any public or quasi-public use under any statute, by right of eminent domain or by purchase in lieu of eminent domain, the entire award shall be received by and expended by the Board of Directors in a manner which in their discretion is in the best interest of the Association. The Association shall represent the interest of all Owners in any negotiations, suit or action or settlement in connection with such matters.

5.7 Damage or Destruction of Common Area. In the event any Common Area is damaged or destroyed by an Owner or any of his Occupants, guests, tenants, licensees, agents or members of his family in a manner that would subject such Owner to liability for such damage under Washington law, such Owner does hereby authorize the Association to repair such damage. The Association shall repair the damage and restore the area in workmanlike manner as originally constituted or as may be modified or altered subsequently by the Association in the discretion of the Board of Directors. The reasonable cost necessary for such repairs shall become a special assessment upon the Lot of the Owner who caused or is responsible for such damage.

ARTICLE 6

ARCHITECTURAL REVIEW COMMITTEE

6.1. 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 have been submitted to and approved in writing by the ARC. It is the intent and purpose of this Declaration to assure quality of workmanship and materials and to assure harmony of exterior design with the existing improvements and landscaping. The ARC is not responsible for determining compliance with structural and building codes, solar ordinances, zoning codes or other governmental regulations, all of which are the responsibility of the Lot Owners. The procedure and specific requirements for review and approval of construction may be set forth in design guidelines adopted from time to time by the ARC. Construction by the Declarant is presumed to have been approved and is thereby exempt from this review. In all cases, which the ARC consent is required by this Declaration, the provision of this Article shall apply.

(a). PLANS AND SPECIFICATIONS ARE NOT APPROVED FOR ENGINEERING, STRUCTURAL DESIGN OR QUALITY OF MATERIALS, AND BY APPROVING SUCH PLANS AND SPECIFICATIONS NEITHER THE ARC, THE BOARD OF DIRECTORS, THE MEMBERS, THE MANAGING AGENT NOR THE ASSOCIATION ASSUMES LIABILITY OR RESPONSIBILITY FOR THESE MATTERS, NOR FOR ANY DEFECT IN ANY STRUCTURE CONSTRUCTED FROM SUCH PLANS AND SPECIFICATIONS. OWNER IS SOLELY RESPONSIBLE FOR ALL IMPROVEMENTS, PERMITS AND COSTS OF SAID WORK.

6.2. Architectural Review Committee, Appointment and Removal. The ARC shall consist of no fewer than three (3) members and no more than five (5) members, as the Board may appoint from time to time. The Declarant reserves the right to appoint all members of the ARC and all replacements thereto until turnover. The Declarant may appoint a single person to serve as the ARC. After build out, Declarant shall delegate the right to appoint and remove members of the ARC to the Board of Directors. The terms of office for each member of the ARC shall be for one (1) year unless lengthened by the Board at the time of appointment or unless the Board serves as the ARC in which event the terms of the ARC members shall be the same as their terms as Board members. The Board may appoint any or all of its members for the ARC and there should be no requirement for non-Board members on the ARC. The Board may appoint one or more members to the ARC who are not Owners, but who have special expertise regarding the matters that come before the ARC. In the sole discretion of the Board, such non-Owner members of the ARC may be paid and that cost paid by applicants or the Association.

6.3. Majority Action. Except as otherwise provided in this Declaration, a majority of the members of the ARC shall have the power to act on behalf of the ARC, without the necessity of a meeting and without the necessity of consulting the remaining member of the ARC. The ARC may render its decision only by written instrument setting forth the action taken by the members consenting thereto.

6.4. Duties. The ARC shall consider and act upon the proposals and/or plans submitted pursuant to this Article. The ARC, from time to time and at its sole discretion, may adopt architectural rules, regulations and guidelines ("Architectural Standards"). The Architectural Standards shall interpret and implement the provisions of this Declaration for architectural review and guidelines for architectural design, placement of buildings, color schemes, exterior finishes and materials and similar features which may be used in Property; provided, however that the Architectural Standards shall not be in derogation of the minimum standards established by this Declaration.

6.5. ARC Decision. The ARC shall render its approval or denial decision with respect to the construction proposal within twenty (20) working days after it has received all material required by it with respect to the application. All decisions shall be in writing. In the event the ARC fails to render its decision of approval or denial in writing within sixty (60) days of receiving all material required by it with respect to the proposal, the application shall be deemed approved. Approval by the ARC does not imply government approval, which is solely the responsibility of the Owner.

6.6. ARC Discretion. The ARC may, at its sole discretion, withhold consent to any proposed work if the ARC finds the proposed work would be inappropriate for the particular Lot or incompatible with the design standards that the ARC intends for Orchard Park Estates. Consideration such as siting or location on the Lot, shape, size, color, design, height, solar access, or other effect on the enjoyment of other Lots or the Common Area, and any other factors which the ARC reasonably believe to be relevant, may be taken into consideration by the ARC in determining whether or not to consent to any proposed work.

6.7. Non-waiver. Consent by the ARC to any matter proposed to it or within its jurisdiction shall not be deemed to constitute a precedent or waiver impairing the ARC's right to withhold approval as to any similar matter thereafter proposed or submitted to it for consent.

6.8. Appeal. At any time after Declarant has delegated appointment of the members of the ARC to the Board of Directors pursuant to Section 6.2, any Owner adversely impacted by action of the ARC may appeal such action to the Board of Directors. Appeals shall be made in writing within ten (10) days of the ARC's action and shall contain specific objections or mitigating circumstances justifying the appeal. If the Board is already acting as the ARC, the appeal shall be treated as a request for a rehearing, but in such case the Board must actually meet and receive evidence and argument. A final and conclusive decision shall be made by the Board of Directors within fifteen (15) days after receipt of such notification. The determination of the Board shall be final.

6.9. Effective Period of Consent. The ARC's consent to any proposed work shall automatically be revoked three (3) months after issuance unless construction of the work has been commenced or the Owner has applied for and received an extension of time from the ARC.

6.10. Determination of Compliance. The ARC shall inspect, from time to time, all work performed and determine whether it is in substantial compliance with the approval granted. If the ARC finds that the work was not performed in substantial conformance with



the approval granted, or if the ARC finds that the approval required was not obtained, the ARC shall notify the Owner in writing of the noncompliance. The notice shall specify the particulars of any noncompliance and shall require the Owner to take the necessary action to bring the work into compliance with the approved project.

6.11. Noncompliance. If the ARC determines that an Owner has not constructed an improvement consistent with the specifications on which approval is based, and if the Owner fails to diligently commence to remedy such noncompliance in accordance with the provisions of the notice of noncompliance, then at the expiration of the third (3rd) day from the date of such notification, the ARC shall provide a notice of a hearing to consider the Owner's continuing noncompliance. The hearing shall be set not more than thirty (30) days from the date of the notice of noncompliance. At the hearing, if the ARC finds that there is no valid reason for the continuing noncompliance, the ARC shall determine the estimated costs of correcting it. The ARC shall then require the Owner to remedy or remove the same within a period of not more than ten (10) days from the date of the ARC's determination. If the Owner does not comply with the ARC's ruling within such period or within any extension of such period as the ARC, at its discretion, may grant, the Association may (a) remove the noncomplying improvement, (b) remedy the noncompliance, or (c) file suit to compel compliance. The costs of such action shall be assessed against the Owner and his Lot, including all attorneys' fees and other costs expended and incurred to enforce compliance before suit or action is filed and at trial or on any appeal or review of same.

6.12. Liability. Neither the ARC, the Board, their agents, nor any member thereof shall be liable to any Owner, Occupant, or builder for any damage, loss or prejudice suffered or claimed or claimed to be suffered arising from any action by the ARC or a member thereof or failure of the ARC or a member thereof, provided only that the member has acted in good faith in accordance with the actual knowledge possessed by him.

6.13. Estoppel Certificate. Within fifteen (15) working days after written request is delivered to the ARC by an Owner, and upon payment to the ARC of a reasonable fee fixed by the ARC to cover costs, the ARC shall provide such Owner with a certificate executed by the Chairman of the ARC, and acknowledged, certifying with respect to any Lot owned by the Owner, that as of the date thereof either (a) all improvements made or done upon or within such Lot by the Owner comply with this Declaration or any Rules and Regulations either promulgated by the Board or the ARC, 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. The Owner, his heirs, devisees, successors and assigns shall be entitled to rely on the certificate with respect to the matters set forth. The certificate shall be conclusive as between the Declarant, the ARC, the Association and all Owners, and all such persons deriving an interest through any of them.

ARTICLE 7

ASSOCIATION OF ORCHARD PARK ESTATES OWNERS

7.1. Association Powers. The Association shall be a non-profit, mutual benefit corporation established under the Washington Statutes and have all of the powers granted to it by said Statutes, including RCW 64.38.020.

7.2. Members. Each Owner shall be a mandatory member of the Association. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of any Lot. Transfer of ownership of a Lot automatically transfers membership in the Association. Without any other act or acknowledgement, Occupants and Owners shall be governed and controlled by this Declaration the Articles, Bylaws, and Rules and Regulations and any amendments thereof. Ownership of a Lot shall be the sole qualification for being a Member in the Association.

7.3. Proxy. Each Owner may cast his vote in person, pursuant to a proxy executed by the Owner, or by written ballot, as provided by Washington Statutes. An Owner may not revoke a proxy given pursuant to this section except by actual notice or revocation to the person presiding over a meeting of the Association. 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.

7.4. Voting Rights. The Association shall have two (2) classes of voting members.

(a) Class A. Class A members shall be all Owners of Lots other than the Declarant, and each Class A member shall be entitled to one (1) vote for each Lot owned with respect to all matters upon which Owners are entitled to vote.

(b) Class B. The Class B member shall be Declarant, its successors and assigns. The Class B member shall have three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership upon the earlier of:

(i). When eighty percent (80%) of the Lots in all phases of the Property have been sold and conveyed to Owners other than Declarant ("Termination Date"); or

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

Thereafter, each Owner, including the Declarant, shall be entitled to one (1) vote for each Lot owned with respect to all matters upon which Owners are entitled to vote, and the total number of votes shall be equal to the total number of Lots.

When more than one (1) person or entity owns a Lot, the vote for such Lot may be cast as they shall determine, but in no event will fractional voting be allowed. Fractional or split votes shall be disregarded, except for purposes of determining a quorum. The total number of votes as of the Termination Date and thereafter shall be equal to the total number of Lots.

7.5. Procedure. All meetings of the Association, the Board of Directors, the ARC, and Association committees shall be conducted with such rules of order as may from time to time be adopted by the Board of Directors. Notwithstanding which rule of order is adopted, the chairman shall be entitled to vote on all matters, not merely to break a tie vote. A tie vote does not constitute a majority or approval of any motion or resolution.

ARTICLE 8

DECLARANT CONTROL

8.1. Interim Board and Officers. The Declarant hereby reserves administrative control of the Association. The Declarant, in its sole discretion, shall have the right to appoint and remove members of the Interim Board of Directors, which shall manage the affairs of the Association and which shall be vested with all powers and rights of the Board of Directors. The Interim Board shall consist of from one to three members. Notwithstanding the provision of this Section, at the Turnover Meeting (as hereinafter defined) at least one (1) Director shall be elected by Owners other than the Declarant, even if the Declarant otherwise has voting power to elect all of the members of the Board.

8.2. Turnover Meeting. The Declarant shall call a meeting for the purpose of turning over administrative control of the Association from the Declarant to the Class A members within ninety (90) days of the earlier of:

(a) Upon Sale of Lots. The date that Lots representing eighty percent (80%) of Lots subject to this Declaration, plus any recorded annexation of additional Lots, have been conveyed to persons other than the Declarant; or

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

The Declarant shall give notice of the meeting to each Owner as provided in the Bylaws. If the Declarant does not call the meeting required under this Section, any Owner may do so. There is no quorum requirement for the turnover meeting.

8.3 Board of Directors. At and following Turnover, the Board of Directors of the Association shall be comprised of three (3) directors. The Directors elected at the Turnover Meeting shall serve until the first annual meeting of the Corporation. The Turnover Meeting may serve as the annual meeting of the corporation for the year in which it is held. The directors will be elected by a plurality of the total membership of the Association of Orchard Park Estates Owners. In the event of a vacancy occurring on the

Board, the position of such director(s) shall be filled in accordance with the terms and provisions of the Bylaws through appointment by the Board of Directors. Terms of office shall be staggered such that at the first annual meeting election after the Turnover Meeting, as described in the Bylaws, two (2) Directors shall serve for a term of two-years, and one (1) Director for a term of one-year. At all subsequent Annual Meetings, the term of office for elected Directors will be 2 years.

ARTICLE 9

DECLARANT'S SPECIAL RIGHTS

9.1. General. Declarant is undertaking the work of developing Lots and other improvements within Orchard Park Estates. The completion of the development work and the marketing and sale of the Lots is essential to the establishment and welfare of the Property as a residential community. Until the Homes on all Lots on the Property have been constructed, fully completed and sold, with respect to the Common Areas and each Lot on the Property, the Declarant shall have the special rights set forth in this Article 9.

9.2. Marketing Rights. Declarant shall have the right to maintain a sales office and model on one or more of the Lots which the Declarant may or may not own, to be staffed by the employees of the Declarant or any licensed real estate sales agents. The Declarant and prospective purchasers and their agents shall have the right to use and occupy the sales office and models during reasonable hours any day of the week. The Declarant may maintain a reasonable number of "For Sale" signs at reasonable locations of the Property, including, without limitation, the Common Area.

9.3. Declarant's Easements. The Declarant has reserved easements over the Property as more fully described in Article 3, Sections (c) and (d) hereof.

9.4. Appearance and Design of Orchard Park Estates. Declarant shall not be prevented from changing the exterior appearance of the Common Area, including the landscaping or any other matter directly or indirectly connected with project in any manner deemed desirable by Declarant, provided that the Declarant obtain governmental consents required by law. The construction and material standards of Article 4 notwithstanding, Declarant may change exterior and/or interior designs of Homes and Lots from initial plans and provisions in this document, without notice. This may include designs, colors, and type of materials, provided Declarant obtains any necessary governmental consent.

9.5 Construction by Declarant. All construction by Declarant is presumed to have been approved by the ARC and to meet any Design Guidelines of the Association.

ARTICLE 10

FUNDS AND ASSESSMENTS

10.1. Purpose of Assessment. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners and Occupants of Lots, and for the improvement, maintenance, protection, administration and insurance of the Common Areas owned by the Association including, without limitation private storm water facilities, water, sewer and drainage facilities, any private utilities and lighting, other easements, payment of real property ad valorem taxes, and establishment and funding of a reserve fund. No individual structure insurance will be provided by Association.

(a) Common Expense Designations. Common Expenses of the nature described in Section 10.1 which are to be, or are, incurred by the Association for the benefit of all of the Owners of Lots within the Property shall be separately budgeted for allocation among all such Owners and shall be designated "General Common Expenses".

(b) Insurance By the Association. The Board shall obtain, and maintain in effect, from reputable insurance companies authorized to do business in the State of Washington, public liability insurance with respect to all the Common Area in such amounts and in such forms as the Board deems advisable to provide adequate protection for bodily injury, including deaths of persons, and property damage, whether caused by the negligence of the Association or otherwise; provided, however, that such policy(ies) shall not be for an amount of less than \$1,000,000.00 per person, per occurrence, and that such policy(ies) shall provide that the coverage there under cannot be canceled or substantially modified without at least 10 days written notice to the Association. No fire and casualty coverage will be purchased for Homes. The Association may obtain such other and further policies of insurance, as it deems advisable. The named insured on the policy may read "Association of Orchard Park Estates Owners." The casualty insurance to be obtained by the Association pursuant to this paragraph 10.1(b) shall include the following terms, if the Board determines they are reasonably available:

- i) A waiver of subrogation by the insurer as to any claims against the Board, any Owner, or any guest of an Owner;
- ii) A waiver by the insurer of its right to repair and reconstruct instead of paying cash;
- iii) A provision that no policy may be canceled, invalidated, or suspended because of the action of an Owner;
- iv) A provision that no policy may be canceled, invalidated, or suspended because of the conduct of any director, officer, or employee of the Association unless the insurer gives the Association a prior written demand that the Association

correct the defect and allows the Association a reasonable time to make the correction; and

- v) A provision that any "other insurance" clause in any policy shall exclude from its coverage all owners' policies.

At the discretion of the Board, the Corporation may purchase and maintain insurance on behalf of any person who is or was a Director, Officer, employee, or agent of the Corporation, against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his/her/their status as such, whether or not the Corporation would have the power to indemnify him or her against such liability under the provisions of the Articles of Incorporation of the Corporation.

10.2. Covenants to Pay. Declarant, on behalf of each and every subsequent Owner of any Lot, covenants and agrees that each Lot will pay the Association the assessments and any additional charges levied pursuant to this Article 10.

(a) Funds Held. The assessments collected by the Association shall be held by the Association for and on behalf of each Owner and shall be used solely for the operation, care and maintenance of Orchard Park Estates as provided by this Declaration. Upon the sale or transfer of any Lot, the Owner's interest in the funds shall be deemed automatically transferred to the successor in interest of such Owner, and is not refundable.

10.3. Basis of Assessments and Commencement of Assessments. Assessments are to be levied against all Lots, except those owned by the Declarant, whether or not such Lots have been improved with a substantially completed Home. Provided, however, that no Assessment shall be levied against any Lot until such time as it is first sold to a purchaser other than Declarant or Declarant assignee. Assessments for all Lots conveyed by the Declarant to purchaser/Owner, either by deed or land sales contract, shall begin on the day of the recording of the deed or land sale contract conveying or contracting to convey the Lot of the new Owner.

10.4. Annual Assessments. Annual assessments for each fiscal year shall be established when the Board approves the budget for that fiscal year. Annual assessments shall be levied on a fiscal year basis. The fiscal year shall be the calendar year unless another year is adopted by vote of the Board members. At the Boards discretion, annual assessments shall be payable in monthly, quarterly, semi-annually or annual installments, and shall be payable on the first day of each billing period during the term of this Declaration.

(a) Budget. Regardless of the number of Members or the amount of assets of the Association, each year the Board shall prepare, approve and make available to each Member a pro forma operating statement (budget) containing; (i) estimated revenue and expenses on an accrual basis; (ii) the amount of the total cash reserves of the Association currently available for replacement or major repair of the Common Area and for contingencies; (iii) an itemized estimate for the remaining life of, and the methods of funding to defray repair, replacement or additions to major

components of the Common Area; and (iv) a general statement setting forth the procedures used by the Board in the calculation and establishment of reserves to defray the costs and repair, replacement or additions to major components of the Common Area.

For the first fiscal year, the budget shall be approved by the Board no later than the date on which annual assessments are scheduled to commence. Thereafter, it shall be the duty of the Board of Directors to prepare a budget covering the estimated costs of operating the Association during the coming year, which shall include: a reserve in accordance with a reserve budget for the Common Area Properties separately prepared. The Board of Directors shall cause the budget and the annual assessments to be levied against each Lot for the following year to be delivered to each member at least thirty (30) days prior to the end of the current calendar year. Within thirty (30) days after adoption by the Board of Directors of any proposed regular or special budget of the Association, the Board shall set a date for a meeting of the Owners to consider ratification of the budget not less than sixty (60) days after mailing of a budget summary.

The budget and the annual assessment shall become effective unless disapproved at said Owners meeting by a majority of the total Association vote. Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board of Directors fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget and annual assessments in effect for the then current year shall continue for the succeeding year.

(b) Allocation of Assessments. The total amount in the General Association budget shall be charged equally against all Lots, which have closed escrow to an Owner other than the Declarant or a Declarant assignee as annual assessments.

(c) Non-Waiver of Assessments. If before the expiration of any fiscal year the Association fails to fix annual assessments for the next fiscal year, the annual assessments established for the preceding year shall continue until a new annual assessment is fixed.

10.5. Reserve Funds

(a) Reserve Fund for Replacing Common Area Improvements

Declarant shall in addition establish a reserve fund in the name of the Association for replacement, in whole or in part, of the Common Area and any improvements located in, on, or under the Common Area for which the Association is responsible pursuant to this Declaration, that will normally require replacement in more than three (3) and fewer than thirty (30) years, including any exterior painting, if the Common Area includes exterior painted surfaces. The reserve account need not include those items that could reasonably be funded from the maintenance fund. For purposes of funding the reserve fund, the Declarant initially, and thereafter the Association shall impose an assessment to be called the "Reserve Fund Assessment" against each Lot, which assessment shall be spread equally over the Lots. However, after the turnover meeting, the Board may borrow funds from the reserve account to meet high seasonal demands on the regular operating funds or to meet other temporary expenses. The Reserve Fund Assessment shall be based on the reserve study, and updates thereof, described in Section 10.5 (b), or other sources of reliable information. Nothing herein shall limit the authority of the Declarant or the Association to establish other separate and unrelated reserve funds that are funded by assessments for reserves that are in addition to the Reserve Fund or that relate only to a particular type or category of Lot. The Reserve Fund shall be kept separate from other funds and may be used only for the purposes for which reserves have been established as specified in this Section.

Required Reserve Fund Assessments for completed improvements shall begin accruing from the date the first Lot assessed is conveyed. Declarant may elect to defer payment of the Reserve Fund Assessments due on Lots it owns until the date of the conveyance of the Lot to an Owner. However, the Declarant may not defer such payment beyond the date of the Turnover Meeting. The book and records of the Association shall reflect the amount owing from the Declarant for all Reserve Fund Assessments.

After the Turnover Meeting, the Board may borrow funds from the Reserve Fund to meet high seasonal demands on the regular operating funds or to meet other unexpected increases in expenses. Such funds borrowed from the Reserve Fund shall be repaid from regular annual or special assessments against the Lots, if the Board 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 shall adopt by resolution a written payment plan providing for repayment of the borrowed funds within a reasonable period.

The Board may adjust the amount of the Reserve Fund Assessments as indicated by any reserve study or update, and provide for any other reserve items that the Board, in its discretion, may deem appropriate during a fiscal year. In addition, after the second anniversary of the turnover meeting, the Association may elect to reduce or increase future Reserve Fund Assessments by a 75% vote of the Owners.

Any funds established for any of the purposes mentioned in this Section shall be deemed to be within the Reserve Fund notwithstanding that it may not be so

designated by the Board of Directors. The amount of the Reserve Fund shall constitute an asset of the Association and shall not be refunded or distributed to any Owner.

(b) Reserve Study. The Board of Directors shall annually conduct a reserve study, or review and update an existing study, of the Common Area components to determine the requirements of the reserve fund described in Section 10.5 above. The reserve study shall include (a) identification of all items for which reserves are required to be established; (b) the estimated remaining useful life of each item as of the date of the reserve study; (c) the estimated cost of maintenance, repair, or replacement of each item at the end of its useful life; and (d) a thirty (30) year plan with regular and adequate contributions, adjusted by estimated inflation and interest earned on the reserve fund, to meet the maintenance, repair, and replacement schedule.

10.6 Special Assessments. The Board of Directors shall have the power to levy special assessments against an Owner or all Owners in the following manner for the following purposes:

(a) Deficits in Operating Budget. To correct a deficit in the operating budget, by vote of a majority of the Board;

(b) Breach of Documents. To collect amounts due to the Association from an Owner for breach of the Owner's obligations under the Declaration, the Bylaws, or the Rules and Regulations, by vote of a majority of the Board;

(c) Repairs. To make repairs or renovations to the Common Area if sufficient funds are not available from the operating budget or replacement reserve accounts by vote of a majority of the Board; or

(d) Capital Additions. To make capital acquisitions, additions or improvements, by vote of at least seventy-five percent (75%) of all votes allocated to the Lots.

10.7 Accounts.

(a) Types of Accounts. Assessments collected by the Association may be deposited into at least two (2) separate accounts with a bank, which accounts shall be designated as (i) the Current Operating Account and (ii) the Reserve Account. Those portions of the assessments collected for current maintenance and operation levied under Section 10.4 (b) will be in the Current Operating Account and those portions of the assessments collected as reserves for replacement and deferred maintenance of capital improvements into the Reserve Account. Special Assessments shall be deposited into one of the two accounts, whichever is deemed by the Board to be appropriate. Withdrawal of funds for the Association's Reserve Account shall require the signatures of two (2) Directors.

(b) Reserve Account. The Association shall pay out of the Reserve Account only those costs that are attributable to the maintenance, repair or replacement of capital improvements for which reserves have been collected and held. No funds collected for the Reserve Account may be used for ordinary maintenance and operation purposes, unless repaid within six (6) months of withdrawal, or as approved by a majority of Owners.

(c) Current Operating Account. All ordinary maintenance and operating expenses shall be paid from the Current Operating Account.

10.8 Default in Payment of Assessments, Enforcement of Liens.

(a) Continuing Liability. No Owner may waive, or otherwise exempt him/her-self from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot. No diminution or abatement of any assessment shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner.

(b) Personal Obligation. All assessments properly imposed under this Declaration or the Bylaws shall be the joint and several personal obligations of all Owners of the Lot to which such assessment pertains. In a voluntary conveyance (that is, one other than through foreclosure or a deed in lieu of foreclosure) the grantees shall be jointly and severally liable with the grantor(s) for all Association assessments imposed through the recording date of the instrument affecting the conveyance. A suit for a money judgment may be initiated by the Association to recover such assessments without either waiving or foreclosing the Association's lien.

10.9 Application. All payments shall be applied first to costs, then to late charges, then to interest and then to delinquent assessments.

10.10 Re-Sale Certificates. The Association shall, within five (5) days after receiving a written request therefore and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot shall be binding upon the Association as of the date of issuance.

10.11 Effect of Nonpayment of Assessments; Remedies of the Association.

Any assessments or installments thereof, which are not paid when due, shall be delinquent. All assessments shall be the personal obligation of the Person who was the Owner of such Lot at the time the assessment(s) fell due. Each Owner shall be personally liable for the portion of each assessment coming due while the Owner of a Lot and each grantee of an Owner shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance. Any assessment or installment thereof delinquent for a period of more than thirty (30) days shall incur a late charge and interest in an amount as the Board of Directors may from time to time determine. The Association shall cause a notice of delinquency to be given to any Owner who has not paid within thirty (30) days following the due date. If the assessment is not paid within fifteen (15) days after such delinquency notice, a lien, as herein provided, shall attach to such Owner's Lot. In the event that the assessment remains unpaid thirty (30) days after the delinquency notice, the Association may, as the Board of Directors shall determine, institute suit to collect such amounts and/or to foreclose its lien.

10.12 Creation of the Lien. Each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) the initial assessment; (b) annual assessments; (c) special assessments; and (d) specific assessments against any particular Lot which are established pursuant to the terms of this Declaration, including, but not limited, to, reasonable fines as may be imposed in accordance with the terms of this Declaration. All such assessments, together with late charges and interest, costs, including, without limitation, reasonable attorney's fees actually incurred, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each assessment is made. Such lien shall be superior to all other liens and encumbrances on such Lot, except for (a) liens for ad valorem taxes; or (b) liens for all sums unpaid on a first Mortgage or on any Mortgage to Declarant duly recorded in the land records of Benton County and all amounts advanced pursuant to such Mortgage and secured thereby in accordance with the terms of such instrument. All other Persons acquiring liens or encumbrances on any Lot after this Declaration shall have been recorded in such records shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage, or convey the same.

10.13 Interest; Fines; Late Fees; Penalties. The Board in its reasonable discretion may from time to time adopt resolutions to set the rate of interest, and to impose late fees, fines and penalties on delinquent assessments or for violations of the provisions of this Declaration, the Bylaws, any Rules and Regulations, and any rules and regulations adopted by the ARC. The adoption of such impositions shall be communicated to all Owners in writing not less than thirty (30) days before the effective date by a notice mailed to the assessment billing addresses of such Owners. Such impositions shall be considered assessments which are lienable and collectible in the same manner as any other assessments.

Provided, however, no fine or penalty for violation of this Declaration, the Bylaws or any Rules and Regulations (other than late fees, fines or interest arising from an Owner's failure to pay regular or special assessments) may be imposed against an Owner or his Lot until such Owner is given an opportunity for a hearing as provided in Section 4.21.

10.14 Acceleration of Assessments. In the event an Owner is delinquent in payment of any assessment or installment on any assessment, the Association, upon not less than ten (10) days written notice to the Owner, any accelerate the due date of the full annual assessment for that fiscal year and all future installments of any special assessments.

10.15 Association's Right to Rents/Receiver. In any foreclosure suit by the Association with respect to such lien, the Association shall be entitled to collect reasonable rent from the defaulting Owner for the use of his Lot or shall be entitled to the appointment of a Receiver. Any default by the Owner in any provisions of the Declaration or Bylaws shall be deemed to be a default by the Owner of any mortgage to which the Owner is party or to which the Lot is subject.

10.16 Financial Records & Report. The Board of Directors shall prepare, or cause to be prepared, for any calendar year in which the Association levies or collects assessments, and shall distribute to all Owners at the annual meeting a balance sheet and operating statement (income and expense) of the Association, which shall contain a schedule of assessments received and receivable. The Board of Directors shall cause detailed and accurate records of the receipts and expenditures of the Association to be kept specifying and itemizing all expenditures. All records of the Association, including names and addresses of Owners and other occupants of the Lots, shall be available for examination by all Owners, holders of mortgages on the Lots, and their respective authorized agents on reasonable advance notice during normal working hours at the offices of the Association or its managing agent.

ARTICLE 11

GENERAL PROVISIONS

11.1. Records. The Board of Directors shall preserve and maintain minutes of the meetings of the Association, the Board and any committees. The Board of Directors shall also keep detailed and accurate financial records including individual assessment accounts of Owners, the balance sheet, and income and expense statements. Individual assessment accounts shall designate the name and address of the Owner or Owners of the Lot, the amount of each assessment as it becomes due, the amounts paid upon the account, and the balance due on the assessments. The minutes of the Association, the Board and committees, and the Association's financial records shall be reasonably available for review and copying by the Owners. A reasonable charge may be imposed by the Association for providing copies.

(a) Inspection by Members and Mortgagees. This Declaration, the Bylaws, copies of rules and use restrictions, membership register, books of account,

and minutes of meetings of the members of the Board of Directors and committees shall be made available for inspection and copying by any member of the Association or by the duly appointed representative of any member and by holders, insurers, or guarantors of any first Mortgage at any reasonable time and for a purpose reasonably related to such Person's interest as a member or holder, insurer, or guarantor of a first Mortgage at the office of the Association or at such other reasonable place as the Board of Directors shall prescribe.

- (i) Rules for Inspection. The Board of Directors shall establish reasonable rules with respect to:
 - Notice to be given to the custodian of the records;
 - Hours and days of the week when such an inspection may be made; and
 - Payment of the cost of reproducing copies of documents.
- (ii) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extra copies of documents at the reasonable expense of the Association.

11.2. Indemnification of Directors, Officers, Employees and Agents. To the fullest extent allowed by applicable Washington law, the Association shall indemnify any Director, officer, employee or agent who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by the Association) by reason of the fact that he/she is or was a Director, officer, employee or agent of the Association or is or was serving at the request of the Association as a Director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by said person in connection with such suit, action or proceeding if he/she acted in good faith and in a manner he/she reasonably believed to be in, or not opposed to, the best interest of the Association, and, with respect to any criminal action or proceedings, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or with a plea of nolo contendere or its equivalent, shall not of itself create a presumption that a person did not act in good faith and in a manner which he/she reasonably believed to be in, or not opposed to, the best interest of the Association, and with respect to any criminal action or proceedings, had reasonable cause to believe his conduct was unlawful. Payment under this clause may be made during the pendency of such claim, action, suit or proceeding as and when incurred, subject only to the right of the Association to reimbursement of such payment from such person, should it be proven at a later time that such person had no right to such payments. All persons who are ultimately held liable for their actions on behalf of the Association as a Director, officer,

employee or agent shall have a right of contribution over and against all other Directors, officers, employees or agents and members of the Association who participated with or benefited from the acts which created said liability.

11.3. Enforcement; Attorneys' Fees. The Association and the Owners within the Property or any mortgagee on any Lot shall have the right to enforce all of the covenants, conditions, restrictions, reservations, easements, liens and charges now or hereinafter imposed by any of the provisions of this Declaration as may pertain specifically to such parties or owners by any proceeding at law or in equity. Failure by either the Association or by any Owner or mortgagee to enforce any covenant, condition or restriction herein contained shall in no event be deemed a waiver of their right to do so thereafter.

11.4. Agreements. Subject to the prior approval of Declarant (so long as Declarant owns any property for development and/or sale in the Property) all agreements and determinations, including settlement agreements regarding litigation involving the Association, all fully authorized by the Board of Directors shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in the Property or the privilege of possession and enjoyment of any part of the Property.

11.5. Implied Rights. The Association may exercise any right or privilege given to it expressly by this Declaration, the Bylaws, the Articles of Incorporation, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

11.6. Variances. Notwithstanding anything to the contrary contained herein, the Board of Directors or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Property.

11.7. Severability. Invalidation of any one of these covenants, conditions or restrictions by judgment or court order shall not affect the other provisions hereof and the same shall remain in full force and effect for the duration of this document.

11.8 Duration. The covenants, conditions and restrictions of this Declaration shall run with and bind the land for a term of thirty-five (35) years from the date of this Declaration being recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless rescinded by a vote of at least ninety percent (90%) of the Owners and ninety percent (90%) of the first mortgagees. Provided, however, amendments that do not constitute rescission of the planned development may be adopted as provided in Section 11.9 below. Additionally, any such rescission, which affects the Common Area, shall require the prior written consent of the City of Kennewick and/or Benton County.



11.9 Amendment. Except as otherwise provided in Sections 11.5, 11.8, and the restrictions set forth elsewhere herein, this Declaration may be amended at any time by an instrument approved by not less than seventy-five percent (75%) of the total votes for all Lots subject to this Declaration, of each class of members that are eligible to vote. However, during the period of time prior to the Turnover Meeting, Declarant has right to amend Declaration, Bylaws and Articles of Incorporation without notice to or approval by any Class A members. Any amendment must be executed, recorded and certified as provided by law and a copy provided to all Owners of record within 30-days prior to the effective date of the amendment. Provided, however, that no amendment of this Declaration shall effect an amendment of the Bylaws or Articles without compliance with the provisions of such documents, and the Washington Non-Profit Corporation statutes. Provided further, so long as the Declarant own any Lot, no amendment affecting the general plan and development or any other right of the Declarant herein contained may be effected without the express written consent of the Declarant or its successors and assigns.

11.10 Release of Right of Control. The Declarant may give up their right of control in writing at any time by notice to the Association.

11.11 Personal Pronouns. All personal pronouns used in this Declaration, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall apply to the plural and vice versa.

11.12 Unilateral Amendment by Declarant. The Declarant may amend this Declaration in order to comply with the requirements of the Federal Housing 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 Washington, or any other state in which the Lots are marketed and sold, or any corporation wholly owned, directly or indirectly, by the United States or the State of Washington, or such other state, the approval of which entity is required in order for it to insure, guarantee or provide financing in connection with development of the Property and sale of Lots. Prior to the Turnover Meeting, no Declarant amendment shall require notice to or approval by any Class A member.

11.13 Resolution of Document Conflicts. In the event of a conflict among any of the provisions in the documents governing Orchard Park Estates, such conflict shall be resolved by looking to the following documents in the order shown below:

1. Declaration of Covenants, Conditions and Restrictions;
2. Articles of Incorporation;
3. Bylaws;
4. Rules and Regulations.



IN WITNESS WHEREOF, the undersigned being the Declarant herein, has executed this instrument this 3rd day of MARCH, 2005.

By: [Signature]

Printed Name: MICHAEL NEWELL

Title: SEC/TREAS

STATE OF OREGON)
County of Deschutes) ss.
)

This instrument was acknowledged before me on the 3 day of Mar, 2005 by Mike Newell, as Sec/Treas. of Hayden Enterprises, Inc.

Betty J Powell
NOTARY PUBLIC FOR OREGON
My Commission Expires: June 1, 2007

