

# **Abiqua Heights Covenants, Conditions and Restrictions**

Electronic Version  
September, 2005

**Disclaimer:** This electronic version of the Abiqua Heights CC&Rs was created to facilitate distribution for current homeowners, as well as those considering building or purchasing within Abiqua Heights. It is also intended to provide an easier means for searching. There are no guarantees as to the accuracy of the information provided in this document.

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## **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF ABIQUA HEIGHTS, SUBDIVISION**

This Declaration, to be effective upon its recording in Marion County, Oregon, is made and executed this 1st day of September, 1996, by Design-Home Construction, Inc. (hereinafter "Declarant").

Declarant is the owner of certain real property in the City of Silverton, Marion County, Oregon, which is more particularly described on the plat maps, hereinafter referred to as Exhibit A attached hereto and incorporated herein by this reference.

Declarant proposes to create a subdivision to be known as ABIQUA HEIGHTS, composed of portions of the real property described on Exhibit A.

Declarant has deemed it desirable for the preservation of the value and desirability of the real property in the community to subject the real property in the Community to the following covenants, conditions, restrictions and easements, including the Common Property of the Community and to establish an Association to which will be delegated the power and authority to maintain and administer the Common Property and enforce the covenants and restrictions and promote the health, safety, and welfare of the community.

Now, therefore, the Declarant hereby declares that each parcel of real property in the community, as and when it is separately platted and declared to be a part of ABIQUA HEIGHTS, shall thereafter be sold, conveyed, owned and occupied subject to the rights of the Association and upon acceptance of a deed or land sale contract to purchase, the Declarant and each purchaser covenant and agree to comply with said provisions of this Declaration.

Exhibit A to the CCR's erroneously described only Phase I of Abiqua Heights Subdivision (approximately 29.6 acres) rather than the entire parcel (approximately 67.4 acres), originally approved by the City of Silverton for potential inclusion in the subdivision in resolution No. PC-95-20, recorded on April 22, 1996, at Reel 1304, Page 632, of the Real Property Records of Marion County. Attached hereto as Exhibit A and by reference incorporated herein is the legal description for the full approximately 67.4 acre parcel. If platted and included in this subdivision pursuant to Article III, §1 and Article I, § 16 of the CCR's, subsequent phases of Abiqua Heights will be subject to all obligations and benefits of the CCR's, as amended.

Declarant is hereby excused from building a lodge and three golf holes on the common areas as proposed in Article VII, paragraph 2 of the CCR's. Declarant has conveyed, or will convey, the Phase I common area to the Association, subject to encumbrances of record, and the Association will thereafter control the use and maintenance of, and determine future improvements to, the common areas subject to the CCR's, as amended, and Association bylaws. In all other respects, Declarant will retain the rights and obligations of the Declarant under the CCR's as amended, other than the right to determine improvements to the common area.

[language added by Measure 1, August 2003 AHHA Vote].

**On September 24, 2005, Declarant and the Abiqua Heights Homeowners Association proposed, and the homeowners voted, by written ballot, on 8 proposed additions or amendments to the CCRs and Association By-Laws. Three of the proposed amendments passed with the requisite 75% (72 of 96 Class A members) necessary to amend the CCRs.**

**The following addition and amendments were approved by the homeowners:**

**Article IV Architectural Committee Section 2 Committee Approval Required Subsection a.**

**Article V Use Restrictions and Obligations Section 10 Landscaping Subsection g.**

**Article V Use Restrictions and Obligations Section 10 Landscaping Subsection i.**

**ARTICLE I**  
**Definitions**

Section 1. "Association" means the ABIQUA HEIGHTS Homeowners' Association, Inc., an Oregon non-profit corporation.

Section 2. "Board" means the board of directors of the Association.

Section 3. "Bylaws" means the bylaws of the Association as amended from time to time.

Section 4. "Common Expenses" means expenditures made by or financial liabilities incurred by the Association and includes any allocations to the reserve account under Article XI, Section 3.

Section 5. "Common Property" means any real property or interest in real property which is owned or leased by the Association, or designated in a plat for transfer to the Association. "Common Property" does not include real property or improvements thereon which are platted as part of Living Units, even though such real property and improvements may be owned or used in common by owners or occupants of those Living Units. Common Property includes personal property owned or leased by the Association.

Section 6. "Declarant" means Design-Home Construction, Inc. and any successor or assign thereof specified as a successor Declarant in a written agreement between the parties.

Section 7. "Declaration" means this declaration and any amendments thereto.

Section 8. "Living Unit" means a building or a portion of a building located upon a Lot and intended for separate occupancy and ownership; it does not include a building or portion of a building on Common Property.

Section 9. "Lot" means a unit of land in the Property which is platted for the purpose of constructing thereon one or more Living Units; at such time as a Lot has one or more Living Units constructed upon it, it ceases to be a Lot for purposes of voting and assessment pursuant to this Declaration.

Section 10. "Member" means and refers to every person, group of persons or entity who holds membership in the Association. An Owner is a member. There are two classes of members:

- a. A Class A Member is the Owner of a Lot or Living Unit.
- b. A Class B Member is the Declarant,

Section 11. "Mortgage" means a mortgage or a deed of trust pertaining to a Lot or Living Unit.

Section 12. "Mortgagee" means a mortgagee or a beneficiary of a deed of trust.

Section 13. "Occupant" means the occupant of a Living Unit.

Section 14. "Owner" means the legal owner or contract purchaser of any Lot or Living Unit which is part of the Property, but does not include a mortgagee who has an interest in the Lot or Living Unit merely as security for the performance of an obligation.

Section 15. "Plat" means the final map, diagram, drawing, replat or other writing containing the descriptions, locations and other information on Common Property, Living Units and/or Lots in a subdivision of a or a portion of the real property in the Community.

Section 16. "Property" means each parcel of real property on which Declarant records a plat and declares all or portions thereof to be part of ABIQUA HEIGHTS. "Property" also means all improvements and fixtures located on the Property. "Property" includes tracts of Common Property identified as such on the recorded plat, whether or not such tract has been conveyed to the Association. "Property" does not include any portion of the real property described in Exhibit A unless and until a plat and declaration for such portion are recorded by Declarant.

## **ARTICLE II**

### **Name**

The name by which the Community is to be identified is "ABIQUA HEIGHTS".

## **ARTICLE III**

### **General Development Plan**

Section 1. Phased Development. Declarant proposes to develop and plat the community four (4) phases. As each phase is developed, Declarant will record a plat of the phase, which plat will identify the number of Lots and/or Living Units included in that phase and any tracts which will or may be subsequently conveyed to the Association as Common Property. There is no limit on the number of phases that may be included in the community. Declarant is not obligated to include all or any particular portion of the real Property described in Exhibit A in the community, except that which is described in Phase 1.

Section 2. Residential Development. Each phase will be platted for development as single family residential units. If all phases are developed, the community will contain approximately 164 lots. The actual number of Living Units and/or Lots may be more or less.

Section 3. Common Property. As each phase of the Community is platted, the plat shall depict the tracts, if any, which will or may be transferred to the Association as Common Property. At such times as the Declarant shall deem the Association financially capable of operating and maintaining a tract of Common Property, it shall convey such tract to the Association; provided, that any tract so conveyed shall have debt encumbrance that is assumable at the time of conveyance, or the Board may negotiate the process of assignment of the debt between the Board and the Declarant. The Association shall accept each such conveyance and shall thereafter be responsible to operate and maintain such tract of Common Property and any facilities and improvements thereon at the Association's expense. Prior to the conveyance, the Declarant shall be responsible to maintain such tract and facilities at Declarant's expense, but shall be entitled to

reasonable reimbursement through homeowner's fees. The Common Property is more fully described in Article VII.

Section 4. Sidewalks. As individual lots sell, sidewalks shall be completed by the Owner of that Lot through the building permit process, and the construction cost of the sidewalk will not be included in price of the Lot. If the Declarant completes the sidewalks prior to an Owner's purchase, the sidewalk will be added to the price of the lots. Thereafter, the City of Silverton and the Homeowners Association will be responsible for sidewalk maintenance. Steps and sidewalk will be constructed to Adams Street subject to the Adams Street neighborhood's objections.

Section 5. Additions.

a. So long as there are Class B memberships of the Association, additional property may be annexed to the above-described property without the assent of the Class A members of the Association, provided that authorities typical to those described in Article XV, Section 2 determine that the annexation is in accord with the general plan theretofore approved by them. Thereafter, such additional property may be annexed only with the consent of two-thirds (2/3) of the Class A members of the Association. The scheme within the Covenants and Restrictions shall not, however, be extended to include any additional property unless and until the same is annexed to the real property described on Exhibit A, as hereinafter provided. The maximum number of Lots with class A members which can be included in the Association are the original 164. Plus an additional 13 memberships may be extended to the "Johnson" property (agreement dated 3-5-95) and 5 memberships to the "Imel" property (agreement dated 12-29-95) as long as the agreements extended to the original parties are in perpetual good standing; must be approved individually in writing by the Declarant or his assigns.

b. Further, the Declarant and his assigns shall hold 40 perpetual prepaid Class A memberships with voting powers equal to 40 homeowners. These 40 memberships, when actively used, shall have the same financial obligations as the other class A members for that amount of cost and cost of operation that exceeds the original items committed to by the Declarant in Article VII, Section 2.

c. Any annexation made pursuant to this Article, or otherwise, shall be made by recording a Supplementary Declaration of Covenants and Restrictions among the Land Records for Marion County, Oregon, which Supplementary Declaration shall extend the scheme of the within Covenants and Restrictions to such annexed property or associated properties. Such Supplementary Declaration may contain such complementary additions and modifications to the covenants and restrictions set forth in the within Declaration as may be necessary to reflect the different character or use, if any, of such annexed property.

d. Pfeifer Homes shall be the exclusive builder as of September 1, 1996 for all major construction projects in ABIQUA HEIGHTS and will remain in such capacity so long as they maintain their solid reputation as a quality builder and remain a solvent and viable company.

**ARTICLE IV**  
**Architectural Committee**

Section 1. Architectural Committee. Except for the original construction and except for purposes of proper maintenance and repair or as otherwise provided in this Declaration, it shall be prohibited to install, erect, attach, apply, paste, hinge, screw, nail, build, alter, plant, remove or construct any lighting, shades, railings, screens, awnings, patio covers, decorations, fences, features, walls, aerials, antennas, radio or television broadcasting or receiving devices, slabs, sidewalks, curbs, gutters, patios, balconies and decks, porches, driveways, greenhouses, gutters and downspouts, garage walls, fireplaces, or to make any change or otherwise alter (including any alteration in color), in any manner whatsoever the exterior of any Lot, Living Unit, or upon any of the Common Areas or Common Facilities, (if any), within the project or to remove or alter any windows or exterior doors of any Living Unit, materially increase the cost of operating or insuring the Association property or impair any easement, until the complete plans and specifications, showing the location, nature, shape, height, form of change (including, without limitation, any other information specified by the Board of Directors or its designated committee) shall have been submitted and approved in writing as to safety, the effect of any such alterations on the cost of maintaining and insuring the Association property and harmony of design, color and location in relation to surrounding structures and topography, by the Board of Directors of the Association, or by an architectural control committee designated by it.

Section 2. Committee Approval Required. No building, fence, wall, patio, deck, or other structure or improvement shall be commenced, erected, or maintained upon the Property nor shall any exterior addition to, or change or alteration therein, be made, nor shall any landscaping of any portion of the Property be commenced or maintained until the plans and specifications have been submitted to and approved in writing by the Architectural Committee.

a. No structure on any building lot in the subdivision shall be erected, placed or altered until the building plan, material specifications and plot plan, showing the location of such building, have been approved in writing by the Architectural Committee to assure quality of workmanship and materials, compatibility and harmony of external design with other structures, if any, in the subdivision. In the event the Architectural Committee fails to approve or disapprove, in writing, within sixty (60) days after a complete set of major plans and specifications, including site plan, site elevations (existing and proposed), floor plans, sections, site drainage and utilities, building elevations with all detail, all roof details and types, all exterior colors, or thirty (30) days after minor plans and specifications for minor alterations with similar details and information that is pertinent on a major plan have been submitted, to the Architectural Committee, construction may proceed as though approval had been given, approval will not be required and the related covenants shall be deemed to have been fully complied with. This clause is intended for the convenience only of the members and shall not construe approvals of details that are obviously not in compliance. Furthermore, it shall not apply during times of catastrophe, national emergency, depressions, other breakdown of normal economical, transportation or political systems, etc.. **[language amended by measure 4-1, September, 2005 AHHA vote]**

b. To save frustration and money it is recommended that preliminary designs be submitted for opinion before final design is completed.

c. Construction of a Living Unit must be completed within one year of the date excavation is begun, unless modified by the architectural review committee. Landscaping shall be substantially completed within one year following completion of Living Unit construction.

d. No Owner shall be permitted to partition any lot for any purpose without Board approval.

e. No lot line adjustment that will reduce the size of any Lot to less than 8,000 square feet for a single residence.

f. Compliance with building codes and other requirements established by the applicable governmental authorities are the responsibility of each Owner and the Architectural Committee has no responsibility for the structural integrity, safety or operation of any improvements or structures.

g. Silverton's zoning ordinances require that all lots with original slopes exceeding 15% are in Silverton's Comprehensive plans as being within the slide hazard zone and must have a soil engineer or geologist study as part of the structural permit approval process. Each lot in question must verify this before proceeding with permanent designs. Also there are some lots with an overlay of materials from street construction; unless an individual soil report states otherwise all foundation footings shall be placed on virgin materials.

h. The Declarant or his assign shall remain on the architectural review committee, at his option, until the last lot is developed.

## **ARTICLE V**

### **Use Restrictions and Obligations**

Section 1. Residential Use. No commercial activities of any kind shall be carried on in any Living Unit or on any other portion of the Property except activities relating to the sale or temporary lease of Lots or Living Units. This provision, however, shall not be construed so as to prevent or prohibit an Owner from maintaining his professional personal library, keeping his personal business or professional records or accounts, handling his personal business or professional telephone calls, or occasionally conferring with business or professional associates in his Living Unit.

Section 2. Nuisance to the Neighborhood. No obnoxious or offensive activity shall be carried on upon any Lot or Living Unit, nor shall anything be done thereon which may be or may become an unusual annoyance or nuisance to the neighborhood.

Section 3. Use of Lots. No Lot shall be used for other than single-family residential purposes. There shall not exist on any such Lot at any time a trailer, shack, bam, temporary building (except for temporary construction job shed) or guesthouse. Home occupancy shall be allowed as

provided by the ordinances of the City of Silverton, except as expressly restricted or prohibited herein.

Section 4. Outbuildings, Sunrooms, Solariums and Gazebos. All such structures must be approved by the Architectural Committee and must be of a design that is compatible to the Living Unit. Committee criteria will include location, function, shape, size, material, color, placement and visibility from adjacent properties. Free-standing fabric (tent-type) structures will not be allowed except on a temporary basis (7 days maximum) for special occasions such as weddings, birthday parties, reunions, etc. **[Language amended by Measure 23, August 2003 AHHA Vote].**

Section 5. Firewood. Any firewood stored on a Lot shall be for use at the residence on that Lot and shall not exceed a reasonable quantity. All firewood shall be neatly stacked and kept in a location which is not visible from the public street in front of the residence. If the firewood is covered or protected from the elements, said covering shall be a structure conforming to the same standards as an outbuilding as described herein. No firewood shall be cut on site except during clearing of the Lot. Splitting of wood is allowed. Coverings consisting of plastic, tarps, canvas, or other non-permanent structures such as lean-tos are not permitted.

Section 6. Environmental Pollution. No activities producing noxious odors or substances or other environmental pollution are permitted in the subdivision. This includes but is not limited to multiple kennels, burning of trash or garbage which is expressly prohibited. Compost piles, the spreading of animal manures in gardening or landscape activities, burning of prunings and leaves, customary and legal use of yard care pesticides and fertilizers, and outdoor cooking of food are permitted. Courtesy shall be used when burning such that burning conditions will be avoided that will allow smoke to drift horizontally into neighboring homes.

Section 7. Vacant Lots. Vacant Lots shall be maintained by the Owner to the following standards; Lots shall be kept free of trash, garbage, and debris. Grasses and weeds shall not be allowed to exceed 12-inches in height. Vacant Lots are not to be used for the dumping or disposal of leaves, trimmings, and lawn clippings or rubbish or garbage of any kind.

Section 8. Mailboxes. Individual mailboxes are not allowed in the subdivision in front of residences. Mailboxes will be provided by the US Postal Service. In those locations that the postal services places their pedestals, the effected homeowners shall be aware that the sidewalk may have a short diversion into their landscaped areas as much as 9' from the street curb to allow continuous pedestrian traffic on the sidewalk. Newspaper receptacles, which are not architecturally offensive, may be attached to Living Units.

Section 9. Outdoor Play Equipment. Outdoor play equipment such as pools, spas, hot tubs, jungle gyms and swing sets must be placed behind the Living Unit as such unit is viewed from the nearest public street.

Section 10. Landscaping.

a. Landscape plans must be approved by the Architectural Committee. Landscaping is required in front and side yards within two months of occupancy, provided, however, that the Architectural Committee may extend the 2-month deadline when weather conditions make timely completion impracticable. Entire Lots will be completely landscaped (including gardens) within one (1) year of occupancy. Generally, yards and landscaping are to be kept in a neat and attractive condition. Specifically, lawns shall not be allowed to exceed 6-inches in height. **[Language amended by Measure 24, August 2003 AHHA Vote].**

b. Planting of evergreen trees which reach a mature height of over 20-feet are prohibited. Evergreen trees which have a mature height of less than 20-feet are permitted, but may not obstruct existing solar collector panels, or passive solar devices, if any, of adjoining Lots. Deciduous trees of any species may be planted and residents are encouraged to do so, especially flowering trees that will contribute to the beauty of the neighborhood.

c. Hedges shall not be allowed to exceed 8-feet in height on portions that lie behind the forward most part of the residence, and 4-feet in height on portions that lie forward (in front) of the residence.

d. Like measurement limitations for hedges shall apply to all fences placed on the Lot. In addition, all fences must be of wood or masonry/brick/stone construction. Fences of wire, barbed wire, bare galvanized chain link, or other metal post construction are expressly limited.

e. Acceptable yard ornamentation will be determined by the Architectural Committee on a case by case basis. This shall not apply to seasonal holiday decorations which are promptly removed within thirty (30) days after the holiday.

f. Non-colored exterior and outdoor lighting that enhances safety, security, and adds to the beauty of a landscaped home is encouraged, but lighting, particularly spot or flood and similar lighting must not be allowed to shine directly into neighbors' homes.

g. Street trees shall meet the city of Silverton's code requirements regarding street trees. A minimum one (1) inch caliper tree must be planted. **[language amended by measure 4-2, September, 2005 AHHA vote]**

h. Cutting of any tree with a diameter greater than 6" is prohibited without Architectural Review Committee approval; great efforts shall be made to protect all trees especially the large Native Oaks. Any flagrant damage of trees that may encourage their removal with be severely dealt with.

i. Homeowners shall maintain all slopes, embankments and cut banks during and after construction phase to prevent erosion and run off onto neighboring properties. Retaining walls and drainage measures shall be used and landscape planting should be used to address any run off and erosion problems. **[new language added by measure 4-3, September, 2005 AHHA vote]**

Section 11. Architectural Specifications. In order to create and maintain a high standard of living in ABIQUA HEIGHTS, the following guidelines have been established and must be adhered to:

- a. All buildings shall be constructed on the site and be of new materials.
- b. The minimum square footage for a single story residence shall be no less than 1,500 square feet, exclusive of garages and decks/patios/porches. For two story residences, the minimum square footage shall be no less than 1,800 square feet. In no case shall the total value of a home and lot with its improvements be less than \$180,000.00; such value base will change annually by the Portland, Oregon, Construction Consumer Price Index. NOTE: The Homeowner's Association's primary concern, however, is the exterior appearance of each home.
- c. Each single story and two story house shall have a garage, either attached or detached, with the capacity to contain at least two cars. Any garage constructed separately from the Living Units shall conform to the specifications of "outbuildings", i.e. with like roof and siding construction, etc.. Any home which site will allow a daylight basement will require special review by the Architectural Review Committee to be greater than one and one half stories above that basement level; also any home with a "crawl space" which wishes to be greater than two and one half stories will require special review. The review will consider sight and esthetic obstruction based on obvious known factors at the time of review.
- d. Carports are not allowed.
- e. Patio covers are allowed, however, they must be positioned out of the view from the public street in front of the residence, and shall be constructed according to the standards for outbuildings.
- f. No residence may be constructed utilizing wood as a primary heat source. Fireplaces and wood stoves are permitted, however, they must be secondary to gas, oil, electric, or active/passive solar. Heat pumps, if used, must have their condenser unit located no further than five (5) feet from the Living Unit and must receive special consideration to provide screening from public view and noise attenuation.
- g. All driveways are to be finished, that is, paved with concrete slab, with the exception that asphalt road surfacing may be used on the pole portion of any flag lot. In no case will gravel or oiled driveways be allowed.
- h. Legal setback lines established by ordinance of the City of Silverton must be complied with except to the extent modified by this subdivision. Setbacks for accessory structures shall be the same as the main structure setbacks of Silverton; subject to the Architectural Review Committee's consideration of variance relative to neighborhood sight views and privacy. No side yard shall be less than 6' on flat ground nor less than 10' on settings where finish grades may be over 25%. No combination of neighboring side yards shall be less than 16'. Lots may need front setbacks other than 20' to allow sufficient construction area; also many lots with trees may require special front yard and other yard considerations to save the trees, which have priority.

i. All dwellings and garages shall have adequate gutters and downspouts, and collected water shall be distributed onto the property in accordance with municipal and other codes. Runoff water shall not be directed or allowed to flow openly onto adjoining Lots, If no storm sewer is available for roof, area, or footing drains through easement alternatives, dry wells must be used.

j. Easements to serve neighboring Abiqua Heights lots or common space: roof drains, sanitary sewer, electrical underground, landscape sprinkling, driveways, etc. will not be unreasonably withheld if it can be established that such use and convenience will not damage or affect the esthetic, economics, or livability of each member's individual lot.

k. Most architectural styles are allowed in the subdivision with the following exceptions; manufactured homes, log homes, dome homes, simple ranches, boxes and simple A-frames are not allowed. Complex A-frames are subject to Architectural Committee review and approval. Other styles not mentioned are subject to the review and approval of the Architectural Review Committee. Designs shall be required to have significant character and details.

l. Roofing materials. Roofs in the subdivision shall be of cedar shakes or shingles, tile (either natural or artificial) or architectural composition (with minimum 30-year warranty). The following roofs are expressly prohibited: composition roofs with a manufacturer's warranty of less than 30 years. All structures are encouraged to have portions of roofs at a minimum pitch of 8:12. Roof materials not mentioned are subject to approval by the Architectural Committee.

m. Siding. Any style of solid wood siding, such as cedar or redwood, either vertical or horizontal channeled, lap, or board and bat configuration is acceptable. Lap siding of wood/cement composite is also acceptable, as is dryvit, stucco, brick, and stone veneer. These last four (4) veneers must comprise 30% of the exterior of the surfaces of the available siding space (excluding doors & windows) of the front elevation of the home, as determined by the ARC. Also, when placed at corners, materials must wrap the corner by 16" to give a column or balanced appearance. Expressly prohibited is T-111 or similar sheet-type sidings and vinyl and aluminum sidings. All wood siding must be back-primed to avoid unnecessary paint peeling or siding warping. **[Language amended by Measure #2-9, October 2004 AHHA Vote].**

n. Colors: All wooden exterior surfaces shall be painted or stained. Pastels and earth tone colors are required. All exterior colors are subject to review and approval by the Architectural Committee. Color samples should be submitted with plans, prior to construction. Colors will be expected to be in harmony with the neighborhood. Each house shall be repainted or regained every eight (8) years or less unless it can be demonstrated that specific coatings are adequate.

o. If a home is not constructed on a lot within 24 months after closing of its purchase the Owner must install sidewalks the full frontage length of the property within 24 months of that closing. All lots must have construction started within 36 months of closing from sale from the Declarant.

p. If posts and columns are needed for decks or living areas located beyond the main foundation, these structures must be of an appropriate mass to architecturally appear to support the structure above. No creations spindly in nature will be accepted.

q. A visual architectural approval system may be developed such that a point system would determine acceptable levels of detail. Some review items would be depth, size and details of dormers, bay windows, cornice, comers, window mullions, true chimneys, overhangs, % of dryvit, % of masonry, etc..

Section 12. Animals. Other than a maximum of 10 major (dogs, cats, etc.) pets per Living Unit, no animals or fowls shall be raised, kept, or permitted within the Property. No animals of any kind shall be kept, bred or raised for commercial purposes. All pets shall be confined to the Owner's Living Unit and shall not be permitted to run free or otherwise to be or become a nuisance or source of annoyance to other Owners or Occupants. All Owners of pets will abide by municipal sanitary regulations, leash laws, and rules or regulations promulgated by the Board. An Owner may be required to remove a pet after receipt of two notices in writing from the Board of violations of this section or any such laws, rules, or regulations governing pets.

Section 13. Vehicles. No trucks (except, pickups of 1-ton weight or less), campers, motor-homes, trailers, boats, motorcycles, or similar recreational vehicle shall be parked on any Lot or street other than temporarily (in no case in excess of 24 hours) and then solely for the purpose of loading or unloading or a service call; provided, however, that such vehicle may be kept within an Owner's enclosed garage. If either the Declarant or the Association (but neither is obligated to do so) designates a portion of the Property specifically for the purpose of parking such vehicles, such storage or parking shall be solely at the risk of the Owner, and neither Declarant nor the Association nor any other person shall have any responsibility therefore, whether or not any fee or charge is made or paid for the privilege of such storage or parking. No vehicles of any kind shall be parked on any portion of the Property while such vehicles are in a state of disrepair or while being repaired. Recreational vehicles may be parked on site outside the building only after significant demonstration and architectural details are provided to the Architectural Review Committee that show their exterior existence is not obvious and well screened so that they blend into the landscaping or design.

Section 14. Signs. No signs shall be erected or displayed on any Lot, Living Unit, or any other portion of the Property without the prior written permission of the Board; provided, such permission shall not be required for one sign no larger than 6 inches by 24 inches displaying the name and/or address of the Occupant, or one temporary sign no larger than 18 inches by 24 inches advertising the Lot or Living Unit for sale or lease, which shall be removed upon the sale or lease of the Lot or Living Unit. During construction the builder may advertise with a sign no greater than 32" x 48".

Section 15. Poles, Antennas, Etc. No exterior mounted television or radio antennae or large satellite dishes shall be installed or maintained on any portion of the Property; nor shall exterior machinery or equipment for cooling and/or heating be installed or maintained on any portion of the Property without prior approval of the Architectural Committee; the Committee's approval of the installation of any one such device shall not constitute a waiver of this section nor obligate

the Committee to approve the installation of any other such device. Flag poles and small satellite dishes may be installed after approval.

Section 16. Trash Collection and Storage. No Lot shall be used or allowed to be used or maintained as a dumping ground for rubbish. All trash and garbage shall be kept in closed containers and out of public view except that containers may be placed curbside on collection day.

Section 17. Underground Utilities. Other than temporary above-ground wiring for construction or emergencies, no outdoor overhead wire or service drop for the distribution of electrical energy or for telecommunication purposes nor any pole, tower, or other structure for independent transmission or support of said outdoor wire shall be erected, placed or maintained on any portion of the Property. All such installations shall be underground. All electrical, phone and cable conduit must be placed within the foundation pour and not be exposed outside of the exterior or siding of the home.

Section 18. Leases. Each Owner shall have the right to lease his Lot or Living Unit. Any said lease shall be in writing and shall provide that its terms shall be subject in all respects to the provisions of the Declaration and that any failure by the lessee to comply with the provisions of said Declaration shall constitute a default under said lease. Any such lessee shall be entitled to the use and enjoyment of the Common Property. For purposes of this Section, the term "lease" is for short term convenience of Owner of the property only and firmly construes that the owner will reoccupy his residence after the period of absence for vacation, health, etc.. Any lease greater than 12 months must be approved by the Board of Directors.

Section 19. Respect for other neighborhoods. When exiting Abiqua Heights Subdivision onto Reserve Street all owners and their guests shall make a conscious effort to turn right and go to city center by means of Steelhammer Road and Oak Street. Main Street and its steep slopes should be left to local use only. Also, when returning from city center, members and their guests shall make the same conscious effort to use the same route described above. Furthermore, use of Steelhammer Road shall be done with the same respect as if it were their own street.

Section 20. [Well Water.] – **[Language deleted by Measure #2-13, October 2004 AHHA Vote].**

Section 21. Owner's Obligation.

a. Exterior Living Unit Maintenance. Each Owner shall maintain the exterior appearance of his Living Unit and Lot in an attractive manner and in accordance with the Architectural Committee of ABIQUA HEIGHTS. The Association may, in the interest of the general welfare of all other Owners of the property, provide periodic maintenance upon either Lots or Living Units subject to annual assessment as provided herein, as follows (but in no way limited to the following): periodic painting of exterior building surfaces and trim, repair and maintenance of gutters, downspouts, roofs, shrubs, lawns, walks, driveways and other exterior improvements, all as and when it deems necessary for the purposes aforesaid but not without

resolution by the Board of Directors of the Association and not without reasonable notice to the Owner of any Lot or Living Unit.

b. The Owner of a Lot will be responsible for any necessary grading, drainage, or retaining walls. Neither the Declarant, or the Association shall be responsible for any of the cost thereof.

c. Maintenance of Lots. Subject to rules and regulations to be adopted by the Association, the Lot Owners shall have the primary responsibility for the maintenance of their Lots. In the event an Owner of any Lot in the properties shall fail to maintain the premises and improvements situated thereon in a manner satisfactory to the Board of Directors, the Association, after approval by two-thirds (2/3) of the vote of the Directors shall have the right, through its agents and employees, to enter upon said parcel and repair, maintain, and restore the Lot and the exterior of the building and any other improvements erected thereon. The cost of such exterior maintenance shall be added to and become part of the assessments to which such Lot is subject.

d. Each Owner must maintain fire and extended coverage insurance. If a loss occurs and is not replaced or repaired in a timely manner by the Owner, the Association may cause such repair or replacement to be done and place a lien on the Owner's property. If the Associations costs for such repair or replacement are not repaid within a reasonable course of time, not to exceed four (4) months, the Association may proceed with hen foreclosure proceedings as provided under the laws of the State of Oregon. If the cost of such repairs are excessive (and exceed \$5000.00), the Board may option to the lien process without causing the improvements first.

#### Section 22. Use of Streets.

a. Streets are basically for motorized vehicles and bicycles. Other uses need to be limited.

b. Specific items that are not allowed are:

1. Basketball hoop setups at curbs
2. Skateboard ramps and obstacles, etc.

c. If there is a specific occasion of such objects, it must be sanctioned by the Board.

#### Section 23. Construction Conduct

a. Workmen shall be courteous to neighbors and development visitors,

b. Work on Sundays is to be limited to the hours of 9: 00 AM to 7: 00 PM unless restricted to within the enclosure of the home under construction.

c. Work on weekdays and Saturdays is limited to the hours of 6: 00 AM to 9: 00 PM unless restricted to within the enclosure of the home under construction.

d. Audio and visual disruption are of the essence: if neighboring properties submit reasonable complaints, the Board may assert limitations greater than contained in this section.

e. Job site music will not be excessive.

f. Each site will have a large garbage container. No scattered food and paper debris will be acceptable.

g. Mud, gravel and other construction debris that gets on the street will be reasonably cleaned off at the end of the day or sooner if it creates a public hazard.

h. If construction assemblies are necessary in the street (i.e. cranes, concrete pumps, etc.), necessary precautions shall be maintained relative to the convenience and safety of the public.

1) Safety cones in the streets are a suggested practice,,

2) Notice to adjoining neighbors or to local traffic of possible impending danger are suggested.

i. Each construction site shall have paid access to a serviced chemical toilet.

j. Construction job sheds shall be maintained and not placed in a manner that will unnecessarily impede traffic flow.

Section 24. Additional Rules and Regulations. The Board from time to time may adopt, modify, or revoke rules and regulations governing the conduct of persons and the operation and use of the Property as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Property. Such action may be modified by vote of not less than two-thirds (2/3) of each class of members voting in person or by proxy, at a meeting duly called for this purpose. A copy of the rules and regulations, upon adoption, and a copy of each amendment, modification or revocation thereof, shall be delivered promptly to each Owner and shall be binding upon all Owners and Occupants on any portion of the Property from the date of delivery.

## **ARTICLE VI**

### **Common Area Access**

Section 1. Public access. There are currently (in all 4 phases) (3) public accesses to the common open area at Abiqua Heights. This common open area is owned by the Homeowners and not dedicated to the public of the City of Silverton.

- a. The public, other than Abiqua Heights Homeowners, may walk into and through the open space but only on designated walkways.
- b. The public may not use any of the facilities, play golf, have a picnic, etc. without:
  1. Specifically being occupied by a member of the association.
  2. Or be a guest of the association.
  3. Or having had paid a fee for a specific use.

Section 2. Adjacent Homeowners. Homeowners who own property next to the common areas are encouraged to have sight obstructing hedges or fences for no greater than 50% of their property line that fronts on the common area. This is to encourage: a) visibility and openness; b) provide a social atmosphere that encourages conversation and the foundation for friendly relationships.

Section 3. Courtesy. In light of the above Section 2, all those who use the common areas must never trespass over the lots that are adjacent to the common area without the permission of those owners. They are to instruct their children with the same respect as well and are responsible for their guests.

- a. The Homeowners Association shall include in its draft of rules governing the use of these common areas the same consciousness.

## **ARTICLE VII**

### **Common Property**

Section 1. Streets. Declarant agrees to improve all streets on Common Property to standards required by the City of Silverton, prior to conveyance to the City of Silverton. All streets within the Property shall be Common Property tracts and shall be maintained and repaired by the City of Silverton at such time as Declarant conveys the same. The Declarant may elect to dedicate the streets as public streets at such time as the City of Silverton or any other governmental body is willing to accept such public dedication and thereafter maintain the streets.

Section 2. Other Common Property Tracts. As each phase of the community is platted, the plat shall depict the non-street tracts, if any, which will or may be transferred to the Association as Common Property. Such tracts may contain landscaping, ponds, and/or facilities or improvements for the use, or benefit, in common, of the members of the Association. Declarant does not agree to complete improvements on any non-street Common Property tract other than a multi-purpose common lodge, three holes of golf and the primary two (2) bottom lakes. Other improvements such as tennis courts, swimming pool, racquetball courts, etc. that may be desired by homeowners must be approved by 2/3rds of the class A members when the Declarant is no longer in control.

Section 3. Use of Common Property.

a. Golf holes. Three holes of golf use shall be used in accordance with the rules and regulations promulgated by the Association. There may be time limitations relative to family functions having priority in common areas.

b. Lakes. Lakes and waterways are for aesthetic view quality only. Swimming, wading, or other recreational use is strictly prohibited. Children under 12 years of age shall not be left unattended around any waterway. A fish habitat will be established. Fishing possibilities and regulations will be subject to a Board decision.

c. Lodge building. The Lodge shall have times and regulations administered by the Board of Directors. There may be user fees relative to family get togethers, weddings, etc.

d. Neotraditional Center. The common area may be used to construct a restaurant; other small retail or general use functions that may be beneficial to the social interaction, convenience, and economical well being of the homeowner's as a group.

e. No residential subdivision, The common area may never be subdivided to create more residential lots or any other residential growth in number of units.

Section 4. Conveyance To The Association. As soon as sufficient lots have been sold and assessments have been collected allowing the Association to be financially capable of operating and maintaining a tract of Common Property, Declarant shall convey said tract to the Association; provided, that any tract so conveyed shall have debt encumbrance that is assumable at the time of conveyance or the Board may negotiate the process of assignment of the debt between the Board and the Declarant. The Association shall accept each such conveyance and shall thereafter be responsible to operate and maintain such tract and any facilities thereon in good repair and in an attractive appearance at the Association's expense. Prior to the conveyance, the Declarant shall be responsible to maintain such tract and facilities at Declarant's expense, but shall be reasonably reimbursed through homeowner's fees. Should the Association fail to maintain the Common Property, the City of Silverton may cause the maintenance of such open space and other common areas to be made and such costs shall become a lien upon the real property. Notwithstanding the foregoing, all Common Property within a phase shall be conveyed to the Association upon conversion of Class B memberships as provided under Article Y., Section 2 (b).

Section 5. Mortgage or Conveyance of Common Property. After conveyance to the Association, the Common Property cannot be mortgaged or conveyed without the affirmative vote of four-fifths of each class of members voting in person or by proxy at a meeting duly called for this purpose; provided, however, that this Section shall not apply to the granting of easements for public utilities or other public purposes, or to the dedications described in Article VIII, Section 3(c).

Section 6. Condemnation of Common Property. After conveyance to the Association, the Board shall have the sole authority to negotiate with any public or private body or person having the

power of eminent domain and to sue or defend in any litigation involving such bodies or persons with respect to the Common Property or any portion thereof which is the subject of any condemnation or eminent domain proceeding.

## **ARTICLE VIII**

### **Easements**

Section 1. Declarant's Rights and Easements. Declarant shall have the following special rights and easements until all portions of the real property described in Exhibit A capable of residential development have been platted and submitted by Declarant to ABIQUA HEIGHTS and until both of the following events have occurred: (a) all Lots and Living Units owned by Declarant in all phases have been sold and conveyed; and (b) all Common Property depicted on all phases has been conveyed by Declarant to the Association.

a. Sales Offices and Models. Declarant shall have the right to maintain a sales office and model unit in one or more of the Lots or Living Units which the Declarant owns. The Declarant and prospective purchasers and their agents shall have the right to use and occupy the sales offices and models during reasonable hours any day of the week. Declarant may assign these rights to other developers of Lots or Living Units on the Property.

b. "For Sale" Signs. The Declarant may maintain a reasonable number of "For Sale" signs which do not conform in style or size with the requirements of this Declaration at reasonable locations on the Property. Declarant may assign this right to other developers of Lots or Living Units on the Property.

c. Declarant's Easement, The Declarant hereby reserves an easement over the Common Property for all reasonable purposes related to the improvement or maintenance of any Common Property and the construction of Living Units on any and all Lots owned by Declarant.

Section 2. Utility Easements.

a. Generally, there is hereby created a blanket easement upon, across, over, through and under the Property for ingress, egress, installation, replacement, repair and maintenance of all utility and service lines and systems including, but not limited to water, sewers, gas, telephones, electricity, television, cable or communication lines and systems. By virtue of this easement, it shall be expressly permissible for the Declarant or the providing utility or service company to install and maintain facilities and equipment on the Property, to excavate for such purposes and to affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of Living Units providing such company restores disturbed areas to the condition in which they were found. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines or other utility service lines or facilities for such utilities may be installed or relocated on said Property except as programmed and approved by the Declarant, until the event as described in Article VIII, Section I have occurred, or by the Architectural Committee thereafter. This easement shall in no way affect any other recorded

easements on the Property. This easement shall be limited to improvements and utility installations as originally constructed or repairs and replacements thereof

b. Specifically, responsibility for utility improvements, installations, repairs and replacements are as follows: 1) The City of Silverton shall be responsible for the sanitary sewer mainline and the storm drain as it pipes into the City's street right-of-way, H) the Association shall be responsible for storm drainage of the pond and its structures and maintenance of the Common Areas.

Section 3. Members Easement of Enjoyment. Subject to the provisions of this Declaration and rules and regulations of the Association, every Owner shall have a right of easement of enjoyment in and to the Common Property, and an easement of access through the Common Property as reasonably necessary for access to the Owner's Lot or Living Unit, which easements shall be appurtenant to and shall pass with the title to every Lot or Living Unit. The Owner's easements created hereby shall be subject to the following rights of the Association:

a. The right of the Association to establish reasonable rules and to charge reasonable assessments and fees for capital expenditures on the Common Property and the maintenance and upkeep of the Common Property and payment of all Association expenses.

b. The right of the Association to suspend the right of an Owner to use the Common Property for any period during which any assessment against his Lot or Living Unit remains unpaid for more than 30 days after notice; the right of the Association to suspend the right of an Owner to use any Common Property for a period not to exceed 60 days for any other infraction of the Declaration or rules and regulations promulgated and adopted by the Board.

c. The right of the Association to dedicate the streets, or to dedicate and transfer all or any other portion of the Common Property to any public agency or authority subject to such conditions as may be agreed to by the members. Other than streets and except as to the grant of easements for utilities and similar or related purposes, no such dedication and transfer shall be effective unless approved by a vote of two-thirds of each class of members voting in person or by proxy at a meeting duly called for this purpose, and unless the holders of first mortgage liens on any of the Lots of Living Units have approved such dedication or transfer.

d. Any Owner may delegate his right of enjoyment to the Common Property to the members of his family and to his guests, as well as to any lessee of his Lot or Living Unit, subject to the regulations as may be established from time to time by the Board.

[No Section 4 in original]

Section 5. Easements for Encroachments. If an encroachment results from construction, reconstruction, repair, shifting, settlement or movement of any portion of the community, an easement for the encroachment exists to the extent that any Lot or Common Property encroaches on any other Lot or Common Property. An easement continues for maintaining the encroachment so long as the encroachment exists. Nothing in this Section relieves an Owner of liability in case

of the Owner's willful misconduct or relieves Declarant or any other person of liability for failure to adhere to the plats of the Community.

Section 6. Easement of Access on Streets. The owners of each Lot shall have, for themselves and their agents, employees, and invitees, an easement to travel on the streets within the Property as reasonably needed for ingress and egress to their respective property or Lot. The "Johnson" (agreement dated 3-5-95) and "Imel" (agreement dated 12-29-95) properties also have this privilege and it shall be good as long as the agreements extended to the original parties are in perpetual good standing. Homeowners of these properties must observe the same respect in their travel habits as the Homeowners of Abiqua Heights.

## **ARTICLE IX**

### **Association**

Section 1. Organization, Adoption of Bylaws. Upon the execution and recording of this Declaration, the Articles of Incorporation shall be filed, and the Association shall be organized to provide for the preservation and architectural control of the Property, the maintenance of the Common Property, and to promote the health, safety, and welfare of the Owners and Occupants of the Property. Declarant shall simultaneously adopt and record Bylaws for the Association.

Section 2. Board of Directors. The affairs of the Association shall be governed by a Board of Directors as provided in the Bylaws. The Declarant shall appoint the initial directors of the Board.

Section 3. Power and Duties of the Association. The Association shall have such powers and duties as may be granted or delegated to it by law, the Articles of Incorporation, this Declaration, and the Bylaws.

## **ARTICLE X**

### **Membership and Voting Rights**

Section 1. Members. Every person or entity who is a record owner of a fee interest or undivided fee interest in any Lot or Living Unit or a purchaser in possession under a land sale contract shall be a mandatory member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of any Lot or Living Unit; except for Article 111. 5.b. Transfer of ownership of a Lot or Living Unit automatically transfers membership in the Association.

Section 2. Voting Rights. The Association shall have two classes of voting members:

a. Class A. Class A members shall be all Owners designated in Section I hereof with the exception of Declarant; Class A members shall be entitled to one vote for each Lot or Living Unit owned; provided, however, that at such time as one or more Living Units have been

constructed on a Lot, the vote for the Lot shall cease to exist, When more than one person holds an interest in a Lot or Living Unit, all such persons shall be members and shall exercise their vote for said Lot or Living Unit as they determine; provided, in no event shall more than one vote be cast with respect to any Lot or Living Unit.

b. Class B. The Class B member shall be the Declarant. The Class B member shall be entitled to three (3) votes for each Lot or Living Unit owned; provided, however, that at such time as one or more Living Units have been constructed on a Lot, the votes for the Lot shall cease to exist. All Class B memberships shall cease and be automatically converted to Class A memberships on the occurrence of the earlier of the following:

(i) The total number of votes represented by Class A memberships becoming equal to or greater than the total number of votes represented by Class B memberships after all portions of the real property described in Exhibit A capable of residential development have been platted and submitted to ABIQUA HEIGHTS; or

(ii) December 31, 2010.

Section 3. Transitional Advisory Committee: In addition to the board of directors of the Association, the Declarant shall form a transitional advisory committee in accordance with the provisions of ORS 94.600 to 94.604 not later than the 60th day after the Declarant has conveyed lots representing 50 percent of the Class A votes in the Association. Such Committee shall be appointed in accordance with the requirements of ORS 94.604, and shall operate until the administrative responsibility for the common areas have been turned over to the Association, pursuant to ORS 94.609 et seq., or pursuant to such other provision of the Declaration as may govern turnover.

## **ARTICLE XI**

### **Covenants for Assessments**

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant hereby covenants, and each Owner of any Living Unit or Lot by acceptance of a deed thereof, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay the Association (1) annual assessments or charges, (2) special assessments, and (3) individual assessments to be established and collected as hereinafter provided. All such assessments, together with interest thereon and together with attorneys' fees and costs of collection thereof as hereinafter provided, shall be a continuing lien upon the Living Unit or Lot against which each such assessment is made. Each such assessment, together with interest thereon, attorneys' fees and costs of collection thereof, shall also be the personal obligation of the person who was the Owner of such Living Unit or Lot at the time when the assessment fell due as well as a lien on his respective Living Unit or Lot. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them, but the lien of the assessment shall run with the Lot or Living Unit.

Section 2. Purpose of Annual Assessments. The annual assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the Owners and Occupants, and to pay the common expenses of the Association. Common expenses shall include:

- a. Expenses of administration and architectural review.
- b. Expenses of maintenance and operation of the Common Property before and after conveyance to the Association as provided in Article VII, Section 4.
- c. Property tax or mortgage payments.
- d. Cost of insurance or bonds as provided in Article )UII.
- e. Costs of funding reserves as provided in Section 3 of this Article.
- f. Any deficit in common expenses for any prior fiscal year of the Association.
- g. Any other items properly chargeable as an expense of the Association.
- h. Any other items agreed upon as common expenses by Owners.
- i. Credits from income received from Lodge functions, or other income sources.

Section 3. Reserve Accounts for Major Repair and Replacement of Improvements. The Association shall maintain a reserve account or accounts for repair or replacement of those structures or improvements, on the Common Property which will naturally require replacement in more than three and less than thirty years, taking into account the estimated remaining life of such items and the replacement cost thereof. The reserve account or accounts will be funded out of the annual assessments each year. The initial budget of the Association shall provide for not less than five percent (5%) of the amounts of each annual assessment to be paid into the reserve account. That initial amount may be increased annually as provided in Section 4 below. That initial amount shall not be decreased nor shall the funds be used for any purpose other than defraying all or part of the costs of major repair or replacement as provided herein, except by a vote of two-thirds (2/3) of each class of members voting in person or by proxy, at an annual meeting or special meeting duly called for this purpose. The Board shall invest the reserve funds in an insured interest-bearing account until needed.

Section 4. Maximum Annual Assessment. The maximum annual assessment shall be \$500.00 per year for each Lot or Living Unit assessed. The first payment shall be prorated at the closing of each sale.

- a. From and after January 1 of the year immediately following the conveyance of the first Lot or Living Unit to an Owner other than Declarant, the Board may increase the maximum annual assessment each year not more than ten percent (10%) above the maximum assessment for the previous year without a vote of two-thirds (2/3) of the membership .

b. From and after January 1 of the year immediately following the conveyance of the first Lot or Living Unit to an Owner other than Declarant, the maximum annual assessment may be increased above ten percent (10%) by a vote of two-thirds (2/3) of each class of members voting in person or by proxy, at an annual meeting or special meeting duly called for this purpose.

c. The Board may fix the annual assessment at any amount not in excess of the maximum. The first annual assessment for the period ending December 31, 1996, shall be \$500.00.

d. Within ninety (90) days after the end of each fiscal year, the Board of Directors shall supply to all Owners an accounting of the Common Expenses for such fiscal year actually incurred and paid, together with a tabulation of the amount collected pursuant to the budget adopted by the Board of Directors for such fiscal year, and showing the net amount collected pursuant to the actual expenditures plus reserves.

e. Assessments may be reduced only if prudent and no deficit will occur.

Section 5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Property for which the reserve account is inapplicable or inadequate, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members voting in person or by proxy, at a meeting duly called for this purpose.

Section 6. Uniform Rate of Assessment. Except as provided in Sections 9 and 10, both annual and special assessments must be fixed at a uniform rate for all Lots and Living Units; provided that at such time as one or more Living Units on a Lot are assessed, the Lot shall no longer be assessed. A living Unit shall be assessed at such time as an occupancy permit has been issued by the appropriate governing body.

Section 7. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage which was recorded before the assessment became due. Sale or transfer of any Lot or Living Unit shall not affect the assessment lien. However, the sale or transfer of any Lot or Living Units pursuant to the foreclosure or deed in lieu of foreclosure of a first mortgage with priority over the lien shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer, and to the extent the assessment is not the personal obligation of any Owner or former Owner such unpaid expenses or assessments shall be deemed a common expense of the Association. No sale or transfer shall relieve such Lot or Living Unit from liability for any assessments thereafter becoming due or from the lien thereof.

Section 8. Junior Lienholders. Junior lienholders or purchasers under them who acquire title to a Lot or Living Unit as a result of foreclosure of such junior lien shall take title subject to the lien

of any unpaid assessments. In voluntary conveyance of a unit, the grantee shall take title subject to the lien of any unpaid assessments.

Section 9. Exemption from Assessments. No Lot or Living Unit owned by Declarant shall be subject to any annual or special assessment until it has been sold or leased to a person other than Declarant.

Section 10. Individual Assessments. The Association may assess an Owner individually for common expenses incurred through such Owners fault or direction or failure to perform the obligations imposed on Owners by this Declaration, the Architectural Committee, or rules and regulations. Further, an Owner shall be assessed individually for fines, charges and expenses incurred by the Association in the process of collection of assessments or enforcement of this Declaration, and Architectural Committee, or rules and regulations.

## **ARTICLE XII**

### **Collection of Assessment Enforcement**

Section 1. Compliance With Declaration, Rules and Regulations. Each Owner and Occupant shall comply with the Declaration, and rules and regulations adopted pursuant thereto.

Section 2. Authority to Enforce and Collect. The Board shall take prompt action against any violator to enforce the provisions of the Declaration, rules and regulations adopted pursuant thereto, including prompt action to collect any unpaid assessment. In doing so, the Board may exercise one or more of the remedies, separately or concurrently, specified in the Declaration as well as any other remedies which may be available at law. In addition, any aggrieved Owner may bring an action to recover damages or to enjoin, abate, or remedy any noncompliance or breach by appropriate legal proceedings.

Section 3. Abatement and Enjoining Violations. In the event of a violation of provisions of the Declaration, or any rules or regulations adopted pursuant thereto, the Board shall have the right to:

a. Upon thirty days (30) written notice, enter the Lot or Living Unit in which or as to which such violations exists and to summarily abate and remove, at the expense of the Owner, any thing or condition that may exist therein contrary to the intent and meaning of said provisions, and the Board shall not thereby be deemed in any manner of trespass; or

b. Enjoin, abate, or remedy such thing or condition, including removal or alteration of construction by appropriate legal proceedings.

c. The Board may immediately stop any construction processes that have been started without approval of the architectural review committee by giving a 24 hour written notice that is either hand delivered or delivered by certified mail. If owners or their builders wish to get an early start on excavation, etc. without such stoppage occurring, it is advised that they give the

architectural review committee preliminary plans as prescribed in Article IV.2.b with a written request to start specific steps in the construction process. If such early processes are deemed excessive or unclear, the committee may deny an early start request.

Section 4. Interest, Late Charges, Fines. Interest shall accrue on any assessment or portion thereof not paid when due at the rate of twelve percent (12%) per annum until paid. The Board may, if it deems appropriate, impose charges for late payments of assessments and, after giving notice and an opportunity to be heard, levy reasonable penalties for violations of the Declaration and rules and regulations adopted pursuant thereto.

Section 5. Acceleration of Assessment. In the event that an Owner fails to pay an installment of an assessment when it is due, the Board may, after ten days' written notice, declare the defaulting Owner's entire annual or special assessment due immediately, and interest thereafter shall accrue on the entire assessment at twelve percent (12%) per annum until paid. Assessments shall be in default, and be lien securing such assessment may be foreclosed, if the assessment is not paid in full within thirty (30) days of mailing written demand therefor.

Section 6. Attachment, Notice, Recordation, Duration, and Foreclosure of Lien, Appointment of Receiver-, Power to Bid at Foreclosure Sale. The Association shall follow the provisions regarding the attachment, notice, recordation and duration of liens established on real property under the laws of the State of Oregon and provisions regarding the foreclosure of liens under the laws of the State of Oregon except that notwithstanding ORS 87.376, a lien for an unpaid assessment that would otherwise attach under ORS 87.352 to ORS 87.362 shall be deemed a consensual lien, and shall continue in force for a period of three years from the date the particular unpaid assessment became due, and may be foreclosed by suit at any time during that three year period. In any such foreclosure suit, the Owner shall be required to pay reasonable rental for the Lot or Living Unit. The plaintiff in such foreclosure suit shall be entitled to the appointment of a receiver to collect the rent. The Board, acting on behalf of the Association, shall have the power to bid on the Lot or Living Unit at the foreclosure sale, and to acquire and hold, lease, mortgage and convey the same on behalf of the Association.

Section 7. Action to Obtain and Recover a Money Judgment. The Board may bring an action to obtain a money judgment against an Owner or Occupant for damages for the Owners or Occupant's breach or noncompliance with the provisions of the Declaration or rules and regulations adopted pursuant thereto. The Board may bring an action to obtain a money judgment for unpaid assessments against the Owner personally obligated to pay the same; the action to recover a money judgment for unpaid assessments may be maintained without foreclosing or waiving the lien securing the same.

Section 8. Collection Costs, Attorneys' Fees. Owners who fail to pay assessments when due shall be obligated to pay reasonable fees and costs including, but not limited to, attorneys' fees incurred in connection with the Board's efforts to correct the delinquent or unpaid assessments, whether or not suit or action is commenced. In the event the Board commences suit or action for the collection of any amounts due or to seek damages or enforcement of any provision of this Declaration or rules and regulations adopted pursuant thereto, or enforcement of any rights under State or Federal law existing because of the Declaration, the defendants, jointly and severally,

will be liable for the cost of such suit or action, including reasonable attorneys' fees to be fixed by the court or courts, both at trial and on appeal in State or Federal Court or in Bankruptcy, in addition to all other sums or obligations.

## ARTICLE XIII

### Insurance

Section 1. Types of Insurance Policies. For the benefit of the Association and the Owners, the Board shall obtain and maintain at all times, and shall pay for out of the common expenses funds, the following insurance:

a. A policy or policies of fire insurance with the extended coverage and special form endorsements, for the full insurable replacement value, if available, of any structure on Common Property.

b. A policy or policies insuring the Association, its Board and the Owners individually, against any liability to the public or the Owners and their invitees or lessees, incident to the ownership, supervision, control or use of the Common Property. Limits of liability under such insurance shall be not less than \$500,000 per occurrence for bodily injuries and property damage liability. Such limits and coverage shall be reviewed at least annually by the Board which may increase the limit of and/or coverage, in its discretion. Said policy or policies shall be issued on a comprehensive liability basis and shall provide cross liability endorsements wherein the rights of named insured under the policy or policies shall not be prejudiced as respects his, her or their action against another named insured.

c. The Board shall secure and cause to be maintained in force at all times a fidelity bond for any person or entity handling funds of the Association, including, but not limited to, employees of any professional manager. The premiums on such bonds shall be paid by the Association. The Association shall not be responsible for any loss or damage to real or personal property of any Owner, whether stored in the Common Property or in the Owners Lot or Living Unit, nor shall the Association maintain any insurance coverage for such loss.

Section 2. Insurance Companies Authorized. AU policies shall be written by a company licensed to do business in Oregon and holding a "Commissioners rating" of "A" and a size rating of "AAA", or better, by Best's Insurance Reports, or as may be otherwise acceptable to the Board.

Section 3. Authority to settle. All losses under policies hereafter in force regarding the Common Property shall be settled exclusively with the Board or its authorized representative. Releases and proofs of loss shall be executed by at least two (2) directors.

Section 4. Prohibition of Contribution. In no event shall the insurance coverage obtained and maintained by the Board hereunder be brought into contribution with insurance purchased by the individual Owners or their mortgagees.

Section 5. Provisions in Insurance Policies. The Board of Directors shall make every effort to secure insurance policies that will provide for the following:

a. A waiver of subrogation by the insurer as to any claims against the Board, the manager, the Owners and their respective servants, agents and guests.

b. A provision that the policy cannot be canceled, invalidated or suspended on account of the conduct of any one or more individual Owners.

c. A provision that the policy cannot be canceled, invalidated or suspended on account of the conduct of any officer or employee of the Board without prior demand in writing that the Board of Directors or manager cure the defect.

d. A provision that any "no other insurance" clause in the policy exclude individual Owners' policies from consideration.

Section 6. Review of Insurance Policies. At least annually, the Board shall review all insurance carried by the Association, which review shall include an appraisal of all improvements made to the Common Property by a representative of the insurance carrier writing the master policy.

Section 7. Insurance Proceeds Sufficient to Cover Loss. In case of fire, casualty or any other damage and destruction, the insurance proceeds of the policy, if sufficient to reconstruct the damaged or destroyed structure, shall be applied to such reconstruction. Reconstruction of the damaged or destroyed structure, as used in this paragraph, means restoring the structure to substantially the same condition in which it existed prior to the fire, casualty or disaster. Such reconstruction shall be accomplished under the direction of the Board.

Section 8. Insurance Proceeds Insufficient to Cover Loss. If the insurance proceeds are insufficient to reconstruct the damaged or destroyed structure, the damage to, or destruction of, such structure shall be promptly repaired and restored by the Board, using the proceeds of insurance, if any, on the structure for that purpose. If the members approve, as provided in Article 3a, Section 5, the Association may levy a special assessment to increase the proceeds available for reconstruction.

## **ARTICLE XIV**

### **General Provisions**

Section 1. Records. The Board shall keep detailed records of the action of the Board, including minutes of the meetings of the Board and minutes of the meetings of the Association. The Board shall also keep detailed and accurate financial records in chronological order of the receipts and expenditures of common expenses. The Board shall also maintain an assessment roll in which there shall be an account for each Lot or Living Unit subject to assessment. Such account shall designate the name and address of the Owner of the Lot or Living Unit, the amount of each

assessment against the Owner, the dates and amounts on which the assessment becomes due, the amounts paid upon the account, and the balance due on the assessments.

Section 2. Indemnification of Directors, Officers, Employees and Agents. 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 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 acted in good faith and in a manner he 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 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, should it be proven at a later time that said 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 to 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.

Section 3. Enforcement. The Declarant, the Association, the Owners of Lots or Living Units within the Property, the holder of any recorded mortgage on any Lot or Living Unit, 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 appertain specifically to said bodies or owners by any proceeding at law or in equity. Failure by any of them to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of their right to do so thereafter. In the event suit or action is commenced to enforce the terms and provisions of this Declaration, the prevailing party shall be entitled to its attorneys' fees and costs in such suit or action to be fixed by the trial court, and in the event of an appeal, the cost of the appeal, together with reasonable attorneys' fees, to be set by the appellate court. In addition thereto, the Association shall be entitled to its reasonable attorneys' fees incurred in any enforcement activity taken on delinquent assessments, whether or not suit or action is filed.

Section 4. Severability . Invalidation of any one of these covenants or restrictions by judgment or by court order shall not affect the other provisions hereof and the same shall remain in full force and effect.

Section 5. Duration. The covenants and restrictions of this Declaration shall run with and bind the land for a term of thirty (30) years from the date of this Declaration being recorded, after

which time they shall be automatically extended indefinitely unless rescinded by a vote of at least ninety percent (90%) of each class of members and approved by ninety percent (90%) of the holders of first mortgages on the Lots and Living Units.

Section 6. Rights of-Mortgagees. Any holder of a first mortgage lien on any Lot or Living Unit upon written request to the Board, shall have the right to:

- a. Receive timely written notice of meetings of the Association.
- b. Receive timely written notice of any proposed abandonment or termination of the Association.
- c. Receive timely written notice of any material amendment of the Declaration or the Articles of Incorporation or Bylaws of the Association.
- d. Receive timely written notice of any decision by the Association to terminate professional management and to assume self-management of the Association, if the Association previously has retained professional management services.
- e. Inspect the financial records and similar documents of the Association at reasonable intervals during normal business hours.
- f. Receive written notice of substantial damage to or destruction of any Common Property and/or any improvements thereon; and
- g. Receive timely written notice of any condemnation or eminent domain proceeding affecting the Common Property or any portion thereof

Section 7. Notice of Default by Mortgagor. Upon written request of the mortgagee, received prior to any breach or default, the Association shall give the mortgagee written notification of any default by the mortgagor in the performance of such mortgagor's obligations under this Declaration which is not cured within thirty (30) days.

Section 8. Limitations. As long as there is a Class B membership, the Association may not use its resources to take a public position in opposition to the General Plan of Development or to changes thereto proposed by the Declarant.

## **ARTICLE XV**

### **Amendments to Declaration**

Section 1. Amendment by Members. The Declaration may be amended by affirmative vote of not less than three-fourths (3/4) of all Class A members; provided, however, that until such time as the events described in Article VIII, Section 1, have occurred, no amendment shall be effective without the approval of the Declarant; and, provided further, that no amendment to Article XIV,

Section 6, shall be effective without the prior written approval of all institutional holders of first mortgages on Lots or Living Units.

Section 2. Declarant's Right to Amend. Notwithstanding the provisions of Section 1, the Declarant may amend the Declaration in order to comply with requirements of the Federal Housing Administration, the Veterans Administration, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Mortgage Loan Corporation, any department, bureau, board, commission or agency of the United States or the State of Oregon or any corporation wholly-owned, directly or indirectly, by the United States or the State of Oregon which insures, guarantees or provides financing for a planned community or Lots or Living Units in a planned community; provided, however, that if the need for such an amendment occurs after the turnover meeting described in the Bylaws, such an amendment shall not be effective without the concurrence of a majority vote of all Class A members.

Section 3. Recordation of Amendments. Amendments to the Declaration shall be executed and certified by any officer of the Association designated for that purpose, or in the absence of designation, by the President of the Association, and recorded in the deed records of Marion County.

## ARTICLE XVI

### **Exemption from Planned Community Act**

ABIQUA HEIGHTS is not exempt from the Oregon Planned Community Act, ORS 94.565 et seq., the provisions of which shall apply to this Declaration or the Association.

## ARTICLE XVII

### **Provisions for the Benefit of the City of Silverton**

Section 1. Repair and Maintenance. In the event the Association fails to properly maintain and repair the common areas, the City of Silverton may, after giving the Association sixty (60) days written notice of its failure and a reasonable opportunity to perform, require the Association to maintain or repair the off street parking and Common Areas of the Property to remove any public nuisance or hazard.

Section 2. City of Silverton Easement. The City of Silverton shall have an easement of access over and upon the Common Property for emergency equipment and personnel of utilities, fire department, and police department, and for the purpose of inspection and investigation. Further, the City of Silverton shall have an easement of access to all utility lines. In the event damage occurs as a result of the City exercising its easement rights as provided herein, the City will restore the surface of the Property and any landscaping and improvements thereon as reasonably close to their original condition as possible.

Section 3. Building- Codes and Zoning Ordinances. Each Owner shall comply with all applicable laws, including but not limited to, building codes and zoning ordinances in the construction of any improvements on the Property, in addition to any requirements set forth by the Architectural Committee.

Section 4. Amendments Affecting- the City of Silverton. Notwithstanding the provisions of Article XVI, this Declaration may not be amended in any manner which would adversely affect the City of Silverton.

Section 5. Dissolution of the Association. Unless the streets in the Property have been dedicated to and accepted by the City of Silverton, the Association shall not dissolve without the consent of the City of Silverton.

**ARTICLE XVIII**

**Phase I of Abiqua Heights**

The Declarant has recorded a plat for Phase I of ABIQUA HEIGHTS. Phase 1, as depicted on the plat, shows 64 lots and common areas. Phase I consists of 64 lots and common areas which shall be Common Property. Declarant hereby declares that upon the recording of the plat for Phase 1, said 64 lots and common area shall become "Property" as that term is used in this Declaration. This same Declarant shall be the basis for the Covenants, Conditions and Restrictions of Abiqua Heights Phase 11, 111, & IV as referred in Silverton's Resolution No. PC-95-2.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed the day and year first above written.

DESIGN HOME CONSTRUCTION, INC.

By: \_\_\_\_\_

Its: \_\_\_\_\_