

DECLARATION OF RESTRICTIONS

OF

DITZ-CRANE OF OREGON, INC.

This Declaration, made this 22 day of 1971, by DITZ-CRANE of Oregon, Inc., hereinafter called Declarant;

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain real property in the County of Clackamas, State of Oregon, the legal description of which is attached hereto marked "Exhibit A" and made a part hereof; and

WHEREAS, Declarant desires to subject such property to the conditions, restrictions and charges for the benefit of such property and its present and subsequent owners as hereinafter specified; and

WHEREAS, the power to enforce certain of such conditions, restrictions, reservations and charges is to reside in Tanglewood Townhouse Association, a nonprofit corporation organized under the laws of the State of Oregon;

NOW, THEREFORE, Declarant hereby declares that all the properties described in Exhibit A shall be held, sold and conveyed subject to the following easements, covenants, restrictions and charges. Such easements, covenants, restrictions and charges (hereinafter sometimes referred to as "covenants and restrictions") shall run with such property and shall be binding on 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

The following words, when used in this Declaration or

any supplemental declaration, unless the context shall prohibit, shall have the following meanings:

1.1 "Association" shall mean Tanglewood Townhouse Association, a nonprofit association organized under the laws of the State of Oregon, its successors and assigns.

1.2 "The Properties" shall mean all the property described in Exhibit A.

1.3 "Common Properties" shall mean those areas of land shown or declared as such in any recorded subdivision plat of the Properties and intended to be devoted to the common use and enjoyment of the Owners of the Properties or hereafter acquired by the Association for such purpose.

1.4 "Lot" shall mean any numbered plot of land shown upon any recorded subdivision plat of the Properties which is not designated as Common Properties.

1.5 "Member" shall mean every person or entity who holds membership in the Association.

1.6 "Owner" shall mean the record owner, whether one or more persons or entities, of fee simple title to any Lot situated upon the Properties, including contract sellers but excluding those having such interest merely as security for performance of an obligation.

1.7 "Mortgage" shall mean a deed of trust as well as a mortgage.

1.8 "Mortgagee" shall mean a beneficiary of, or a holder of, a deed of trust, as well as a mortgagee.

## ARTICLE II

### Membership and Voting Rights in the Association

2.1 Membership. Members of the Association shall be every Owner of a fee or undivided fee interest in any Lot subject by covenants of record to assessment by the Association and every person who holds a contract purchaser's interest of

record in a Lot. There shall be no other qualification for membership except as set forth above. Membership shall terminate on transfer of fee simple title by an Owner or the contract purchaser's interest by a contract purchaser who qualifies as a member. If an Owner sells a Lot by contract of sale, upon recordation thereof, the Owner's membership shall terminate and the contract purchaser's membership shall commence.

2.2 Voting Rights. There shall be two classes of voting membership:

A. Class A members shall be all those members other than the Declarant. Class A members will be entitled to one vote for each Lot in which they hold the interest required for membership by Section 2.1. If more than one person holds such interest or interests, all such persons shall be members, but the vote for such Lot shall be exercised as the persons holding such interest shall determine between themselves, provided that in no event shall more than one vote be cast with respect to any such Lot. Class A members shall be entitled to elect two members of the board of directors of the Association so long as there is Class B membership.

B. The Class B member shall be the Declarant. The Class B member shall be entitled to elect three members of the board of directors of the Association. Class B membership may be converted to Class A membership at the option of the Class B member evidenced in written notice to the secretary of the Association, and shall be converted to Class A membership without further act or deed on June 1, 1973.

### ARTICLE III

#### Property Rights in the Common Properties

3.1 Member's Easements of Enjoyment. Subject to the provisions of Section 3.3, every member shall have a right of

easement and enjoyment in and to the Common Properties, and such easement shall be appurtenant to and shall pass with the title to every Lot and upon the recordation of the contract of sale of any Lot.

3.2 Title to Common Properties. The Declarant covenants that it will convey fee simple title to the Common Properties to the Association prior to the conveyance of the first Lot, and such title shall be free and clear of all liens other than the lien of such construction mortgage as Declarant shall place on the Properties, which mortgage (if any there be) Declarant agrees to pay pursuant to the terms thereof. In any event, the Declarant shall convey the Common Properties to the Association free and clear of all liens and encumbrances not later than June 1, 1973.

3.3 Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

3.3.1 The right of the Association to limit the number of guests of members permitted to use the Common Properties.

3.3.2 The right of the Declarant and the Association in accordance with its Articles and Bylaws to mortgage said property as security for any loan, the purpose of which is improvement of the Common Properties. In the event of a default upon any such mortgage, the lender's rights hereunder shall be limited to a right after taking possession of such properties to charge admission and other as a condition of continued enjoyment by the members, and, if necessary, to open the enjoyment of such property to a wider public until the

mortgage debt is satisfied, whereupon the possession of such property shall be returned to the Association and all rights of the members hereunder shall be fully restored.

3.3.3 The right of the Association to dedicate or transfer all or any part of the Common Properties to any municipal corporation, public agency or authority for such uses and purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer, however, shall be effective except pursuant to a vote of the members as provided by the Articles of Incorporation.

3.4 Delegation of Use. Any member may delegate in accordance with the Bylaws his right of enjoyment to the Common Properties to the members of his family and his tenants.

#### ARTICLE IV

##### Covenant for Maintenance Assessment

4.1 Creation of the Lien and Personal Obligation of Assessment. Each Owner of any Lot by acceptance of the deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association annual assessments and special assessments for capital improvements. Such assessments shall be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided shall be continuing lien upon the property against which each such assessment is made from the date hereinafter set

forth. Each such assessment, together with such interest thereon and costs of collection thereof as hereinafter provided, shall also be a personal obligation of the person who is the Owner of such property at the time when the assessment fell due. Such personal obligation shall not pass to his successors in title unless expressly assumed by them.

4.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, enjoyment and welfare of the residents of the Properties and in particular for the improvement and maintenance of property, services and facilities devoted to the purpose and related to the use and enjoyment of the Common Properties and of the homes situated upon the Properties.

4.3 Basis of Annual Assessment. Unless changed by vote of the membership as hereinafter provided, the maximum annual assessment for any Lot shall be at the rate of \$300 per year. The board of directors of the Association may after consideration of the current maintenance costs and the financial requirements of the Association fix the annual actual assessment at an amount less than the maximum. Upon the vote of the membership as hereinafter provided, the Association may change the maximum annual assessment fixed by this Section prospectively.

X 4.4 Special Assessments for Capital Improvements. Upon vote of the members of the Association in the manner hereinafter set forth, the Association may levy in addition to annual assessments a special assessment in any calendar year applicable to that year only, for the purpose of defraying in whole or in part the cost of construction or reconstruction or expected repair or

replacement of a described capital improvement upon the Common Properties including necessary fixtures and personal property related thereto.

4.5 Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on an annual, quarterly or monthly basis in the discretion of the board of directors.

4.6 Voting and Notices for Special Assessment and Change of Maximum Assessment. Any special assessment or change in maximum annual assessment must have the assent of two-thirds of the votes of each class of members who are voting in person or by proxy at a meeting duly called for that purpose, written notice of which shall be sent to all members at least thirty days in advance of the date of such meeting, setting forth the purpose of the meeting.

4.7 Date of Commencement of Annual Assessment. The initial annual assessments shall commence on the first day of such month as determined by the board of directors of the Association, shall be made for the balance of the calendar year and shall be due and payable on the date fixed by the board. Annual assessments for any year after the first year shall become due and payable on such date or dates as may be determined by the board of directors.

The amount of the initial annual assessment for the first year in which assessments are made or for any property which becomes subject to assessment for the first time shall be prorated on a calendar year basis according to the date of the first assessment or the date on which property first became subject to assessment.

4.8 Certificate of Payment. The Association shall upon demand at any time furnish to any Owner liable for an assessment a certificate in writing setting forth whether the assessments on the property owned by such Owner have been paid.

4.9 The Effect of Non-Payment of Assessments; Lien of Association. If an assessment is not paid on the date when due, such assessment shall become delinquent and shall bear interest at the rate of 7% per annum from such due date. The secretary of the Association may file in the office of the County Clerk of Clackamas County within 90 days after such delinquency, a statement of the amount of the delinquent assessments, together with interest, and upon payment in full thereof shall execute and file a proper release of such lien. Such assessment with interest set forth above shall constitute a lien on such Lot from the date of filing notice of delinquency until the lien is released as herein provided. The Association may bring an action at law to enforce payment of a delinquent assessment against the Owner personally obligated to pay the same and may enforce such lien in the manner provided by law with respect to a lien on real property.

In the event a judgment or decree is obtained in favor of the Association, the Owner shall be liable for the Association's court costs and disbursements and a reasonable attorney's fee to be fixed by the Court, such costs, disbursements and attorney's fee to be further secured by such lien. No Owner may waive or otherwise escape liability for assessments by non-use of the Common Properties or abandonment of his Lot.

4.10 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or deed of trust. Sale or transfer of



any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot which is subject to any mortgage or deed of trust, pursuant to a decree of foreclosure under such mortgage or any proceeding in lieu of foreclosure thereof, including sale under a deed of trust, shall extinguish any lien of an assessment which became a lien prior to such sale or transfer. Such sale or transfer shall not release such Lot from liability from any assessments thereafter becoming due or from the lien thereof.

4.11 Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein:

A. All properties to the extent of any easement or other interest therein dedicated and accepted by a municipal corporation or other local public authority and devoted to public use.

B. All Common Properties.

4.12 Irrevocable Trust of Assessments. All assessments whether annual assessments or special assessments for capital improvements shall be held by the Association in irrevocable trust, with such annual assessments to be held in trust for the uses and purposes set forth in Section 4.2 of this Declaration, and special assessments to be held in trust for the purposes set forth in Section 4.4 of this Declaration. It is understood that the purposes set forth in Section 4.2 shall include, without limiting the generality of that section, all expenses relating to the maintenance of the Common Properties, property taxes thereon, liability insurance with respect to the use and operation of the Common Properties, payment of premiums on policies of fire insurance with extended coverage endorsements with respect to all

homes and other buildings located on the Properties, a reasonable management fee for managing the affairs of the Association, and the exterior maintenance of the buildings and lots as required by Article VIII of the Declaration, including establishing such reserves for such purpose as may be required in the exercise of good business judgment.

The Association as such Trustee agrees that it will deposit all sums paid to it under this Declaration in a bank or savings and loan association, and that it will not thereafter withdraw such sums or any portion thereof, except for the uses and purposes herein set forth; provided that the Association may, at its discretion, withdraw such sums for the purpose of redeposit in some other bank or savings and loan association. Except with respect to a reasonable management fee which may be charged by Declarant for the management of the affairs of the Association, if so determined by the board of directors, no part of such trust fund shall inure to the benefit of Declarant.

#### ARTICLE V

##### Party Walls

5.1 General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts of omissions shall apply thereto.

5.2 Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party 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 Article means ownership of a dwelling unit or other structure which incorporates any

part of such wall.

5.3 Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty covered by insurance maintained by the Association, the Association shall repair the damage in accordance with the provisions of Article X hereof. But if such wall is destroyed or damaged by any casualty not covered by insurance maintained by the Association in accordance with Article IX hereof, Owners who have used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof 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 of omissions.

5.4 Weatherproofing. Notwithstanding any other provision of Article V, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole costs of furnishing the necessary protection against such elements, but such obligation shall not be the basis of any claim by any insurer which has insured the Association pursuant to Article IX hereof.

5.5 Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

5.6 Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

## ARTICLE VI

### Architectural Control

6.1 Original Structures. Original structures, land plan and landscaping shall be constructed under the approval of the Mountain Park architectural committee.

6.2 Tanglewood Townhouse Improvement Committee. The board of directors shall appoint an Improvement Committee of three or more persons who need not be members of the Association, which Committee may act for the board to the extent set forth in this Declaration.

6.3 Restrictions on Construction, Maintenance and Improvement. The following restrictions are applicable to construction, alterations, maintenance and improvements on the Properties:

A. No exterior building alteration, fence, hedge, wall or other structure, landscaping or planting shall be commenced, erected or maintained upon the Properties, until the plans and specifications showing the nature, kind, shape, height, color, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the board of directors or by the Improvement Committee. If the board of directors or the Improvement Committee fails to approve or disapprove such design and location within 30 days after such plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

B. The location, color, size, design, lettering and other particulars of mail or paper delivery boxes shall be subject to approval of the Improvement Committee.

C. All outside television and radio aerials and antennas are prohibited without express written approval of the Association or the Improvement Committee.

D. No sign or other advertising device of any character shall be erected on any unit or maintained upon any part of the Properties except one sign not larger than 18 inches by 24 inches advertising a unit for sale or for rent. Signs advertising the property for sale or for rent by a real estate broker shall not be permitted. Provisions of this section are not applicable to Declarant.

## ARTICLE VII

### Restrictions on Use of Property by Occupants

7.1 Use Restrictions. The following restrictions shall be applicable to the use of any property subject to this Declaration:

7.1.1 No Lot shall be used for any purpose other than residential purposes.

7.1.2 No animals or fowls shall be raised, kept or permitted upon the Properties or any part thereof, excepting only domestic dogs or cats and excepting caged pet birds kept within the dwelling house, provided said dogs, cats and pet birds are not permitted to run at large and are not kept, bred or raised for commercial purposes or in unreasonable numbers.

7.1.3 No noxious or offensive activity shall be carried on upon the Properties or any part thereof, nor shall anything be done or maintained thereon which may be or become an annoyance or nuisance to the neighborhood or detract from its value as a high-class residential district.

7.1.4 No trucks, campers, trailers or boats shall be parked or permitted to remain in the Properties unless inside the Owner's garage or in such specific parking area as may be assigned by the Association to a particular recreational vehicle.

7.1.5 No Owner or occupant shall remove or significantly alter any tree or shrub in any street, right-of-way, park or recreational area or other part of the Common Properties unless permission in writing is first granted by the Association.

7.1.6 All walks and driveways are for the use of Members on an equal basis. It shall be the responsibility of each Member to allow maximum ease of pedestrian and vehicular ingress and egress over walks and driveways by prohibiting automobile parking in front of garages or in the alleyways and allowing no obstruction or barrier on, across or adjacent to sidewalks.

7.1.7 The board of directors shall have jurisdiction over activities permitted in the common use areas. All disputes, complaints or matters of change in existing use restriction will be submitted to the board of directors for arbitration. Judgment of the board of directors shall be final and binding as to all parties concerned.

#### ARTICLE VIII

##### Exterior Maintenance

##### 8.1 Maintenance of Common Areas and Exterior Maintenance.

The Association shall maintain or provide for the maintenance of the Common Properties, and in addition, the Association shall provide exterior maintenance upon and for each Lot subject to assessment hereunder, including, without being limited to, the following:  
paint, repair, replace and care for roofs, gutters, downspouts,  
exterior building surfaces, trees, shrubs, grass, landscaped areas,  
walks, streets, alleys and other exterior improvements. Such

*Then  
Applies*

exterior maintenance shall not include glass surfaces. In the event that the need for such maintenance or repair is caused through the willful or negligent act of omission of the Owner, his family, tenants, guests or invitees, the cost of such maintenance or repairs may, in the discretion of the directors, be added to and become a part of the assessment to which such dwelling unit or Lot is subject, and a lien thereon enforceable in the same manner as an assessment. Damage from causes not covered by insurance maintained by the Association and other than normal wear from use shall be the responsibility of each Owner and not included in the maintenance provided by the Association. If such Owner does not commence repair of such damage within 30 days and complete the repair within a reasonable time, the Association may make such repair for Owner's account, and the cost thereof shall be added to and become a part of the assessment to which such Lot is subject and a lien thereon enforceable in the same manner as an assessment.

Each Owner shall be responsible for maintaining and keeping in good order and repair the interior of his own dwelling unit.

8.2 Owners Not to Paint Exteriors. Since the Association is charged with the duty of exterior maintenance, Owners and occupants are expressly prohibited from painting or changing the exterior of any building, garage, fence or wall without written approval of the board of directors or the Improvement Committee.

## ARTICLE IX

### Insurance

9.1 Duty to Obtain Insurance. The Association acting

for itself and for all Owners, shall obtain and maintain at all times insurance of the type of policy and amount as set forth hereinafter for the benefit of the Owners and the Association as its interest may appear. Payments of premiums for such insurance shall be considered a purpose for which assessments may be levied by the Association pursuant to Article IV hereof:

9.1.1 A policy or policies of fire insurance with extended coverage endorsement for the full insurable replacement value of all homes and other structures and improvements located on the Properties. Such policy or policies shall provide for a separate loss payable endorsement in favor of the mortgagee of each Lot in the Properties. During the initial sale of all townhouses in the Properties, the amount of such policy or policies shall be the full insurable replacement value of all Lots improved by townhouses not owned by Declarant and insurable improvements on the Common Properties; Declarant shall maintain at its own cost and expense policies of insurance covering unsold Lots improved with townhouses.

9.1.2 A policy or policies insuring the Association, its officers and board of directors and employees against any liability to the public or the Owners, their invitees or tenants, incident to ownership or use of the Common Properties. Limits of liability under such policy shall be not less than \$100,000/\$300,000 for personal injury and \$100,000 for property damage in each occurrence. Such policy or policies shall be issued on a comprehensive liability basis to provide cross-liability endorsements



wherein the rights of the named insured under the policy shall not be prejudiced as respects the right of action of any such insured against any other named insured.

9.2 Quality of Insurance Policies. All insurance policies required under this Article shall be written in a company licensed to do business in Oregon and holding a rating of A+/AAA or better, by Best's Insurance Reports.

9.3 Authority to Adjust Losses. Exclusive authority to adjust losses under policies obtained by the Association pursuant to this Article shall be vested in the Association or its authorized representative.

9.4 Contribution. In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by individual owners or their mortgagees.

9.5 Owner's Additional Insurance. Each Owner may obtain additional insurance at his own expense; provided, however, that no Owner shall be entitled to exercise his right to maintain insurance coverage in such way as to decrease the amount which the Association may realize under any insurance policy which the Association may have in force on the Properties and the improvements thereon at any particular time.

9.6 Notification as to Improvements. Each Owner must notify the Association in writing of any improvements to the structures located on his Lot, the value of which improvements is in excess of \$1,000.00.

9.7 Duty to File Copies of Individual Policies. Any Owner who obtains individual insurance policies covering any portion of the Properties other than personal property belonging

to such Owner shall file copies of such individual policy or policies with the Association within 30 days after purchase of such insurance.

9.8 Provisions of Insurance Policies. The Association shall make every effort to obtain insurance policies that will provide:

9.8.1 A waiver of subrogation by the insurer as to any claims against the Association, its officers, board of directors and manager, the Owners and their respective servants, agents and guests.

9.8.2 The master policy with respect to the Properties cannot be cancelled, invalidated or suspended on account of the conduct of any one or more Owners, on account of the conduct of any officer or employee of the Association, or the manager, without prior demand in writing that the Association cure the defect.

9.8.3 That any "no other insurance" clause in the master policy excludes individual Owners' policies from consideration.

9.8.4 That the insurer issue sub-policies specifying the portion of the master policy earmarked for each Owner's interest, and that until the insurer furnishes written notice and a grace period to the mortgagee or insured under the loss payable clause thereof, such mortgagee's coverage is neither jeopardized by the conduct of the mortgagor-owner or the Association or other Owners nor cancelled for non-payment of premiums.

9.9 Annual Review of Insurance. At least annually, the Association shall review all insurance carried by it and such review shall include appraisal of all structures and other improvements located on the Properties by a representative of

the insurance carrier providing the master policy.

## ARTICLE X

### Damage and Destruction

10.1 Application of Insurance Proceeds. In the event of fire or other insured loss, the insurance proceeds of policies covering such loss, if sufficient to reconstruct the buildings damaged or destroyed with the addition of the amount deductible under such policies, shall be applied to such reconstruction. The Association shall pay such deductible amount toward the cost of such reconstruction. "Reconstruction" of the damaged or destroyed buildings means restoring the buildings to substantially the same condition in which they existed prior to such loss, with each building being located within the boundaries of the Lot on which it was located prior to the loss. Such reconstruction shall be accomplished by or at the direction and under the supervision of the Association or its representatives.

10.2 Procedure if Insufficient Insurance Proceeds. If the insurance proceeds plus the amount deductible under the insurance policies covering such loss are insufficient to reconstruct the damaged or destroyed building, nevertheless such building shall be promptly reconstructed by or under the direction of the Association or its representative. The Association shall use the proceeds of the insurance on the building for that purpose and pay from its general funds the amount deductible under such policy. The balance of the cost of such reconstruction shall be financed by means of a special assessment for capital improvements in accordance with the provisions of Article IV hereof. In making such assessment, however, the Association shall take into consideration with respect to any Owner's individual assessment, any

individual policy of insurance the proceeds of which have been made available for the reconstruction or repair of such building.

If damage or destruction to a building is caused by casualty not within the coverage of insurance policies required to be maintained hereunder by the Association, the obligation to repair such damage shall be in accordance with the provisions of Article VIII hereof.

## ARTICLE XI

### Easements

11.1 Reservation of Easements. Declarant hereby grants to the City of Lake Oswego and the Association and also reserves to itself, its successors and assigns, perpetual easements under, over and across all Common Properties for the purpose of erecting, constructing, maintaining and operating sewers and drainage systems, and poles, pipes, wires, cables, guys, anchors and conduits for lighting, heating, power, water systems, telephone, television transmission and any other method of conducting and performing any public or quasi-public utility service or function beneath, upon or above the surface of such Common Properties. Declarant reserves the right to cut and/or trim any tree or other growth on such Common Properties which may interfere with or menace the construction, maintenance or operation of such utilities.

On all Common Properties shown as such on recorded plats, the easement herein granted to the City of Lake Oswego shall be limited to a strip five feet on either side of the center line of each sewer or other pipeline, conduit, cable or other utility instrument as initially placed in, on or under such Common Properties.

### 11.2 Easements to Association and Owners.

11.2.1 There is hereby granted to the Association, its agents and servants, an easement in gross with

respect to all of the Properties for the purpose of entry and access for the installation and maintenance of utility services of any kind or the landscaping and maintenance of the Common Properties and for the performance of its duties of exterior maintenance with respect to improvements on the Lots and on the Common Properties as specified in Article VIII hereof and for the execution generally of its rights and obligations as otherwise provided in this Declaration.

11.2.2 There is hereby granted to Owners, Members, their tenants, invitees and guests a non-exclusive easement for egress and ingress over the Common Properties and including without limitation all streets, alleys and sidewalks on such Common Properties. Such easements shall be in addition to and not in diminution of any other easements and rights granted in Article III of this Declaration.

11.3 Encroachments. If any portion of a party wall or other part of an improvement as originally constructed upon the Properties, including without limitation eaves or other overhangs of a structure, encroaches upon any part of the Common Properties or upon the Lot or Lots used or designated for use by another Owner, an easement for the encroachment and for the maintenance of the same is granted to and for the benefit of the Owners of such encroaching structure. No such easement shall exist, however, in respect to an encroachment caused by construction of any improvement on any Lot after completion of construction of the original improvements thereon by the Declarant.

In the event a dwelling unit constructed on a Lot becomes partially or totally destroyed or in need of repair or

replacement, mutual and reciprocal easements are granted to the Owner of the Lot upon which the damaged or destroyed dwelling unit is located, the Owner of the abutting Lots and the Association to the extent reasonably necessary to make repairs and replacement to the damaged or destroyed property and protecting the structure on the Lot adjacent thereto. Any dispute as to the extent of such easement shall be submitted to the board of directors for arbitration and their judgment thereon shall be final and binding as to all parties concerned.

## ARTICLE XII

### General Provisions

12.1 Duration. Covenants and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns for a term of 20 years from the date this Declaration is recorded. After such term such covenants and restrictions shall be automatically extended for successive periods of 10 years unless an instrument signed by the then Owners of two-thirds of the Lots has been recorded agreeing to change said covenants and restrictions in whole or in part. The covenants and restrictions of this Declaration may be amended during the first 20 year period by an instrument signed by not less than 75% of the Owners of Lots. Any amendment must be properly recorded. This Declaration shall not be revoked, if such revocation would result in a violation of the ordinances of the City of Lake Oswego.

12.2 Notices. Unless otherwise provided herein, any notice required to be sent to any Member or Owner under the

provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

12.3 Enforcement. The Association or any Owner shall have the right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants and reservations imposed by the provisions of this Declaration and a similar right shall exist with respect to recovery of damages for any such violation. Failure of the Association or of 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.

12.4 Severability. Invalidation of any one of these covenants or restrictions by judgment or court decree shall in no wise effect any other provisions which shall remain in full force and effect.

12.5 Effect of Municipal Ordinances. Police, fire and other public safety ordinances of any municipal corporation having jurisdiction over any portion of the Properties shall govern where more restrictive than those covenants and restrictions.

12.6 Exchanges of Portions of Common Properties. The Association shall have power to exchange any part of the Common Properties not in excess of 10,000 square feet for a like amount of property contiguous to such Common Properties, provided that the board of directors of the Association, by unanimous vote of all of the board of directors then in office, finds:

A. That such an exchange will be beneficial to the Association, and

B. The value of the property exchanged is at least equal to the value of the Common Properties involved in

the exchange.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal as of the date and year first hereinabove set forth.

Dated at \_\_\_\_\_, Oregon, this \_\_\_\_\_ day of \_\_\_\_\_, 1971.

DITZ-CRANE of Oregon, Inc.

By \_\_\_\_\_  
Vice President.

By \_\_\_\_\_  
Vice President

STATE OF OREGON            ).  
                                  )ss  
County of                    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1971, before me appeared \_\_\_\_\_ who declared that he is Vice President and \_\_\_\_\_ who declared that he is Vice President of Ditz-Crane of Oregon, Inc., a corporation, and being first duly sworn, acknowledged that they signed the foregoing document in the capacities set forth and declared that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year above written.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires: