

AMENDED AND RESTATED

DECLARATION

FOR

KIWANDA SHORES PLANNED UNIT DEVELOPMENT

THIS AMENDED AND RESTATED DECLARATION, made this 1st day of April, 1990, by Kiwanda Shores Maintenance Association (herein "Association"), pursuant to the provisions of the Oregon Planned Community Act, and with the intent to establish the protective framework within which Kiwanda Shores Planned Unit Development will be developed and thereby to perpetuate for the benefit of all who acquire property within the natural environment of Kiwanda Shores.

WITNESSETH:

WHEREAS, the Association intends that Kiwanda Shores Planned Unit Development shall provide for all who acquire property therein an opportunity to obtain unique satisfaction of their recreational needs in a manner which will insure preservation and full enjoyment of the natural advantage of the area and yet encourage appropriate diversity of individual expression, and to also nourish this concept of development which serves both the public and private interests by fostering a beneficial land use which will perpetuate the openness and the scenic values of the area and enrich the lives of homeowners and guests;

WHEREAS, it is assumed that all owners of property within Kiwanda Shores Planned Unit Development will be inspired by its natural environment to accept the principal that the development and use of Kiwanda Shores Planned Unit Development must preserve that environment for themselves and future owners, and also that those persons entrusted with the development and administration of Kiwanda Shores Planned Unit Development will discharge their trust in full recognition of that principal and, to the extent consistent therewith, will foster freedom of individual expression:

WHEREAS, a Declaration of Conditions and Restrictions Affecting Kiwanda Shores was recorded July 8, 1964, in Book 192, Page 295, in the Deed Records of Tillamook County, Oregon;

WHEREAS, a Declaration of Conditions and Restrictions Affecting First Addition to Kiwanda Shores was recorded October 7, 1969, in Book 217, Page 417, in the Deed Records of Tillamook County, Oregon;

WHEREAS, an Amendment to Declaration of Conditions and Restrictions Recorded Book 217, Page 417, Affecting First Addition to Kiwanda Shores, was

recorded October 29, 1969, in Book 217, Page 521, in the Deed Records of Tillamook County, Oregon;

WHEREAS, an Amended Declarations Kiwanda Shores Third and Fourth Additions, was recorded on November 8, 1972, in Book 229, Page 662, in the Deed Records of Tillamook County, Oregon;

WHEREAS, a Declarations Kiwanda Shores Planned Unit Development was recorded December 31, 1973, in Book 234, Page 890, in the Deed Records of Tillamook County, Oregon;

WHEREAS, a Declarations Kiwanda Shores Planned Unit Development Phase IIA-B Fifth Addition was recorded December 19, 1979, in Book 267, Page 42, in the Deed Records of Tillamook County, Oregon; and

WHEREAS, a Declaration of Conditions and Restrictions Affecting Sixth Addition to Kiwanda Shores was recorded September 1, 1983, in Book 288, Page 892, in the Deed Records of Tillamook County, Oregon;

WHEREAS, the owners of the lots encumbered by the above listed declarations desire to amend each said declaration by adopting an amended and restated declaration for the purpose of unifying all lots under one comprehensive declaration and to declare that all lots and common property together shall be known as Kiwanda Shores Planned Unit Development:

NOW, THEREFORE, each lot and the common property encumbered by the above listed declarations shall be encumbered by this Amended and Restated Declaration and the owners of said lots shall become members of the established Kiwanda Shores Maintenance Association and as such shall be entitled to all rights afforded to members as set forth in the Nonprofit Articles of Incorporation of Kiwanda Shores Maintenance Association and the Amended and Restated Bylaws of Kiwanda Shores Maintenance Association.

NOW, THEREFORE, the Association hereby declares that all of the properties described below in Article II shall be submitted in fee simple to the provisions of the Oregon Planned Community Act. This Amended and Restated Declaration shall be binding on all parties having any right, title, or interest in the described properties. The above-described property shall thereby be organized according to the planned community form of ownership and pursuant to ORS Chapter 94.550, the Oregon Planned Community Act.

NOW, THEREFORE, the Association does hereby declare and provide as follows:

ARTICLE I
Definitions

When used in this Amended and Restated Declaration the following terms shall be accorded the meanings indicated:

1.1 The "Association" refers to the Kiwanda Shores Maintenance Association.

1.2 "Amended and Restated Bylaws" refers to the Amended and Restated Bylaws of the Association adopted pursuant to § 6.4 as they may be amended from time to time.

1.3 "Lot" refers to any plot of land, except roads and common area shown upon any recorded plat or plats, within the Planned Community.

1.4 "Lot Owner" refers to every record owner, *including* a contract vendee, of a fee or undivided fee interest in every Lot within the property to which this Amended and Restated Declaration applies, except that ownership acquired and intended solely as security for the performance of an obligation which shall not constitute ownership.

1.5 "Mortgage" and "Mortgagee" refer, respectively, to a recorded mortgage, trust deed, or contract of sale and the holder, beneficiary, or vendor of such instrument.

1.6 "Planned Community" refers to the land, buildings and improvements submitted by this Amended and Restated Declaration and all easements, rights and appurtenances belonging thereto.

1.7 "Plans" refer to the plat and floor plans of Kiwanda Shores Planned Unit Development filed simultaneously with this Amended and Restated Declaration.

1.8 "Roads" refer to all private roads within all platted portions of the Planned Community.

1.9 Incorporation By Reference. Except as otherwise provided in this Amended and Restated Declaration, each of the terms used herein that are defined in ORS 94.550, the Oregon Planned Community Act, shall have the meanings set forth in such section.

ARTICLE II
Name of the Planned Community

The name by which the Planned Community shall be known is "Kiwanda Shores Planned Unit Development."

ARTICLE III
Description of the Property

The property submitted to the Oregon Planned Community Act by this Amended and Restated Declaration is located in Pacific City, Tillamook County, Oregon, and is more particularly described in the attached Exhibit "A." The Planned Community contains a total of 126 Lots.

ARTICLE IV
Common Property; Common Profits and Expenses; voting

4.1 Common Property. A legal description of the real property included in the Planned Community which is common property is described in the attached Exhibit "B."

4.2 Allocation of Common Profits and Expenses. The common profits derived from and the common expenses of the common property shall be distributed and charged to the owner of each Lot in an equal amount, except the amount associated with the owner of each unimproved Lot may be discounted at the discretion of the Board of Directors.

4.3 Allocation of Voting Rights. Each Lot shall be allocated one vote in the affairs of the Association. The method of voting shall be as specified in the Amended and Restated Bylaws.

ARTICLE v
Use of Property

Each Lot is to be used for residential purposes as described in the Amended and Restated Bylaws. Additional limitations on use are contained in the Amended and Restated Bylaws by which all owners are bound.

ARTICLE VI
The Association of Lot Owners

6.1 Organization. An association of lot owners shall serve as a means through which the lot owners may take action with regard to the administration, management, and operation of the Planned Community. The name of this Association is the "Kiwanda Shores Maintenance Association."

6.2 Membership; Board of Directors. Each Lot Owner shall be a member of the Association. The affairs of the Association shall be governed by a Board of Directors as provided in the Amended and Restated Bylaws.

6.3 Powers and Duties. The Association has such powers and duties as are granted to it by the Oregon Planned Community Act; including each of the powers set forth in ORS 94.630: together with such additional powers and duties afforded by this Amended and Restated Declaration or the Amended and Restated Bylaws.

6.4 Designation of Manager. The Board of Directors, pursuant to the approval of the Association as required in Article 4.4 of the Amended and Restated Bylaws, may appoint a manager or managing agent for the Planned Community on behalf of the Association, and such manager or managing agent shall have complete authority to assume full control and responsibility for the management, operation, and maintenance of the Planned Community at the expense of the Association.

ARTICLE VII

Budget, Espouses and Assessments

7.1 Budget. The Board of Directors shall, from time to time and at least annually, prepare a budget for the Association; estimate the common expenses expected to be incurred, less any previous over assessment; and assess the common expenses to each unit owner in the proportion set forth in Article IV, Sec. 4.2.

7.2 Determination of Common Expenses. Common expenses shall include:

- (a) Expenses of administration;
- (b) Expenses of maintenance, repair, or replacement of common property;
- (c) Cost of insurance or bonds obtained in accordance with the Association Amended and Restated Bylaws;
- (d) A general operating reserve;
- (e) Reserve for replacements and deferred maintenance;
- (f) Any deficit in common expenses for any prior period;
- (g) Utilities for the common property and other utilities with a common meter or commonly billed, such as trash collection, water, and sewer; and
- (h) Any other items properly chargeable as an expense of the Association.

7.3 Assessment of Lot Owners. All Lot Owners shall be obliged to pay common expenses assessed to them by the Board of Directors on behalf of the Association pursuant to this Amended and Restated Declaration. Assessments may not be waived due to limited or nonuse of common property. The Board of Directors, on behalf of the Association, shall assess the common expenses against the Lot Owners, from time to time and at least annually, and shall take prompt action to collect from a Lot Owner any common expense due which remains unpaid by him for more than one hundred eighty (180) days from the due date for its payment.

7.4 Capital Expenditures. In the case of making a capital expenditure (cost of construction made with the expectation of existence for an indefinite period), the Board of Directors shall give written notice to all members of the Association of its intent to pass a resolution to authorize the expense of a capital improvement to the common property. No vote of the Association is necessary, however, the expenditure must be approved by a vote of 60% of the Board of Directors.

7.5 Reserves. A portion of the common expense collected from each Lot Owner shall be placed in an account separate from the general operating account of the Association in accordance with ORS 94.595. This separate account is to be used as a reserve account for major maintenance and replacement of the common property all or part of which would normally require

replacement in more than three (3) or less than thirty (30) years from the time the budget is determined by the Board of Directors.

The reserve account shall be used only for the purposes outlined in this section: provided, however, that the Board of Directors may borrow funds from the reserve account to meet high seasonal demands on the regular operating funds or to meet other temporary expenses which will later be paid from special assessments or maintenance fees. The reserve account may be invested by the Board of Directors subject to normal prudent investment standards.

Assessments paid into the reserve account shall be the property of the Association and are not refundable to sellers of Lots. Sellers of Lots may treat their outstanding share of the reserve account as a separate item in any agreement for the sale of their Lots.

7.6 Special Assessments - Capital Improvements. In the case of any duly authorized capital improvement to the common property as set forth in Section 7.4 herein, the Board of Directors may, by resolution, establish separate assessments for the same which may be treated as capital contributions by the Lot owners and the proceeds of which shall be used only for the specific capital improvements described in the resolution. Special assessments shall be collectable as regular common expenses, including applicable lien provisions.

7.7 Default in Payment of Common Expenses. In the event of default by any Lot Owner in paying to the Association the assessed common expenses, such Lot Owner shall be liable for late payment charge at the rate of twelve percent (12%) per annum on such common expenses from the due date thereof or at such greater rate as may be established by the Board of Directors, from time to time, not to exceed the maximum lawful rate, if any. The defaulting Lot Owner shall also pay any other reasonable late charge established by the Board of Directors, from time to time, together with all expenses incurred by the Association in collecting such unpaid expenses including attorneys' fees (whether or not suit is instituted, and at trial or any appeal therefrom). In addition, the Board of Directors shall have the authority to attach a surcharge to any delinquent account not paid to the Association prior to March 1 of the

year such assessment is due. A surcharge equal to ten percent (10%) of the total assessment due to the Association shall be charged against the Lot if said assessment is paid during the period March 1 through April 30. Any assessment paid on or after May 1 shall incur a surcharge equal to twenty percent (20%) of the total assessment due to the Association. The Board of Directors shall have the right and duty to recover for the Association such common expenses together with such charges, interest, and expenses of the proceeding, including attorneys' fees, by an action brought against such Lot Owner or by foreclosure of the lien upon the Lot granted by the Oregon Planned Community Act. The Board of Directors shall notify the holder of any first Mortgage upon a Lot of any default not cured within thirty (30) days of the date of default.

7.8 Foreclosure of Liens for Unpaid Common Expenses. In any suit brought by the Association to foreclose a lien on a Lot because of unpaid assessments, the Lot Owner shall be required to pay a reasonable rental for the use of the Lot during the pendency of the suit: and the plaintiff in such foreclosure suit shall be entitled to the appointment of a receiver to collect such rental. The Board of Directors, acting on behalf of the Association, shall have the power to purchase such Lot at the foreclosure sale and to acquire, hold, lease, Mortgage, vote the votes appurtenant to, convey, or otherwise deal with the Lot. A suit or action to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing the liens securing the same.

7.9 Statement of Common Expenses. The Board of Directors shall advise each Lot Owner in writing of the amount of common expenses payable by him and furnish copies of each budget, on which such common expenses are based to all Lot Owners and, if requested, to their Mortgagees. The Board of Directors shall promptly provide any Lot Owner who makes a request in writing with a written statement of his unpaid common expenses.

7.10 Priority of Lien; First Mortgages. Any lien of the Association against a Lot for common expenses shall be subordinate to tax and assessment liens and any first Mortgage of record. Where the purchaser or Mortgagee of a Lot obtains title to the Lot as a result of foreclosure of a first Mortgage or by deed in lieu of foreclosure, such purchaser or Mortgagee, his successors and assign, shall not be liable for any of the common expenses chargeable to the Lot which became due prior to the acquisition of title by the purchaser or Mortgagee.

ARTICLE VIII

Rights of Mortgagees

8.1 Approval Required. In addition to any other approvals required by the Oregon Planned Community Act, this Amended and Restated Declaration, or the Amended and Restated Bylaws, the prior written approval of seventy-five percent (75%) of the holders of first Mortgages of Lots in the Planned Community (based upon one vote for each Mortgage owned) must be obtained for the following:

8.1.1 The abandonment, termination, or removal of the property from the provisions of the Oregon Planned Community Act, except when provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain:

8.1.2 The partition or subdivision of any Lot or of the common property

8.1.3 Any material amendment to this Amended and Restated Declaration or the Amended and Restated Bylaws:

8.1.4 Abandonment, encumbrance, sale, or transfer of the common property. The granting of easements for public utilities or for other public purposes consistent with the intended use of the common property by the Planned Community shall not be deemed a transfer within the meaning of this clause; or

8.1.5 Use of hazard insurance proceeds for losses to any Planned Community property, whether to Lots or to common property for other than the repair, replacement, or reconstruction of such improvements, except as provided by statute in cases of substantial loss to the Lots and/or common property of the Planned Community.

8.2 In addition to the approvals required in § 8.1, each Mortgagee (or beneficiary of a trust deed or vendor and including guarantors) shall have the following rights:

8.2.1 Right to Examine Books and Records. All Mortgagees shall have the right to examine the books and records of the Association or the Planned Community property upon reasonable notice and at reasonable times.

8.2.2 Right to Annual Reports. All Mortgagees shall, upon request, be entitled to receive an annual financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association.

8.2.3 Right to Receive Written Notice of Meetings.
The Association shall give all Mortgagees, upon request, written notice of all meetings of the Association, and such Mortgagees shall be permitted to designate a representative to attend all such meetings.

8.2.4 Notice in Event of Loss or a Taking.
The Association shall give all Mortgagees written notice of any loss to, or taking of, the common property of the Planned Community, or a Lot in the Planned Community if such loss or taking exceeds \$10,000 with respect to the common property.

ARTICLE IX
Common Property

9.1 Ownership of Common Property. Title to the Common Property shall be vested in fee simple to the Association. Each Lot owner shall have the right to use the Common Property pursuant to the terms hereof. Maintenance and control of the Common Property shall be pursuant to the provisions of this Amended and Restated Declaration.

9.2 Obligations of the Association. Except as stated herein, the Association shall be responsible for the exclusive management and control of the Common Property and all improvements thereon, if any, and shall keep the same in good, clean, attractive and sanitary condition, order and repair.

9.3 Lot Owner's Easement of Enjoyment. Subject to the provisions herein and rules and regulations of the Association, Lot Owners and their invitees shall have a right and easement of enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to every Lot.

9.4 Extent of Easement. The easement of enjoyment created hereby shall be subject to the following:

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

(b) The right of the Association to suspend the right of a Lot Owner to use the Common Property for any period during which any assessment against the Lot remains unpaid for more than thirty (30) days after notice; the right of the Association to suspend the right of a member to use any said Common Property for a period not to exceed sixty (60) days for any other infraction of the Amended and Restated Declaration, Amended and Restated Bylaws or any rules adopted by the Association.

(c) The right of the Association to dedicate or transfer all or any portion of the Common Property to any public agency, authority or utility for such purpose or create utility easements under, over and through the Common Property and subject to such conditions as may be agreed to by the Lot Owners. No such dedication or transfer shall be effective unless approved by two-thirds (2/3) of the Association's Board of Directors' votes outstanding agreeing to such dedication, transfer or easement and approved by Tillamook County or its successor and, except as to the grant of easements for utilities and similar or related purposes, unless all holders of first Mortgage liens on any of the Lots have approved such dedication or transfer.

9.5 Delegation of Use. Any Lot Owner may delegate his right of enjoyment to the Common Property to the occupant of his Lot or to the members of his family and to his guests subject to general regulations as may be established from time to time by the Association, Amended and Restated Bylaws of the Association and this Amended and Restated Declaration.

9.6 Damage or Destruction of Common Property by Lot Owner. In the event any Common Property is damaged or destroyed by a Lot Owner or any of his guests, tenants, licensees, agents or members of his family, such Lot Owner does hereby authorize the Association to repair said damage; the Association shall repair said damaged area in a good and workmanlike manner as originally constituted or as the area may be modified or altered subsequently by the Association in the discretion of the Association. The reasonable cost necessary for such repairs as originally constituted shall become a special assessment upon the Lot of said Lot Owner who caused said damage.

9.7 Authority of Association to Sell or Transfer Common Property. Except as otherwise provided in this Amended and Restated Declaration, the Association may sell, convey or subject to a security interest any portion of the common property if 80% or more of the votes in the Association are cast in favor of that action. The Association shall treat proceeds of any sale under this section as an asset of the Association. This article does not apply to the granting of easements for public utilities or for other public purposes consistent with the intended use of such common property by the Planned Community.

A sale, transfer or encumbrance of the common property or any portion of the common property made pursuant to a right reserved in this Article may provide that the common property be released from any restriction imposed on the common property by this Amended and Restated Declaration. However, a sale, transfer or encumbrance may not deprive any Lot of its right of access or support without the consent of the owner of the Lot.

ARTICLE X

General Covenants

10.1 Right of Entry. A Lot Owner shall grant the right of entry to the Board of Directors of the Association, managing agent, manager, or any other person authorized by the Board of Directors, in the case of any emergency originating in or threatening his Lot or other Planned Community property, whether or not the owner is present at the time. A Lot Owner shall also permit such persons to enter his Lot for the purpose of performing installations, alterations, or repairs to any common property and for the purpose of inspection to verify that the Lot owner is complying with the restrictions and requirements described in this Amended and Restated Declaration and the Amended and Restated Bylaws, provided that requests for entry are made in advance and such entry is at a time convenient to the owner.

10.2 Encroachments.

10.2.1 Pursuant to ORS 94.733, each Lot shall have an easement through the Common Property for the purpose of accommodating any present or future encroachment as a result of engineering errors, construction, reconstruction, repairs, settlement, shifting, or movement of any portion of the property, or any other similar cause, and any encroachment due to building overhang or projection. There shall be valid easements for the maintenance of the encroaching Lots and common property so long as the encroachments shall exist, and except as otherwise provided in subsection 2 of this section, the rights and obligations of owners shall not be altered in any way by the encroachment.

10.2.2 The easement described under subsection 1 of this section does not relieve a Lot Owner of liability in case of willful misconduct of a Lot Owner or relieve a Board of Directors or any contractor, subcontractor, or material man of liability for failure to adhere to the plat and floor plans.

10.2.3 The encroachments described in subsection 1 of this section shall not be construed to be encumbrances affecting the marketability of title to any Lot.

10.3 Responsibility for Maintenance. The necessary work to maintain, repair, or replace the common property shall be the responsibility of the Board of Directors of the Association and shall be carried out as provided in the Amended and Restated Bylaws.

10.4 Covenant of Contribution. No owner of a Lot may exempt himself from liability for his contribution toward the common expenses by a waiver of the use of, or enjoyment of any of the common property, or by abandonment of his Lot.

10.5 Enforcement. The Association, or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Amended and Restated Declaration. 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.

10.6 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

10.7 Authority to Grant Easements, Rights-Of-Way, Licenses, and Other Similar Interests. The Association shall have the authority to execute, acknowledge, deliver, and record on behalf of the Lot owners, leases, easements, rights-of-way, licenses, and other similar interests affecting the common property and consent to vacation of roadways within and adjacent to the Planned Community. The granting of a lease in excess of two years or any other interest or consent shall first be approved by at least two-thirds (2/3) of the Lot Owners. The instrument granting any such interest

shall be executed by the president and secretary of the Association and acknowledged in the manner provided for acknowledgement of such instruments by such officers, and shall state that such grant was approved by at least two-thirds (2/3) of the Lot Owners.

ARTICLE XI **Architectural Standards**

11.1 Purpose. In order to preserve the unique natural surrounding, style and quality of the Planned Community, to establish and preserve a harmonious and aesthetically pleasing design for the Planned Community, and to protect and promote the value of the Planned Community, the Lots and all improvements located thereon shall be subject to the restrictions set forth in this Article XI. Every Lot owner, by acceptance of a deed or other conveyance of such interest, agrees to be bound by the provisions of this Article XI.

11.2 Architectural Control Committee. No improvements of any nature whatsoever shall be constructed, altered, demolished, removed, added or maintained upon the exterior portion of the Lot or common property by the Association or any Lot Owner unless such improvements are approved by the Architectural Control Committee in accordance with this Article XI, which shall be established by the Board of Directors. The Committee shall consist of up to five (5) , but not less than three (3) , members appointed by the Board of Directors. The term of office for each member shall be set by the Board of Directors. The sole right and duty of the Committee is to make recommendations to the Board of Directors which shall be the sole body for making the decisions provided under this Article. The Board of Directors upon the recommendation of the Architectural Control Committee is authorized to retain the services of consulting architects, landscape architects, urban designers, engineers, inspectors and/or attorneys in order to advise and assist the Architectural Control Committee in performing its functions. Nothing herein shall be deemed to prohibit a member of the Board of Directors from serving on the Architectural Control Committee.

11.3 Construction of Improvements.

11.3.1 All buildings, structures or other improvements (excepting sidewalks and driveways) on or with respect to any Lot and with respect to any common property shall be located only within applicable setback lines, if any, specified by the Board of Directors upon the recommendation of the Architectural Control Committee. Variances with respect to such setback lines may be granted in the sole discretion of the Committee. To assure that all structures will be located so that the maximum view, privacy and breeze will be available, each structure will be located taking into consideration the topography of the land, the location of the trees, vegetation and other aesthetic and environmental considerations, as well as the precise site and location of any other structures and improvements within the Planned Community.

11.3.2 The Board of Directors, upon the recommendation of the Architectural Control Committee, may require that any contractor or subcontractor for any planned improvements within the Planned Community post payment and/or performance bonds with the Board of Directors to assure that such contractor or

subcontractor shall satisfactorily complete such improvements, such bonds to be in the name of the Association and to be in form and amount satisfactory to the Board of Directors. Furthermore, the Board of Directors, upon the recommendation of the Architectural Control Committee may require that a Lot owner place in escrow with the Board of Directors a sum of no more than Ten Thousand Dollars (\$10,000), in order to assure the completion of all improvements, including landscaping.

11.3.3 Structures may not be temporarily or permanently occupied until the exteriors thereof have been completed. No temporary house, shack, tent, barn or other outbuilding shall be permitted on any Lot at any time, except as otherwise provided herein or by the Board of Directors. During construction by the Association or a Lot Owner, the Association shall require its contractors to maintain the common property or Lot in a reasonably clean and uncluttered condition and, to the extent possible, all construction trash and debris shall be kept within refuse containers. Upon completion of construction, the Association or Lot Owner, (as the case may be,) shall cause its contractors to immediately remove all equipment, tools and construction material and debris from the common property or Lot on which such construction has been completed.

11.3.4 Each Lot Owner shall keep his Lot maintained at a level equal to that established by the Board of Directors. If for any reason a Lot Owner fails to properly maintain his Lot, the Association shall have the authority to provide the maintenance deemed necessary by the Board of Directors and the costs of such maintenance shall be added to the Lot Owner's assessment account.

11.3.5 All planning and construction shall be performed in accordance with local, county and state land use policies.

11.4 Landscaping Approval. To preserve the natural appearance of the Planned Community, no landscaping, grading, excavation or filling of any nature whatsoever shall be implemented and installed by the Association or any Lot Owner unless and until the Plans therefor have been submitted to and approved in writing by the Board of Directors upon the recommendation of the Architectural Control Committee.

11.5 Approval Not a Guarantee. No approval of Plans and specifications and no publication of architectural standards shall be construed as representing or implying that such Plans, specifications or standards will, if followed, result in properly designed improvements. Such approvals and standards shall in no event be construed as representing or guaranteeing that any dwelling or other improvement built in accordance therewith will be built in a good and workmanlike manner. Neither the Association nor the Board of Directors nor the Architectural Control Committee shall be responsible or liable for any defects in any Plans or specifications submitted, revised or approved, nor for any defects in construction undertaken pursuant to such Plans and specifications.

11.6 Signs. Except as may be required by legal proceedings, no signs or advertising posters of any kind shall be permitted on any Lot or maintained upon any part of the Planned Community, except identification signs installed by the Association. After initial sale, all identification signs, unless provided by the Association, must be approved by the Architectural Control Committee before installation.

11.7 Antennae. Without prior permission of the Board of Directors, no television antenna, radio receiver or other similar device shall be attached to or installed on any portion of the Planned Community unless contained entirely within the interior of a dwelling unit or other structure: provided, however, that the Association shall not be prohibited from installing, without limitation, equipment necessary for master antennae or satellite dish, security, cable television, mobile radio or other similar systems within the Planned Community.

11.8 Construction Activities. Notwithstanding any provisions or restrictions contained in this Amended and Restated Declaration to the contrary, it shall be expressly permissible for the Association and its contractors, agents, employees, successors and assigns, to maintain and carry on such facilities and activities as may be reasonably required, convenient or incidental to the construction and improvement of the common property.

11.9 Construction Restrictions.

11.9.1 Use and occupancy of the Lots shall be subject to zoning, building, health, sewage disposal and sanitation regulations of the State of Oregon and all governmental agencies having jurisdiction. If there are no governmental standards applicable, construction work shall be in accordance with the Uniform Building Code, latest edition.

11.9.2 The design, specifications, color grade, plot plan and location of every building, planting, fence, outbuilding, swimming pool structure, or other improvement of any nature whatsoever, the facilities thereon, and future changes, reconstructions or additions thereto must have prior written approval of the Architectural Control Committee as to location of the improvement with respect to property and building, set back lines, quality of workmanship and materials, and location with respect to topography and finish grade elevation, before work is commenced. Plans shall be submitted to: Architectural Control Committee, Kiwanda Shores Maintenance Association, P.O. Box 808, Pacific City, OR 97135. Architectural Control Committee shall render its decision with respect to the proposal within 30 days after it has received all material required by it with respect thereto.

Plans submitted for approval shall be sufficiently detailed to tell the reviewers exactly what is *planned*. *Building* plans shall consist of the following minimum *information*: *plot* plan, floor plans, front, side and rear elevations, and drainage tiles and culverts clearly marked, type and class of exterior finish and color to be used, and such *construction details* as are necessary to show stability. Masonry exterior, except rim, and vivid colors will not be considered compatible.

Plot plans should show careful consideration for preservation of the view for adjacent properties. No view obstructing fence or *plantings* may be used except for immediate privacy, such as between outdoor living areas of two adjacent properties.

11.9.3 No Lot shall be subdivided regardless of the number of Owners of such Lot.

11.9.4 Promptly after completion of any work, the Lot Owner shall give written notice of completion to the Architectural Control Committee. The Architectural Control Committee shall promptly, after receipt of such notice, inspect the completed work and give written notice to the Lot Owner of approval or of any respects in which the completed work fails to meet the plans and specifications consented to by the Architectural Control Committee. The Lot Owner shall be given a reasonable period, not less than thirty days, in which Lot Owner shall remedy any variance.

11.9.5 No person shall reside on a Lot until the exterior construction of the main residence thereon has been completed, which shall be within one year of commencement of construction. No temporary structure shall be placed on the Lot at any time.

11.9.6 Lots shall be used exclusively for residential purposes and no Lot shall be improved with more than one single family dwelling, including guest quarters, garages or wings for use of the immediate family, their guests and domestic helpers. Such appendages shall be blended or attached to the main house as parts of the architectural design as approved by the Architectural Control Committee.

11.9.7 No fence, gate or similar structure may be constructed or placed on any Lot without the prior, written approval of the Architectural Control Committee.

11.9.8 No Lot owner shall install any utility line, outside antennae or other outside wire without the prior written approval of the Architectural Control Committee.

11.9.9 No dwelling shall be permitted on any Lot within the said plat of less than a main floor area of 900 square feet, exclusive of garages.

11.9.10 No dwelling shall be built nearer than 20 feet to the street line *which such* building faces and not less than 20 feet from any street on the side of such dwelling. All structures shall be not less than 5 feet from any side property line.

11.9.11 All dwellings located west of Ocean Drive that are constructed after the date of execution of this Amended and Restated Declaration shall have a maximum gable height of sixteen (16) feet above finished grade.

ARTICLE XIII
Plan of Development

The Planned Community may be developed with the addition of up to six more phases. The Association reserves the right to add six additional phases to the Planned Community and to annex such additional phases by filing supplements to this Amended and Restated Declaration pursuant to ORS 94.580(3). Any such additional phase shall be of comparable style, quality, size, and range of Lot value to those Lots existing on the date hereof.

12.1 Maximum Number of Lots and Phases. If fully developed, the Planned Community shall contain not more than 300 Lots and not more than 12 phases.

12.2 Expiration Date. No additional phase may be added more than fifteen (15) years after the filing of this Amended and Restated Declaration. Upon a vote of a majority of the Lot Owners this date may be extended for up to five (5) years by amendment to this Amended and Restated Declaration.

12.3 Additional Common Property. While the Association may elect not to add additional Common Property, if it does, such addition may substantially increase the proportionate amount of the common expenses payable by Lot Owners.

12.4 Allocation of Voting Rights. Each Lot added to the Planned Community shall be allocated one vote in the affairs of the Association.

12.5 Allocation of Common Profits and Expenses. The common profits derived from and the common expenses of any common property added to the Planned Community pursuant to this article shall be distributed and charged to the owner of each Lot in an equal amount, except the amount associated with the owner of each unimproved Lot which may be discounted at the discretion of the Board of Directors.

12.6 Legal Description of Additional Phases. A legal description of the property upon which the additional phases would be located is included in the attached Exhibit "D."

ARTICLE XIII
Amendment

13.1 Approval Required. The Association may amend this Amended and Restated Declaration and the plat only by vote or agreement of the owners representing two-thirds (2/3) of the total votes in the Planned Community. In no event shall an amendment under this article increase the number of Lots 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.

13.2 Execution and Recordation. An amendment shall not be effective until certified by the president and secretary of the Association and recorded as required by law.

IN WITNESS WHEREOF, the Association has caused this Amended and Restated Declaration to be executed this 1st day of April, 1990_.

KIWANDA SHORES MAINTENANCE ASSOCIATION

r

President, George Baumgardner

Secretary, Scott Culp

STATE OF OREGON)

ss.

County of Tillamook)

Before me this 1st day of April, 1990, appeared the above-named Association and who acknowledged tha the/she is the President and the above-named who acknowledged that he/she is the Secretary of the above-named Association, and that they executed the within instrument on behalf of the Association by authority of its Board of Directors.

Before me: -,

Julie C. Larkins
NOTARY PUBLIC FOR OREGON
My Commission Expires: 11/19/90

NOTARY PUBLIC SEAL