

AFTER RECORDING, RETURN TO:

**Pahlisch Nielsen Homes, LLC
7128 SW Gonzaga Street Suite 100
Tigard OR 97223**

**DECLARATION OF PROTECTIVE COVENANTS
CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR PARK AT TIMBERHILL**

Pahlisch Nielsen Homes, LLC
Declarant

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**DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR PARK AT TIMBERHILL**

THIS DECLARATION is made this _____ day of _____, 2001 by **PAHLISCH NIELSEN HOMES, LLC**, an Oregon limited liability company ("Declarant").

RECITALS

A. Declarant has recorded the plat of "**Park at Timberhill**" in the plat records of Benton County, Oregon.

B. Declarant desires to subject the property described in such plat, except Tract D thereof, to the conditions, restrictions and charges set forth in this instrument for the benefit of such property, and its present and subsequent owners, and to establish such property under the Oregon Planned Community Act, ORS 94.550 to 94.783, as the planned development to be known as "**Park at Timberhill**."

NOW, THEREFORE, Declarant hereby declares that the property described in Section 2.1 below shall be held, sold and conveyed subject to the following easements, covenants, restrictions and charges, which shall run with such property and shall be binding upon all parties having or acquiring any right, title or interest in such property or any part thereof and shall inure to the benefit of each owner thereof.

ARTICLE 1

DEFINITIONS

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

1.1. "**Architectural Review Committee**" or "**the Committee**" means the committee appointed pursuant to Article 7 below.

1.2. "**Assessments**" means all assessments and other charges, fines and fees imposed by the Association on an Owner in accordance with this Declaration, the Bylaws of the Association or the provisions of the Oregon Planned Community Act, including, without limitation, Annual Assessments, Special Assessments, Emergency Assessments, and Individual Assessments as described in Article 10 below.

1.3. "**Association**" means the nonprofit corporation to be formed to serve as the owners association as provided in Article 8 below, and its successors and assigns.

1.4. "**Board of Directors**" means the duly appointed or elected board of directors of the Association, which is invested with the authority to operate the Association and to appoint the officers of the Association. Prior to the turnover meeting described in Section 8.7, Declarant will appoint the Board of Directors. After the turnover meeting, the Board of Directors will be elected by the Owners.

1.5. "**Common Areas**" means those lots or tracts designated as such on any plat of the Property, or in this Declaration, including any Improvements thereon, and shall also include any Lots converted to Common Areas as provided in Section 3.2 below.

1.6. "**Common Maintenance Areas**" means those areas, in addition to Common Areas, designated as such in this Declaration and to be maintained by the Association.

1.7. "**Declarant**" means Pahlisch Nielsen Homes, LLC, an Oregon limited liability company, and its successors and assigns if such successor or assignee should acquire Declarant's interest in the remainder of the proposed project site, or less than all of such property if a recorded instrument executed by Declarant assigns to the transferee all of Declarant's rights under this Declaration.

1.8. "**Improvement**" means every structure or improvement of any kind, including but not limited to a fence, wall, driveway, swimming pool, storage shelter, landscaping or other product of construction efforts on or in respect to the Property.

1.9. "**Living Unit**" means a building or a portion of a building located upon a Lot within the Property and designated for separate residential occupancy, together with any permitted Accessory Dwelling Unit.

1.10. "**Lot**" means a platted or partitioned lot within the Property, with the exception of any lot marked on a plat of the Property as being common or open space or so designated in this Declaration. Lot does not include Common Areas or Public Areas.

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

1.12. "**Owner**" means the person or persons, including Declarant, owning any Lot in the Property; but does not include a tenant or holder of a leasehold interest or a person holding only a security interest in a Lot. The rights, obligations and other status of being an Owner commence upon acquisition of the ownership of a Lot and terminate upon disposition of such ownership, but termination of ownership shall not discharge an Owner from obligations incurred prior to termination.

1.13. "**Park at Timberhill**" means the Property.

1.14. "**Public Areas**" means areas dedicated to the public or established for public use in any plat of the Property, or so designated in this Declaration.

1.15. "**Sold**" means that legal title has been conveyed or that a contract of sale has been executed and recorded under which the purchaser has obtained the right to possession.

1.16. "**The Property**" means Park at Timberhill.

1.17. "**This Declaration**" means all of the easements, covenants, restrictions and charges set forth in this instrument, together with any rules or regulations promulgated hereunder, as the same may be amended or supplemented from time to time in accordance with the provisions hereof.

ARTICLE 2

PROPERTY SUBJECT TO THIS DECLARATION

2.1. **The Property.** Declarant hereby declares that all of the real property described below is owned and shall be owned, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration:

All real property within that certain plat entitled "Park at Timberhill, " filed in the plat records of Benton County, Oregon, in Book _____ at Page _____ of Plat Records, except Tract D.

2.2. **Improvements.** Declarant does not agree to build any improvements on the Property other than as required by the City of Corvallis, but may elect, at Declarant's option, to build additional improvements.

2.3. **Withdrawal of Property.** Declarant may withdraw property from Park at Timberhill only by duly adopted amendment to this Declaration, except that Declarant may withdraw all or a portion of the Property at any time prior to the sale of the first Lot in the Property, subject to the prior approval of the City of Corvallis. Such withdrawal shall be by a declaration executed by Declarant and recorded in the deed records of Benton County, Oregon. If a portion of the Property is so withdrawn, all voting rights otherwise allocated to Lots being withdrawn shall be eliminated, and the common expenses shall be reallocated as provided in Section 10.9 below. Such right of withdrawal shall not expire except upon sale of the first Lot within the applicable phase of the Property as described above.

ARTICLE 3

LAND CLASSIFICATIONS

3.1. **Land Classifications.** All land within the Property is included in one or another of the following classifications:

(a) Lots, which shall consist of Lots 1 through 52 of the plat of the Property.

(b) Common Areas, which shall be the areas marked as Tracts A, B, and C on the plat of the Property.

(c) Common Maintenance Areas, which shall be trail easement area on Lot 22, the 20 foot wide landscape planting easement along Huckleberry Drive and the stormwater detention facility located on Tract A of the Plat of Townhomes at Timberhill..

(d) Public Areas, which shall be Tract D, the streets, and any public access trails shown on the plat of the Property.

3.2. **Conversion of Lots to Common Areas.** Declarant may elect to build common facilities on one or more Lots and designate such Lots as Common Areas by a declaration recorded in the deed records of Benton County, Oregon. Such declaration shall be executed by Declarant, as owner of the Lots.

ARTICLE 4

PROPERTY RIGHTS IN COMMON AREAS

4.1. **Owners' Easements of Enjoyment.** Subject to provisions of this Article, every Owner and his invitees shall have a right and easement of enjoyment in and to the Common Areas, which easement shall be appurtenant to and shall pass with the title to every Lot.

4.2. **Title to Common Areas.** Title to the Common Areas shall be conveyed to the Association by Declarant, free and clear of monetary liens, prior to the date on which Class B membership in the Association ceases and is converted to Class A membership as described in Section 8.3.

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

(a) **Association Easements.** Declarant grants to the Association for the benefit of the Association and all Owners of Lots within the Property the following easements over, under and upon the Common Areas:

(i) An easement on all Common Areas for underground installation and maintenance of power, gas, electric, water and other utility and communication lines and services installed by Declarant or with the approval of the Board of Directors of the Association and any such easement shown on any plat of the Property.

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

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

(b) **Public and Utility Easements.** The public is hereby granted access easements over all alley areas, pedestrian accesses, trails and Common Areas within the Property. In addition, Declarant or the Association shall grant or assign such easements to municipalities or other utilities performing utility services and to communication companies, and the Association may grant free access thereon to police, fire and other public officials and to employees of utility companies and communications companies serving the Property.

(c) **Use of the Common Areas.** The Common Areas shall not be partitioned or otherwise divided into parcels for residential use, and no private structure of any type shall be constructed on the Common Areas. Except as otherwise provided in this Declaration, the Common Areas shall be reserved for the use and enjoyment of all Owners and no private use may be made of the Common Areas. Nothing herein shall prevent the placing of a sign or signs upon the Common Areas identifying the Property or identifying pathways or items of interest, signs restricting certain uses or warning signs, provided such signs are approved by the Architectural Review Committee. The Board of Directors of the Association shall have authority to abate any trespass or encroachment upon the Common Area at any time, by any reasonable means and with or without having to bring legal proceedings.

(d) **Open Space Conservation Areas.** Those portions of the Common Areas designated by the City of Corvallis as Open Space Conservation Areas shall be retained in a natural manner. Non-native and invasive species may be removed, and existing vegetation shall be maintained for the well being of the resource and safety of residents. There shall be no alteration or interference with the natural drainage patterns or activities which may damage slopes or create erosion or sliding problems. These areas shall not be used for landscape features or equipment, such as lawns, composting, hot tubs, play structures, or sheds, or for dumping debris of any type, including yard and animal waste.

(e) **Landscaping of Certain Common Areas.** The two oak trees located on Tract C east of Lot 22 are significant trees which need protection. To assure such protection, no fill material or other significant impacts are permitted within a radius that is five feet larger than the drip line of each such tree. Those portions of the Common Areas

abutting the rights of way for Huckleberry Street and 29th Street shall incorporate a 20-foot wide landscape planting easement where fencing is not permitted. Plantings within these areas shall meet coverage requirements of the City of Corvallis Land Development Code except where retaining walls exist. In those cases, plantings in front on the wall, or hanging down over the wall, shall in three years create a screen that covers 50 percent of the wall. The landscape treatment along 29th Street shall consist of a 12-foot wide tree planting area, five-foot sidewalk, and a 20-foot wide landscape easement area that abuts the east side of the 29th Street right of way. Plant materials shall consist of street trees in the 12-foot strip that are the same species as those along the west side of the street, and there shall be some repetition of the shrub and groundcover species that are planted on the west side of 29th Street. In addition, landscape shall include numerous large canopy trees planted within the 20-foot landscape easement area. A uniform hedgerow shall be planted in the landscaped area of Tract A behind Lots 30 through 36 and which shall be maintained and irrigated by the Association. Irrigation on the 29th Street streetscape shall be limited to the curbside planter strip and landscaped area of Tract A behind Lots 30 through 36, and at the intersection of 29th Street and Silktassel, so as to eliminate negative impacts on the open space natural vegetation. The Association shall maintain the landscaping in a healthy condition, ensuring that there is a ninety percent (90%) ground coverage and that the trees if not healthy are replaced.

(f) **Alienation of the Common Areas.** The Association may not by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas owned directly or indirectly by the Association for the benefit of the Lots unless the holders of at least 80 percent of the Class A Association voting rights and the Class B member (as defined in Section 8.3 below), if any, have given their prior written approval and unless approved by the City of Corvallis. The Association shall first offer to dedicate such property to the City of Corvallis. This provision shall not apply to the easements described in Section 4.3(a) above. The Association, upon approval in writing of at least 50 percent of the Class A Association voting rights and the Class B member, if any, and if approved by order or resolution of the City of Corvallis, may dedicate or convey any portion of the Common Areas to a park district or other public body.

(g) **Limitations on Use.** Use of the Common Areas by the Owners shall be subject to the provisions of this Declaration and to the following:

(i) The right of the Association to suspend such use rights of an Owner to the extent provided in Article 11 below.

(ii) The right of the Association to adopt, amend and repeal rules and regulations in accordance with this Declaration.

4.4. **Delegation of Use.** Any Owner may delegate, in accordance with the Bylaws of the Association, his right of enjoyment of the Common Areas to the family members, tenants, invitees and guests, whose use shall be subject to this Declaration and Rules and Regulations adopted under this Declaration.

4.5. **Easements Reserved by Declarant.** So long as Declarant owns any Lot, Declarant reserves an easement over, under and across the Common Areas in order to carry out sales and rental activities necessary or convenient for the sale or rental of Lots. In addition, Declarant hereby reserves to itself and for the owners of Lots in Park at Timberhill a perpetual easement and right-of-way for access over, upon and across the Common Areas for construction, utilities, communication lines, drainage, and ingress and egress for the benefit of other property owned by Declarant and future phases of the Property. Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under and across the Common Areas and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the Improvements on the Property or other real property owned by Declarant; provided, however, that no such rights shall be exercised by Declarant in such a way as to unreasonably interfere with the occupancy, use, enjoyment or access to an Owner's Lot by that Owner or his family, tenants, employees, guests or invitees.

ARTICLE 5

PROPERTY RIGHTS IN LOTS

5.1. **Use and Occupancy.** The Owner of a Lot in the Property shall be entitled to the exclusive use and benefit of such Lot, except as otherwise expressly provided in this Declaration, but the Lot shall be bound by and each Owner and the Declarant shall comply with the restrictions contained in Article 6 below and all other provisions of this Declaration and the provisions of any supplement or amendment to this Declaration.

5.2. **Easements Reserved.** In addition to any utility and drainage easements shown on any recorded plat, Declarant hereby reserves the following easements for the benefit of Declarant and the Association:

(a) **Adjacent Common Area.** The Owner of any Lot which blends together visually with any Common Area shall, if the Association elects from time to time to so require, permit the Association to enter upon the Lot to perform the maintenance of such Common Area.

(b) **Right of Entry.** Declarant, the Architectural Review Committee and any representative of the Association authorized by it may at any reasonable time, and from time to time at reasonable intervals, enter upon any Lot for the purpose of maintaining any Common Maintenance Area located on or adjacent to the Lot and determining whether or not the use and/or improvements of such Lot are then in compliance with this Declaration. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Lot.

(c) **Utility Easements.** Easements for installation and maintenance of utilities and drainage facilities may be reserved over portions of certain Lots, as shown on any recorded plat. Within the easements, the Architectural Review Committee will not permit any structure, planting or other material to be placed or permitted to remain on the easement area

which may damage or interfere with the installation or maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

(d) **Landscape Easement.** A landscape easement is imposed on Lots 22 through 29. Owners are restricted from encroaching on this easement other than for landscaping purposes.

ARTICLE 6

GENERAL USE RESTRICTIONS

6.1. **Structures Permitted.** No structures shall be erected or permitted to remain on any Lot except structures containing a single detached Living Unit and structures normally accessory thereto, all of which shall have first been approved by the Architectural Review Committee pursuant to Article 7 below. Such provision shall not exclude construction of a private greenhouse, storage unit, private swimming pool or structure for the storage of a boat and/or camping trailer for personal use, provided the location of such structure is in conformity with the applicable City of Corvallis regulations, is compatible in design and decoration with the dwelling structure constructed on such Lot, and has been approved by the Architectural Review Committee.

6.2. **Residential Use.** Lots shall only be used for residential purposes. Except with the consent of the Board of Directors of the Association, no trade, craft, business, profession, commercial or similar activity of any kind shall be conducted on any Lot, nor shall any goods, equipment, vehicles, materials or supplies used in connection with any trade, service or business be kept or stored on any such Lot. The mere parking on a Lot of a vehicle bearing the name of a business shall not, in itself, constitute a violation of this provision. Nothing in this paragraph shall be deemed to prohibit (a) activities relating to the rental or sale of Living Units, (b) the right of Declarant or any contractor or homebuilder to construct Living Units on any Lot, to store construction materials and equipment on such Lots in the normal course of construction, and to use any Living Unit as a sales or rental office or model home for purposes of sales or rental in Park at Timberhill, and (c) the right of the Owner of a Lot to maintain his professional personal library, keep his personal business or professional records or accounts, handle his personal business or professional telephone calls or confer with business or professional associates, clients or customers, in his Living Unit. The Board of Directors shall not approve commercial activities otherwise prohibited by this paragraph unless the Board of Directors determines that only normal residential activities would be observable outside of the Living Unit and that the activities would not be in violation of applicable City of Corvallis ordinances.

6.3. **Offensive or Unlawful Activities.** No noxious or offensive activities shall be carried on upon the Property, nor shall anything be done or placed on the Property which interferes with or jeopardizes the enjoyment of the Property, or which is a source of annoyance to Owners or occupants. No unlawful use shall be made of the Property nor any

part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction over the Property shall be observed.

6.4. **Animals.** No animals, livestock or poultry of any kind shall be raised, bred or kept or permitted within any Lot other than a reasonable number of household pets which are not kept, bred or raised for commercial purposes and which are reasonably controlled so as not to be a nuisance. Any inconvenience, damage or unpleasantness caused by such pets shall be the responsibility of their respective owners. No animal shall be permitted to roam the Property unattended, and all dogs shall be kept on a leash while outside a Lot. An Owner or occupant may be required to remove a pet upon receipt of the third written notice from the Association Board of Directors of violations of any rule, regulation or restriction governing pets within the Property.

6.5. **Maintenance of Structures and Grounds.** Each Owner shall maintain the Owner's Lot and Improvements thereon in a clean and attractive condition, in good repair and in such fashion as not to create a fire or other hazard. Such maintenance shall include, without limitation, exterior painting, repair, replacement and care for roofs, gutters, downspouts, exterior building surfaces, walks, lights and fences on alleys and other exterior improvements and glass surfaces. All repainting or restaining and exterior remodeling shall be subject to prior review and approval by the Architectural Review Committee. In addition, each Owner shall keep all sidewalks, shrubs, trees, grass and plantings of every kind on the Owner's Lot (other than Common Maintenance Areas) neatly trimmed, property cultivated and free of trash, weeds and other unsightly material, and shall maintain and irrigate the area of the street right-of-way between the curb and the sidewalk. Damage caused by fire, flood, storm, earthquake, riot, vandalism, or other causes shall likewise be the responsibility of each Owner and shall be restored within a reasonable period of time.

6.6. **Parking.** Except as may otherwise be provided in the Rules and Regulations of the Association, parking of boats, trailers, motorcycles, trucks, mobile homes, campers or other recreational vehicles or equipment, regardless of weight, and parking of any other vehicles with a gross vehicle weight in excess of 9,000 pounds shall not be allowed to remain overnight on any part of the Property or on public streets within the Property, excepting only within areas designated for such purposes by the Board of Directors of the Association or within the confines of an enclosed garage or screened area, the plans of which shall have been reviewed and approved by the Architectural Review Committee prior to construction, and no portion of the same may project beyond the screened area. If there is no rear fencing and the vehicle could be seen from the outside the Lot other than from the front road, the vehicle must also be screened from view from that direction as well. Vehicles may not be used for storage of materials for more than forty-eight (48) hours without approval from the Architectural Review Committee. Parking in or blocking of alleys is prohibited. Any vehicle parked in violation of this section can be towed or impounded as provided in Section 11.1(c) below.

6.7. **Vehicles.** No Owner shall permit any vehicle which is in an extreme state of disrepair to be abandoned or to remain parked on the Owner's Lot unless screened from view or on the Common Area or any street for a period in excess of forty-eight (48) hours. A vehicle shall be deemed in an "extreme state of disrepair" when the Board of Directors reasonably determines that its presence offends the occupants of the area due to its appearance or continued inoperability. Should any Owner fail to remove such vehicle within five (5) days following the date on which notice is mailed to him by the Association, the Association may have the vehicle removed from the Property and charge the expense of such removal to the Owner. Parking in or blocking of alleys is prohibited. Any vehicle parked in violation of this section can be towed or impounded as provided in Section 11.1(c) below.

6.8. **Signs.** No signs shall be erected or maintained on any Lot except that not more than one "For Sale" or "For Rent" sign placed by the Owner, Declarant or by a licensed real estate agent, not exceeding twenty-four (24) inches high and thirty-six (36) inches long, may be temporarily displayed on any Lot, except that two such signs may be placed on a Lot during the course of initial construction of a dwelling on such Lot. The restrictions contained in this paragraph shall not prohibit the temporary placement of "political" signs on any Lot by the Owner, subject to reasonable regulations adopted by the Architectural Review Committee relating to size and length of display.

6.9. **Rubbish and Trash.** No part of the Property shall be used as a dumping ground for trash or rubbish of any kind. Yard rakings, dirt and other material resulting from landscaping work shall not be dumped onto Lots, streets or Common Areas. Should any Owner or occupant responsible for its generation fail to remove any trash, rubbish, garbage, yard rakings or any such materials from any streets or the Property where deposited by such person within ten (10) days following the date on which notice is mailed to the Owner or occupant by the Board of Directors of the Association, the Association may have such materials removed and charge the expense of such removal to the Owner.

6.10. **Landscape.** All landscaping (including front and rear yard) shall be completed within six (6) months from the date of occupancy of the Living Unit constructed thereon. Landscaping must include at least grass and bark dust. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon written approval of the Architectural Review Committee. Three medium to large, as defined by the City of Corvallis Land Development Code, deciduous trees (2.5" minimum caliper) shall be planted on the south side of the dwellings on each of Lots 1 through 7, 38 through 44, 22 through 29 and 8. These trees shall be planted at least 10 feet from the top of retaining walls. Three evergreen trees shall be planted on each of Lots 30 through 37 and 8, between the dwelling and the streetside lot line.

6.11. **Temporary Structures.** No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuildings shall be used on any Lot at any time as a residence either temporarily or permanently, except during the period of initial construction of a dwelling on the Lot.

6.12. **Fences, Hedges and Retaining Walls.** No fences or boundary hedges shall be installed without prior approval of the Architectural Review Committee. All fencing must be of the type shown on the attached Exhibit A. All retaining walls must be approved by the Architectural Review Committee and the City of Corvallis, and no structural alteration of an established retaining wall or exposed rock is allowed unless first approved by the Architectural Review Committee and the City of Corvallis.

6.13. **Service Facilities.** Service facilities (garbage, fuel tanks, clotheslines, etc.) shall be screened such that the elements screened are not visible at any time from the street or a neighboring property.

6.14. **Antennas and Satellite Disks.** Exterior antennas, satellite receiver and transmission dishes and other communication devices shall not be permitted to be placed upon any Lot except in accordance with rules established by the Architectural Review Committee in accordance with Section 7.3.

6.15. **Exterior Windows, Lighting and Noisemaking Devices.** All exterior windows installed on Living Units shall be a Low E nonreflective glass to minimize reflective glare. Only down-lighting will be allowed on exteriors, and this shall be shielded so that the light cone does not leave the property. A light impact plan shall be submitted to the Architectural Review Committee and the City of Corvallis with building permits. Except with the consent of the Architectural Review Committee, no noisemaking devices shall be installed or modified on any Lot. Seasonal holiday lighting and decorations are permissible if consistent with any applicable rules and regulations and if removed within thirty (30) days after the celebrated holiday.

6.16. **Pest Control.** No Owner shall permit any thing or condition to exist upon any portion of the Property which shall induce, breed or harbor infectious plant or animal diseases or noxious insects or vermin.

6.17. **Grades, Slopes and Drainage.** Each Owner of a Lot shall accept the burden of, and shall not in any manner alter, modify or interfere with, the established drainage pattern and grades, slopes and courses related thereto over any Lot or Common Area without the express written permission of the Architectural Review Committee, and then only to the extent and in the manner specifically approved. No structure, plantings or other materials shall be placed or permitted to remain on or within any grades, slopes, or courses, nor shall any other activities be undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow, or obstruct or retard the flow of water through drainage channels.

6.18. **Lot Access.** No lots shall be developed or modified so as to allow direct access to 29th Street.

6.19. **Protection of Oak Tree on Lot 1.** The existing 48-inch diameter oak tree located at the northeast corner of Lot 1 shall be preserved and may not be cut down or moved unless an arborist certifies that leaving the tree will present a safety hazard. Development shall not extend within a radius that is five feet larger than the tree's drip line. Development includes buildings and drives, cuts and fills, and construction activities (i.e., no vehicle parking and/or maneuvering, storage or construction materials, trenching, or other related activities shall be permitted within the protect radius). To prevent damage during construction, a construction fence at least five feet high shall be located 10 feet outside the tree's drip line before any grading or other construction activities begin on the site. Lawn and other ground cover requiring irrigation shall not be permitted under the tree and within five feet of the tree's drip line area. Watering in this area is prohibited, as is trenching, cutting or filling.

6.20. **Lot 8 Setback.** No building or outdoor living areas, such as patios and decks, shall be constructed on Lot 8 within ten (10) feet of its boundary with Tract B.

6.21. **Rules and Regulations.** In addition, the Association from time to time may adopt, modify or revoke such nondiscriminatory rules and regulations governing the conduct of persons and the operation and use of the Property as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Property. A copy of the Rules and Regulations, upon adoption, and a copy of each amendment, modification or revocation thereof, shall be delivered by the Association Board of Directors promptly to each Owner. The rules and regulations may be adopted by the Board of Directors of the Association, except as may be otherwise provided in the Bylaws of the Association.

ARTICLE 7

ARCHITECTURAL REVIEW COMMITTEE

7.1. **Architectural Review.** No Improvement shall be commenced, erected, placed or altered on any Lot until the construction plans and specifications showing the nature, shape, heights, materials, colors and proposed location of the Improvement have been submitted to and approved in writing by the Architectural Review Committee. It is the intent and purpose of this Declaration to assure quality of workmanship and materials and to assure harmony of external design with the existing Improvements and as to location with respect to topography and finished grade elevations and compliance with the setback requirements contained in the conditions of approval of the City of Corvallis. The building plans to be submitted shall consist of one complete set of plans and specifications in the usual form showing insofar as appropriate, (i) the size the dimensions of the Improvements, (ii) the exterior design, (iii) approximate exterior color scheme, location of Improvements on the Lot, including setbacks, driveway and parking areas, and location of existing trees to be removed. These plans and specifications shall be left with the Committee until sixty (60) days after notice of completion has been received by the Committee. This is for the purpose of determining whether, after inspection by the Committee, the Improvement complies substantially with the plans and specifications submitted and approved. The Architectural

Review Committee is not responsible for determining compliance with structural and building codes, solar ordinances, zoning codes or any other governmental regulations, all of which are the responsibility of the applicant. The procedure and specific requirements for review and approval of construction may be set forth in Design Guidelines adopted from time to time by the Architectural Review Committee. The Committee may charge a reasonable fee to cover the cost of processing the application. In all cases in which the Architectural Review Committee consent is required by this Declaration, the provisions of this Article shall apply, except that this Article shall not apply to construction by Declarant.

7.2. **Committee Decision.** The Architectural Review Committee shall render its decision with respect to the construction proposal within thirty (30) working days after it has received all material required by it with respect to the application. In the event the Committee fails to render its approval or disapproval within forty-five (45) working days after the Committee has received all material required by it with respect to the proposal, or if no suit to enforce this Declaration has been commenced within one year after completion thereof, approval will not be required and the related provisions of this Declaration shall be deemed to have been fully complied with.

7.3. **Committee Discretion.** The Architectural Review Committee may, at its sole discretion, withhold consent to any proposed work if the Committee finds the proposed work would be inappropriate for the particular Lot or incompatible with the design standards that the Committee intends for Park at Timberhill. Consideration such as siting, shape, size, color, design, materials, height, solar access, screening, impairment of the view from other Lots, or other effect on the enjoyment of other Lots or the Common Area, disturbance of existing terrain and vegetation and any other factors which the Committee reasonably believes to be relevant, may be taken into account by the Committee in determining whether or not to consent to any proposed work. Regulations on siting of television antennas and satellite receiving dishes shall be in conformance with any applicable Federal Communications Commission rules.

7.4. **Membership: Appointment and Removal.** The Architectural Review Committee shall consist of as many persons, but not less than two, as the Declarant may from time to time appoint., The Declarant may remove any member of the Committee from office at its discretion at any time and may appoint new or additional members at any time. The Association shall keep on file at its principal office a list of the names and addresses of the members of the Committee. Declarant may at any time delegate to the Board of Directors of the Association the right to appoint or remove members of the Architectural Review Committee. In such event, or in the event Declarant fails to appoint an Architectural Review Committee, the Board of Directors shall assume responsibility for appointment and removal of members of the Architectural Review Committee, or if it fails to do so, the Board of Directors shall serve as the Architectural Review Committee.

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

7.6. **Liability.** Neither the Architectural Review Committee nor any member thereof shall be liable to any Owner, occupant, builder or developer for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the Committee or a member of the Committee, and the Association shall indemnify the Committee and its members therefrom, provided only that the member has, in accordance with the actual knowledge possessed by him, acted in good faith.

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

7.8. **Appeal.** At any time after Declarant has delegated appointment of the members of the Architectural Review Committee to the Board of Directors of the Association pursuant to Section 7.4, any Owner adversely affected by action of the Architectural Review Committee may appeal such action to the Board of Directors of the Association. Appeals shall be made in writing within ten (10) days of the Committee's action and shall contain specific objections or mitigating circumstances justifying the appeal. A final, conclusive decision shall be made by the Board of Directors of the Association within fifteen (15) working days after receipt of such notification.

7.9. **Effective Period of Consent.** The Architectural Review Committee's consent to any proposed work shall automatically be revoked one year after issuance unless construction of the work has been substantially commenced in the judgment of the Architectural Review Committee and thereafter diligently pursued, unless the Owner has applied for and received an extension of time from the Committee.

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

ARTICLE 8

ASSOCIATION

Declarant shall organize an association of all of the Owners within Park at Timberhill. Such Association, its successors and assigns, shall be organized under the name "**Park at Timberhill Owners Association**" or such similar name as Declarant shall designate, and shall have such property, powers and obligations as are set forth in this Declaration for the benefit of the Property and all Owners of Lots located therein.

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

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

8.3. **Voting Rights.** The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Class B member and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member shall be the Declarant and shall be entitled to three votes for each Lot owned by Declarant. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(i) When all of the Lots in Park at Timberhill have been sold and conveyed to Owners other than Declarant; or

(ii) At such earlier time as Declarant may elect in writing to terminate Class B membership.

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

(a) The powers, duties and obligations granted to the Association by this Declaration.

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

(c) The powers, duties and obligations of a homeowners association pursuant to the Oregon Planned Community Act.

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

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

8.5. **Specific Powers and Duties.** The powers and duties of the Association shall include, without limitation, the following:

(a) **Maintenance and Services.** The Association shall provide maintenance and services for the Property as provided in Article 9 and other provisions of this Declaration.

(b) **Insurance.** The Association shall obtain and maintain in force policies of insurance as provided in this Declaration or the Bylaws of the Association.

(c) **Rulemaking.** The Association shall make, establish, promulgate, amend and repeal rules and regulations as provided in Section 6.18, 6.19, 6.20, 6.21, 9.3 of this Declaration.

(d) **Assessments.** The Association shall adopt budgets and impose and collect Assessments as provided in Article 10 of this Declaration.

(e) **Enforcement.** The Association shall perform such acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce the provisions of this Declaration and the rules and regulations adopted by the Association, including, without limitation, enforcement of the decisions of the Architectural Review Committee.

(f) **Employment of Agents, Advisers and Contractors.** The Association, through its Board of Directors, may employ the services of any person or corporation as managers, hire employees to manage, conduct and perform the business, obligations and duties of the Association, employ professional counsel and obtain advice from such persons or firms or corporations such as, but not limited to, landscape architects, architects, planners, lawyers and accountants, and contract for or otherwise provide for all services necessary or convenient for the management, maintenance and operation of the Property.

(g) **Borrow Money, Hold Title and Make Conveyances.** The Association may borrow and repay moneys for the purpose of performing its duties under this Declaration, and subject to Section 4.3(e) above, encumber the Common Areas as security for the repayment of such borrowed money. The Association may acquire, hold title to and convey, with or without consideration, real and personal property and interests therein, including but not limited to easements across all or any portion of the Common Area, and shall accept any real or personal property, leasehold or other property interests within Park at Timberhill conveyed to the Association by Declarant.

(h) **Transfer, Dedication and Encumbrance of Common Area.** Except as otherwise provided in Section 4.3(e) above, the Association may sell, transfer or encumber all or any portion of the Common Area to a person, firm or entity, whether public or private, and dedicate or transfer all or any portion of the Common Area to any public agency, authority, or utility for public purposes.

(i) **Create Classes of Service and Make Appropriate Charges.** The Association may, in its sole discretion, create various classes of service and make appropriate Individual Assessments or charges therefor to the users of such services, including but not limited to reasonable admission and other fees for the use of any and all recreational facilities situated on the Common Areas, without being required to render such services to those of its members who do not assent to such charges and to such other Rules and Regulations as the Board of Directors deems proper. In addition, the Board of Directors shall have the right to discontinue any service upon nonpayment or to eliminate such service for which there is no demand or adequate funds to maintain the same.

(j) **Implied Rights and Obligations.** The Association may exercise any other right or privilege reasonably to be implied from the existence of any right or privilege expressly given to the Association under this Declaration or reasonably necessary to effectuate any such right or privilege.

8.6. **Liability.** A member of the Board of Directors or an officer of the Association shall not be liable to the Association or any member thereof for any damage, loss or prejudice suffered or claimed on account of any action or failure to act in the performance of his duties, except for acts of gross negligence or intentional acts. In the event any member of the Board of Directors or any officer of the Association is made a party to any proceeding because the individual is or was a director or officer of the Association, the Association shall indemnify such individual against liability and expenses incurred to the maximum extent permitted by law.

8.7. **Interim Board: Turnover Meeting.** Declarant shall have the right to appoint an interim board of three directors, who shall serve as the Board of Directors of the Association until replaced by Declarant or until their successors take office at the turnover meeting following termination of Class B membership. Declarant shall call a meeting of the Association for the purpose of turning over administrative responsibility for the Property to the Association not later than ninety (90) days after termination of the Class B membership in accordance with Section 8.3 above. At the turnover meeting the interim directors shall resign and their successors shall be elected by the Owners as provided in this Declaration and in the Bylaws of the Association. If Declarant fails to call the turnover meeting required by this section, any Owner or mortgagee of a Lot may call the meeting by giving notice as provided in the Bylaws.

8.8. **Contracts Entered into by Declarant or Prior to Turnover Meeting.** Notwithstanding any other provision of this Declaration, any management contracts, service contracts or employment contracts entered into by the Declarant or the Board of Directors on behalf of the Association prior to the turnover meeting described in Section 8.7 above shall have a term of not in excess of three (3) years. In addition, any such contract shall provide that it may be terminated without cause or penalty by the Association or Board of Directors upon not less than thirty (30) days' notice to the other party given not later than sixty (60) days after the turnover meeting described in Section 8.7 above.

ARTICLE 9

MAINTENANCE, UTILITIES AND SERVICES

9.1. **Maintenance and Lighting of Common Areas and Common Maintenance Areas.** The Association may provide exterior lighting for and shall perform all maintenance upon the Common Areas and Common Maintenance Areas, including but not limited to landscaping, irrigation, walks, private roads, entrance gates, fences, retaining walls, and signs, parking areas, walkways and trails, unless the maintenance thereof is assumed by a public body. Such areas shall be maintained in an attractive condition and in a good and workmanlike manner such as to carry out the purpose for which such areas are intended.

9.2. **Maintenance of Utilities.** The Association shall perform or contract to perform maintenance of all private utilities within Common Areas, such as sanitary sewer service lines, domestic water service lines and storm drainage lines, except to the extent such maintenance is performed by the utilities furnishing such services. The Association shall not be liable for any interruption or failure of such services. Each Owner shall be responsible for maintaining utility lines within his Lot.

9.3. **Maintenance of Stormwater Detention Facility.** The pond stormwater detention facility that is part of the Common Maintenance Areas shall be landscaped in grass and trees. Trees species within the area of frequent standing water shall be water tolerant with many wide canopy trees located to maximize shading of stormwater. The facility shall be designed to facilitate maintenance by riding mowers (i.e., mowing strips, thoughtful tree spacing, etc.) To minimize hazards to children in pond area, any area where grasses, weeds, etc are not kept low by mowing shall be maintained so grass does not exceed eight inches in height. Maintenance of the facility shall be the responsibility of the Association.

9.4. **Security.** The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to make the Property safer than it otherwise might be. Neither the Association, Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Property, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or of ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system or other security system cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants that the Association, its board of directors and committees, Declarant, and any successor Declarant are not insurers and that each person using the Property assumes all risks for loss or damage to persons, to property and to the contents of Lots resulting from acts of third parties and releases such parties from any liability therefor.

9.5. **Services.** The Association shall provide or contract for such services as the Board may reasonably deem to be of benefit to the Property, including, without limitation, landscape services, garbage and trash removal for Common Areas and security services.

9.6. **Owner's Responsibility.** Except as otherwise provided in this Declaration or by written agreement with the Association, all maintenance of the Lots and Improvements thereon as provided in Section 6.5 above shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in a neat and attractive condition in accordance with the community-wide standard of Park at Timberhill The Association shall, in the discretion of the Board of Directors, assume the maintenance responsibilities of such Owner if, in the opinion of the Board of Directors, the level and quality of maintenance being provided by such Owner does not satisfy such standard. Before assuming the maintenance responsibilities, the Board of Directors shall notify the Owner in writing of its intention to do so, and if such Owner has not commenced and diligently pursued remedial action within fifteen (15) days after mailing of such written notice, then the Association shall proceed. The expenses of such maintenance by the Association shall be reimbursed to the Association by the Owner, together with interest as provided in Section 11.5 below. Such charges shall be an Individual Assessment and lien on the Lot as provided in Sections 10.7 and 11.2 below.

ARTICLE 10

ASSESSMENTS

10.1. **Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners and occupants of the Property and for the improvement, operation and maintenance of the Common Areas.

10.2. **Types of Assessments.** The Association may levy Annual Assessments, Special Assessments, Emergency Assessments, and Individual Assessments, all as more particularly described below.

10.3. **Apportionment of Assessments.** Lots owned by Declarant shall not be subject to Annual Assessments, Special Assessments or Emergency Assessments until such time as the Lot is occupied for residential use, except that Annual Assessments for reserves as described in Section 10.11(b) below shall begin accruing for all Lots, including Lots owned by Declarant, from the date the first Lot is conveyed. Declarant, however, may defer payment of the accrued reserve assessments for a Lot until the date the Lot is conveyed. The books and records of the Association shall reflect the amount owing from the Declarant for all reserve assessments. All Lots other than unoccupied Lots owned by Declarant shall be subject to assessment shall pay an equal share of the Annual Assessments, Special Assessments and Emergency Assessments. Declarant may elect to delay collection of Annual Assessments against all Lots, but in such case shall pay all common expenses of the Association until such Assessments commence. No Owner by the Owner's own action may claim exemption from liability for contribution towards common expenses by waiver by the Owner of use of enjoyment of any of the Common Area or by abandonment by the Owner of the Owner's Lot. An Owner may not claim an offset against an Assessment for failure of the Association to perform its obligations, and no Owner may offset amounts owing or claimed to be owing by the Association or Declarant to the Owner.

10.4. **Annual Assessments.** The Board of Directors of the Association shall from time to time and at least annually prepare an operating budget for the Association, taking into account the current costs of maintenance and services and future needs of the Association, any previous overassessment and any common profits of the Association. The budget shall take into account the numbers of Lots subject to assessment as of the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to assessment during the fiscal year. The budget shall provide for such reserve or contingency funds as the Board deems necessary or as may be required by law, but not less than the reserves required by Section 10.9 below. Annual Assessments for such operating expenses and reserves ("Annual Assessments") shall then be apportioned among the Lots as provided in Section 10.3 above.

Within thirty (30) days after adopting the annual budget, the Board of Directors shall provide a summary of the budget to all Owners. If the Board of Directors fails to adopt an annual budget, the last adopted budget shall continue in effect. The manner of billing and collection of Assessments shall be as provided in the Bylaws.

10.5. **Special Assessments.** In addition to the Annual Assessment authorized above, the Board of Directors may levy during any fiscal year a Special Assessment ("Special Assessment"), applicable to that year only, for the purpose of deferring all or any part of the cost of any construction or reconstruction, unexpected repair, or acquisition or replacement of a described capital improvement, or for any other one-time expenditure not to be paid for out of Annual Assessments. Special Assessments which in the aggregate in any fiscal year exceed an amount equal to fifteen percent (15 %) of the budgeted gross expenses of the Association for the fiscal year may be levied only if approved by a majority of the voting rights voting on such matter, together with the written consent of the Class B member, if any. Prior to the turnover meeting described in Section 8.7, any Special Assessment must be approved by not less than fifty percent (50%) of the Class A voting rights, together with the written consent of the Class B member. Special Assessments shall be apportioned as provided in Section 10.3 above and may be payable in lump sum or in installments, with or without interest or discount, as determined by the Board of Directors.

10.6. **Emergency Assessments.** If the Annual Assessments levied at any time are, or will become, inadequate to meet all expenses incurred under this Declaration for any reason, including nonpayment of any Owner's Assessments on a current basis, the Board of Directors of the Association shall immediately determine the approximate amount of such inadequacy and issue a supplemental budget, noting the reason therefor, and levy an Emergency Assessment for the amount required to meet all such expenses on a current basis ("Emergency Assessment"). Any Emergency Assessment which in the aggregate in any fiscal year would exceed an amount equal to five percent (5%) of the budgeted gross expenses of the Association for the fiscal year may be levied only if approved by not less than a majority of the voting rights voting on such matter, together with the written consent of the Class B member, if any. Emergency Assessments shall be apportioned as set forth in Section 10.3 above and payable as determined by the Board of Directors.

10.7. **Individual Assessments.** Any common expense or any part of a common expense benefiting fewer than all of the Lots may be assessed exclusively against the Lots benefited ("Individual Assessment"). Individual Assessments include, without limitation, charges for services provided under Sections 8.5(i) and 9.6 and any common expense that is the fault of the Owner and not paid by insurance. Individual Assessments shall also include default assessments levied against any Lot to reimburse the Association for costs incurred in bringing such Lot or its Owner into compliance with the provisions of this Declaration or the Rules and Regulations of the Association and for fines or other charges imposed pursuant to this Declaration for violation thereof. Unless otherwise provided by the Board of Directors, Individual Assessments shall be due 30 days after the Board of Directors has given written notice thereof to the Owners subject to the Individual Assessments.

10.8. **Operations Fund.** The Association shall keep all funds received by it as Assessments, other than reserves described in Section 10.9, separate and apart from its other funds, in a bank account in the name, of the Association to be known as the "**Operations Fund.**" All expenses of the Association shall be paid from the Operations Fund or the Reserve Fund referred to in Section 10.9. The Association shall use such fund exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents within the Property and in particular for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas and of the Lots situated upon the Property, including but not limited to:

(a) Payment of the cost of maintenance, utilities and services as described in Article 9.

(b) Payment of the cost of insurance as described in the Bylaws of the Association.

(c) Payment of taxes assessed against the Common Areas and any improvements thereon.

(d) Payment of the cost of other services which the Association deems to be of general benefit to the Owners, including but not limited to accounting, legal and secretarial services.

10.9. **Reserve Fund.**

(a) **Establishment of Account.** The Declarant shall establish a bank account in the name of the Association (the "**Reserve Fund**") for replacement of common properties which will normally require replacement in whole or in part in more than three(3) and less than thirty (30) years and for exterior painting if the Common Areas or other property to be maintained by the Association include exterior painted surfaces. The Reserve Fund need not include those items that could reasonably be funded from operating assessments.

(b) **Funding of Reserve Fund.** The Reserve Fund shall be funded by assessments against the individual Lot assessed for maintenance of the items for which the Reserve Fund is being established, which sums shall be included in the regular monthly Annual Assessment for the Lot. The amount assessed shall take into account the estimated remaining life of the items for which the reserve is created and the current replacement cost of such items. The Association is responsible for administering the Reserve Fund and making periodic payments into it.

(c) **Reserve Studies.** The amount of the reserve payments shall be adjusted at least annually to recognize changes in current replacement costs over time. The Board of Directors annually shall conduct a reserve study, or review and update an existing study, of the Common Areas and other property maintained by the Association to determine the Reserve Fund requirements. A Reserve Fund shall be established for those items of the Common Areas and other property maintained by the Association for all or part of which will normally require replacement in more than three (3) and less than thirty (30) years, for exterior painting if the Common Areas or any other property maintained by the Association include exterior painted surfaces, and for the maintenance, repair or replacement of other items the Board of Directors, in its discretion, may deem appropriate. The Reserve Fund need not include items that could reasonably be funded from operating assessments. The reserve study shall include:

- (i) Identification of all items for which reserves are to be established;
- (ii) The estimated remaining useful life of each item as of the date of the reserve study;
- (iii) An estimated cost of maintenance, repair or replacement of each item at the end of its useful life;
- (iv) A thirty (30) year plan with regular and adequate contributions, adjusted by estimated inflation and interest earned on reserves, to meet the maintenance, repair and replacement schedule.

(d) **Use of Reserve Fund.** The Reserve Fund shall be used only for maintenance, repair and replacement of Common Areas and other property maintained by the Association for which the reserves have been established and shall be kept separate from other funds. After the turnover meeting described in Section 8.7, however, the Board of Directors may borrow funds from the Reserve Fund to meet high seasonal demands on the regular operating funds or to meet other temporary expenses which will later be paid from Annual Assessments, Special Assessments, Limited Common Area Assessments or Emergency Assessments. Nothing in this section shall prohibit prudent investment of the reserve account. Following the second year after the turnover meeting, future Assessments for the Reserve Fund may be reduced, eliminated or decreased by an affirmative vote of not less than seventy-five percent (75 %) of the voting power of the Association. Assessments paid into the Reserve Fund are the property of the Association and are not refundable to sellers or Owners of Lots. Sellers of the Lots, however, may treat their outstanding share of the Reserve Fund as a separate item in any sales agreement.

10.10. **Creation of Lien and Personal Obligation of Assessments.** Declarant, for each Lot owned by it within the Property, does hereby covenant, and each Owner of any Lot by acceptance of a conveyance thereof, whether or not so expressed in any such conveyance, shall be deemed to covenant to pay to the Association all assessments or other charges as may be fixed, established and collected from time to time in the manner provided in this Declaration or the Association Bylaws. Such assessments and charges, together with any interest, expenses or attorneys' fees imposed pursuant to Section 11.5, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment or

charge is made. Such Assessments, charges and other costs shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment or charge fell due. Such liens and personal obligations shall be enforced in the manner set forth in Article 11 below.

10.11. **Voluntary Conveyance.** In a voluntary conveyance of a Lot the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor of the Lot up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, upon request of a prospective purchaser, the Board of Directors of the Association shall make and deliver a statement of the unpaid Assessments against the prospective grantor or the Lot, and the grantee in that case shall not be liable for, nor shall the Lot when conveyed be subject to, a lien filed thereafter for any unpaid Assessments against the grantor in excess of the amount set forth in the statement.

ARTICLE 11

ENFORCEMENT.

11.1. **Violation of General Protective Covenants.** In the event any Owner constructs or permits to be constructed on his Lot an Improvement contrary to the provisions of this Declaration, or shall violate any provisions of this Declaration, the Bylaws of the Association or the rules and regulations, then the Association acting through its Board of Directors shall notify the Owner in writing of any such specific violations. If the Owner is unable, unwilling or refuses to comply with the Association's specific directives for remedy or abatement, or the Owner and the Association cannot agree to a mutually acceptable solution within the framework and intent of this Declaration, after notice and opportunity to be heard and within fifteen (15) days of written notice to the Owner, then the Association acting through its Board of Directors, shall have the right to do any or all of the following:

(a) Assess reasonable fines against such Owner in the manner and amount the Board deems appropriate in relation to the violation, which fines shall constitute Individual Assessments for purposes of this Declaration;

(b) Enter the offending Lot and remove the cause of such violation, or alter, repair or change the item which is in violation of this Declaration in such a manner as to make it conform thereto, in *which* case the Association may assess such Owner for the entire cost of the work done, which amount shall be payable to the Operations Fund as an Individual Assessment, provided that no items of construction shall be altered or demolished in the absence of judicial proceedings;

(c) Cause any vehicle parked in violation of this Declaration or the rules and regulations to be towed and impounded at the Owners' expense;

(d) Suspend the voting rights, any utility services paid for out of Assessments and the right to use the Common Areas for the period that the violations remain unabated, provided that the Association shall not deprive any Owner of access to and from his Living Unit; and

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

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

(a) The Association may suspend such Owner's voting rights, any utility services paid for out of Assessments and right to use the Common Areas until such amounts, plus other charges under this Declaration, are paid in full and may declare all remaining periodic installments of any Annual Assessment immediately due and payable. In no event, however, shall the Association deprive any Owner of access to and from his Lot.

(b) The Association shall have a lien in accordance with ORS 94.709 against each Lot for any Assessment levied against the Lot, including any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Lot.

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

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

11.3. **Reports to First Mortgagees.** In response to a written request of any first mortgagee of a Lot, the Association shall report to such mortgagee whether such Lot is current or past due with respect to Assessments.

11.4. **Subordination of Lien to Mortgages.** The lien of the Assessments or charges provided for in this Declaration shall be subordinate to the lien of any mortgage or deed of trust on such Lot which was made in good faith and for value and which was recorded prior to the recordation of the notice of lien. Sale or transfer of any Lot shall not affect the Assessment lien, but the sale or transfer of any Lot which is subject to any mortgage or deed of trust pursuant to a decree of foreclosure thereunder or any deed or proceeding, deed or assignment in lieu of foreclosure shall extinguish any lien of an Assessment notice of which was recorded after the recording of the mortgage or trust deed. The unpaid Assessments as a result of such

foreclosure or sale shall become a common expense of all Owners, including the mortgagee or purchaser, and such sale or transfer shall not release the Lot from liability for any Assessments or charges thereafter becoming due or from the lien of such Assessments or charges.

11.5. **Interest, Late Charges and Expenses.** Any amount not paid to the Association when due in accordance with this Declaration shall bear interest from the due date until paid at a rate which is the greater of eighteen percent (18%) per annum or three percentage points per annum above the prevailing Portland, Oregon prime rate as of the due date, or such other rate as may be established by the Board of Directors, but not to exceed the lawful rate of interest under the laws of the State of Oregon. A late charge may be charged for each delinquent Assessment in an amount established from time to time by resolution of the Board of Directors of the Association not to exceed thirty percent (30%) of such Assessment. In the event the Association shall file a notice of lien, the lien amount shall also include the recording fees associated with filing the notice, and a fee for preparing the notice of lien established from time to time by resolution of the Board of Directors of the Association.

11.6. **Costs and Attorneys' Fees.** In the event the Association shall bring any suit or action to enforce this Declaration, the Bylaws of the Association or the Rules and Regulations, or to collect any money due hereunder or to foreclose a lien, the Owner-defendant shall pay to the Association all costs and expenses incurred by it in connection with such suit or action, including a foreclosure title report, and the prevailing party in such suit or action shall recover such amount as the court may determine to be reasonable as attorneys' fees at trial and upon any appeal or petition for review thereof or in connection with any bankruptcy proceedings or special bankruptcy remedies.

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

11.8. **Enforcement by the City of Corvallis.** The provisions of this Declaration relating to preservation and maintenance of Common Areas and Common Maintenance Areas shall be deemed to be for the benefit of the City of Corvallis as well as the Association and Owners of Lots, and the City of Corvallis may enforce such provisions by appropriate proceedings at law or in equity, or may cause such maintenance to be performed, the costs of which shall become a lien upon the Property.

ARTICLE 12

MORTGAGEES

12.1. **Reimbursement of First Mortgagees.** First mortgagees of Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy, for such Common Area. First mortgagees making such payments shall be owed immediate reimbursement therefor from the Association to the extent the same was the responsibility of the Association.

12.2. **Right of First Mortgagees Relating to Maintenance.** At any time that the Common Areas are not maintained or repaired by the Association to the extent reasonably necessary to protect and preserve the value of the Property for security purposes, then the record mortgagee, upon giving written notice as provided in this paragraph, shall be entitled to exercise the rights of the Owner of the Lot as a member of the Association to vote at all regular and special meetings of the members of the Association for a period of one year following the date of such notice. During this one-year period, the Association shall give notice of all regular and special meetings to both the Owner and the mortgagee, and the Owner may attend such meetings as an observer. Notice from the mortgagee under this section shall quote this Section 12.2 and shall be sent postage prepaid by certified United States mail, return receipt requested, to the Owner with a copy by regular mail to the Association at the last known address of each.

ARTICLE 13

MISCELLANEOUS PROVISIONS

13.1. **Amendment and Repeal.** This Declaration, or any provision thereof, as from time to time in effect with respect to all or any part of the Property, may be amended or repealed by the vote or written consent of Owners representing not less than seventy-five percent (75 %) of the Lots, based upon one vote for each such Lot, together with the written consent of the Class B member, if such Class B membership has not been terminated as provided in this Declaration. Any such amendment or repeal shall become effective only upon recordation in the Deed Records of Benton County, Oregon, of a certificate of the president or secretary of the Association setting forth in full the amendment, amendments or repeal so approved and certifying that said amendment, amendments or repeal have been approved in the manner required by this Declaration. In no event shall an amendment under this section create, limit or diminish special Declarant rights without Declarant's written consent, 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. Declarant may not amend this Declaration to increase the scope of special declarant rights reserved in this Declaration after the sale of the first Lot unless owners representing seventy-five percent (75%) of the total vote, other than Declarant, agree to the amendment. To the extent any amendment relates to the preservation or maintenance of the Common Areas or private utility lines, or the existence of an entity responsible for accomplishing the same, such amendment shall be approved by the Zoning Administrator of the City of Corvallis.

13.2. **Regulatory Amendments.** Notwithstanding the provisions of Section 13.1 above, until the turnover meeting described in Section 8.7 has occurred, Declarant shall have the right to amend this Declaration or the Bylaws of the Association in order to comply with the requirements of any applicable statute, ordinance or regulation or of the Federal Housing Administration, the United States Department of Veterans Affairs, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Mortgage Loan Corporation, any department, bureau, board, commission or agency of the United States or the State of Oregon, or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon which insures, guarantees or provides financing for a planned community or lots in a planned community. After the turnover meeting, any such amendment shall require the approval of a majority of the voting rights of the Association voting in person, by proxy or by ballot at a meeting or ballot meeting of the Association at which a quorum is represented.

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

13.4. **Lessees and Other Invitees.** Lessees, employees, invitees, contractors, family members and other persons entering the Property under rights derived from an Owner shall comply with all of the provisions of this Declaration restricting or regulating the Owner's use, improvement or enjoyment of his Lot and other areas within the Property. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner himself.

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

13.6. **Construction: Severability: Number: Captions.** This Declaration shall be liberally construed as an entire document to accomplish the purposes thereof as stated in the introductory paragraphs hereof. Nevertheless, each provision of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision shall not affect the validity or enforceability of the remaining part of that or any other provision.

As used in this Declaration, the singular shall include the plural and the plural the singular, and the masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration.

13.7. **Notices and Other Documents.** Any notice or other document permitted or required by this Declaration may be delivered either personally or by mail. Delivered by mail shall be deemed made twenty-four (24) hours after having been deposited in the United States mail as certified or registered mail, with postage prepaid, addressed as follows: If to Declarant or the Association, 7128 SW Gonzaga Street, Suite 100, Tigard, Oregon 97223; if to an Owner, at the address given at the time of the Owner's purchase of a Lot, or at the Lot. The address of a party may be changed at any time by notice in writing delivered as provided herein.

IN WITNESS WHEREOF, Declarant has executed this Declaration on the date set forth above.

PAHLISCH NIELSEN HOMES, LLC an Oregon limited liability company

By _____
Dennis Pahlisch, Member

STATE OF OREGON)
) ss.
County of Washington)

The foregoing instrument was acknowledged before me this 13 day of December, 2001, by Dennis Pahlisch, Member of Pahlisch Nielsen Homes, LLC, an Oregon limited liability company, on its behalf.

[OFFICIAL SEAL]

[NANCY E. KOWALSKI]
Notary Public for State of Oregon
My commission expires: October 18, 2003