

**AMENDED AND RESTATED DECLARATION  
OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR THE CAPES  
MARCH 22, 2003**

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Tillamook County, Oregon 2003-419490

04/18/2003 11:50:29 AM  
DEED-ACCR Cnt#1 Str#1  
\$200.00 \$11.00 \$10.00 - Total = \$221.00



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

Tassi O'Neill, Tillamook County Clerk



Return to: → Capes HOA  
P.O. Box 404  
Oceanside, OR. 97134

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

THIS DECLARATION is made this day of, by THE CAPES HOMEOWNERS'  
ASSOCIATION, INC., an Oregon non-profit corporation ("HOA").

**RECITALS**

The Declaration of Covenants, Conditions, and Restrictions for the Capes was recorded  
June 30, 1992, in Book 343, Pages 404, *et. seq.*, in the Records of Tillamook County, Oregon.  
The original Declaration was amended, restated, and recorded June 5, 1993, in Book 351,  
Pages 271, *et. seq.*, and has been amended several times since then (collectively, the "Prior  
Declarations.")

**DECLARATION**

**NOW, THEREFORE**, HOA hereby amends and restates such Prior Declarations to  
read in its entirety as follows, and declares that the property described in the Plat of The Capes  
shall be held, sold, and conveyed subject to this Declaration and the easements, covenants,  
conditions, restrictions and charges set forth in this Declaration, which shall run with such  
property and shall be binding upon all parties having or acquiring any right, title or interest in  
such property or any part thereof and shall inure to the benefit of each owner thereof.

**ARTICLE I**

**DEFINITIONS**

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

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

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

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such additional property to The Capes in accordance with Section 2.2 of this Declaration, but excluding any property withdrawn from The Capes in accordance with section 2.3 of this Declaration.

1.4 "**Attached Lot**" means any Lot on which an Attached Unit is or may be built, as shown on any plat subject to this Declaration. Platted Lots 63 and 64 are collectively an Attached Lot for all purposes and Platted Lots 175 and 176 are collectively an Attached Lot for all purposes.

1.5 "**Attached Unit**" means a single-family Living Unit which shares a common wall with another single-family Living Unit. A single-family Living Unit on lots 63 and 64 is an Attached Unit and a single-family Living Unit on Lots 175 and 176 is an Attached Unit. A single-family Living Unit on Lot 77 is an attached unit.

1.6 "**Common Areas**" means those tracts designated as "tracts" or "common area" or "open space" on any plat of the Property subject to this Declaration, or in any declaration annexing property to The Capes, including any Improvements thereon. The Common Areas shall include all areas designated Common Area on the Plat of The Capes, all roads, Manager's House, Bridge House, properties so designated by recorded amendment (including Lots 1, 2, 131, and 172), parking areas and a gate as shown on the plat subject to this Declaration.

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

1.8 "**Declaration**" means the easements, covenants, conditions, restrictions, and charges set forth herein, together with any rules or regulations promulgated hereunder, as the same may be amended or supplemented from time to time in accordance with the provisions hereof.

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

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

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

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

1.13 "**Lot**" means a platted or partitioned lot within the Property, including both Attached Lots and Detached Lots, and a Condominium Unit, with the exception of any tract or Lot marked on a plat of the Property as being common or open space or so designated in the Declaration or the declaration annexing such property to The Capes.

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

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

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

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

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION

All of the Property subject to the Prior Declarations shall remain subject to this Amended and Restated Declaration.

## ARTICLE III

### LAND CLASSIFICATIONS

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

**3.1.1** Attached Lots, which shall consist of all Lots on each of which are or may be constructed one Attached Unit.

**3.1.2** Detached Lots, which shall consist of all Lots which are not Attached Lots.

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

**3.1.4** "Common Areas" means those tracts designated as "tracts" or "common area" or "open space" on any plat of the Property subject to this Declaration, or in any declaration annexing property to The Capes, including any Improvements thereon.

The Common Areas shall include all areas designated Common Area on the Plat of The Capes, all roads, Manager's House, Bridge House, properties so designated by prior recorded amendment (including Lots 1, 2, 131, and 172), parking areas and a gate as shown on the plat subject to this Declaration.

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



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

#### **ARTICLE IV**

##### **PROPERTY RIGHTS IN COMMON AREAS**

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

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

**4.2.1 Easements.** The Association, for the benefit of the Association and all Owners of Lots within the Property, shall retain the following easements over, under, and upon the Common Areas.

(a) An easement on all Common Areas for underground installation and maintenance of power, gas, electric, water, and other utility and communication lines and

services installed with the approval of the Board of Directors of the Association and any such easement shown on any plat of the Property.

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

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

**4.2.2 Assignment to Public Utilities.** ~~Declarant or the Association~~ *HOA* may (and, to the extent required by law, shall), grant or assign, easements to municipalities or other utilities performing utility services and to *communication* companies, and the Association may grant free access thereon to police, fire and other public officials and to employees of utility companies and communications companies serving the Property.

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

**4.4 Alienation of the Common Areas.** The Association may not by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas owned directly or indirectly by the Association for the benefit of the Lots unless the holders of at least 80 percent of the voting rights have approved such action, and such action complies with all applicable governmental requirements. The Association, upon approval in writing of at least eighty percent (80%) of the voting rights, and if approved by order or resolution of Tillamook County, may dedicate or convey any portion of the Common Areas to a park district or other public body for open space or recreational use. The sale, transfer, or encumbrance of the Common Area or any portion of the Common Area in accordance with this Section 4.5 may provide that the Common Area so conveyed shall be released from any restriction imposed on such Common Area by this Declaration. No sale, transfer, or encumbrance, may, however, deprive any Lot of such Lot's right of access or support without the prior written consent of the Owner of the Lot.

**4.5 Limitations on Use.** Use of the Common Areas by the owners shall be subject to the provisions of this Declaration and to the following:

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

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

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

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

## ARTICLE V

### **PROPERTY RIGHTS IN LOTS**

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

5.2 **Easements Reserved.** HOA hereby reserves the following easements for the benefit of the Association:

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

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

5.2.3 **Utility Easements.** Easements for installation and maintenance of utilities and drainage facilities are reserved over the front, rear and side five (5) feet of each Lot. Such

other easements as may be shown on a recorded plat subject to this Declaration are also hereby reserved. Within the easements, no Improvements (except for utilities), planting or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible. Notwithstanding the provisions of this paragraph, no such easements shall exist along adjoining side lot lines on which a common wall, as defined in Section 5.3, exists or which has been approved for zero lot line development.

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

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

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

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

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

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

**5.3.6 Arbitration.** In the event of any dispute arising concerning a common wall, or under the provisions of this Section 5.3, the Board of Directors of the Association shall act as arbitrators and their decision shall be final. In their reasonable discretion, the Board of Directors may award costs and attorneys fees, if any, to the prevailing party.

## ARTICLE VI

### RESTRICTIONS ON USE OF LOTS

**6.1 Structures Permitted.** No structures shall be erected or permitted to remain on any Lot except structures containing Living Units and structures normally accessory thereto. The

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

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

**6.3 Offensive or Unlawful Activities.** No noxious or offensive activities shall be carried on upon any Lot or Common Area, nor shall anything be done or placed on any Lot or

Common Area which interferes with or jeopardizes the enjoyment of other Lots or the Common Areas, or which is a source of annoyance to residents. No unlawful use shall be made of a Lot nor any part thereof, and all valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction thereof, shall be observed. Without limiting the generality of the foregoing, no heat pump or other heating, ventilating, or air conditioning equipment, or other equipment (such as hot tubs) the operation of which produces noise at a level higher than 80 decibels, shall be allowed on any Lot or Living Unit. Hot tubs shall have lockable covers and be covered at all times when not in use. The Board may promulgate special rules for the construction, use and operation of hot tubs. No unreasonably noisy activity shall occur on any Lot or Common Area. An unreasonably noisy activity consists of an activity that produces noise of a level inconsistent with the character of a high quality coastal recreational community. The Board shall determine what constitutes an unreasonably noisy activity and may promulgate rules regarding such activities. Outdoor activities that produce noise, excluding walking and normal conversation, shall not occur between the hours of 10:00 p.m. and 7:00 a.m.

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



remove a pet upon receipt of the third notice in writing from the Board of Directors of violations of any rule, regulation or restriction governing pets within the Property.

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

**6.6 Parking.** Parking of boats, trailers, motorcycles, trucks, truck campers, or other recreational vehicles or equipment shall not be allowed on any part of the Property nor on public streets adjacent thereto, excepting only within areas designated for such purposes by the Board of Directors of the Association or within the confines of an enclosed garage. In the case of Detached Lots, such vehicles may be parked in enclosed areas, subject to the Architectural Review Committee's approval of the enclosure. Pick-up trucks may be parked in a Living Unit's driveway while the owner of a Living Unit is residing at that Living Unit. No parking of any vehicle shall be allowed except in areas designated for parking on any plat subject to this Declaration.

**6.7 Vehicles in Disrepair.** No Owner shall permit any vehicle which is in a state of visible disrepair to be abandoned or to remain parked upon any Lot or on the Common Area or

on any street for a period in excess of forty-eight (48) hours. A vehicle shall be deemed in an "a state of visible disrepair" when the Board of Directors reasonably determines that its presence offends the occupants of the neighborhood. Should any Owner fail to remove such vehicle within five (5) days following the date on which notice is mailed to such Owner by the Association, the Association may have the vehicle removed from the Property and charge the expense of such removal to the Owner.

**6.8 Signs.** No signs shall be erected or maintained on any Lot except that not more than one "For Sale" sign placed by the Owner, 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. The restrictions contained in this paragraph shall not prohibit the temporary placement of "political" signs (not larger than twenty-four (24) inches high and thirty-six (36) inches long) on any Lot by the Owner.

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

**6.10 Completion of Construction.** The construction of any building on any Lot, including painting and all exterior finish, shall be completed within eight (8) months

from the beginning of construction so as to present a finished appearance when viewed from any angle. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon written approval from the Architectural Review Committee. The building area shall be kept reasonably clean and in workmanlike order during the construction period. All unimproved Lots shall be kept free of dead trees and man-made debris, but may otherwise be left in their natural condition until construction commences.

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

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

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

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

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

**6.16 Antennas and Satellite Dishes.** Exterior antennas shall not be permitted to be placed upon any Lot. Satellite dishes are allowed as provided in the Federal Communications Regulations, subject to guidelines established by the Architectural Review Committee.

**6.17 Maximum Height and Minimum Yard Requirements.** Each Lot shall be subject to the maximum height and the minimum yard requirements established by Tillamook County or other governmental entity with jurisdiction over each such Lot (subject to any variance granted by Tillamook County or other such governmental entity). In addition, all Lots are subject to any more restrictive maximum height or minimum yard requirements as shown on any plat subject to this' Declaration, or as established from time to time by the Architectural Review Committee (subject to any variance granted by the Architectural Review Committee). No Living Unit may be rebuilt, reconstructed or remodeled to a height any greater than its height at the time it was originally constructed.

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

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

on an Owners Lot which falls outside of an Owner's Lot and the Owner shall be responsible for removing any such tree which has fallen. No Owner may recontour, excavate, fill, remove sand from or otherwise alter a Lot, unless in connection with Improvements approved of by the Architectural Review Committee.

**6.20 Provisions Relating to Earth Movement.**

**6.20.1 Owners' Obligations.** It shall be the unconditional continuing personal obligation of each Owner of a Living Unit to remove completely all improvements from such Owner's Lot when such Living Unit has been declared permanently uninhabitable by any governmental agency in a final, unappealable manner. Such removal may be effected by the relocation of such Living Unit by specialized, licensed, insured movers expert in the movement of such structures, or by the demolition and removal of such Living Unit by licensed, bonded and insured contractors expert in such work. In any event, such Owner's obligation shall include the complete removal of the Living Unit's foundation and all improvements located on the Owner's Lot, and shall include the capping of all utilities serving such Living Unit. The relocation of such utility systems will not be the Owner's responsibility. In all events, the work done pursuant to this Section shall be accomplished in accordance with specifications established by the Association and all applicable governmental agencies (which agencies' specifications shall control in the event HOA's specifications conflict with, rather than supplement, those of such agencies), reasonably designed to achieve the purpose of restoring the Owner's Lot as nearly as possible to its natural state so as to minimize the collateral effects of such Lot's eventual subsidence.

**6.20.2. Association's Obligations.** HOA shall not have any obligation with respect to the maintenance or repair of any kind (including, without limitation, emergency repair) or replacement of any Living Unit or any other improvement upon any Owner's Lot to the extent that such maintenance, repair or replacement arises out of or is related to landslide, erosion or other earth movement. HOA shall have no obligation to take any steps to provide lateral or subjacent support to any Owner's Lot where the loss of lateral or subjacent support arises out of erosion, landslide or

earth movement, or out of any act of God. HOA shall have the right, but not the obligation, to enforce the obligations of an individual Owner under Section 6.20.1 above, including, without limitation, the right, in the event an Owner fails or refuses to perform such obligations within the time provided, to perform such obligations on such Owner's behalf and to recover the amounts so expended from such defaulting Owner, including, without limitation, all costs and expenses associated with the completion of such work, including the costs and expenses of permits, consultants' and experts' fees, attorneys' fees, and the costs of any damage to the Common Areas occasioned by the performance of such work. HOA shall be entitled to interest at a reasonable rate established from time to time by the Board of Directors, in addition to all other sums due hereunder. Any Mortgagee of a Living Unit shall have the right to enforce the obligations of such Mortgagee's Owner under Section 6.20.1 above, and to enjoy the same rights as HOA described in this Section 6.20.2.

**6.20.3. Timing of Owners' Obligations.** An Owner shall effect the removal of the Living Unit, as required under Section 6.20.1 and improvements from such Owner's Lot no later than the earlier of: (a) ninety (90) days after the date such Living Unit is declared uninhabitable by any governmental agency in a final, unappealable manner; or (b) ninety (90) days after HOA has reasonably determined the Living Unit suffers material damage related to the earth movement. An Owner who removes a Living Unit before such removal is required under Section 6.20.3 may do so, but in accordance with the standards of Section 6.20.1, and such work must be completed not more than ninety (90) days after it has begun.

**6.20.4 No Liability.** Neither HOA nor any Mortgagee of any Living Unit exercising any of the rights set forth in Section 6.20.2 above shall be liable to the Owner of the Lot and Living Unit whose failure or refusal to perform such obligations occasioned the performance of such work.

**6.20.5 Uninhabitable Unit Lots.** Upon the satisfactory completion of an Owner's obligations described in this Section 6.20, such Owner may convey such Owner's Lot to HOA free and clear of all liens and encumbrances, whereupon such Lot shall be converted to Common Area.

**6.20.6 Assessments; Voting.** Upon the earlier of (1) a final, unappealable governmental declaration that the Living Unit is uninhabitable due to the risk of imminent harm from earth movement (*i.e.*, red-tagging) or (2) the date an Owner removes a Living Unit and all improvements from the Lot in accordance with Section 6.20.1 above, such Lot and Living Unit shall not be subject to assessments accruing after such date. No Lot exempt from assessment under this section shall have any vote on any matter relating to HOA, and such Lot shall not be considered to be a Lot for purposes of calculating quorum or approval requirements, voting thresholds, etc.

## **ARTICLE VII**

### **ARCHITECTURAL REVIEW COMMITTEE**

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



cases where the Architectural Review Committee's consent is required by this Declaration, the provisions of this Article shall apply.

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

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

**7.4 Membership; Appointment and Removal.** The Architectural Review Committee shall consist of as many persons, but not less than three, as the Board may from time to time appoint. The Board may remove any member of the Committee from office at any

time and may appoint new or additional members at any time. The Association shall keep on file at its principal office a list of the names and addresses of the members of the Committee.

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

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

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

**7.8 Appeal.** Any Owner adversely affected by action of the Architectural Review Committee may appeal such action to the Board of Directors of the Association. Appeals shall be made in writing within ten (10) days of the Committee's action and shall contain specific objections or mitigating circumstances justifying the appeal. A final, conclusive decision shall

be made by the Board of Directors of the Association within fifteen (15) working days after receipt of such notification.

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

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

## **ARTICLE VIII**

### **ASSOCIATION**

The Association, its successors and assigns, shall be organized under the name "The Capes Homeowners Association, Inc.", and shall have such property, powers and obligations

as are set forth in this Declaration for the benefit of the Property and all Owners of property located therein.

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

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

**8.3 Voting Rights.** Voting rights within the Association shall be allocated as follows: Lots shall be allocated one vote per Lot.

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

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

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

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

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

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

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

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

## ARTICLE IX

### MAINTENANCE, UTILITIES AND SERVICES

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

**9.2 Maintenance of Utilities.** The Association shall perform or contract for the performance of maintenance of all private utilities within Common Areas and up to the boundary of each Lot, such as sanitary sewer service lines, domestic water service lines, storm water detention facilities, and storm drainage lines, except to the extent such maintenance is

performed by the utilities furnishing such services. Each owner shall be responsible for maintaining utility lines within such Owner's Lot.

**9.3 Repair and Maintenance of Attached Units.**

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

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

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

**9.4 Repair and Maintenance of All Units.**

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

9.4.2 If an Owner fails to maintain the exterior of its Living Unit in a manner consistent with the general standard of exterior maintenance of The Capes then the Association may perform necessary maintenance and repair and charge the cost of such maintenance and repair to the owner of such Living Unit and the amount so charged shall be an Article X assessment.

**ARTICLE X**  
**ASSESSMENTS**

**10.1 Annual Budgets.** The Association Board of Directors shall from time to time and at least annually prepare an operating budget for the Association, taking into account the current costs of maintenance and services and future needs of the Association, any previous overassessment and any surplus of the Association. The budget shall provide for such reserve or contingency funds as the Board deems necessary or as may be required by law. The method of adoption of the budget shall be as provided in the Bylaws.

**10.2 Assessment.** All Lots shall be subject to assessment on the following basis:

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

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

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

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



**10.3 Capital Improvement Assessments.** The Association may elect to purchase, construct or otherwise acquire additional equipment, facilities, property or other capital improvements for the general use and benefit of all the members of the Association, and for that purpose may impose a special assessment to be called a "Capital Improvement Assessment." The Association shall also establish a reserve account for replacement of all items of common property which will normally require replacement, in whole or in part, in more than three and less than thirty (30) years. Any such assessment described in this Section 10.3 shall be against the Lots within the Property on the same formula as set forth in Section 10.2. Any expenditure by the Association pursuant to this section, excluding projects included in the reserve account, in an aggregate amount of Ten Thousand and No/100 Dollars (\$10,000.00) or more shall be effective only if approved by not less than seventy-five percent (75%) of the votes of the members who are voting in person, by absentee ballot or by proxy at a meeting duly called for this purpose.

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

**10.5 Payment of Assessments.** The Association shall, not less than annually, provide notice to the owner of each Lot of the amount of the assessment for such Lot calculated in accordance with Article X of this Declaration. Assessments shall be due and payable on or before a date set forth in the notice which shall be not less than thirty (30) days

from its due date or at such other time or times set in accordance with this Declaration or the Bylaws of the Association.

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

## **ARTICLE XI**

### **ENFORCEMENT**

**11.1 Use of Common Areas.** In the event any Owner shall violate any provision of this Declaration, the Bylaws of the Association or other rules adopted by the Association governing the use of Common Areas, then the Association, acting through its Board of Directors, shall notify the owner in writing that the violations exist and that such owner is responsible for them, and may, after reasonable notice and opportunity to be heard, do any or all of the following: suspend such Owner's voting rights and right to use the Common Areas for the period that the violations remain unabated, or for any period not to exceed sixty (60) days for any infraction of its rules and regulations; impose reasonable fines upon the owner, in the manner

and amount the Board deems appropriate in relation to the violation, which fines shall be paid to the Association; or bring suit or action against such Owner to enforce this Declaration. Nothing in this section, however, shall give the Association the right to deprive any owner of access to and from such Owner's Lot.

**11.2 Nonqualifying Improvements and violation of General Protective Covenants.**

In the event any Owner constructs or permits to be constructed on such Owner's Lot an Improvement contrary to the provisions of this Declaration, or causes or permits any Improvement, activity, condition or nuisance contrary to the provisions of this Declaration to remain uncorrected or unabated on such Owner's Lot, then the Association acting through its Board of Directors shall notify the Owner in writing of any such specific violations of this Declaration and shall require the Owner to remedy or abate the same in order to bring such owner's Lot, the Improvements thereon and such Owner's use thereof, into conformance with this Declaration. If the Owner is unable, unwilling or refuses to comply with the Association's specific directives for remedy or abatement, or the owner and the Association cannot agree to a mutually acceptable solution within the framework and intent of this Declaration, after notice and opportunity to be heard and within sixty (60) days of written notice to the Owner, then the Association acting through its Board of Directors, shall have the right to do any or all of the following:

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

11.2.2 Enter the offending Lot and remove the cause of such violation, or alter, repair or change the item which is in violation of the Declaration in such a manner as to make it conform thereto, in which case the Association may assess such Owner for the entire cost of the

work done, which amount shall be payable to the Association, provided that no Improvements shall be altered or demolished in the absence of judicial proceedings, or

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

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

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

11.3.2 The Association shall have a lien against each Lot for any assessment levied against the Lot and any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Lot from the date on which the assessment, fine or charge is due. The provisions regarding the attachment, notice, recordation and duration of liens established on real property under ORS 87.352 to 87.382 shall apply to the Association's lien. The lien shall be foreclosed in accordance with the provisions regarding the foreclosure of liens under ORS Chapter 88. The Association, through its duly authorized agents, may bid on the Lot at such foreclosure sale, and may acquire and hold, lease, mortgage and convey the Lot.

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

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

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

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

11.6 **Interest, Expenses and Attorneys' Fees.** Any amount not paid to the Association when due in accordance with this Declaration shall bear interest from the due date until paid at a rate three percentage points per annum above the prevailing prime rate declared by the bank in

Portland, Oregon with the largest number of deposits, or such other rate as may be established by the Board of Directors, but not to exceed the lawful rate of interest under the laws of the State of Oregon. A late charge may be charged for each delinquent assessment in an amount established from time to time by resolution of the Board of Directors of the Association not to exceed thirty percent (30%) of such assessment. In the event the Association shall file a notice of lien, the lien amount shall also include the recording fees associated with filing the notice, and a fee for preparing the notice of lien established from time to time by resolution of the Board of Directors of the Association. In the event the Association shall bring any suit or action to enforce this Declaration, or to collect any money due hereunder or to foreclose a lien, the Owner-defendant shall pay to the Association all costs and expenses incurred by it in connection with such suit or action, including a foreclosure title report, and the prevailing party in such suit or action shall recover such amount as the court may determine to be reasonable as attorneys' fees at trial and upon any appeal or petition for review thereof.

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

## ARTICLE XII

### OWNERSHIP, USE AND RENTAL RESTRICTIONS

**12.1 Ownership Restriction.** Title to any Lot may not be conveyed (whether by operation of law or otherwise) to more than four (4) co-owners. A co-owner consists of either an individual or a married couple. Time share ownership of any Lot shall not be permitted. "Time share ownership" means a right to occupy a Living Unit during five or more separate periods over a period of at least five years.

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

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

Property and is intended to maintain quality in rental activities, and to restrict traffic, an excessive number of occupants, and the excessive use of the Living Units by persons other than Owner.

## ARTICLE XIII

### MISCELLANEOUS PROVISIONS

**13.1 Amendment and Repeal.** This Declaration, or any provision thereof, as from time to time in effect with respect to all or any part of the Property, may be amended or repealed by the vote or written consent of owners holding not less than seventy-five percent (75%) of the voting rights in the Association. Any such amendment or repeal shall become effective only upon recordation in the Deed Records of Tillamook County, Oregon, of a certificate of the president or secretary of the Association setting forth in full the amendment, amendments or repeal so approved and certifying that said amendment, amendments or repeal have been approved in the manner required by this Declaration. In no event shall an amendment under this Section create or change the boundaries of any Lot or any uses to which any Lot is restricted unless the owners of the affected Lots unanimously consent to the amendment.

**13.3 Duration.** This Declaration shall run with the land and shall be and remain in full force and effect at all times with respect to all property subjected to these Covenants and the owners thereof for an initial period of thirty (30) years commencing with the date on which this document is recorded. Thereafter, this Declaration shall continue to run with the land and be and remain in full force and effect at all times with respect to all property subjected to these Covenants and the owners thereof for successive additional periods of ten (10) years each. The continuation from the initial or any additional period into the next



subsequent period shall be automatic and without the necessity of any notice, consent or other action whatsoever; provided, however, that this Declaration may be terminated at the end of the initial or any additional period by resolution approved not less than one year prior to the intended termination date by the vote or written consent of Owners owning not less than seventy-<sup>1</sup> percent (75%) of the voting rights in the Association. Any such termination shall become effective only if a certificate of the president or secretary of the Association, certifying that termination as of a specified termination date has been approved in the manner required herein, is duly acknowledged and recorded in the Deed Records of Tillamook County, Oregon, not less than six months prior to the intended termination date. Such termination shall not have the effect of denying any Owner of access to such Owner's Lot unless such Owner and any mortgagee of such Lot have consented in writing to the termination.

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

**13.5 Lessees, Renters, and Other Invitees.** Lessees, renters, invitees, contractors, family members and other persons entering the Property under rights derived from an owner

shall comply with all of the provisions of this Declaration restricting or regulating the owner's use, improvement or enjoyment of such Owner's Lot and other areas within the Property. The owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner himself or herself.

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

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

13.8 **Notices and Other Documents.** Any notice or other document permitted or required by this Declaration may be delivered either personally or by mail. Delivery by mail shall be deemed made twenty-four (24) hours after having been deposited in the United States mail as certified or registered mail, with postage prepaid, addressed as follows:

The Capes Homeowners' Association / PO Box 404 / Oceanside, OR 97134 and  
if to an Owner, at the address given by such Owner at the time of such owner's

purchase of a Lot, or at such Owner's Lot. The address of a party may be changed by such owner at any time by notice in writing delivered as provided herein.

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

**IN WITNESS WHEREOF,** the President and Secretary of the HOA hereby certify that the foregoing Declaration was duly adopted by not less than seventy-five percent (75%) of the voting power of the Association. HOA has executed this Declaration this 22 day of March 2003.

**THE CAPES HOMEOWNERS ASSOCIATION, an Oregon non-profit corporation**

By: Gordon J Rood  
President

By: Janine Schulwitz  
Secretary

STATE OF OREGON            )  
  ) SS  
County of Washington    )

The foregoing instrument was acknowledged before me on this 2 day of April, 2003, by Gordon Rood and Janine Schulwitz who acknowledged they are the President and Secretary of The Capes Homeowners' Association, and that said document was executed on behalf of the corporation.



Rachel L. Bright  
Notary Public for Oregon