

AFTER RECORDING RETURN TO:  
J. Dav. Bennett, P.C.  
3500 First Interstate Tower  
Portland, OR 97201

CONDOMINIUM DECLARATION

FOR

McNARY HIGHLANDS CONDOMINIUM

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This Declaration submits to the provisions, restrictions and limitations of the Oregon Condominium Act, land hereinafter described and all improvements now existing or to be constructed on such property, to be known as McNARY HIGHLANDS CONDOMINIUM.

Recitals, Intent and Purpose

McNary Highlands, a California limited partnership "Declarant" is owner in fee simple of the property described hereinbelow, and desires to submit said property to the Condominium form of ownership, to be converted, handled and used in the manner provided by the Oregon Condominium Act.

NOW, THEREFORE,

Declaration

Declarant hereby declares on behalf of itself, its successors, grantees and assigns, as well as to any and all persons having, acquiring or seeking to have or acquire any interest of any nature whatsoever in and to any part of the property as follows:

1. DEFINITIONS. Except as otherwise provided or modified by this Section, the terms herein shall have the meaning set forth in the Oregon Condominium Act, ORS 100.005 et seq., and said statute and definitions are incorporated herein. As used in this Declaration and in the Bylaws, the following terms shall have the following meanings:

"Condominium" means the land, all buildings, improvements and structures thereon, and all easements, rights and appurtenances belonging thereto, which are

herewith submitted to the provisions of the Oregon Condominium Act.

"Mortgage," "Mortgagee" and "Mortgagor" mean, respectively, a recorded mortgage, trust deed or contract of sale which creates a lien against a Unit, and the holder, beneficiary or vendor of such a mortgage, trust deed or contract of sale.

"Unit" means the airspace encompassed by the undecorated interior surface of the perimeter walls, floors and ceilings which is owned in fee simple by each Unit owner and which is more specifically described in Section 3.2 of this Declaration.

2. LAND DESCRIPTION. The land hereby being submitted to the Oregon Condominium Act is located in the County of Multnomah, State of Oregon and is more particularly described on Exhibit "A."

3. NAME AND UNIT DESCRIPTION.

3.1 Name. The name by which the property submitted hereunder shall be known is McNary Highlands Condominium.

3.2 Boundaries of Units. Each Unit shall be bounded by the interior surfaces of its perimeter walls, floors, ceilings, windows and window frames, doors and door frames and trim. The Units shall include all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, garage doors, fireplaces and flues, and any other materials constituting any part of its finished surfaces and the exterior surfaces so described. All other portions of the walls, floors or ceilings shall be a part of the common elements. In addition, each Unit shall include the following:

(a) All spaces, nonbearing interior partitions, windows, window frames, exterior doors, door frames, and all other fixtures and improvements within the boundaries of the Unit; and

(b) All outlets of utility service lines, including, but not limited to, power, light, gas, hot and cold water, heating, refrigeration, air conditioning and waste disposal within the boundaries of the Unit, but shall not include any part of such lines or ducts themselves.

In interpreting deeds, mortgages, deeds of trust and other instruments, for any purpose whatsoever or in connection with any matter, the existing physical boundaries of the Unit or of a

Unit reconstructed in substantial accordance with the original plans hereof shall be conclusively presumed to be the boundaries regardless of settling, rising or lateral movement of the building and regardless of variances between boundaries as shown on the plat and those of the actual building or buildings.

3.3 Building Description and Unit Designation. The land submitted by this Declaration has eight (8) buildings thereon in which Condominium Units are located. The Condominium buildings, which are two and three-story, wood frame construction on concrete foundations with cedar siding and tile roofs, contain fifty-eight (58) Units. Twenty-two of the Units include a garage on the basement level of the building in which the Units are located. There are four (4) carport buildings which contain thirty-six (36) single car carport spaces. The vertical and horizontal boundaries, number designation, location and dimension of each Unit are shown on the plat. The plat is being recorded simultaneously with this Declaration.

The allocation to each Unit of an undivided interest in the common elements was determined by dividing the sum of the approximate floor space of all Units into the approximate floor space of each respective Unit.

The Unit designation, approximate area and percentage ownership in common elements is as follows:

<u>Unit No.</u>	<u>Address</u>	<u>Floor Plan</u>	<u>Approximate Area*</u>	<u>Percentage Ownership in Common Elements</u>
1	101	C	1,208 Sq. Ft.	1.8555
2	102	C	1,208 Sq. Ft.	1.8555
3	103	C	1,208 Sq. Ft.	1.8555
4	104	C	1,208 Sq. Ft.	1.8555
5	105	C	1,208 Sq. Ft.	1.8555
6	106	F	1,008 Sq. Ft.	1.5483
7	107	E	1,008 Sq. Ft.	1.5483
8	108	G	1,344 Sq. Ft.	2.0644
9	201	B	1,008 Sq. Ft.	1.5483
10	202	B	1,008 Sq. Ft.	1.5483
11	203	B	1,008 Sq. Ft.	1.5483
12	204	B	1,008 Sq. Ft.	1.5483
13	205	B	1,008 Sq. Ft.	1.5483
14	206	B	1,008 Sq. Ft.	1.5483
15	207	B	1,008 Sq. Ft.	1.5483
16	208	B	1,008 Sq. Ft.	1.5483
17	209	B	1,008 Sq. Ft.	1.5483
18	210	B	1,008 Sq. Ft.	1.5483
19	211	B	1,008 Sq. Ft.	1.5483
20	212	B	1,008 Sq. Ft.	1.5483
21	301	C	1,208 Sq. Ft.	1.8555
22	302	C	1,208 Sq. Ft.	1.8555

123.78  
124.91

46.50  
117.277  
118.43

23	303	C	1,208 Sq. Ft.	1.8555
24	304	C	1,208 Sq. Ft.	1.8555
25	305	C	1,208 Sq. Ft.	1.8555
26	306	G	1,344 Sq. Ft.	2.0644
27	307	G	1,344 Sq. Ft.	2.0644
28	308	D	672 Sq. Ft.	1.0319
29	401	C	1,208 Sq. Ft.	1.8555
30	402	C	1,208 Sq. Ft.	1.8555
31	403	C	1,208 Sq. Ft.	1.8555
32	404	C	1,208 Sq. Ft.	1.8555
33	405	C	1,208 Sq. Ft.	1.8555
34	406	G	1,344 Sq. Ft.	2.0644
35	407	E	1,008 Sq. Ft.	1.5483
36	408	F	1,008 Sq. Ft.	1.5483
37	501	A	1,136 Sq. Ft.	1.7449
38	502	A	1,136 Sq. Ft.	1.7449
39	503	A	1,136 Sq. Ft.	1.7449
40	504	A	1,136 Sq. Ft.	1.7449
41	505	A	1,136 Sq. Ft.	1.7449
42	506	A	1,136 Sq. Ft.	1.7449
43	601	A	1,136 Sq. Ft.	1.7449
44	602	A	1,136 Sq. Ft.	1.7449
45	603	A	1,136 Sq. Ft.	1.7449
46	604	A	1,136 Sq. Ft.	1.7449
47	605	A	1,136 Sq. Ft.	1.7449
48	701	A	1,136 Sq. Ft.	1.7449
49	702	A	1,136 Sq. Ft.	1.7449
50	703	B	1,008 Sq. Ft.	1.5483
51	704	B	1,008 Sq. Ft.	1.5483
52	705	C	1,208 Sq. Ft.	1.8555
53	801	A	1,136 Sq. Ft.	1.7449
54	802	A	1,136 Sq. Ft.	1.7449
55	803	A	1,136 Sq. Ft.	1.7449
56	804	A	1,136 Sq. Ft.	1.7449
57	805	A	1,136 Sq. Ft.	1.7449
58	806	A	1,136 Sq. Ft.	<u>1.7449</u>

TOTAL: 100.0000%

4. GENERAL COMMON ELEMENTS.

4.1 Definition. The general common elements consist of all portions of the Condominium not part of a Unit or a limited common element, including, but not limited to the following:

(a) The land;

(b) The foundations, columns, girders, beams, supports, bearing walls, main walls, roofs, halls, and stairs;

(c) The yards, gardens, those parking areas not part of a Unit and not designated as a limited common element and outside storage spaces not designated as limited common elements;

(d) Installations of central services, such as power, light, water, and waste disposal up to the outlets within any Units;

(e) In general, all apparatus and installations existing for common use;

(f) The buildings containing the carports;

(g) All roadways and driveways within the Condominium boundaries; and

(h) All other elements of any building necessary or convenient to its existence, maintenance and safety, or normally in common use.

4.2 Maintenance, Repair and Replacement; Liability for Common Expense. Except as otherwise specifically provided in this Declaration, the cost of maintenance, repair and replacement of the general common elements shall be a common expense, and the performance of such work shall be the responsibility of the Association, except that any damage caused by the negligence or intentional act of an owner, his invitee, guest or servant shall be repaired by the Association at such owner's sole cost and expense. Although repair, maintenance and replacement of door and door frames (including patio and garage doors), window and window frames is the responsibility of individual owners, exterior painting shall be the responsibility of the Association. Common expenses shall be assessed and apportioned among the owners as set forth in Section 10.6 below. The Board of Directors, in its sole discretion, or the management agent, at the direction of the Board of Directors, may round up the Unit assessments to the next whole dollar amount or to the next quarter dollar amount.

4.3 Income From General Common Elements. All income derived from any coin-operated vending machines and/or any other income derived from the common elements shall be income of the Association. The Board of Directors may, in its discretion, use such income to help meet the expense of maintaining the common elements or for such other purpose as may benefit the Association and the Unit Owners in a substantially equal manner.

5. LIMITED COMMON ELEMENTS. The following shall constitute limited common elements, the use of which shall be restricted to the Units to which they pertain:

5.1 Definitions. Each of the patios and/or decks is a

limited common element appertaining to the Unit which it adjoins as shown on the plat. Carports Numbers C-1 through C-36, including the storage lockers located therein are limited common elements appertaining to the Units with the same numerical designation. At the time this Declaration is recorded, the carport designation on the physical site matches the addresses of the units, i.e., C-101 through C-102, etc. For convenience, the schedule of units in Section 3.3 hereof includes the address numbers as well as the legal description.

5.2 Maintenance, Repair and Replacement of Limited Common Elements. Except as otherwise specifically provided in this Declaration, the cost of maintenance, repair and replacement of the limited common elements shall be a general common expense, and the performance of such work shall be the responsibility of the Association, except that any damage caused by the negligence or intentional act of an owner, his invitee, guest or servant shall be repaired by the Association at such owner's sole cost and expense. Common expenses shall be assessed and apportioned among the owners as set forth in Section 10.6 below.

## 6. PARKING.

6.1 Garages/Limited Common Element Parking. Units 1 through 36 each have a single car carport appertaining to them as a limited common element, as more particularly set forth in Section 5 of this Declaration. Each of the remaining Units contain a double car garage excepting Unit Number 50 which contains a single car garage, and Unit 51 which has a single-car garage appertaining to it as a limited common element. The structures covering the limited common element parking spaces are a part of the general common elements of the Condominium.

6.2 General Common Element Parking. Any unnumbered or undesignated parking spaces are general common elements and shall be available for the use of the owners and their guests. The general common element parking shall be used in accordance with rules and regulations promulgated by the Board of Directors.

7. VOTING. The owner or co-owners of each Unit shall be entitled to one vote per Unit. "Majority" or "Majority of Unit Owners" shall mean the owners of more than fifty percent (50%) of the voting rights allocated to the Units by the Declaration. The calling and conducting of meetings of the Association of Unit Owners and the exercise of voting rights shall be controlled by Articles II and III of the Bylaws.

## 8. USE OF PROPERTY.

8.1 General. Each Unit is to be used for residential

purposes only. The common elements shall be used for the furnishing of services and facilities for the enjoyment of the Unit owners. Additional restrictions and regulations are set forth in the Bylaws and rules or regulations adopted pursuant to the provisions of the Bylaws.

8.2 Rules and Regulations Promulgated by the Association. The Board of Directors shall have the authority from time to time to promulgate such rules and regulations as the Board may deem in the best interest of the Association. No person shall use the common elements or any part thereof in any manner contrary to or inconsistent with such rules and regulations. Without in any manner intending to limit the generality of the foregoing, the Board of Directors shall have the right, but not the obligation, to promulgate rules and regulations limiting the use of the common elements to the members of the Association and their respective families, guests, invitees and servants. Such use may be conditioned upon, among other things: (a) the payment by the Unit owner of assessments for common expenses and such other assessments or fees as may be established by the Association for the purpose of defraying the costs associated with the use of such common elements; and (b) the observance by the Unit owner, his guests, invitees and servants, of the Declaration, Bylaws and the Association's rules and regulations.

9. CONTRACTS AND LEASES. All contracts or leases (including any management contract) which are entered into prior to the turnover meeting shall be terminable without penalty by the Association or the Board of Directors upon not less than thirty (30) days' written notice to the other party by the Association given not later than sixty (60) days after the turnover meeting. Provided, however, any such contracting or leasing party may request the Association to affirm the continuation of any such agreement for the balance of its stated term. Affirmation by the Association after transfer of control shall extinguish all termination rights of the Association under this Section.

10. BYLAWS; ASSOCIATION; MANAGEMENT.

10.1 Adoption of Bylaws. In behalf of the Association, the Declarant hereby adopts the Bylaws attached hereto as Exhibit "B" to govern the administration of the Condominium. The Bylaws shall be effective upon the execution and recording of this Declaration.

10.2 Association of Unit Owners; Membership. Each owner of a Unit in the Condominium shall be a member of the Association, and membership therein shall be limited to Unit owners only. The Association of Unit Owners, which shall be organized upon the recording of the Declaration and Bylaws, shall serve as a means

through which the Unit owners may take action with regard to the administration, management and operation of the Condominium. The Association of Unit Owners shall be an Oregon non-profit corporation.

10.3 Management; Board of Directors. The affairs of the Association shall be governed by a Board of Directors as provided in the Bylaws. The Board of Directors shall elect officers consisting of a chairman, secretary and treasurer. Pursuant to the provisions of the Bylaws and the Oregon Condominium Act, the Board of Directors may adopt administrative rules and regulations governing details of the operation, maintenance and use of the Condominium property. The Board of Directors may contract with a professional manager or management firm to manage the affairs of the Association.

10.4 Interim Board and Officers. The Declarant has reserved control over the administration of the Association by reserving the right in the Bylaws to appoint an interim Board of Directors to manage the Condominium until the turnover meeting. The turnover meeting shall be held within ninety days after conveyance to persons other than the Declarant of fifty (50%) of the Units in the Condominium or three years from the date of conveyance of the first Unit in the Condominium, whichever is earlier. The three (3) members of the interim board shall also serve as the interim chairman, secretary and treasurer.

10.5 Powers and Duties of the Association. The Association and the Board of Directors shall have the powers and duties granted to them by this Declaration, the Bylaws, and ORS 100.405(4) together with other provisions of the Oregon Condominium Act.

10.6 Covenant to Pay Assessments; Liability for Common Expense. Each owner hereby covenants to pay to the Association annual assessments for common expenses as more fully provided in the Bylaws. No owner may avoid liability for assessments by abandonment of his Unit or non-use of the common elements. Except as otherwise provided in this Declaration or the Bylaws, each Unit and the owner thereof will be liable for the common expense in the same percentage as the percentage ownership in the common elements allocated to such Unit.

10.7 Delegation. Nothing in this Declaration shall be construed to prohibit the Association or the Board of Directors from delegating to persons, firms or corporations of its choice the performance of such duties as may be imposed upon the Association or the Board of Directors by this Declaration, the Bylaws, Association rules or regulations, or applicable law.

11. SERVICE OF PROCESS. The designated agent to receive

service of process in cases provided in ORS 100.550(1) is named in the Condominium Information Report which will be filed with the Secretary of State in accordance with ORS 100.250(1)(a).

12. MORTGAGEES. In the event of a conflict between this Section 12 and other provisions of this Declaration, the provisions of this Section 12 will prevail. The terms "mortgage", "mortgagor" and "mortgagee" are defined in Section 1 of this Declaration.

12.1 Notice of Action. Upon written request to the Association identifying the name and address of the mortgagee, and the Unit number or address, any mortgagee will be entitled to timely notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Condominium or any Unit on which there is a mortgage held, insured, or guaranteed by such mortgagee;

(b) Any delinquency in the payment of assessments or charges owed by an owner of a Unit subject to a mortgage held, insured or guaranteed by such mortgagee, which remains uncured for a period of sixty (60) days;

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(d) Any proposed action which would require the consent of a specified portion of mortgagees as set forth in this Section 12.

12.2 Mortgagee Exempt from Certain Restrictions. Any mortgagee which comes into possession of the Unit pursuant to the remedies provided in the mortgage, or foreclosure of the mortgage, or deed (or assignment) in lieu of foreclosure, shall be exempt from any "right of first refusal" or other restriction on the sale or rental of the mortgaged Unit, including but not limited to, restrictions on the age of Unit occupants and restrictions on the posting of signs pertaining to the sale or rental of the Unit. Provided, however, mortgagees shall not be exempt from the restriction that Units cannot be rented for periods of less than thirty (30) days.

12.3 Subordination of Association Lien to Mortgage/Discharge of Lien Upon Foreclosure. The lien of the Association shall be subordinate to any first mortgage. Any mortgagee which comes into possession of the Unit pursuant to the remedies provided in the mortgage, by foreclosure of the mortgage, or by deed (or assignment) in lieu of foreclosure, shall take the

property free of any claims for unpaid assessments or charges against the mortgaged Unit which accrue prior to the time such mortgagee comes into possession of the Unit (except for claims for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessments or charges to all Units, including the mortgaged Unit).

12.4 Professional Management. Upon written request of the mortgage holders of at least fifty-one percent (51%) of the first mortgages of Units in the Condominium, the Board of Directors shall employ a professional manager to manage the affairs of the Association. Any agreement for professional management shall provide that the management contract may be terminated for cause on thirty (30) days' written notice. Without the prior written approval of the mortgage holders of fifty-one percent (51%) of the first mortgages on Units in the Condominium, the Association of Unit Owners may not effect any decision to terminate professional management and assume self-management of the Condominium. Additionally, if professional management has previously been required by any mortgage holder, any such decision to establish self-management shall require prior consent of the owners of Units to which sixty-seven percent (67%) of the votes in the Association are allocated.

12.5 Consent of Mortgagees to Change Percentage Ownership in Common Elements. The Unit owners may not reallocate the percentage interest in the common elements attributable to any Unit without prior approval of mortgagees holding fifty-one percent (51%) of the votes attributable to the Units in respect to which the percentage ownership is proposed to be altered. Nothing in this Section 12.5 shall be construed to give the owners, the Association, or the Board of Directors, any specific authority to alter such percentage ownership, and if any attempt is made to do so, full compliance shall be made with the Declaration, the Bylaws and the Oregon Condominium Act.

12.6 Consent of Mortgagees Required to Terminate Project. Except with respect to termination of the Condominium as a result of destruction, damage or condemnation, any termination of the Condominium shall require the approval of mortgagees holding fifty-one percent (51%) of the mortgages on Units in the Condominium. Additionally, any such terminations shall be carried out by the owners pursuant to provisions of the Declaration, the Bylaws and the Oregon Condominium Act, and only after vote of the owners as provided therein.

12.7 Limited Right of Amendment. Except upon the approval of mortgagees who hold fifty-one percent (51%) of the mortgages on Units in the Condominium, no amendments may be made to the Declaration or Bylaws which add to or amend any material provision of the Declaration or Bylaws which establish, provide for, govern or regulate any of the following:

- (a) Voting;
- (b) Assessments, assessment liens or subordination of liens;
- (c) Reserves for maintenance, repair and replacement of the common elements (or Units, if applicable);
- (d) Insurance or fidelity bonds;
- (e) Rights to use of the common elements;
- (f) Responsibility for maintenance and repair of the several portions of the Condominium;
- (g) Expansion or contraction of the Condominium, or the addition, annexation or withdrawal of property to or from the Condominium;
- (h) Boundaries of any Unit;
- (i) The interests in the general or limited common elements;
- (j) Convertibility of Units into common elements, or of common elements into Units;
- (k) Leasing of Units;
- (l) Imposition of any right of first refusal or similar restriction on the right of a Unit owner to sell, transfer or otherwise convey his or her Unit; and
- (m) Any provisions which are for the express benefit of mortgagees.

The provisions of this paragraph are intended only to be a limitation on the right of the Unit owners, Board of Directors and Association to amend the Declaration and Bylaws, and are not intended to give any such parties any specific rights to effect any amendments. Any such amendments to the Declaration or Bylaws shall be made only upon full compliance with the provisions of the Declaration and Bylaws of the Condominium and the Oregon Condominium Act relating to the procedure and percentage of votes required for such amendment. An addition or amendment to the Declaration or Bylaws shall not be considered material so as to require the consent or approval of mortgagees, if it is for the purpose of correcting technical errors or if it is for clarification only.

12.8 Request for Approval of Mortgagees. Any mortgagee who receives a written request to approve additions or amendments

to the Declaration or Bylaws, or to any other action to be taken by the Board of Directors, Association or Unit owners, shall be considered to have given such approval unless a negative response is delivered or posted by such mortgagee within thirty (30) days after such request is received by the mortgagee.

12.9 Proxy Held by Mortgagee in Certain Cases. A mortgagee may attend a meeting of the Association of Unit Owners and may cast the vote of the mortgagor of said Unit for the purpose of voting to paint or otherwise maintain the common elements, including the imposition of any special assessment necessary to pay the cost of such painting or repair. Provided, however, such right shall arise only in the event the mortgagee reasonably believes that the Association of Unit Owners has failed to maintain the common elements in sufficient manner to prevent excessive wear and tear.

12.10 Right to Examine Documents. The Association shall make available to Unit owners and lenders and to mortgagees current copies of the Declaration, Bylaws, other rules concerning the Condominium, and the books, records and financial statements of the Association. The Association shall have the right to impose a reasonable charge for any copies requested by owners, lenders and mortgagees.

12.11 Right to Annual Reports. The holders of at least fifty-one percent (51%) of the mortgages on Units in the Condominium shall be entitled to have an audited financial statement prepared at their expense if such statement is not otherwise available. The Association, its officers and directors and manager (if any), shall cooperate with such mortgage holder and their auditors to facilitate the necessary auditing and review process. Such financial statement shall be furnished within a reasonable time following request.

12.12 Right to Receive Written Notice of Meetings. Upon request, the Association of Unit Owners shall give all mortgagees written notice of all meetings of the Association, and such mortgagees shall be permitted to designate a representative to attend all such meetings.

12.13 List of Mortgagees. The Association shall maintain at all times a list of mortgagees, their names, addresses, the Units and mortgagors affected, and the matters with respect to which such mortgagees have requested notice, provided such information has been furnished to the Association by the owners or their mortgagees.

13. AMENDMENTS TO DECLARATION. Except where a larger vote is required by law, this Declaration may be amended from time to time by consent or approval of the Unit owners holding seventy-five

percent (75%) or more of the voting rights as otherwise set forth in this Declaration. Provided, however, no amendment of this Declaration reducing or eliminating the right of any mortgagee shall be made without the prior written consent of all such mortgagees.

13.1 Declarant's Approval Required. Declarant's prior written consent shall be required for any amendment so long as Declarant owns any Unit in the Condominium. Provided, however, no such consent shall be required after conveyance to owners, other than the Declarant, of seventy-five percent (75%) or more of the Units in the Condominium, or three (3) years after conveyance of the first Unit in the Condominium, whichever is earlier. Provided, however, even after such time, no amendment may limit or reduce any of the Declarant's special rights whether reserved herein or otherwise provided by law. No amendment may change the size, location, percentage interest in the common elements, method of determining liability for common expenses, right to common profits or voting power of any Unit(s) unless such amendment has been approved by the owners of the affected Unit(s) and the mortgagees of such Unit(s).

13.2 Recordation. An amendment to the Declaration shall be effective upon recordation in the Deed Records of Multnomah County, certified to by the chairman and secretary of the Association and approved by the County Assessor and the Real Estate Commissioner.

#### 14. SUBDIVISION/RELOCATION OF BOUNDARIES.

14.1 Subdivision of Units Prohibited. No Unit may be subdivided into divisions of any nature.

14.2 Unit Boundary Changes. The owner or owners of any two adjoining Condominium Units may apply to the Board of Directors of the Association for permission to change the sizes of their Units by adjusting the common boundary between the two Condominium Units or to consolidate the two Condominium Units into one Unit by deleting the common boundary. Any such application shall identify the Condominium Units involved, state any reallocations of the interest in the common element interests, and in the voting rights, common expense liability and right to common profits. The Board of Directors shall approve the change unless it determines that the reallocations are unreasonable or that the relocation or deletion will impair the structural integrity or mechanical systems of the Condominium or lessen the support of any portion of the Condominium. The change shall be effective upon recording in the appropriate records of Multnomah County, Oregon, of amendments to this Declaration and floor plans setting forth the change, executed by the owners and mortgagees of the affected Condominium Units and certified to by the chairman and secretary of the Association,

together with any governmental approvals required by law. All costs in connection with such amendments shall be paid by the applicants.

15. 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 Unit owners, easements, rights-of-way, licenses and other similar interests affecting the general common elements. The granting of any such interest shall first be approved by at least seventy-five percent (75%) of the Unit owners. The instrument granting any such interest shall be executed by the chairman and secretary of the Association and acknowledged in the manner provided for acknowledgment of such instruments by such officers and shall state that such grant was approved by at least seventy-five percent (75%) of the Unit owners.

16. DECLARANT'S SPECIAL RIGHTS. The Declarant shall have the following special rights:

16.1 Sales Office and Model. The Declarant shall have the right to maintain sales and/or rental offices and sales and/or rental models in one or more of the Units which the Declarant owns. The Declarant and prospective purchasers and their agents shall have the right to park automobiles in the parking area on the common elements and to use and occupy the sales office and models during reasonable hours any day of the week.

16.2 "For Sale"/"For Rent" Signs. The Declarant may maintain a reasonable number of "For Sale" and/or "For Rent" signs at reasonable locations on the Condominium property.

16.3 No Capital Assessments Without Consent. Neither the Association nor the Board of Directors shall make any assessments for new construction, acquisition or otherwise without the prior written consent of the Declarant, as long as the Declarant owns the greater of two (2) Units or five percent (5%) of the total number of Units in the Condominium. Nothing contained in this Section 16.3 shall be construed as a limitation on the Declarant's obligation to pay assessments for common expenses on Units owned by the Declarant pursuant to requirements of the Oregon Condominium Act.

16.4 Common Element Maintenance By The Association. The Association shall maintain all common elements in a clean and attractive manner. Should the Association fail to do so, the Declarant may perform such maintenance at the expense of the Association.

16.5 Declarant's Easements. The Declarant, its agents

and employees, shall have an easement on and over the common elements for the completion of any portion of the Condominium, including the furnishing and decoration of any Unit, sales office or model and the right to store materials on the common elements at reasonable places and for reasonable lengths of time.

16.6 Other Declarant Rights. The rights reserved to the Declarant in this Section 16 shall in no way limit any other special Declarant rights the Declarant may have, whether pursuant to the Oregon Condominium Act or otherwise. Upon the expiration of any or all special Declarant rights, the Declarant will have the same rights as any other owner in the Condominium in respect to such ownership.

16.7 Assignment of Declarant's Rights. The Declarant shall have the right to assign any and all of its rights, including without limitation Declarant's special rights as set forth in Section 16 hereof, or to share such rights with one or more other persons exclusively, simultaneously, or consecutively.

16.8 Expiration of Declarant's Special Rights. Unless otherwise provided, the Declarant's special rights reserved in this Section 16 shall expire upon the conveyance by the Declarant of the last Unit owned by the Declarant or five (5) years after conveyance of the first Unit in the Condominium, whichever is earlier.

## 17. GENERAL PROVISIONS.

17.1 Interpretation. The rights and obligations of all members of the Association and any person dealing with the Association or any of its members in respect to matters pertaining to the Declaration and the Bylaws shall be interpreted and governed by the laws of the State of Oregon.

17.2 Severability. Each provision of the Declaration and the Bylaws is independent and severable. The invalidity or partial invalidity of any provision thereof shall not affect any of the remaining portions of that or any other provision of this Declaration or the Bylaws.

17.3 Waiver of Rights. The failure of the Association, Board of Directors, an officer or a Unit owner to enforce any right, provision, covenant or condition of the Declaration and Bylaws shall not constitute a waiver of the right of any such party to enforce such right, provision, covenant or condition in the future.

17.4 Legal Proceedings. Failure to comply with any of the terms of the Declaration, the Bylaws and any rules or regulations adopted thereunder shall be grounds for relief which may include, without intending to limit the same, an action to

recover money due, damages or a suit for injunctive relief, to foreclose a lien, or any combination thereof. Relief may be sought by the Association, Board of Directors, an officer, a professional manager or management firm, or, if appropriate, by an aggrieved Unit owner.

17.5 Costs and Attorneys' Fees. In any proceeding arising because of alleged default by a Unit owner to comply with the terms and provisions of this Declaration (as may be amended or supplemented), the Bylaws (as may be amended), rules and regulations of the Association or any provisions of the Oregon Condominium Act, the prevailing party shall be entitled to recover the cost of the proceedings and such reasonable attorneys' fees as may be determined by the trial court in any trial or by the appellate court in any appeal thereof.

17.6 Compliances. Each Unit owner shall comply with the Declaration and the Bylaws and with the administrative rules and regulations adopted thereunder, and with all other applicable covenants, conditions and restrictions of record. Failure to comply therewith shall be grounds for suit or action maintainable by the Association or any Unit owner in addition to other sanctions which may be provided by the Bylaws or by any existing administrative rules and regulations.

17.7 Conflicting Provisions. In the event of a conflict between or among the Declaration, Bylaws and any administrative rules and regulations, the provisions of the Declaration shall be paramount to the Bylaws and the rules and regulations, and the Bylaws shall be paramount to the rules and regulations. For purposes of this section, the term "Declaration" shall include all amendments and the term "Bylaws" shall include all amendments.

17.8 Section and Paragraph Captions. Section and paragraph captions are not a part hereof unless the context otherwise requires. In construing this Declaration, it is understood that if the context so requires, the singular pronouns shall be taken to mean and include the plural, the masculine, feminine and neuter, and that generally, all grammatical changes shall be made, assumed and implied to make the provisions hereof apply equally to individuals, trusts, estates, personal representative, trustees and corporations.

18. Easements for Cable TV. There is hereby declared an easement over and through the common elements for the installation and maintenance of transmission lines to provide cable TV to the Units. Use of the easements shall be limited to those persons who may legally provide such service and shall be conditioned upon their agreement to install and maintain such transmission lines in reasonable locations and to repair any damage to the Condominium property caused by the installation, maintenance or removal of such cable TV lines.

The undersigned fee owner of the subject property has caused this Declaration to be executed this 29<sup>TH</sup> day of JUNE, 1993.

McNARY HIGHLANDS, a California limited partnership

By J.D.H. REALTY CO., an Oregon corporation, General Partner

By [Signature]  
James D. Harper, Jr., President

STATE OF OREGON )  
County of Multnomah ) ss. June 29 1993

Personally appeared JAMES D. HARPER, JR., who, being duly sworn, did say that he is the President of J.D.H. REALTY CO., general partner of McNARY HIGHLANDS, a California limited partnership, and he acknowledged the foregoing instrument as its voluntary act and deed.

[Signature]  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: 7-26-93

The foregoing Declaration is approved pursuant to ORS 100.110 this 16th day of December, 1993.



MORELLA LARSEN  
Real Estate Commissioner  
By [Signature]

The foregoing Declaration is approved pursuant to ORS 100.110 this 31<sup>ST</sup> day of DECEMBER, 1993.

MULTNOMAH COUNTY ASSESSOR  
By [Signature]  
DEPUTY

EXHIBIT "A"  
TO THE DECLARATION FOR McNARY HIGHLANDS CONDOMINIUM

I, Wendell Cloepfil, being first duly sworn, depose and say that "MCNARY HIGHLANDS", an Oregon Condominium, situated in the South-half of Section 32, Township 1 South, Range 1 East, Willamette Meridian, City of Lake Oswego, Multnomah County, Oregon, was correctly surveyed and marked with proper monuments as represented on the annexed map, and at the initial point a two-inch diameter, galvanized iron pipe, 36 inches long, was driven 6 inches below the surface of the ground at the Northwest corner of Block 40 of "MOUNTAIN PARK BLOCKS 35-41", a subdivision plat of record (Volume 1208, Page 20) in said Multnomah County; thence from said initial point the boundary of "MCNARY HIGHLANDS" runs along the North line of said Block 40, North 89°59'32" East, 62.07 feet to the Southwest corner of that tract described in deed to Howard C. Gammon recorded September 11, 1978, in Multnomah County Deed Book 1293, Page 842; thence along the West line of said Gammon Tract North 00°13'17" East, 30.93 feet to the Northwest corner thereof; thence along the North line of said Gammon Tract South 89°46'03" East, 411.88 feet to the West line of that tract described in deed to A. William and Julia N. Rouzie, recorded January 15, 1985, in Multnomah County Deed Book 1799, Page 965; thence along the West line of said Rouzie Tract and the West line of Block 24 of "MOUNTAIN PARK BLOCKS 10-31", a subdivision plat of record (Book 1202, Page 18) in said Multnomah County, South 00°20'24" West, 163.56 feet to the Southwest corner of said Block 24; thence along the Westerly line of Block 23 of said "MOUNTAIN PARK BLOCKS 10-31" on the following 4 courses 190.02 feet along the arc of a non-tangent curve, concave East, the radius of which is 188.70 feet the central angle is 57°41'52" and the chord bears South 18°54'54" West, 182.10 feet to a point of reverse curvature; thence 28.54 feet along the arc of a curve right, concave Northwest, the radius of which is 20.00 feet, the central angle is 81°45'53", and the chord bears South 30°56'54" West, 26.18 feet to a point of reverse curvature; thence 99.64 feet along the arc of a curve left, concave Southeast, the radius of which is 794.61 feet, the central angle is 7°11'04", and the chord bears South 68°14'19" West, 99.57 feet; thence on a non-tangent line South 62°50'11" West, 61.05 feet to the Northerly line of Tract 1, MOUNTAIN PARK NO 4, A MULTNOMAH COUNTY SUBDIVISION; thence along said line on the following 4 courses: 41.72 feet, along the arc of a non-tangent curve right, concave Northwest, the radius of which is 363.95 feet, the central angle is 6°34'03", and the chord bears South 70°48'41" West, 41.69 feet; thence 410.25 feet along the arc of a non-tangent curve right, concave North, the radius of which is 363.95 feet, the central angle is 64°35'04", and the chord bears North 73°50'42" West, 388.87 feet to a point of tangency; thence North 41°33'10" West 4.96 feet to a point of curvature; thence 68.71 feet along the arc of a curve left, concave Southwest, the radius of which is 661.98 feet, the central angle is 5°56'50", and the chord bears North 44°31'35" West, 68.68 feet to the Southwest corner of said Block 40; thence along the Westerly line of said Block 40 on the following 3 courses: North 42°30'00" East, 134.00 feet; thence North 76°33'35" East, 62.35; thence North 24°00'00" East, 145.95 feet to the initial point.

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ss.

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is and recorded in the record

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SECTION  
CO. OREGON

On Page

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File affixed  
in order of Conveyances

Wick

Deputy